

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2022
Constitutional Amendment, 2022
First Extraordinary Session, 2022
Second Extraordinary Session, 2022
Third Extraordinary Session, 2021

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OF

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FOREWORD

These volumes contain the Acts of the Second Regular Session of the 85th Legislature, 2022, and the First and Second Extraordinary Sessions of the 85th Legislature, 2022, and the Third Extraordinary Session of the 85th Legislature, 2021.

Second Regular Session, 2022

The Second Regular Session of the 85th Legislature convened on January 12, 2022. Pursuant to the Constitutional sixty-day limit on the duration of the session, the Legislature was adjourned *sine die* at midnight, March 12, 2022.

Bills totaling 2,216 were introduced in the two houses during the session (1,483 House, of which 631 were carryover bills from the 2021 Regular Session, and 733 Senate). The Legislature passed 293 bills, 150 House and 143 Senate.

Six bills became law without the Governor's signature, **Com. Sub. for S. B. 262**, Relating generally to financial institutions engaged in boycotts of energy companies, **Com. Sub. for S. B. 476**, Relating to imposition of minimum severance tax on coal, **S. B. 714**, Relating to tie votes by Coal Mine Safety and Technical Review Committee, **Com. Sub. for H. B. 4003**, Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage, **Com. Sub. for H. B. 4488**, Relating to coal mining and changing fees for permitting actions, and **Com. Sub. for H. B. 4826**, Relating to e-sports.

The Governor vetoed 5 bills, **Com. Sub. for S. B. 573**, Providing system where magistrates shall preside in certain instances outside normal court hours, **S. B. 729**, Relating to funding for infrastructure and economic development projects in WV, **H. B. 2300**, Including Family Court Judges in the Judges' Retirement System, **Com. Sub. for H. B. 4001**, Generally relating to broadband, and **Com. Sub. for H. B. 4020**, Relating to reorganizing the Department of Health and Human

Resources, leaving a net total of 288 bills, 147 House and 141 Senate, which became law.

There were 178 Concurrent Resolutions introduced during the session, 113 House and 65 Senate, of which 51 House and 44 Senate were adopted. Twenty-eight House Joint Resolutions, (of which 18 were carryover resolutions from the 2021 Regular Session), and 13 Senate Joint Resolutions were introduced, proposing amendments to the State Constitution, of which 1 House Joint Resolution was adopted, **H. J. R. 102**, Clarifying that the policy-making and rule-making authority of the State Board of Education is subject to legislative review, approval, amendment, or rejection. The House introduced 20 House Resolutions and the Senate introduced 60 Senate Resolutions, of which 16 House and 60 Senate were adopted.

First Extraordinary Session, 2022

The Proclamation calling the Legislature into Extraordinary Session on January 10, 2022, contained 7 items for consideration.

The Legislature introduced 12 bills during the Extraordinary Session, 6 House Bills, and 6 Senate Bills. The Legislature passed 6 Senate Bills.

The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned *sine die* on January 11, 2022.

Second Extraordinary Session, 2022

The Proclamation calling the Legislature into Extraordinary Session on April 25, 2022, contained 16 items for consideration. Subsequent amendment to the proclamation added an item for a total of 17 items for consideration.

The Legislature introduced 30 bills during the Extraordinary Session, 17 House Bills and 13 Senate Bills. The Legislature passed 15 bills, 6 House and 9 Senate.

The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned *sine die* on April 26, 2022.

Third Extraordinary Session, 2021

The Proclamation calling the Legislature into Extraordinary Session on October 11, 2021, contained 34 items for consideration. Subsequent amendments to the proclamation deleted, replaced, and added items for a total of 40 items for consideration.

The Legislature introduced 80 bills during the Extraordinary Session, 39 House Bills and 41 Senate Bills. The Legislature passed 40 bills, 4 House and 36 Senate.

There was 1 House Concurrent Resolution introduced and adopted, **H. C. R. 301**, Authorizing adjournments of Senate and House of Delegates. The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned *sine die* on October 20, 2021.

STEPHEN J. HARRISON

*Clerk of the House and
Keeper of the Rolls.*

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MEMBERS OF THE HOUSE OF DELEGATES

REGULAR SESSION, 2022

OFFICERS

Speaker: Roger Hanshaw - Wallback
Clerk: Stephen J. Harrison – Cedar Grove
Sergeant-at-Arms: Marshall Clay - Fayetteville
Doorkeeper: Robert W. Stewart- Cross Lanes

<u>Name</u>	<u>District</u>	<u>City</u>	<u>Occupation</u>	<u>Term</u>
Anderson, Bill (R)	8th	Williamstown	Educator	71st - 85th
Barach, Jim (D)	36th	Charleston	Retired TV Meteorologist	85th
Barnhart, Trenton (R)	7th	St. Marys	Community Banker	Appt. 9/17/2019, 84th; 85th
Barrett, Jason (R)	61st	Martinsburg	Restaurant owner	81st; 83rd - 85th
Bates, Mick (R)	30th	Beckley	Physical therapist Small Business Owner	82nd - 85th
Boggs, Brent (D)	34th	Gassaway	Railroad Engineer	73rd - 85th
Booth, Josh (R)	19th	Ceredo	Officer Highway Safety Inc.	Appt. 1/27/2021, 85th
Bridges Jordan (R)	24th	Logan	Coal Miner	85th
Brown, Nathan (D)	20th	Williamson	Attorney	84th - 85th
Burkhammer, Adam (R)	46th	Hornor	Business Owner	85th
Capito, Moore (R)	35th	Charleston	Attorney	83rd - 85th
Clark, Wayne (R)	65th	Charles Town	Business Owner	85th
Conley, Roger (R)	10th	Vienna	Business Owner	85th
Cooper, Roy (R)	28th	Wayside	Retired U. S. Navy	81st - 85th
Criss, Vernon (R)	10th	Parkersburg	Executive	69th; 83rd - 85th
¹ Crouse, Kathie Hess (R)	13th	Putnam	Homemaker	Appt. 11/24/2021, 85th
Dean, Mark (R)	21st	Verner	Principal	83rd - 85th
Diserio, Phillip W. (D)	2nd	Follansbee	Retired Electrician	81st; 83rd - 85th
Doyle, John (D)	67th	Shepherdstown		66th; 71st - 80th; 84th - 85 th
Ellington, Joe (R)	27th	Princeton	Physician	80th - 85th
Espinosa, Paul (R)	66th	Charles Town	Public Affairs Manager	81st - 85th
Evans, Ed (D)	26th	Welch	Retired Science Teacher	83rd - 85th
Fast, Tom (R)	32nd	Fayetteville	Attorney	82nd - 85th
Ferrell, Dana (R)	39th	Sissonville	Business Owner	85th
Fleischauer, Barbara Evans (D)	51st	Morgantown	Attorney Small Business Owner	72nd - 76th; 78th - 85th
Fluharty, Shawn (D)	3rd	Wheeling	Attorney	82nd - 85th
Forsht, Don (R)	60th	Gerrardstown	Construction and Property Management	85th
Foster, Geoff (R)	15th	Winfield	Construction Supply	82nd - 85 th
Garcia, Joey (D)	50th	Fairmont	Attorney	85th
Gearheart, Marty (R)	27th	Bluefield	Businessman	80th – 83rd; 85th
Graves, Dianna (R)	38th	Cross Lanes	Auditor	Appt. 9/19/2017, 83rd; 84th - 85th
Griffith, Ric (D)	19th	Kenova	Pharmacist	85th
Hamrick, Danny (R)	48th	Lost Creek	Business Owner	81st - 85th
Hanna, Caleb (R)	44th	Richwood	Full-time Student	84th - 85th
Hansen, Evan (D)	51st	Morgantown	President, Downstream Strategies	84th - 85th
Hanshaw, Roger (R)	33rd	Wallback	Attorney	82nd - 85th
Hardy, John (R)	63rd	Shepherdstown	Businessman	84th - 85th
Haynes, Austin (R)	32nd	Oak Hill	Insurance Agent	85th
Holstein, Josh (R)	23rd	Ashford		85th
² Honaker, Mike (R)	42nd	Greenbrier	County Agency Directory/Coach	Appt. 12/21/021, 85th
Hornbuckle, Sean (D)	16th	Huntington	Financial Advisor	82nd - 85th
Horst, Charles K. "Chuck" (R)	62nd	Falling Waters	Business Owner	85th
Hott II, John Paul (R)	54th	Petersburg	Insurance Disposal Service	84th - 85th
Householder, Eric L. (R)	64th	Martinsburg	Business Owner	80th - 85th
Howell, Gary G. (R)	56th	Keyser	Business Owner	80th - 85th

MEMBERS OF THE HOUSE OF DELEGATES - Continued

Jeffries, Dean (R)	40th	Elkview	Insurance Agent.....	Appt. 9/5/2018, 83 rd ;	84th - 85th
Jeffries, Joe (R)	22nd	Culldon	Maintenance Manager		84th - 85th
Jennings, D. "Buck" Roland (R)	53rd	Thornton	Self-Employed.....	Appt. 10/10/2017, 83rd;	84th - 85th
Keaton, N. Riley (R)	11th	Spencer.....	Youth Camping Ministry		85th
Kelly, David (R)	6th	Sistersville	Pastor		84th - 85th
Kelly, John R. (R)	10th	Parkersburg	Retired, Chemical Industry		82nd - 85th
Kessinger, Kayla (R)	32nd	Mount Hope.....	Director of Human Resources		82nd - 85th
Kimble, Laura (R)	48th	Bridgeport.....	Homemaker		85th
Kimes, D. "Shannon" (R)	9th	Rockport.....	Business Owner.....		85th
Linville, Daniel (R)	16th	Milton	Information Technology Officer ...	Appt. 8/1/2018, 83rd;	84th - 85th
Longanacre, Todd (R)	42nd	Caldwell	Retired Army.....		85th
Lovejoy, Chad (D)	17th	Huntington.....	Attorney		83rd - 85th
Mallow, Phil (R)	50th	Fairmont	Retired UPS Management		85th
Mandt, John Jr. (R)	16th	Huntington.....	Businessman.....	84 th , Resigned 10/7/2020;	85th
Martin, Carl "Robbie" (R)	45th	Buckhannon	Business Owner.....		84th - 85th
Maynard, Zack (R)	22nd	Harts.....	Self Employed.....		83rd - 85th
³ Maynor, Jordan (R)	28th	Raleigh	Consultant	Appt. 8/19/2021,	85th
Mazzocchi, Margitta (R)	24th	Chapmanville.....	Business Owner.....		85th
McGeehan, Pat (R)	1st	Chester	Business Management/Author	79th;	82nd - 85th
Miller, George A. (R)	58th	Berkeley Springs	Retired Maintenance Supervisor		85th
Nestor, William "Ty" (R)	43rd.....	Elkins	Lawyer		85th
Pack, Larry (R)	35th	Charleston.....			85th
Paynter, Tony (R)	25th	Hanover.....	Truck Driver.....		83rd - 85th
Pethel, Dave (D)	5th	Hundred.....	Educator.....	69th - 71st;	74th - 85th
Phillips, Chris (R)	47th	Buckhannon	President, CGP Foods, Inc.....		84th - 85th
Pinson, Jonathan Adam (R)	13th	Point Pleasant	Pastor		85th
Pritt, Chris (R)	36th	Charleston.....	Lawyer		85th
Pushkin, Mike (D)	37th	Charleston.....	Taxi Driver/Musician		82nd - 85th
Queen, Ben (R)	48th	Bridgeport.....	Media Entrepreneur Photography		83rd - 85th
Reed, Ken (R)	59th	Hedgesville	Pharmacist.....		85th
Reynolds, Charlie (R)	4th	Moundsville	Railroad Terminal Manager		85th
Riley, Clay (R)	48th	Shinnston	Professional Engineer		85th
Rohrbach, Matthew (R)	17th	Huntington.....	Physician		82nd - 85th
Rowan, Ruth (R)	57th	Points.....	Retired Educator.....		77th - 85th
Rowe, Larry L. (D)	36th	Charleston.....	Attorney	73rd - 74th (House) 75th - 76th (Senate) 82nd - 85th (House)	
Skaff, Doug (D)	35th	South Charleston.....	Business Owner.....	79th - 81st;	84th - 85th
Smith, Doug (R)	27th	Princeton	Retired Army.....		85th
Statler, Joe (R)	51st	Core.....	Retired.....	82nd - 83rd;	85th
Steele, Brandon (R)	29th	Beckley.....	Attorney		84th - 85th
Storch, Erika (R)	3rd	Wheeling	Financial Officer		80th - 85th
Summers, Amy (R)	49th	Flemington	Registered Nurse		82nd - 85th
Sypolt, Terri Funk (R)	52nd	Kingwood	Assessor		83rd - 85th
Thompson, Cody (D)	43rd.....	Elkins	Educator.....		84th - 85th
Toney, Christopher Wayne (R)	31st	Beckley.....	School Bus Operator.....		84th - 85th
Tully, Heather (R)	41st	Summersville.....	Family Nurse Practitioner	Appt. 6/17/2020,	84th; 85th
Walker, Danielle (D)	51st	Morgantown	Direct Care Worker		84th - 85th
Wamsley, Johnnie II (R)	14th	Point Pleasant	Entrepreneur.....		85th
Ward, Bryan C. (R)	56th	Fisher.....	Retired Sheriff.....		85th
Ward, Guy (R)	50th	White Hall	Material Analyst.....		83rd; 85th
Westfall, Steve (R)	12th	Ripley	Insurance Agents		81st - 85th
Williams, John (D)	51st	Morgantown	Insurance Sales.....		83rd - 85th
Worrell, Evan (R)	18th	Barboursville	Healthcare Data Analytics		84th - 85th
Young, Kayla (D)	36th	South Charleston.....	Entrepreneur.....		85th
Zatezalo, Mark (R)	1st	Weirton.....	Hydrogeologist	82nd - 83rd;	85th
Zukoff, Lisa (D)	4th	Moundsville	Business Owner.....		84th - 85th

¹Kathie Hess Crouse appointed November 24, 2021 to fill the vacancy created by the November 5, 2021 resignation of Joshua Higginbotham.

²Mike Honaker appointed December 21, 2021 to fill the vacancy created by the December 4, 2021 resignation of Barry Bruce.

³Jordan Maynor appointed August 19, 2021 to fill the vacancy created by the August 1, 2021 resignation of Jeffrey Pack.

MEMBERS OF THE SENATE

REGULAR SESSION, 2022

OFFICERS

President: Craig P. Blair - Martinsburg
Clerk: Bruce Lee Cassis, Jr. - Charleston
¹Sergeant-at-Arms: David Lavender - Hurricane
Doorkeeper: Jeffrey L. Branham - Cross Lanes

Name	District	City	Occupation	Term
Azinger, Michael T. (R)	3rd	Vienna	Manager	82nd (House); 83rd - 85th
Baldwin, Stephen (D)	10th	Ronceverte	Minister	83rd (House); Appt. Oct. 16, 2017, 83rd; 84th - 85th
Beach, Robert D. (D)	13th	Morgantown		Appt. April 24, 1998, 73rd (House); 75th - 79th (House); 80th - 85th
Blair, Craig (R)	15th	Martinsburg	Businessman	76th - 79th (House); 81st - 85th
Boley, Donna J. (R)	3rd	St. Marys	Retired	Appt. May 14, 1985, 67th; 68th - 85th
² Brown, Owens (D)	1st	Wheeling	President, WV NAACP	Appt. 10/7/2021, 85th
Caputo, Mike (D)	13th	Rivesville	UMWA District 31 Vice President	73rd - 84th (House); 85th
Clements, Charles H. (R)	2nd	New Martinsville	Retired	77th (House); Appt. Jan. 28, 2017, 83rd; 84th - 85th
³ Geffert, Hannah (D)	16th	Martinsburg	Retired Professor	Appt. 9/29/2021, 85th
Grady, Amy N. (R)	4th	Leon	Teacher	85th
Hamilton, Bill (R)	11th	Buckhannon	Retired	76th-83rd (House); 84th - 85th
Jeffries, Glenn D. (D)	8th	Red House	Businessman	83rd - 85th
Karnes, Robert L. (R)	11th	Helvetia		82nd - 83rd; 85th
Lindsay, Richard D. (D)	8th	Charleston	Attorney	84th - 85th
Maroney, Michael J. (R)	2nd	Glen Dale	Physician	83rd - 85th
Martin, Patrick (R)	12th	Weston	Business Owner	83rd - 84 th (House); 85th
Maynard, Mark R. (R)	6th	Genoa	Automobile Dealer	82nd - 85th
Nelson, Eric (R)	17th	Charleston	Financial Consultant	80th - 84th (House); 85th
Phillips, Rupert W., Jr. (R)	7th	Lorado	Sales Manager	80th - 83rd (House); 85th
Plymale, Robert H. (D)	5th	Huntington	Businessman	71st - 85th
Roberts, Rollan (R)	9th	Raleigh	Minister	84th - 85th
Romano, Michael J. (D)	12th	Clarksburg	Attorney / CPA	82nd - 85th
Rucker, Patricia Puertas (R)	16th	Harpers Ferry	Home Schooling Mother	83rd - 85th
Smith, Randy E. (R)	14th	Davis	Coal Miner	81st - 82nd (House); 83rd - 85th
Stollings, Ron D. (D)	7th	Madison	Physician	78th - 85th
Stover, David (R)	9th	Mullens	Former Circuit Clerk	85th
Swope, Chandler (R)	6th	Mercer	Retired	83rd-85th
Sypolt, Dave (R)	14th	Kingwood	Professional Land Surveyor	78th - 85th
Takubo, Tom (R)	17th	Charleston	Physician	82nd - 85th
Tarr, Eric J. (R)	4th	Putnam	Small Business Owner	84th - 85th
Trump IV, Charles S. (R)	15th	Berkeley Springs	Attorney	71st - 77th (House); 82nd - 85th
Weld, Ryan W. (R)	1st	Wellsburg	Attorney	82nd (House); 83rd - 85th
Woelfel, Michael A. (D)	5th	Huntington	Attorney	82nd - 85th
Woodrum, Jack David (R)	10th	Hinton	Funeral Director	85th

¹David Lavender elected Sergeant-at-Arms January 10, 2022 to fill the vacancy created by the December 22, 2021 resignation of Joseph A. Freedman.

²Owens Brown appointed October 7, 2021 to fill the vacancy created by the October 5, 2021 resignation of William J. Ihlenfeld, II.

³Hannah Geffert appointed September 29, 2021 to fill the vacancy created by the September 11, 2021 resignation of John R. Unger, II.

HOUSE OF DELEGATES COMMITTEES

COMMITTEES OF THE HOUSE OF DELEGATES

STANDING

(As of January 14, 2022)

AGRICULTURE AND NATURAL RESOURCES

Dean (Chair, *Natural Resources*), Phillips (Chair, *Agriculture*), Hamrick (Vice Chair, *Agriculture*), Paynter (Vice Chair, *Natural Resources*), Griffith (Minority Chair, *Agriculture*), Hansen (Minority Chair, *Natural Resources*), Evans (Minority Vice Chair, *Agriculture*), Young (Minority Vice Chair, *Natural Resources*), Anderson, Bridges, Brown, Burkhammer, Cooper, Doyle, Horst, Hott, D. Kelly, Longanacre, Maynor, Pinson, Sypolt, Wamsley, B. Ward, Westfall, Worrell

BANKING AND INSURANCE

Westfall (Chair), Hott (Vice Chair), Rowe (Minority Chair), Williams (Minority Vice Chair), Barnhart, Barrett, Brown, Capito, Criss, Espinosa, Garcia, Graves, Haynes, Householder, D. Jeffries, Keaton, Kimes, Lovejoy, McGeehan, Miller, Pack, Pritt, Reed, Worrell, Young

EDUCATION

Ellington (Chair), Statler (Vice Chair), Hornbuckle (Minority Chair), Thompson (Minority Vice Chair), Bridges, Clark, Doyle, Evans, Ferrell, Griffith, Hamrick, Hanna, Horst, Jennings, J. Kelly, Kessinger, Kimble, Longanacre, Maynor, Mazzocchi, Smith, Toney, Tully, Walker, Wamsley

ENERGY AND MANUFACTURING

Anderson (Chair), J. Kelly (Vice Chair), Evans (Minority Chair), Pethel (Minority Vice Chair), Boggs, Bridges, Burkhammer, Clark, Cooper, Diserio, Ferrell, Graves, Hansen, Holstein, Hott, Mallow, Mandt, Maynard, Paynter, Phillips, Reynolds, Wamsley, Westfall, Young, Zatezalo

HOUSE OF DELEGATES COMMITTEES

ENROLLED BILLS

D. Jeffries (Chair), Westfall (Vice Chair), Barach, Pack, Pushkin

FINANCE

Householder (Chair), Criss (Vice Chair), Boggs (Minority Chair), Rowe (Minority Vice Chair), Anderson, Barrett, Ellington, Espinosa, Gearheart, Graves, Hardy, Hornbuckle, Hott, Howell, D. Jeffries, Linville, Maynard, Pethtel, Riley, Rohrbach, Rowan, Statler, Storch, Toney, Williams

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

Statler (Chair), Riley (Vice Chair), Pethtel (Minority Chair), Boggs (Minority Vice Chair), Honaker, Jennings, Lovejoy, Maynor, Paynter, B. Ward, G. Ward

GOVERNMENT ORGANIZATION

Steele (Chair), Foster (Vice Chair), Diserio (Minority Chair), Barach (Minority Vice Chair), Barnhart, Booth, Conley, Cooper, Crouse, Dean, Fleischauer, Forsht, Hamrick, Hansen, Holstein, J. Jeffries, Kimes, Martin, Mazzocchi, Reynolds, Skaff, Smith, Sypolt, Worrell, Young

HEALTH AND HUMAN RESOURCES

Rohrbach (Chair), D. Jeffries (Vice Chair), Pushkin (Minority Chair), Walker (Minority Vice Chair), Barach, Barnhart, Bates, Criss, Dean, Fleischauer, Forsht, Griffith, Honaker, Jennings, Longanacre, Mallow, Miller, Pack, Reed, Rowan, Summers, Tully, G. Ward, Worrell, Zukoff

INTERSTATE COOPERATION

Storch (Chair), Howell (Vice Chair), Brown, Capito, Fleischauer, Nestor, G. Ward

HOUSE OF DELEGATES COMMITTEES

JUDICIARY

Capito (Chair), Fast (Vice Chair), Lovejoy (Minority Chair), Brown (Minority Vice Chair), Burkhammer, Fluharty, Garcia, Haynes, Keaton, D. Kelly, Kessinger, Kimble, Martin, McGeehan, Nestor, Pack, Phillips, Pinson, Pritt, Pushkin, Queen, B. Ward, Westfall, Zatezalo, Zukoff

PENSIONS AND RETIREMENT

Storch (Chair), Gearheart (Vice Chair), Pethtel (Minority Chair), Evans (Minority Vice Chair), Anderson, Bates, Graves

POLITICAL SUBDIVISIONS

Martin (Chair), Hardy (Vice Chair), Williams (Minority Chair), Doyle (Minority Vice Chair), Anderson, Barrett, Crouse, Fast, Fluharty, Forsht, Foster, Gearheart, Griffith, Hamrick, Hansen, J. Kelly, Kimes, Mazzocchi, Phillips, Riley, Storch, Thompson, Tully, B. Ward, G. Ward

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

D. Kelly (Chair), Hanna (Vice Chair), Walker (Minority Chair), Pushkin (Minority Vice Chair), Ellington, Holstein, Kessinger, Mandt, Reed, Rohrbach

RULES

Hanshaw (Chair), Summers (Vice Chair), Anderson, Capito, Criss, Ellington, Espinosa, Fluharty, Foster, Householder, Howell, D. Jeffries, J. Kelly, Kessinger, Lovejoy, Rowe, Skaff, Steele, Storch, Zukoff

SENIOR, CHILDREN, AND FAMILY ISSUES

Rowan (Chair), Sypolt (Vice Chair), Zukoff (Minority Chair), Boggs (Minority Vice Chair), Booth, Dean, Forsht, Graves, Hanna, Haynes, J. Kelly, Kessinger, Linville, Lovejoy, Mandt, Martin, Paynter, Pethtel, Pinson, Queen, Rohrbach, Smith, Toney, Walker, Young

HOUSE OF DELEGATES COMMITTEES

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

Queen (Chair), Mandt (Vice Chair), Young (Minority Chair), Hornbuckle (Minority Vice Chair), Barach, Barnhart, Clark, Crouse, Ferrell, Garcia, Griffith, Hardy, Holstein, Horst, Keaton, Linville, Mallow, Martin, Miller, Pack, Phillips, Steele, Toney, Wamsley, Zukoff

TECHNOLOGY AND INFRASTRUCTURE

Linville (Chair), Maynard (Vice Chair), Thompson (Minority Chair), Garcia (Minority Vice Chair), Boggs, Booth, Capito, Criss, Espinosa, Evans, Fast, Gearheart, Hamrick, Hansen, Hardy, Howell, Keaton, Pritt, Reed, Riley, Rohrbach, Rowe, Statler, Storch, Tully

VETERANS' AFFAIRS AND HOMELAND SECURITY

Cooper (Chair, *Veterans' Affairs*), Jennings (Chair, *Homeland Security*), Toney (Vice Chair, *Veterans' Affairs*), Worrell (Vice Chair, *Homeland Security*), Fleischauer (Minority Chair, *Veterans' Affairs*), Pushkin (Minority Chair, *Homeland Security*), Griffith (Minority Vice Chair, *Veterans' Affairs*), Zukoff (Minority Vice Chair, *Homeland Security*), Boggs, Clark, Conley, Fluharty, Honaker, D. Jeffries, D. Kelly, J. Kelly, Kimble, Longanacre, Mazzocchi, Nestor, Reynolds, Rowan, Smith, Sypolt, Wamsley

WORKFORCE DEVELOPMENT

Zatezalo (Chair), Barnhart (Vice Chair), Fluharty (Minority Chair), Garcia (Minority Vice Chair), Barach, Bridges, Burkhammer, Conley, Dean, Diserio, Fast, Ferrell, Foster, Horst, Householder, D. Jeffries, Jennings, Kimble, Kimes, Mallow, Pushkin, Reynolds, Thompson, Wamsley, G. Ward

HOUSE OF DELEGATES COMMITTEES

SELECT

COALFIELD COMMUNITIES

Dean (Chair), Bridges (Vice Chair), Evans (Minority Chair), Brown, Hansen, Haynes, Holstein, Paynter, Reynolds, Toney, Zukoff

REDISTRICTING

Howell (Chair), Summers (Vice Chair), Anderson, Boggs, Brown, Capito, Espinosa, Fluharty, Foster, Gearheart, Hornbuckle, Householder, D. Kelly, Kessinger, Linville, Maynard, Rohrbach, Rowan, Skaff, Statler, Steele, Storch, Westfall, Williams

TOURISM AND ECONOMIC DIVERSIFICATION

Howell (Chair), Clark (Vice Chair), Holstein, Hornbuckle, Keaton, Riley, Skaff, Wamsley, B. Ward, Williams, Zatezalo

SENATE COMMITTEES

COMMITTEES OF THE SENATE

STANDING

(As of January 14, 2022)

AGRICULTURE AND RURAL DEVELOPMENT

Sypolt (Chair), Woodrum (Vice Chair), Baldwin, Beach, Geffert, Grady, Martin, Maynard, Roberts, Rucker, Smith

BANKING AND INSURANCE

Azinger (Chair), Clements (Vice Chair), Beach, Boley, Brown, Hamilton, Karnes, Nelson, Romano, Rucker, Swope, Weld, Woelfel

CONFIRMATIONS

Boley (Chair), Takubo (Vice Chair), Azinger, Baldwin, Plymale, Rucker, Stollings, Tarr, Weld

ECONOMIC DEVELOPMENT

Swope (Chair), Martin (Vice Chair), Azinger, Brown, Hamilton, Jeffries, Nelson, Roberts, Romano, Stollings, Stover, Tarr, Woelfel, Woodrum

EDUCATION

Rucker (Chair), Roberts (Vice Chair), Azinger, Beach, Boley, Clements, Geffert, Grady, Karnes, Plymale, Romano, Stollings, Tarr, Trump

ENERGY, INDUSTRY AND MINING

Smith (Chair), Phillips (Vice Chair), Boley, Brown, Caputo, Clements, Hamilton, Jeffries, Martin, Nelson, Romano, Swope, Sypolt

SENATE COMMITTEES

ENROLLED BILLS

Maynard (Chair), Roberts (Vice Chair), Lindsay, Tarr, Woelfel

FINANCE

Tarr (Chair), Sypolt (Vice Chair), Baldwin, Boley, Brown, Clements, Geffert, Hamilton, Jeffries, Maroney, Martin, Nelson, Plymale, Roberts, Stollings, Swope, Takubo

GOVERNMENT ORGANIZATION

Maynard (Chair), Swope (Vice Chair), Brown, Caputo, Jeffries, Lindsay, Maroney, Martin, Nelson, Smith, Stover, Sypolt, Woelfel, Woodrum

HEALTH AND HUMAN RESOURCES

Maroney (Chair), Grady (Vice Chair), Azinger, Geffert, Lindsay, Plymale, Roberts, Rucker, Stollings, Stover, Takubo, Weld, Woodrum

INTERSTATE COOPERATION

Woodrum (Chair), Stover (Vice Chair), Brown, Karnes, Maynard, Romano, Trump

JUDICIARY

Trump (Chair), Weld (Vice Chair), Azinger, Beach, Caputo, Grady, Karnes, Lindsay, Maynard, Phillips, Romano, Rucker, Smith, Stover, Takubo, Woelfel, Woodrum

MILITARY

Weld (Chair), Phillips (Vice Chair), Caputo, Grady, Hamilton, Lindsay, Maroney, Romano, Smith

NATURAL RESOURCES

Hamilton (Chair), Stover (Vice Chair), Beach, Grady, Jeffries, Phillips, Roberts, Rucker, Smith, Stollings, Sypolt, Woelfel, Woodrum

SENATE COMMITTEES

PENSIONS

Nelson (Chair), Clements (Vice Chair), Azinger, Karnes, Lindsay, Plymale, Trump

RULES

Blair (Chair), Takubo (Vice Chair), Azinger, Baldwin, Boley, Maroney, Plymale, Stollings, Tarr, Trump, Weld

TRANSPORTATION AND INFRASTRUCTURE

Clements (Chair), Swope (Vice Chair), Beach, Boley, Jeffries, Karnes, Maynard, Plymale, Roberts

WORKFORCE

Roberts (Chair), Nelson (Vice Chair), Caputo, Geffert, Jeffries, Maroney, Martin, Phillips, Smith, Tarr, Weld

SELECT

REDISTRICTING

Trump (Chair), Sypolt (Vice Chair), Caputo, Jeffries, Phillips, Swope, Tarr, Weld, Woelfel

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2022

CHAPTER 1

(Com. Sub. for S. B. 25 - By Senators Takubo and Maroney)

[Passed March 10, 2022; in effect 90 days from passage]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §55-7B-2, §55-7B-4, and §55-7B-6 of the Code of West Virginia, 1931, as amended, all relating to the prerequisites for filing suit against a health care provider under the Medical Professional Liability Act; updating the definitions of “injury” and “medical injury”; clarifying time limitations for bringing a cause of action for medical injury as a result of alleged medical professional liability against a health care provider; modifying time frame for providing a statement of intent to provide a screening certificate of merit in certain actions under the Medical Professional Liability Act; and updating the tolling of the statute of limitations applicable in certain actions under the Medical Professional Liability Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-2. Definitions.

For the purposes of this article, the following words shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) “Board” means the State Board of Risk and Insurance Management.

(b) “Collateral source” means a source of benefits or advantages for economic loss that the claimant has received from:

(1) Any federal or state act, public program, or insurance which provides payments for medical expenses, disability benefits, including workers’ compensation benefits, or other similar benefits. Benefits payable under the Social Security Act and Medicare are not considered payments from collateral sources except for social security disability benefits directly attributable to the medical injury in question;

(2) Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy or other health care services, or provide similar benefits, but excluding any amount that a group, organization, partnership, corporation, or health care provider agrees to reduce, discount, or write off of a medical bill;

(3) Any group accident, sickness, or income disability insurance, any casualty or property insurance, including automobile and homeowners’ insurance, which provides medical benefits, income replacement, or disability coverage, or any other similar insurance benefits, except life insurance, to the extent that someone other than the insured, including the insured’s employer, has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

(4) Any contractual or voluntary wage continuation plan provided by an employer or otherwise or any other system intended to provide wages during a period of disability.

(c) “Consumer Price Index” means the most recent Consumer Price Index for All Consumers published by the United States Department of Labor.

(d) “Emergency condition” means any acute traumatic injury or acute medical condition which, according to standardized

criteria for triage, involves a significant risk of death or the precipitation of significant complications or disabilities, impairment of bodily functions or, with respect to a pregnant woman, a significant risk to the health of the unborn child.

(e) “Health care” means:

(1) Any act, service, or treatment provided under, pursuant to, or in the furtherance of a physician’s plan of care, a health care facility’s plan of care, medical diagnosis, or treatment;

(2) Any act, service, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider or person supervised by or acting under the direction of a health care provider or licensed professional for, to, or on behalf of a patient during the patient’s medical care, treatment, or confinement, including, but not limited to, staffing, medical transport, custodial care, or basic care, infection control, positioning, hydration, nutrition, and similar patient services; and

(3) The process employed by health care providers and health care facilities for the appointment, employment, contracting, credentialing, privileging, and supervision of health care providers.

(f) “Health care facility” means any clinic, hospital, pharmacy, nursing home, assisted living facility, residential care community, end-stage renal disease facility, home health agency, child welfare agency, group residential facility, behavioral health care facility or comprehensive community mental health center, intellectual/developmental disability center or program, or other ambulatory health care facility, in and licensed, regulated, or certified by the State of West Virginia under state or federal law and any state-operated institution or clinic providing health care and any related entity to the health care facility.

(g) “Health care provider” means a person, partnership, corporation, professional limited liability company, health care facility, entity, or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic

physician, physician assistant, advanced practice registered nurse, hospital, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, speech-language pathologist, audiologist, occupational therapist, psychologist, pharmacist, technician, certified nursing assistant, emergency medical service personnel, emergency medical services authority or agency, any person supervised by or acting under the direction of a licensed professional, any person taking actions or providing service or treatment pursuant to or in furtherance of a physician's plan of care, a health care facility's plan of care, medical diagnosis or treatment; or an officer, employee, or agent of a health care provider acting in the course and scope of the officer's, employee's or agent's employment.

(h) "Injury" or "Medical injury" means injury or death to a patient arising or resulting from the rendering of or failure to render health care.

(i) "Medical professional liability" means any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient. It also means other claims that may be contemporaneous to or related to the alleged tort or breach of contract or otherwise provided, all in the context of rendering health care services.

(j) "Medical professional liability insurance" means a contract of insurance or any actuarially sound self-funding program that pays for the legal liability of a health care facility or health care provider arising from a claim of medical professional liability. In order to qualify as medical professional liability insurance for purposes of this article, a self-funding program for an individual physician must meet the requirements and minimum standards set forth in §55-7B-12 of this code.

(k) "Noneconomic loss" means losses, including, but not limited to, pain, suffering, mental anguish, and grief.

(l) “Occurrence” means any and all injuries to a patient arising from health care rendered by a health care facility or a health care provider and includes any continuing, additional, or follow-up care provided to that patient for reasons relating to the original health care provided, regardless if the injuries arise during a single date or multiple dates of treatment, single or multiple patient encounters, or a single admission or a series of admissions.

(m) “Patient” means a natural person who receives or should have received health care from a licensed health care provider under a contract, expressed or implied.

(n) “Plaintiff” means a patient or representative of a patient who brings an action for medical professional liability under this article.

(o) “Related entity” means any corporation, foundation, partnership, joint venture, professional limited liability company, limited liability company, trust, affiliate, or other entity under common control or ownership, whether directly or indirectly, partially or completely, legally, beneficially, or constructively, with a health care provider or health care facility; or which owns directly, indirectly, beneficially, or constructively any part of a health care provider or health care facility.

(p) “Representative” means the spouse, parent, guardian, trustee, attorney, or other legal agent of another.

§55-7B-4. Health care injuries; limitations of actions; exceptions; venue.

(a) A cause of action for medical injury to a person alleging medical professional liability against a health care provider, except a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, arises as of the date of medical injury, except as provided in subsection (c) of this section, and must be commenced within two years of the date of such injury or death, or within two years of the date when such person discovers, or with the exercise of reasonable diligence,

should have discovered such medical injury, whichever last occurs: *Provided*, That in no event shall any such action be commenced more than 10 years after the date of medical injury.

(b) A cause of action for medical injury to a person alleging medical professional liability against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees arises as of the date of medical injury, except as provided in subsection (c) of this section, and must be commenced within one year of the date of such medical injury, or within one year of the date when such person discovers, or with the exercise of reasonable diligence, should have discovered such injury or death, whichever last occurs: *Provided*, That in no event shall any such action be commenced more than 10 years after the date of medical injury. With the amendments to this subsection enacted in the regular session of the Legislature, 2022, that intends to reinstate and codify a one-year statute of limitations for any cause of action for medical injury resulting in injury or death to a person alleging medical professional liability against a nursing home, assisted living facility, their related entities or employees or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees.

(c) A cause of action for injury to a minor, brought by or on behalf of a minor who was under the age of 10 years at the time of such injury, shall be commenced within two years of the date of such injury, or prior to the minor's 12th birthday, whichever provides the longer period.

(d) The periods of limitation set forth in this section shall be tolled for any period during which the health care provider or its representative has committed fraud or collusion by concealing or misrepresenting material facts about the injury.

(e) Any medical professional liability action against a nursing home, assisted living facility, related entity or employee, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees shall be brought in the circuit court of the county in which the nursing home, assisted

living facility, or acute care hospital providing intermediate care or skilled nursing care, at which the alleged act of medical professional liability occurred is located, unless otherwise agreed upon by the nursing home, assisted living facility, related entity, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care, and the plaintiff. Nothing in this subsection shall prohibit a party from removing the action to federal court.

§55-7B-6. Prerequisites for filing an action against a health care provider; procedures; sanctions.

(a) Notwithstanding any other provision of this code, no person may file a medical professional liability action against any health care provider without complying with the provisions of this section.

(b) At least 30 days prior to the filing of a medical professional liability action against a health care provider, the claimant shall serve by certified mail, return receipt requested, a notice of claim on each health care provider the claimant will join in litigation. For the purposes of this section, where the medical professional liability claim against a health care facility is premised upon the act or failure to act of agents, servants, employees, or officers of the health care facility, such agents, servants, employees, or officers shall be identified by area of professional practice or role in the health care at issue. The notice of claim shall include a statement of the theory or theories of liability upon which a cause of action may be based, and a list of all health care providers and health care facilities to whom notices of claim are being sent, together with a screening certificate of merit. The screening certificate of merit shall be executed under oath by a health care provider who:

(1) Is qualified as an expert under the West Virginia rules of evidence;

(2) Meets the requirements of §55-7B-7(a)(5) and §55-7B-7(a)(6) of this code; and

(3) Devoted, at the time of medical injury, 60 percent of his or her professional time annually to the active clinical practice in his

or her medical field or specialty, or to teaching in his or her medical field or specialty in an accredited university.

If the health care provider executing the screening certificate of merit meets the qualifications of subdivisions (1), (2), and (3) of this subsection, there shall be a presumption that the health care provider is qualified as an expert for the purpose of executing a screening certificate of merit. The screening certificate of merit shall state with particularity, and include: (A) The basis for the expert's familiarity with the applicable standard of care at issue; (B) the expert's qualifications; (C) the expert's opinion as to how the applicable standard of care was breached; (D) the expert's opinion as to how the breach of the applicable standard of care resulted in injury or death; and (E) a list of all medical records and other information reviewed by the expert executing the screening certificate of merit. A separate screening certificate of merit must be provided for each health care provider against whom a claim is asserted. The health care provider signing the screening certificate of merit shall have no financial interest in the underlying claim, but may participate as an expert witness in any judicial proceeding. Nothing in this subsection limits the application of Rule 15 of the Rules of Civil Procedure. No challenge to the notice of claim may be raised prior to receipt of the notice of claim and the executed screening certificate of merit.

(c) Notwithstanding any provision of this code, if a claimant or his or her counsel believes that no screening certificate of merit is necessary because the cause of action is based upon a well-established legal theory of liability which does not require expert testimony supporting a breach of the applicable standard of care, the claimant or his or her counsel shall file a statement specifically setting forth the basis of the alleged liability of the health care provider in lieu of a screening certificate of merit. The statement shall be accompanied by the list of medical records and other information otherwise required to be provided pursuant to subsection (b) of this section.

(d) Except for medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing

intermediate care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within 60 days of the date the health care provider receives the notice of claim. The screening certificate of merit shall be accompanied by a list of the medical records otherwise required to be provided pursuant to subsection (b) of this section.

(e) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within 120 days of the date the health care provider receives the notice of claim.

(f) Any health care provider who receives a notice of claim pursuant to the provisions of this section may respond, in writing, to the claimant or his or her counsel within 30 days of receipt of the claim or within 30 days of receipt of the screening certificate of merit if the claimant is proceeding pursuant to the provisions of subsection (d) or (e) of this section. The response may state that the health care provider has a bona fide defense and the name of the health care provider's counsel, if any.

(g) Upon receipt of the notice of claim or of the screening certificate of merit, if the claimant is proceeding pursuant to the provisions of subsection (d) or (e) of this section, the health care provider is entitled to prelitigation mediation before a qualified mediator upon written demand to the claimant.

(h) If the health care provider demands mediation pursuant to the provisions of subsection (g) of this section, the mediation shall be concluded within 45 days of the date of the written demand. The mediation shall otherwise be conducted pursuant to Rule 25 of the Trial Court Rules, unless portions of the rule are clearly not applicable to a mediation conducted prior to the filing of a complaint or unless the Supreme Court of Appeals promulgates rules governing mediation prior to the filing of a complaint. If mediation is conducted, the claimant may depose the health care provider before mediation or take the testimony of the health care provider during the mediation.

(i)(1) Except for medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, and except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled from the date of mail of a notice of claim to 30 days following receipt of a response to the notice of claim, 30 days from the date a response to the notice of claim would be due, or 30 days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

(2) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled 120 days from the date of mail of a notice of claim to 30 days following receipt of a response to the notice of claim, 30 days from the date a response to the notice of claim would be due, or 30 days from the receipt by the claimant of written notice from the mediator

that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

(3) If a claimant has sent a notice of claim relating to any injury or death to more than one health care provider, any one of whom has demanded mediation, then the statute of limitations shall be tolled with respect to, and only with respect to, those health care providers to whom the claimant sent a notice of claim to 30 days from the receipt of the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded.

(j) Notwithstanding any other provision of this code, a notice of claim, a health care provider's response to any notice claim, a screening certificate of merit, and the results of any mediation conducted pursuant to the provisions of this section are confidential and are not admissible as evidence in any court proceeding unless the court, upon hearing, determines that failure to disclose the contents would cause a miscarriage of justice.

CHAPTER 2

(S. B. 440 - By Senators Woodrum and Trump)

[Passed March 9, 2022; in effect 90 days from passage]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated †§55-20-1, †§55-20-2, †§55-20-3, †§55-20-4, †§55-20-5, †§55-20-6, †§55-20-7, †§55-20-8, †§55-20-9, †§55-20-10, †§55-20-11, †§55-20-12, †§55-20-13, †§55-20-14, †§55-20-15, †§55-20-16, †§55-20-17, †§55-20-18, †§55-20-19, †§55-20-20, †§55-20-21, †§55-20-22, †§55-20-23, †§55-20-24, †§55-20-25, †§55-20-26, †§55-20-27, and †§55-20-28, all relating to establishing uniform requirements and authority for a receiver appointed by a court for management of commercial real estate during certain matters pending before the court; providing a short title; providing definitions; providing for notice and an opportunity for a hearing; providing for scope and exclusions; establishing the power of court; providing for the appointment of receiver; providing for the disqualification from appointment as receiver and disclosure of interest; providing for bond and alternative security; providing for the status of receiver as lien creditor; creating a security agreement covering after-acquired property; providing for the collection and turnover of receivership property; creating the powers and duties of receiver; creating the duties of owner; creating a stay of other actions and injunction; providing for engagement and compensation of professional; providing for the use or transfer of receivership property not in ordinary course of business; creating an executory contract; providing defenses and immunities of receiver; providing for an interim report of receiver; creating

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

notice of appointment, claim against receivership, and distribution to creditors; providing fees and expenses; creating the removal of receiver, replacement, and termination of receivership; creating the final report of receiver and discharge; creating receivership in another state and ancillary reporting; providing an effect of enforcement by mortgagee; creating uniformity of application and construction; and providing for transition.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 20. UNIFORM COMMERCIAL REAL ESTATE RECEIVERSHIP ACT.

†§55-20-1. Short title.

This article may be cited as the Uniform Commercial Real Estate Receivership Act.

†§55-20-2. Definitions.

When used in this article, the following words have the meanings specified in this section:

“Affiliate” means:

(1) With respect to an individual:

(A) A spouse, companion, or domestic partner of the individual;

(B) A lineal ancestor or descendant, whether by blood or adoption, of:

(i) The individual; or

(ii) A spouse, companion, or domestic partner of the individual;

(C) A spouse, companion, or domestic partner of an ancestor or descendant described in clause (ii);

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(D) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them; or

(E) Any other individual occupying the residence of the individual; and

(2) With respect to a person other than an individual:

(A) Another person that directly or indirectly controls, is controlled by, or is under common control with the person;

(B) An officer, director, manager, member, partner, employee, or trustee, or another fiduciary of the person; or

(C) A spouse, companion, or domestic partner of an individual, or any other individual occupying the residence of, an individual described in paragraph (A) or (B).

“Court” means a circuit court.

“Executory contract” means a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach.

“Governmental unit” means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state.

“Lien” means an interest in property which secures payment or performance of an obligation.

“Mortgage” means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if it also creates or provides for a lien on personal property.

“Mortgagee” means a person entitled to enforce an obligation secured by a mortgage.

“Mortgagor” means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.

“Owner” means the person for whose property a receiver is appointed.

“Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

“Proceeds” means the following property:

(1) Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property;

(2) Whatever is collected on, or distributed on account of, receivership property;

(3) Rights arising out of receivership property;

(4) To the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property; or

(5) To the extent of the value of receivership property and to the extent payable to the owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the property.

“Property” means all of a person’s right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired. The term includes proceeds, products, offspring, rents, or profits of or from the property.

“Receiver” means a person appointed by the court as the court’s agent, and subject to the court’s direction, to take possession of, manage, and, if authorized by this article or court

order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

“Receivership” means a proceeding in which a receiver is appointed.

“Receivership property” means the property of an owner which is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

“Record”, used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

“Rents” means:

(1) Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(2) Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property;

(3) Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(4) Sums payable to terminate an agreement to possess or occupy real property of another person;

(5) Sums payable to a mortgagor for payment, or for reimbursement of expenses incurred in owning, operating, and maintaining real property, or constructing or installing improvements on real property; or

(6) Other sums payable under an agreement relating to the real property of another person which constitute rents under law of this state other than this article.

“Secured obligation” means an obligation the payment or performance of which is secured by a security agreement.

“Security agreement” means an agreement that creates, or provides for, a lien.

“Sign” means, with present intent to authenticate or adopt a record:

(1) To execute or adopt a tangible symbol; or

(2) To attach to, or logically associate with, the record an electronic sound, symbol, or process.

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

†§55-20-3. Notice and opportunity for hearing.

(a) Except as otherwise provided in subsection (b) of this section, the court may issue an order under this article only after notice and opportunity for a hearing appropriate in the circumstances.

(b) The court may issue an order under this article:

(1) Without prior notice if the circumstances require issuance of an order before notice is given;

(2) After notice, and without a prior hearing, if the circumstances require issuance of an order before a hearing is held; or

(3) After notice, and without a hearing, if no interested party timely requests a hearing.

†§55-20-4. Scope; exclusions.

(a) Except as otherwise provided in subsection (b) or (c) of this section, this article applies to a receivership for an interest in real property and any personal property related to or used in operating the real property.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(b) This article does not apply to a receivership for an interest in real property improved by one to four dwelling units unless:

(1) The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence;

(2) The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes;

(3) The owner planned or is planning to develop the property into one or more dwelling units to be sold or leased in the ordinary course of the owner's business; or

(4) The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.

(c) This article does not apply to a receivership authorized by law of this state other than this article in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit except to the extent provided by that law.

(d) This article does not limit the authority of a court to appoint a receiver under law of this state other than this article.

(e) Unless displaced by a particular provision of this article, the principles of law and equity supplement this article.

†§55-20-5. Power of court.

The court that appoints a receiver under this article has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property and all such orders shall have statewide effect.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

†§55-20-6. Appointment of receiver.

(a) The court may appoint a receiver:

(1) Before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property or its revenue-producing potential:

(A) Is being subjected to or is in danger of waste, loss, dissipation, or impairment; or

(B) Has been or is about to be the subject of a voidable transaction;

(2) After judgment:

(A) To carry the judgment into effect; or

(B) To preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment; or

(3) In an action in which a receiver for real property may be appointed on equitable grounds.

(b) In connection with the foreclosure or other enforcement of a mortgage, the court may appoint a receiver for the mortgaged property if:

(1) Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment;

(2) The mortgagor agreed in a signed record to appointment of a receiver on default;

(3) The owner agreed, after default and in a signed record, to appointment of a receiver;

(4) The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation;

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(5) The owner fails to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect; or

(6) The holder of a subordinate lien obtains appointment of a receiver for the property.

(c) The court may condition appointment of a receiver without prior notice under §55-20-3(b)(1) of this code or without a prior hearing under §55-20-3(b)(2) of this code on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney's fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court shall release the security.

†§55-20-7. Disqualification from appointment as receiver; disclosure of interest.

(a) The court may not appoint a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified.

(b) Except as otherwise provided in subsection (c) of this section, a person is disqualified from appointment as receiver if the person:

(1) Is an affiliate of a party;

(2) Has an interest materially adverse to an interest of a party;

(3) Has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver;

(4) Has a debtor-creditor relationship with a party; or

(5) Holds an equity interest in a party, other than a noncontrolling interest in a publicly-traded company.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(c) A person is not disqualified from appointment as receiver solely because the person:

(1) Was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership;

(2) Is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes; or

(3) Maintains with a party a deposit account as defined in §46-9-102(a)(29) of this code.

(d) A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

†§55-20-8. Bond; alternative security.

(a) Except as otherwise provided in subsection (b) of this section, a receiver shall post with the court a bond that:

(1) Is conditioned on the faithful discharge of the receiver's duties;

(2) Has one or more sureties approved by the court;

(3) Is in an amount the court specifies; and

(4) Is effective as of the date of the receiver's appointment.

(b) The court may approve the posting by a receiver with the court of alternative security, such as a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver on the receiver's discharge.

(c) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(d) A claim against a receiver's bond or alternative security must be made not later than one-year after the date the receiver is discharged.

†§55-20-9. Status of receiver as lien creditor.

On appointment of a receiver, the receiver has the status of a lien creditor under:

(1) Section §46-9-101 *et seq.* of this code as to receivership property that is personal property or fixtures; and

(2) Chapter 38 of this code as to receivership property that is real property.

†§55-20-10. Security agreement covering after-acquired property.

Except as otherwise provided by law of this state other than this article, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

†§55-20-11. Collection and turnover of receivership property.

(a) Unless the court orders otherwise, on demand by a receiver:

(1) A person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment; and

(2) Subject to subsection (c) of this section, a person that has possession, custody, or control of receivership property shall turn the property over to the receiver.

(b) A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.

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(c) If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

(d) Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn the property over when required by this section.

†§55-20-12. Powers and duties of receiver.

(a) Except as limited by court order or law of this state other than this article, a receiver may:

(1) Collect, control, manage, conserve, and protect receivership property;

(2) Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business;

(3) In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property;

(4) Assert a right, claim, cause of action, or defense of the owner which relates to receivership property;

(5) Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties;

(6) By subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership;

(7) Engage a professional as provided in §55-20-15 of this code;

(8) Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state; and

(9) Exercise any power conferred by court order, this article, or law of this state other than this article.

(b) With court approval, a receiver may:

(1) Incur debt for the use or benefit of receivership property other than in the ordinary course of business;

(2) Make improvements to receivership property;

(3) Use or transfer receivership property other than in the ordinary course of business as provided in §55-20-16 of this code;

(4) Adopt or reject an executory contract of the owner as provided in §55-20-17 of this code;

(5) Pay compensation to the receiver as provided in §55-20-21 of this code, and to each professional engaged by the receiver as provided in §55-20-15 of this code;

(6) Recommend allowance or disallowance of a claim of a creditor as provided in §55-20-20 of this code; and

(7) Make a distribution of receivership property as provided in §55-20-20 of this code.

(c) A receiver shall:

(1) Prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property;

(2) Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property;

(3) File a copy of the order appointing the receiver with the county clerk of the appropriate county and, if a legal description of the real property is not included in the order, the legal description;

(4) Disclose to the court any fact arising during the receivership which would disqualify the receiver under §55-20-7 of this code; and

(5) Perform any duty imposed by court order, this article, or law of this state other than this article.

(d) The powers and duties of a receiver may be expanded, modified, or limited by court order.

†§55-20-13. **Duties of owner.**

(a) An owner shall:

(1) Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties;

(2) Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control;

(3) Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control;

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(4) On subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership; and

(5) Perform any duty imposed by court order, this article, or law of this state other than this article.

(b) If an owner is a person other than an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the owner.

(c) If a person knowingly fails to perform a duty imposed by this section, the court may:

(1) Award the receiver actual damages caused by the person's failure, reasonable attorney's fees, and costs; and

(2) Sanction the failure as civil contempt.

†§55-20-14. Stay of other actions; injunction.

(a) Except as otherwise provided in subsection (d) of this section or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding:

(1) To obtain possession of, exercise control over, or enforce a judgment against receivership property; and

(2) To enforce a lien against receivership property to the extent the lien secures a claim against the owner which arose before entry of the order.

(b) Except as otherwise provided in subsection (d) of this section, the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(c) A person whose act, action, or proceeding is stayed or enjoined under this section may apply to the court for relief from the stay or injunction for cause.

(d) An order under subsection (a) or (b) of this section does not operate as a stay or injunction of:

(1) An act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person seeking appointment of the receiver;

(2) An act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property;

(3) Commencement or continuation of a criminal proceeding;

(4) Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce its police or regulatory power; or

(5) Establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.

(e) The court may void an act that violates a stay or injunction under this section.

(f) If a person knowingly violates a stay or injunction under this section, the court may:

(1) Award actual damages caused by the violation, reasonable attorney's fees, and costs; and

(2) Sanction the violation as civil contempt.

†§55-20-15. Engagement and compensation of professional.

(a) With court approval, a receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

assist the receiver in performing a duty or exercising a power of the receiver. The receiver shall disclose to the court:

- (1) The identity and qualifications of the professional;
- (2) The scope and nature of the proposed engagement;
- (3) Any potential conflict of interest; and
- (4) The proposed compensation.

(b) A person is not disqualified from engagement under this section solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or a party. This article does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.

(c) A receiver or professional engaged under subsection (a) of this section shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work and an itemized list of expenses. The receiver shall pay the amount approved by the court.

†§55-20-16. Use or transfer of receivership property not in ordinary course of business.

(a) In this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(b) With court approval, a receiver may use receivership property other than in the ordinary course of business.

(c) With court approval, a receiver may transfer receivership property, other than in the ordinary course of business, by sale, lease, license, exchange, or other disposition. Unless the agreement of sale provides otherwise, a sale under this section is free and clear of a lien of the person that obtained appointment of the receiver,

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

any subordinate lien, and any right of redemption, but is subject to a senior lien.

(d) A lien on receivership property which is extinguished by a transfer under subsection (c) of this section attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

(e) A transfer under subsection (c) of this section may occur by means other than a public auction sale. A creditor holding a valid lien on the property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

(f) A reversal or modification of an order approving a transfer under subsection (c) of this section does not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.

†§55-20-17. Executory contract.

(a) In this section, “executory contract” has the same meaning as “timesharing plan” as defined in §36-9-4 of this code.

(b) Except as otherwise provided in subsection (h) of this section, with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver’s adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the

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receiver's appointment, the receiver is deemed to have rejected the contract.

(c) A receiver's performance of an executory contract before court approval under subsection (b) of this section of its adoption or rejection is not an adoption of the contract and does not preclude the receiver from seeking approval to reject the contract.

(d) A provision in an executory contract which requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection (b) of this section to adopt the contract.

(e) A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the contract under subsection (b) of this section. Rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract must be submitted by the later of:

- (1) The time set for submitting a claim in the receivership; or
- (2) Thirty days after the court approves the rejection.

(f) If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under law of this state other than this article, the receiver may assign the contract with court approval.

(g) If a receiver rejects, under subsection (b) of this section, an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest, the purchaser may:

- (1) Treat the rejection as a termination of the contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid; or
- (2) Retain the purchaser's right to possession under the contract, and in that case the purchaser shall continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner

after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

(h) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if:

(1) The tenant occupies the leased premises as the tenant's primary residence;

(2) The receiver was appointed at the request of a person other than a mortgagee; or

(3) The receiver was appointed at the request of a mortgagee and:

(A) The lease is superior to the lien of the mortgage;

(B) The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease;

(C) The mortgagee has consented to the lease, either in a signed record or by its failure timely to object that the lease violated the mortgage; or

(D) The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

†§55-20-18. Defenses and immunities of receiver.

(a) A receiver is entitled to all defenses and immunities provided by law of this state other than this article for an act or omission within the scope of the receiver's appointment.

(b) A receiver may be sued personally for an act or omission in administering receivership property only with approval of the court that appointed the receiver.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

†§55-20-19. Interim report of receiver.

A receiver may file or, if ordered by the court, shall file an interim report that includes:

- (1) The activities of the receiver since appointment or a previous report;
- (2) Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver;
- (3) Receipts and dispositions of receivership property;
- (4) Fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses; and
- (5) Any other information required by the court.

†§55-20-20. Notice of appointment; claim against receivership; distribution to creditors.

(a) Except as otherwise provided in subsection (f) of this section, a receiver shall give notice of appointment of the receiver to creditors of the owner by:

- (1) Deposit for delivery through first-class mail or other commercially reasonable delivery method to the last-known address of each creditor; and
- (2) Publication as directed by the court.

(b) Except as otherwise provided in subsection (f) of this section, the notice required by subsection (a) of this section must specify the date by which each creditor holding a claim against the owner which arose before appointment of the receiver must submit the claim to the receiver. The date specified must be at least 90 days after the later of notice under subsection (a)(1) or last publication under subsection (a)(2) of this section. The court may extend the

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

period for submitting the claim. Unless the court orders otherwise, a claim that is not submitted timely is not entitled to a distribution from the receivership.

(c) A claim submitted by a creditor under this section must:

- (1) State the name and address of the creditor;
- (2) State the amount and basis of the claim;
- (3) Identify any property securing the claim;
- (4) Be signed by the creditor under penalty of perjury; and
- (5) Include a copy of any record on which the claim is based.

(d) An assignment by a creditor of a claim against the owner is effective against the receiver only if the assignee gives timely notice of the assignment to the receiver in a signed record.

(e) At any time before entry of an order approving a receiver's final report, the receiver may file with the court an objection to a claim of a creditor, stating the basis for the objection. The court shall allow or disallow the claim according to law of this state other than this article.

(f) If the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order that:

(1) The receiver need not give notice under subsection (a) of the appointment to all creditors of the owner, but only such creditors as the court directs; and

(2) Unsecured creditors need not submit claims under this section.

(g) Subject to §55-20-21 of this code:

(1) A distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with

the creditor's priority under law of this state other than this article; and

(2) A distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs according to law of this state other than this article.

†§55-20-21. Fees and expenses.

(a) The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.

(b) The court may order one or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney's fees and costs:

(1) A person that requested the appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses; or

(2) A person whose conduct justified or would have justified the appointment of the receiver under §55-20-6(a)(1) of this code.

†§55-20-22. Removal of receiver; replacement; termination of receivership.

(a) The court may remove a receiver for cause.

(b) The court shall replace a receiver that dies, resigns, or is removed.

(c) If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(d) The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds that appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership. If the court finds that the appointment was sought wrongfully or in bad faith, the court may assess against the person that sought the appointment:

(1) The fees and expenses of the receivership, including reasonable attorney's fees and costs; and

(2) Actual damages caused by the appointment, including reasonable attorney's fees and costs.

†§55-20-23. Final report of receiver; discharge.

(a) On completion of a receiver's duties, the receiver shall file a final report including:

(1) A description of the activities of the receiver in the conduct of the receivership;

(2) A list of receivership property at the commencement of the receivership and any receivership property received during the receivership;

(3) A list of disbursements, including payments to professionals engaged by the receiver;

(4) A list of dispositions of receivership property;

(5) A list of distributions made or proposed to be made from the receivership for creditor claims;

(6) If not filed separately, a request for approval of the payment of fees and expenses of the receiver; and

(7) Any other information required by the court.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(b) If the court approves a final report filed under subsection (a) and the receiver distributes all receivership property, the receiver is discharged.

†§55-20-24. Receivership in another state; ancillary proceeding.

(a) The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under this article, if:

(1) The person or nominee would be eligible to serve as receiver under the provisions of §55-20-7 of this code; and

(2) The appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

(b) The court may issue an order that gives effect to an order entered in another state appointing or directing a receiver.

(c) Unless the court orders otherwise, an ancillary receiver appointed under subsection (a) has the rights, powers, and duties of a receiver appointed under this article.

†§55-20-25. Effect of enforcement by mortgagee.

(a) A request by a mortgagee for appointment of a receiver, the appointment of a receiver, or application by a mortgagee of receivership property or proceeds to the secured obligation does not:

(1) Make the mortgagee a mortgagee in possession of the real property;

(2) Make the mortgagee an agent of the owner;

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

(3) Constitute an election of remedies that precludes a later action to enforce the secured obligation;

(4) Make the secured obligation unenforceable;

(5) Limit any right available to the mortgagee with respect to the secured obligation; or

(6) Except as otherwise provided in subsection (b), bar a deficiency judgment pursuant to law of this state other than this article governing or relating to a deficiency judgment.

(b) If a receiver sells receivership property that pursuant to §55-10-16(c) of this code is free and clear of a lien, the ability of a creditor to enforce an obligation that had been secured by the lien is subject to law of this state other than this article relating to a deficiency judgment.

†§55-20-26. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

†§55-20-27. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq.* of this code, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c) of this code, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b) of this code.

†§55-20-28. Transition.

This article does not apply to a receivership for which the receiver was appointed before the effective date of this article.

†NOTE: Com. Sub. for S. B. 452 (Chapter 3), which passed prior to this act, also created a new Article 20. Therefore, this has been redesignated as Article 21 for the code.

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CHAPTER 3

**(Com. Sub. for S. B. 452 - By Senators Woodrum, Trump,
Woelfel, Lindsay, and Romano)**

[Passed February 25, 2022; in effect 90 days from passage]
[Approved by the Governor on March 8, 2022.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-20-1, §55-20-2, §55-20-3, §55-20-4, §55-20-5, §55-20-6, §55-20-7, §55-20-8, §55-20-9, and §55-20-10, all relating to permitting civil remedies for the unauthorized disclosure of intimate images; providing for a short title; defining terms; providing for a civil action; providing exceptions to liability; providing for plaintiff's privacy; providing for remedies; creating a statute of limitations; providing for construction; providing for uniformity of application and construction; and addressing effective date.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 20. CIVIL REMEDIES FOR UNAUTHORIZED
DISCLOSURE OF INTIMATE IMAGES.**

§55-20-1. Short title.

This article shall be known and may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

§55-20-2. Definitions.

For the purposes of this article:

(1) “Child” means an unemancipated individual who is less than 18 years of age.

(2) “Consent” means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(3) “Depicted individual” means the individual whose body is shown, in whole or in part, in an intimate image.

(4) “Disclosure” means transfer, publication, or distribution to another person.

(5) “Harm” means physical harm, economic harm, and emotional distress whether, or not accompanied by physical or economic harm.

(6) “Identifiable” means recognizable by a person other than the depicted individual:

(A) From an intimate image itself; or

(B) From an intimate image and identifying characteristic displayed in connection with the intimate image.

(7) “Identifying characteristic” means information that may be used to identify a depicted individual.

(8) “Individual” means a human being.

(9) “Intimate image” means a photograph, film, video recording, or other similar medium that shows:

(A) The uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

(B) A depicted individual engaging in or being subjected to sexual conduct.

(10) “Parent” means an individual recognized as a parent under the laws of this state other than this article.

(11) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(12) “Private” means:

(A) Created or obtained under circumstances in which the depicted individual had a reasonable expectation of privacy; or

(B) Made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

(13) “Sexual conduct” means any act set forth below but is not limited to this list:

(A) Masturbation;

(B) Genital, anal, or oral sex;

(C) Sexual penetration of, or with, an object;

(D) Bestiality; or

(E) The transfer of semen onto a depicted individual.

§55-20-3. Civil action.

(a) Except as otherwise provided in §55-20-4 of this code, a depicted individual who is identifiable and who suffers harm from a person’s intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual’s consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) The depicted individual did not consent to the disclosure;

(2) The intimate image was private; and

(3) The depicted individual was identifiable.

(b) The following conduct by a depicted individual does not establish, by itself, that the individual consented to the disclosure

of the intimate image which is the subject of an action under this article or that the individual lacked a reasonable expectation of privacy:

- (1) Consent to creation of the image; or
- (2) Previous consensual disclosure of the image.

(c) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

§55-20-4. Exceptions to liability.

(a) A person is not liable under this article if the person proves the disclosure of, or threat to disclose, an intimate image was:

- (1) Made in good faith:
 - (A) To law enforcement;
 - (B) For a legal proceeding; or
 - (C) For medical education or treatment.
- (2) Made in good faith in the reporting or investigation of:
 - (A) Unlawful conduct; or
 - (B) Unsolicited and unwelcome conduct.
- (3) Related to a matter of public concern or public interest; or
- (4) Reasonably intended to assist the depicted individual.

(b) Subject to this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under this article for a disclosure or threatened disclosure of an intimate image, as defined in this article, of the child.

(c) If a defendant asserts an exception to liability under §55-20-4(b) of this code, the exception does not apply if the plaintiff proves the disclosure was:

(1) Prohibited by law other than this article; or

(2) Made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(d) Disclosure of, or threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

§55-20-5. Plaintiff's privacy.

In an action under this article, a plaintiff may file a motion to seal with the initial pleading or any other motion as necessary to protect the identity and privacy of the plaintiff. The court may make further orders as necessary to protect the identity and privacy of a plaintiff.

§55-20-6. Remedies.

(a) In an action under this article, a prevailing plaintiff may recover:

(1) The greater of:

(A) Economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress, whether or not accompanied by other damages; or

(B) Statutory damages not to exceed \$10,000 against each defendant found liable under this article for all disclosure and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action. In determining the amount, if any, of statutory damages under §55-20-6(a)(1)(B) of this code, consideration shall be given to the age of the parties at the time of disclosure or threatened disclosure, the number of

disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors;

(2) An amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and

(3) Punitive damages as allowed under the law of this state other than this article.

(b) In an action under this article, the court may award a prevailing plaintiff:

(1) Reasonable attorney's fees and costs; and

(2) Additional relief, including injunctive relief.

§55-20-7. Statute of limitations.

(a) Any action under this article for:

(1) An unauthorized disclosure may not be brought later than four years from the date:

(A) The disclosure was discovered; or

(B) Should have been discovered with the exercise of reasonable diligence.

(2) A threat to disclose may not be brought later than four years from the date of the threat to disclose.

(b) Except as otherwise provided in §55-20-7(c) of this code, this section is subject to the tolling of statutes of this state.

(c) In an action under §55-20-3(a) of this code by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in §55-20-7(a) of this code does not begin to run until the depicted individual attains the age of majority.

§55-20-8. Construction.

(a) This article shall be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C., Section 230.

(b) This article may not be construed to alter the law of this state on sovereign immunity.

§55-20-9. Uniformity of application and construction.

In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to this subject matter among states that enact it.

§55-20-10. Effective date.

This article shall apply to any cause of action, subject to this article, accruing on, or after, the effective date of the article.



CHAPTER 4

**(Com. Sub. for H. B. 4629 - By Delegates Steele, Hanshaw
(Mr. Speaker), Summers, Espinosa, Ellington, Householder,
Foster, D. Jeffries, Barrett, Maynor, and Criss)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §55-17-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §55-17-3a, all relating to actions against the State of West Virginia; providing for expiration of notice of intent to institute an action where an action has not been instituted within the prescribed time period; requiring complaining party or parties to provide a new notice; requiring new notices to be accompanied by the required fee payable to the attorney general or chief officer of the state agency; providing that applicable statute of limitations is not tolled during second or subsequent notices; prohibiting a court from issuing a writ of mandamus, a writ of prohibition or an injunction against the Legislature under the separation of powers provision of the state constitution; prohibiting the naming of the Legislature or its presiding officers in any action challenging the constitutionality of a statute under the separation of powers provision of the state constitution; requiring dismissal of such actions or dismissal of the improperly joined parties; and providing for retrospective and retroactive application of prohibitions to all actions pending at the time of the enactment of this bill.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 17. PROCEDURES FOR CERTAIN ACTIONS
AGAINST THE STATE.**

§55-17-3. Preliminary procedures; service on Attorney General; notice to the Legislature.

(a)(1) Notwithstanding any provision of law to the contrary, at least 30 days prior to the institution of an action against a governmental agency, the complaining party or parties shall provide the chief officer of the governmental agency and the Attorney General written notice, by certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt, the chief officer of the governmental agency shall immediately forward a copy of the notice to the President of the Senate and the Speaker of the House of Delegates. The provisions of this subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable harm would have occurred if the institution of the action was delayed by the provisions of this subsection.

(2) The written notice to the chief officer of the governmental agency and the Attorney General required by subdivision (1) of this subsection is considered to be provided on the date of mailing of the notice by certified mail, return receipt requested. If the written notice is provided to the chief officer of the governmental agency as required by subdivision (1) of this subsection, any applicable statute of limitations is tolled for 30 days from the date the notice is provided and, if received by the governmental agency as evidenced by the return receipt of the certified mail, for 30 days from the date of the returned receipt.

(3) A copy of any complaint filed in an action as defined in §55-17-2 of this code shall be served on the Attorney General.

(b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary in an action instituted against a governmental agency that seeks a judgment, as defined in §55-17-2 of this code, the chief officer of the governmental agency which is named a party to the action shall, upon receipt of service, immediately give written notice thereof, together with a copy of the complaint filed, to the President of the Senate and the Speaker of the House of Delegates.

(2) Upon request, the chief officer of the governmental agency shall furnish the President of the Senate and Speaker of the House with copies of pleadings filed and discovery produced in the proceeding and other documents, information, and periodic reports relating to the proceeding as may be requested.

(3) The chief officer of a governmental agency who fails without good cause to comply with the provisions of this subsection is guilty of misfeasance. This subsection does not require a notice or report to the President of the Senate and the Speaker of the House that no action has been instituted or is pending against a governmental agency during a specified period.

(c) The requirements for notice and delivery of pleadings and other documents to the President of the Senate or Speaker of the House of Delegates pursuant to the provisions of this section do not constitute a waiver of any constitutional immunity or protection that proscribes or limits actions, suits, or proceedings against the Legislature or the State of West Virginia.

(d) The exercise of authority granted by the provisions of this section does not subject the Legislature or any member of the Legislature to any terms of a judgment.

(e) If 90 days elapse after service of notice required by subsection (a) of this section has been effected and action has not been instituted, then the notice shall be considered to have expired, and before an action may be instituted, the complaining party or parties must provide new notice as required by subsection (a) of this section which shall be accompanied by a second or subsequent notice fee of \$250 to the attorney general and by a second or subsequent notice fee of \$250 to the chief officer of the governmental agency: *Provided*, That no further tolling of any applicable statute of limitations shall occur during any second or subsequent notice.

§55-17-3a. Legislature and its presiding officers never to be named as parties to a civil action in court.

(a) Article V of the Constitution of West Virginia provides that the legislative, executive, and judicial departments of the government of West Virginia shall be separate and distinct, so that

neither shall exercise the powers properly belonging to either of the others.

(b) It is an unconstitutional violation of the separation of powers mandated by Article V of the Constitution of West Virginia for:

(1) Any court of this state to issue a writ of mandamus, a writ of prohibition, or an injunction against the Legislature; or

(2) Any person to name the Legislature or the presiding officers thereof, in any action challenging the constitutionality of a statute.

(c) Pursuant to the separation of powers required by Article V of the West Virginia Constitution, if any suit is filed seeking relief under subdivision (1), subsection (a) of this section, or if any suit is filed naming the legislature, or the presiding officers thereof, in violation of the provisions of subdivision (2), subsection (a) of this section, the court must, upon motion, summarily dismiss the action, or dismiss the parties improperly joined.

(c) This section shall be applied retrospectively and retroactively to all actions pending at the time of the enactment of this section.



CHAPTER 5

(Com. Sub. for S. B. 242 - By Senator Sypolt)

[Passed March 11, 2022; in effect 90 days from passage]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §8A-7-10 of the Code of West Virginia, 1931, as amended, relating to municipal and county ordinances generally; prohibiting ordinances that prevent or limit a landowner's complete use of natural resources or real property for farm or agricultural operations outside of municipalities or urban areas.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. ZONING ORDINANCE.

§8A-7-10. Effect of enacted zoning ordinance.

(a) After enactment of a zoning ordinance by a municipality or county, all subsequent land development shall be done in accordance with the provisions of the zoning ordinance.

(b) All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect until amended or repealed by action of the governing body of the municipality or the county taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

(c) Land, buildings or structures in use when a zoning ordinance is enacted may continue the same use and that use may not be prohibited by the zoning ordinance so long as the use of the

land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any present or future satellite agricultural, industrial or manufacturing use. A zoning ordinance may provide for the enlargement or extension of a nonconforming use, or the change from one nonconforming use to another.

(d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one-year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: *Provided*, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures shall conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.

(e) Nothing in this chapter authorizes an ordinance, rule or regulation preventing or limiting, outside of municipalities or urban areas, the complete use (i) of natural resources by the owner; or (ii) of a tract or contiguous tracts of land of any size for a farm or agricultural operation as defined in §19-19-2 by the owner. For purposes of this article, agritourism includes, but is not limited to, the definition set forth in §19-36-2.

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CHAPTER 6

**(Com. Sub. for Com. Sub. for S. B. 264 - By Senators Trump,
Hamilton, and Stollings)**

[Passed March 11, 2022; in effect 90 days from passage]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §19-21A-1, §19-21A-2, §19-21A-3, §19-21A-4, §19-21A-6, and §19-21A-8 of the Code of West Virginia, 1931, as amended, all relating to conservation districts; providing for a short title of the article to be known as the Conservation Districts Law of West Virginia; restating legislative determinations and declaration of policy in clear and concise language; adding definitions for “agriculture” and “urban agriculture”; conferring additional powers and duties upon State Conservation Committee; providing for term of office of district supervisor to begin on July 1, immediately following primary election; providing procedure to fill office of district supervisor if no candidate seeks office; modifying candidate qualifications for election of district supervisor; modifying process for filling vacancies in office of district supervisor; and conferring additional powers and duties upon conservation districts and supervisors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-1. Short title.

This article may be known and cited as the Conservation Districts Law of West Virginia.

§19-21A-2. Legislative determinations and declaration of policy.

It is hereby declared, as a matter of legislative determination:

(a) That West Virginia has a rich history of farming and using natural resources. The farms, forests, soil, and water resources are among the basic assets of the state and conservation of these resources is vital to the maintenance and future of the state and its citizens. However, improper land use practices have led to unnecessary soil erosion and water degradation.

(b) There is a continuing need for the implementation of conservation practices, whether urban, suburban, or rural, that maintain, promote, control, and prevent soil erosion, prevent floodwater and sediment damage, and further the conservation, development, use, disposal, and quality of water, thereby preserving natural resources, controlling floods, preventing impairment of dams and reservoirs, assisting in maintaining the navigability of rivers and harbors, preserving wildlife, protecting the tax base, protecting public lands, and promoting the health, safety, and general welfare of the people of this state.

(c) Adopting sound conservation policies and practices is an investment in West Virginia's Natural Resources and is a foundation for profitable, productive, and healthy ecosystems that are resilient and better able to withstand current and future environmental challenges.

(d) In recognition of the ever-increasing demands on West Virginia's soil and water resources, it is declared the policy of the state that the State Conservation Committee and the State's Conservation Districts, in cooperation with other state and federal agencies, political subdivisions, nongovernmental organizations, private landowners, and others, work to recommend and implement programs and policies that improve soil health and water quality.

(e) This article contemplates that the cost of operating conservation districts will be provided by donations, gifts, contributions, grants, and appropriations, in money, services, materials, or otherwise, from the United States or any of its agencies, from the State of West Virginia or from other sources,

with the understanding that the owners or occupiers of the land bear the responsibility of implementing practices to alleviate soil erosion and/or improve water quality on their lands and will contribute funds, labor, materials, and equipment to aid in carrying out such measures.

§19-21A-3. Definitions.

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

(1) “Agency of this state” means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) “Agriculture” means the production of food, fiber, and woodland products, by means of cultivation, tillage of the soil, and by the conduct of animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of forestry, silviculture, horticulture, harvesting of silviculture products, packing, shipping, milling, and marketing of agricultural products conducted by the proprietor of the agricultural operation, or any other legal plant or animal production and all farm practices.

(3) “Committee” or “State Conservation Committee” means the agency created in §19-21A-4 of this code.

(4) “Conservation” means the reduction of soil erosion, enhancement of water supplies, control, and abatement of nonpoint sources of water pollution, improvement of water quality, increased aquatic and wildlife habitat, and the reduction of damages caused by floodwater and sediment damages and other natural disasters.

(5) “District” or “conservation district” means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(6) “Grant” means the providing of grants for conservation purposes pursuant to legislative rule.

(7) “Governing body” means the supervisors of any conservation district, town, or city, council, city commission, county court, or body acting in lieu of a county court, in this state, and the term “governmental division” means any conservation district, town, city, or county in this state.

(8) “Land occupier” or “occupier of land” means any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter, or tenant.

(9) “Landowners” or “owners of land” means any person or persons, firm, or corporation who holds title to any lands lying within a district organized under the provisions of this article.

(10) “Notice” means notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication is the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in the notice, adjournment may be made, from time to time, without the necessity of renewing the notice for the adjournment dates.

(11) “Petition” means a petition filed under the provisions of §19-21A-14 of this code for the creation of a district.

(12) “Soil conservation”, “erosion control”, or “erosion prevention projects” means those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

(13) “State” means the State of West Virginia.

(14) “Supervisor” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

(15) “Urban Agriculture” means the cultivation, processing, and distribution of agricultural products grown in urban and suburban settings, including vertical production, warehouse farms,

community gardens, rooftop farms, hydroponic, aeroponic, and aquaponic facilities, and other innovations.

(16) “United States” or “agencies of the United States” means the United States of America, Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

(17) “Works of improvement” means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization, or disposal of water.

§19-21A-4. State Conservation Committee; continuation.

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following 10 members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The Director of the state Cooperative Extension Service;

(B) The Director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for

four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings, and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts, and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties, and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees, powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of the agency or institution of learning and make special reports, surveys, or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the

committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules, and orders issued or adopted;

(3) Provide for an annual audit of the accounts of receipts and disbursements; and

(4) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

(1) Review district programs and offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Assist and advise conservation districts and others in implementing conservation improvements, and projects to control and abate nonpoint sources of water pollution and prevent damage from floodwater and sediment;

(3) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article, and facilitate an interchange of advice and experience between the districts and cooperation between them;

(4) Review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with any state, federal, interstate, or other public or private agency, organization, or individual, and advise the districts concerning such agreements or forms of agreements;

(5) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(6) Contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as-needed basis;

(7) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with, and cooperation in, programs of the United States government and any of its proper departments, bureaus, or agencies relating to natural disaster response, natural disaster recovery, or stream restoration related to flooding;

(8) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(9) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(10) Administer the provisions of any law hereinafter enacted by the Legislature appropriating funds for expenditures in connection with the activities of conservation districts; distribute to conservation districts funds, equipment, supplies, and services received by the committee for such purpose from any source subject to conditions in any state or federal statute or local ordinance making such funds, property, or services; adopt rules establishing guidelines to govern the use by conservation districts of such funds, property, and services; and review all budgets, administrative procedures, and operations of such districts and advise the districts concerning their conformance with applicable laws and rules;

(11) Administer a conservation grant program that provides financial assistance to conservation districts and others to promote approved conservation, water quality, and soil conservation projects;

(12) Accept and receive donations, gifts, contributions, grants, and appropriations in money, services, materials, or otherwise, from the United States or any of its agencies, from the State of West Virginia, or from other sources, and use or expend the money, services, materials, or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services, or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations;

(13) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests in the property; maintain, administer, operate, and improve any properties acquired; receive and retain income from the property and expend the income as required for operation, maintenance, administration, or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease, or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article;

(14) Promulgate emergency and legislative rules to effectuate the provisions of this article; and

(15) Upon a Governor's proclamation declaring a state of emergency or federal disaster declaration, the state committee, its employees, or agents may enter any water of the state for the purpose of removing debris and other obstruction which impede water flow and present additional flood hazards. The agency shall make reasonable efforts to secure the permission of the landowner before entering any private property in connection with these removal activities. The exercise of this limited authority does not constitute taking of private property or trespass. This authority shall continue for the duration of the Governor's proclamation or the federal disaster declaration.

(16) Require annual reports from conservation districts, the form and content of which shall be developed by the state committee; and

(17) Establish by rule, adequate and reasonably uniform accounting and auditing procedures which shall be used by conservation districts.

§19-21A-6. Election of supervisors for each district; filling vacancies.

(a) All registered voters in each county in a district shall elect two nonpartisan supervisors who shall hold office for a term of four years and until his or her successor is elected and qualified: *Provided*, That any county with a population of 100,000 based on the most recent decennial census shall elect one additional supervisor and any county with a population over 100,000 based on the most recent decennial census shall elect one additional supervisor for each 50,000 residents over 100,000.

(b) The provisions of §3-1-1 *et seq.* of this code apply to the election of supervisors, and the terms of such members shall begin on July 1, next following the primary election at which they were elected: *Provided*, That if no candidate seeks the office, then the district shall advertise and select a candidate from the county in which the vacancy occurs and submit the name to the state committee for appointment.

(c) A candidate for supervisor must have experience in agriculture, as that term is defined in §19-21A-3 of this code; conservation; or natural resources.

(d) Any vacancy occurring in the office of supervisor shall be filled by the state committee by appointment of a person from the county in which the vacancy occurs. Within 90 days after the vacancy occurs, the district shall advertise and select a candidate from the county in which the vacancy occurs and submit the name to the state committee for appointment. If the unexpired term is for less than two years and six months, the appointed person holds office until the expiration of the term. If the unexpired term is for

more than two years and six months, the appointed person holds the office until a successor is elected in the next primary or general election and qualified.

§19-21A-8. Powers and duties of conservations districts and supervisors.

A conservation district organized under the provisions of this article and the supervisors thereof shall have the following powers and duties, in addition to others granted in other sections of this article:

(1) To hold public meetings, to conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damage, and nonpoint source water pollution, and to the conservation, development, utilization, water quality, disposal of water, and the preventive and control measures needed to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement to the public: *Provided*, That in order to avoid duplication of research activities, no district shall initiate any research program or publish the results except with the approval of the state committee and in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of the lands or the necessary rights or interests in the lands in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil washing may be prevented and controlled, water quality may be improved, and works of improvement may be carried out;

(3) To carry out preventive and control measures and works of improvement within the district, including, but not limited to,

engineering operations, methods of cultivation, the growing of vegetation, changes in use of land; drainage, irrigation, and other agricultural water management operations and measures for the prevention of floodwater and sediment damages, or for the control and abatement of nonpoint sources of water pollution; and the measures listed in §19-21A-2 of this code on lands owned or controlled by this state or any of its agencies with the consent and cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion-control and prevention operations, operations for the control and abatement of nonpoint sources of water pollution, and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to institute condemnation proceedings to acquire any property, real or personal, or rights or interests therein, whether or not located in the district, required for works of improvement; to maintain, administer, and improve any properties acquired, to receive income from such properties, and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article;

(6) To accept and receive donations, gifts, contributions, grants, and appropriations in money, services, materials, or otherwise from the United States or any of its agencies, from the state of West Virginia, or from other sources and use or expend the money, services, materials, or other contributions in carrying out the policy and provisions of this article;

(7) To make available, on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources, and for the prevention and control of soil erosion, and for flood prevention or the conservation, development, utilization, water quality, and disposal of water;

(8) To construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

(9) To develop and submit to the state committee its proposed long range program and annual work plans related to the conservation of soil resources, and for the control and prevention of soil erosion, and for flood prevention and water quality improvement, or the conservation, development, utilization, and disposal of water within the district. The plans shall specify, in as much detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(10) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation,

flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts, contributions, and grants in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from any other source and to use or expend such money, services, materials, or other contributions in carrying on its operations;

(11) To sue and be sued in the name of the district; to have a seal, which shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make and, from time to time, amend and repeal rules and regulations not inconsistent with this article to carry into effect its purposes and powers;

(12) As a condition to extending any benefits under this article to, or the performance of work upon any lands, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damage thereon;

(13) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder in its acquisition, operation, and disposition of property unless the Legislature shall specifically so state;

(14) To enter into contracts and other arrangements with agencies of the United States, with persons, firms, or corporations, including public and nonprofit corporations, with the state government of this state or other states, or any department or agency thereof, with governmental divisions, with soil conservation, drainage, flood control, soil erosion, or other improvement districts in this state or other states, for cooperation or assistance in constructing, improving, operating, or maintaining

works of improvement within the district, or in preventing floods, or in conserving, developing, utilizing, and disposing of water in the district, or for making surveys, investigations, or reports thereof; and to obtain options upon and acquire property, real or personal, or rights or interests therein, in other districts or states required for flood prevention and water quality improvement, or the conservation, development, utilization, and disposal of water within the district and to construct, improve, operate, or maintain thereon or therewith works of improvement.

(15) Each district shall, through public meetings, publications, or other means, keep the public, agencies, and occupiers of the land within the district informed of the works and activities planned and administered by the district, of the purposes these will serve, and of the results achieved annually by the districts.



CHAPTER 7

(Com. Sub. for S. B. 424 - By Senators Sypolt, Baldwin, Karnes, Phillips, Smith, Woodrum, Hamilton, Martin, Lindsay, Jeffries, Romano, Clements, Maroney, and Rucker)

[Passed March 12, 2022; in effect 90 days from passage]
[Approved by the Governor on March 28, 2022.]

AN ACT to repeal §19-1-10, and §19-15-11 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-13DD-3 of said code; to amend and reenact §19-1-4a and §19-1-11 of said code; to amend said code by adding thereto one new section, designated §19-1-13; to amend and reenact §19-9-7a of said code; to amend and reenact §19-12E-4 and §19-12E-5 of said code; to amend and reenact §19-15A-4 of said code; to amend and reenact §19-16-6 of said code; to amend and reenact §19-16A-21 of said code; to amend and reenact §19-20C-3 of said code; to amend and reenact §19-36-5 of said code, all relating generally to the 2022 Farm Bill; increasing the West Virginia Farm-to-Food bank tax credit; allowing for retroactive application of the tax credit; allowing the Commissioner of Agriculture to accept certain funds and property from federal agencies, individuals, and certain businesses; repealing requirement for Social Security numbers on applications; removing requirement that commissioner file annual report on rural rehabilitation loan program with Joint Committee; requiring commissioner to file annual report detailing department activities with President of the Senate, Speaker of the House, and Joint Committee on Government and Finance and sending copy to archives and history; requiring license from state to produce industrial hemp; changing the National Animal Identification System to the Animal Disease Traceability Program; requiring license from state to produce industrial hemp; allowing commissioner to recognize hemp

license issued by the USDA; repealing publication requirement for fertilizer law; removing requirement that commissioner publish annual report on the liming material law; removing requirement that commissioner publish and distribute annual report on the law; allowing commissioner to deny, suspend, modify, or revoke license or application for license for violation, conviction, or penalty assessment under a certain federal act; removing requirement that commissioner file annual spay and neuter report; providing that agritourism on land classified as agricultural does not change use of land for zoning purposes; providing that agritourism business may use certain facilities for certain events without complying with fire codes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13DD. WEST VIRGINIA FARM-TO-FOOD BANK TAX CREDIT.

§11-13DD-3. Amount of credit; limitation of credit.

(a) There is allowed to farming taxpayers who make donations of edible agricultural products to one or more nonprofit food programs in this state, a credit against taxes imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code in the amount set forth in this section.

(b) The amount of the credit is equal to 30 percent of the value of the donated edible agricultural products, but not to exceed \$5,000 during a taxable year or the total amount of tax imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, whichever is less, in the year of donations.

(c) If the amount of the credit exceeds the taxpayer's tax liability for the taxable year, the amount which exceeds the tax liability may be carried over and applied as a credit against the tax liability of the taxpayer pursuant to §11-21-1 *et seq.* or §11-24-1 *et*

seq. of this code to each of the next four taxable years unless sooner used.

(d) No more than \$200,000 of tax credits may be allocated by the department in any fiscal year. The department shall allocate the tax credits in the order the donation forms are received.

(e) It is the intent of the Legislature in enacting the amendments to this section during the regular session of the Legislature, 2022, that the amendments be applied retroactively to apply to any donations of qualifying edible agricultural products to one or more nonprofit food programs in this state made on or after January 1, 2022.

CHAPTER 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4a. Commissioner authorized to accept gifts, etc., and enter into cooperative agreements.

Notwithstanding any provision of this code to the contrary, the Commissioner of Agriculture is hereby empowered and he or she shall have authority to accept and receive donations, gifts, contributions, grants, and appropriations of money, services, materials, real estate, or other things of value from the United States Department of Agriculture, the United States Food and Drug Administration, the United States Environmental Protection Agency, any other agency of the United States government, or any of their divisions or bureaus, and he or she shall have authority to use, utilize, develop, or expend such money, services, material, or other contributions in conformity with the conditions and provisions set forth in such grants, appropriations, or donations.

The commissioner may accept and receive donations, gifts, contributions, and grants of money, services, materials, real estate, and other things of value from individuals, partnerships, associations, or corporations, and he or she shall have authority to utilize such contributions to encourage, promote, and develop the agricultural interests or industries of the state.

The commissioner is hereby empowered, and he or she shall have authority to enter into agreements with any department of state government for the purpose of carrying out any regulatory laws where or when any related functions or duties exist. He or she shall also have authority to enter into agreements with any city council or county commission of the State of West Virginia, for carrying out the provisions of the agricultural laws over which he or she has enforcement authority.

§19-1-10. Requirement for social security number on applications.

[Repealed.]

§19-1-11. Rural Rehabilitation Loan Program.

(a) The Rural Rehabilitation Loan Program is an important tool for the Department of Agriculture to promote investment in the agricultural industry in the state. Rules are needed for the loan program to remain viable.

(b) The commissioner shall propose emergency and legislative rules for approval in accordance with §29A-3-1 *et seq.* of this code. The rules shall, at a minimum:

(1) Establish minimum requirements and qualifications for the loan committee, including the addition of public members who have agricultural or business loan experience;

(2) Prohibit department employees and loan committee members, and their immediate family members, from receiving program loans;

(3) Establish minimum financial requirements for receiving a program loan;

(4) Require loans to be used for agricultural or related purposes;

(5) Require collateral sufficient to secure the loan;

(6) Establish policies for the application, applicable interest rates, delinquencies, refinancing, collection proceedings, collateral requirements, and other aspects of the loan program;

(7) Require the department to advertise the loan program to the public, including information on the department's website and in the department's market bulletin; and

(8) Transfer the servicing of the program loans to a financial institution via competitive bid or to the State Treasurer's office or other governmental entity.

(c) The commissioner shall not be required to utilize the services of the state agency for surplus property for the disposition of items purchased by participants in the loan program and subsequently repossessed by the committee to be sold in order to satisfy the balance of an outstanding loan.

§19-1-13. Annual reporting to the Legislature.

On or before January 31 of each year, the commissioner shall file a report with the President of the State Senate, the Speaker of the House, and the Joint Committee on Government and Finance detailing the activities of the department, including all boards and commissions under the commissioner's authority, during the preceding fiscal year. The report shall include all donations, gifts, contributions, grants, and appropriations of money, services, materials, real estate, or other things of value accepted and received by the department. A copy of the commissioner's annual report shall also be provided to the Division of Archives and History to be kept as a permanent record of the state.

ARTICLE 9. DISEASES AMONG DOMESTIC ANIMALS.

§19-9-7a. Animal disease traceability; rulemaking; exemption.

West Virginia shall be a participating state in the United States Department of Agriculture's Animal Disease Traceability program. The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of

this code governing the collection of farm premises and animal identification data.

The premises and animal identification data collected by the commissioner in accordance with the requirements of the Animal Disease Traceability program are specifically exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this code.

ARTICLE 12E. INDUSTRIAL HEMP DEVELOPMENT ACT.

§19-12E-4. Industrial hemp authorized as agricultural crop; license required.

(a) Industrial hemp is considered an agricultural crop in this state if grown for the purposes authorized by the provisions of this article. Upon meeting the requirements of §19-12E-5 of this code, an individual in this state may plant, grow, harvest, possess, process, sell, or buy industrial hemp.

(b) A person shall not cultivate, handle, or process industrial hemp in this state unless the person holds an industrial hemp license issued by this state.

§19-12E-5. Industrial hemp; licensing.

(a) A person growing industrial hemp shall apply to the commissioner for a license on a form prescribed by the commissioner.

(b) The application for a license must include the name and address of the applicant and the legal description and global positioning coordinates of the land area to be used to produce industrial hemp.

(c) The commissioner shall require each first-time applicant and may establish requirements for other persons involved with the industrial hemp program, to submit to a state and national criminal history record check. The criminal history record check shall be based on fingerprints submitted to the State Police or its assigned agent for forwarding to the Federal Bureau of Investigation.

(1) The applicant shall meet all requirements necessary to accomplish the state and national criminal history record check, including:

(A) Submitting fingerprints; and

(B) Authorizing the board, the State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for a license.

(2) The results of the state and national criminal history record check may not be released to or by a private entity except:

(A) To the individual who is the subject of the criminal history record check;

(B) With the written authorization of the individual who is the subject of the criminal history record check; or

(C) Pursuant to a court order.

(3) The criminal history record check and related records are not public records for the purposes of §29B-1-1 *et seq.* of this code.

(4) The applicant shall pay the actual costs of the fingerprinting and criminal history record check.

(d) If the applicant has completed the application process to the satisfaction of the commissioner, the commissioner shall issue the license, which is valid until December 31 of the year of application: *Provided*, That an individual applying to renew a current license may continue to operate under an existing license, as long as his or her completed renewal application has been submitted to the department on or before the deadline established by the department.

(e) Any person seeking to grow, cultivate, or process industrial hemp shall provide to the department prior written consent allowing the department, State Police, and other state and local law-enforcement agencies to enter onto all premises where industrial hemp is grown, cultivated, processed, or stored to

conduct physical inspections or otherwise ensure compliance with the requirements of this code and the legislative rules promulgated pursuant to this code.

(f) In the alternative, the commissioner may choose to recognize industrial hemp grower licenses issued by the United States Department of Agriculture.

(g) Sale of industrial hemp products —

(1) Notwithstanding any provision of the code to the contrary, a person need not obtain a license to possess, handle, transport, or sell hemp products or extracts, including those containing one or more hemp-derived cannabinoids, including CBD.

(2) Hemp-derived cannabinoids, including CBD, are not controlled substances or adulterants.

(3) Products containing one or more hemp-derived cannabinoids, such as CBD, intended for ingestion are to be considered foods, not controlled substances or adulterated products.

(4) Applicable state agencies shall make available any and all customary registrations to the processors and manufacturers of hemp products.

(5) Retail sales of hemp products may be conducted when the products and the hemp used in the products were grown and cultivated legally in another state or jurisdiction and meet the same or substantially the same requirements for processing hemp products or growing hemp under this article and rules promulgated under §19-2E-7 of this code.

(6) Notwithstanding any other provision of this code to the contrary, derivatives of hemp, including hemp-derived cannabidiol, may be added to cosmetics, personal care products, and products intended for animal or human consumption, and the addition is not considered an adulteration of the products.

(7) Hemp and hemp products may be legally transported across state lines, and exported to foreign nations, consistent with U.S. federal law and laws of respective foreign nations.

ARTICLE 15. WEST VIRGINIA FERTILIZER LAW.

§19-15-11. Publications.

[Repealed.]

ARTICLE 15A. WEST VIRGINIA AGRICULTURAL LIMING MATERIALS LAW.

§19-15A-4. Inspection fee; report of tonnage; annual report.

(a) Each sales invoice prepared in normal course of business by either a registrant or distributor shall reflect the amount of the inspection fee and the name of the payor.

(b) Within 30 days following June 30 and December 31, of each year, each registrant and distributor shall submit on a form furnished by the commissioner a summary of tons of each agricultural liming material sold or distributed by each registrant and distributor in the state during the previous six months' period. The report of tonnage shall be accompanied by payment of an inspection fee as established by legislative rule. If the tonnage, or portion thereof, has been paid by another person, documentation by invoice must accompany such report. The semiannual payment and late fee shall be established by legislative rule.

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-6. Duties and authority of Commissioner of Agriculture.

The commissioner may:

(a) Establish by legislative rule germination standards for agricultural, vegetable, tree and shrub, or flower seeds;

(b) Enter and inspect, during reasonable hours, any location where agricultural, vegetable, tree and shrub, or flower seeds, or

seed potatoes for sowing purposes are manufactured, distributed, transported, or used, and where records relating to the manufacture, distribution, shipment, labeling, or sale of seed are kept. This inspection shall include, but is not limited to, examining, photographing, verifying, copying, and auditing records as is necessary to determine compliance with this article, labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing, and sale of agricultural, vegetable, tree and shrub seeds, or seed potatoes;

(c) Open, examine, sample, and test agricultural, vegetable, tree and shrub, or flower seed, or seed potatoes, equipment, containers, transport containers, and packages used or intended to be used in the manufacture and distribution of seeds used for sowing purposes;

(d) Issue certificates of registration pursuant to this article;

(e) Refuse applications for registration, or suspend or revoke registrations as provided in this article;

(f) Issue “stop sale or embargo” orders as provided in this article;

(g) Condemn and confiscate any agricultural, vegetable, tree and shrub, or flower seed, or seed potato that is not brought into compliance with this article;

(h) Collect fees and penalties and expend moneys under the terms of this article;

(i) Conduct sampling in accordance with the official methods as established by the Association of American Seed Control Officials, the United States Department of Agriculture, or the Association of Official Seed Analysts;

(j) Conduct hearings as provided by this article;

(k) Assess civil penalties and refer violations to a court of competent jurisdiction;

(l) Obtain court orders directing any person refusing to submit to inspection, sampling, and auditing to submit;

(m) Establish and maintain seed testing facilities, establish reasonable fees for the tests, incur expenses, and conduct tests in accordance with the Association of Official Seed Analysts;

(n) Be guided by the analytical results of the official sample when determining whether the agricultural, vegetable, tree and shrub, or flower seed is deficient in any component;

(o) Report the analytical results on all official deficient samples to the registrant, dealer, purchaser if known, and or the distributor;

(p) Upon request made within 30 days from the date the official sample results are reported, furnish a portion of the official sample to the registrant;

(q) Cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this article;

(r) Establish fees by legislative rule;

(s) Propose rules for promulgation, in accordance with §29A-3-1 *et seq.* of this code;

(t) Promulgate emergency rules within 90 days of the passage of this bill into law; and

(u) Inspect and approve seed conditioning facilities in the state, issue permits, and establish fees.

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.

§19-16A-21. Violations.

It is unlawful for any person to manufacture, distribute, sell or offer for sale, use or offer to use:

(1) Product registration. — (A) Any pesticide which is not registered pursuant to the provisions of this article, or any pesticide if any of the claims made for it or any of the directions for its use differ in substance from the representation made in connection with its registration, or if the composition of a pesticide differs from its composition as represented in connection with its registration, in the discretion of the commissioner, a change in the labeling or formula of a pesticide may be made, within a registration period, without requiring registration of the product, however, changes are not permissible if they lower the efficiency of the product.

(B) Any pesticide sold, offered for sale, or offered for use which is not in the registrant's or the manufacturer's unbroken container and to which there is not affixed a label, visible to the public, bearing the following information:

(i) The name and address of the manufacturer, registrant, or person for whom manufactured;

(ii) The name, brand, or trademark under which the pesticide is sold; and

(iii) The net weight or measure of the content, subject to such reasonable variation as the commissioner may permit.

(C) Any pesticide which contains any substance or substances in quantities highly toxic to humans, unless the label bears, in addition to any other matter required by this article:

(i) A skull and crossbones;

(ii) The word "poison" prominently in red, on a background of distinctly contrasting color; and

(iii) A statement of an antidote for the pesticide.

(D) The pesticides commonly known as lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, sodium fluoride, sodium fluosilicate, and barium fluosilicate unless they have been distinctly colored or discolored as provided by rules issued in accordance with this article, or any other white powder

pesticide which the commissioner, after investigation of and after public hearing on the necessity for such action for the protection of the public health and the feasibility of coloration or discoloration, by rules, requires to be distinctly colored or discolored, unless it has been so colored or discolored. The commissioner may exempt any pesticide to the extent that it is intended for a particular use or uses from the coloring or discoloring required or authorized by this subsection if he or she determines that such coloring or discoloring for such use or uses is not necessary for the protection of the public health.

(E) Any pesticide which is adulterated or misbranded, or any device which is misbranded.

(F) Any pesticide that is subject of a stop sale, use, or removal order provided for hereinafter in this article until such time as the provisions of that section hereafter have been met.

(2) Business/applicator violations. — In addition to imposing civil penalties or referring certain violations for criminal prosecution the commissioner may, after providing an opportunity for a hearing, deny, suspend, modify, or revoke a license issued under this article, if he or she finds that the applicant, or licensee, or his or her employee has committed any of the following acts, each of which is declared to be a violation:

(A) Made false or fraudulent claims through any media, misrepresenting the effect of materials or methods to be utilized or sold;

(B) Used or caused to be used any pesticide in a manner inconsistent with its labeling or rules of the commissioner: *Provided*, That such deviation may include provisions set forth in section 2(ee) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.), as the same is in effect on the effective date of this article, disposed of containers or unused portions of pesticide inconsistent with label directions or the rules of the commissioner in the absence of label directions if those rules further restrict such disposal;

(C) Acted in a manner to exhibit negligence, incompetence, or misconduct in acting as a pesticide business;

(D) Made false or fraudulent records, invoices, or reports;

(E) Failed or refused to submit records required by the commissioner;

(F) Used fraud or misrepresentation, or presented false information in making application for a license or renewal of a license, or in selling or offering to sell pesticides;

(G) Stored or disposed of containers or pesticides by means other than those prescribed on the label or adopted rules;

(H) Provided or made available any restricted use pesticide to any person not certified under the provisions of this article or rules issued hereunder;

(I) Made application of any pesticide in a negligent manner;

(J) Neglected or, after notice, refused to comply with the provisions of this article, the rules adopted hereunder or of any lawful order of the commissioner;

(K) Refused or neglected to keep and maintain records or reports required under the provisions of this article or required pursuant to rules adopted under the provisions of this article or refused to furnish or permit access for copying by the commissioner any such records or reports;

(L) Used or caused to be used any pesticide classified for restricted use on any property unless by or under the direct supervision of a certified applicator;

(M) Made false or misleading statements during or after an inspection concerning any infestation of pests found on land;

(N) Refused or neglected to comply with any limitations or restrictions on or in a duly issued certification;

(O) Aided, abetted, or conspired with any person to violate the provisions of this article, or permitted one's certification or registration to be used by another person;

(P) Impersonated any federal, state, county, or city inspector or official;

(Q) Made any statement, declaration, or representation through any media implying that any person certified or registered under the provisions of this article is recommended or endorsed by any agency of this state;

(R) Disposed of containers or unused portions of pesticide inconsistent with label directions or the rules of the commissioner in the absence of label directions if those rules further restrict such disposal;

(S) Detach, alter, deface, or destroy, in whole or in part, any label or labeling provided for in this article or the rules promulgated under the provisions of this article;

(T) Refuse, upon a request in writing specifying the nature or kind of pesticide or device to which such request relates, to furnish to or permit any person designated by the commissioner to have access to and to copy such records of business transactions as may be essential in carrying out the purposes of this article; or

(U) Violated or been convicted or is subject to a final order assessing a penalty pursuant to §14(a) or (b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 *et seq.*).

ARTICLE 20C. WEST VIRGINIA SPAY NEUTER ASSISTANCE PROGRAM.

§19-20C-3. Rulemaking; annual report.

(a) The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this article.

(b) Rules promulgated under this section shall, at a minimum:

(1) Identify the types of nonprofit organizations and programs that qualify for spay neuter grants;

(2) Establish parameters for spay neuter grants;

(3) Establish procedures and requirements for grant applications; and

(4) Establish administration, recordkeeping, and reporting requirements for nonprofit organizations and programs that receive spay neuter grants.

ARTICLE 36. AGRITOURISM RESPONSIBILITY ACT.

§19-36-5. Maintenance of property status for certain purposes; exceptions.

(a) Notwithstanding any provision of this code to the contrary, the occurrence of agritourism does not change the nature or use of property that otherwise qualifies as agricultural for building code, zoning, or property tax classification purposes.

(b) An agritourism business may use certain of its facilities for occasional events without complying with building and fire codes applicable to structures used for such purposes on a full-time basis if such facilities are deemed structurally sound and otherwise safe for the intended use.

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CHAPTER 8

(Com. Sub. for H. B. 4050 - By Delegates Summers and Hanshaw (Mr. Speaker))

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §19-18-1 of the Code of West Virginia, 1931, as amended, relating to defining terms related to livestock trespassing.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. GENERAL STOCK LAW.

§19-18-1. Livestock trespassing on property of another; damages for injuries to person or property; notice to livestock owner; containment of livestock; costs for containment.

(a) If livestock enters the property of a landowner without that landowner's consent, the owner of the livestock is liable for damages for personal injury or property damage in a civil action in magistrate or circuit court.

(b) The landowner must attempt to contact the owner of the trespassing livestock within 48 hours of the trespass. If the owner cannot be contacted within 48 hours, the landowner shall notify the county sheriff.

(c) The landowner may contain the trespassing livestock on his or her property, but is not required to do so. If the landowner is able to contact the owner of the trespassing livestock pursuant to subsection (a) of this section, he or she shall also inform the owner of the costs of containment and shall allow the owner to retrieve the livestock.

(d) The owner of the trespassing livestock and the landowner shall attempt to mutually agree upon a fair cost for any containment. A fair cost for containment is an amount which would be allowed for the sheriff for containing similar livestock. If the negotiation fails, or if the landowner is not otherwise reimbursed for the costs for containment, the landowner may seek monetary damages in a civil action for these costs.

(e) "Livestock" is defined as an animal of the bovine, equine, porcine, ovine or caprine specie, domestic poultry, peafowl, guineafowl, leporidae, camelid, emu, and captive cervid as defined in §19-2H-2 of this code.

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CHAPTER 9

(Com. Sub. for H. B. 4644 - By Delegates Foster, Kimes, and Steele)

[Passed March 10, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT amend and reenact §19-16A-14 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Pesticide Control Act; and exempting from the requirement of an annual pesticide business license for persons applying products that are generally available through retail sale at groceries, drug stores, and other stores offering a broad variety of consumer products.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16A. WEST VIRGINIA PESTICIDE CONTROL ACT.

§19-16A-14. Exemptions.

(a) Veterinarian exemption. — The provisions of §19-16A-7 of this code relating to licenses and requirements for their issuance do not apply to a doctor of veterinary medicine applying pesticides to animals during the normal course of his or her veterinary practice: *Provided*, That he or she is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and does not publicly hold himself or herself out as a pesticide applicator.

(b) Farmer exemption. — The provisions of §19-16A-7 of this code article relating to licenses and requirements for their issuance do not apply to any farmer applying pesticides for himself or herself or with ground equipment or manually for his or her farmer neighbors: *Provided*, That he or she:

(1) Operated farm property and operates and maintains pesticide application equipment primarily for his or her own use;

(2) Is not regularly engaged in the business of applying pesticides for hire amounting to a principal or regular occupation and that he or she does not publicly hold himself or herself out as a pesticide applicator; and

(3) Operates his or her pesticide application equipment only in the vicinity of his or her own property and for the accommodation of his or her neighbors.

(c) Experimental research exemption. — The provisions of §19-16A-7 of this code relating to licenses and requirements for their issuance do not apply to research personnel applying pesticides only to bona fide experimental plots.

(d) Products generally available exemption. — The provisions of §19-16A-7 of this code relating to licenses and requirements for their issuance do not apply to the use, application, or administration, by unlicensed persons whether for compensation or not, of lawn care products or pest control products that are generally available through retail sale at groceries, drug stores, and other stores offering a broad variety of consumer products.



CHAPTER 10

(H. B. 4848 - By Delegates Steele, Dean, Smith and Young)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §60-7-17 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-16-5a, to amend and reenact §11-16-6d, §11-16-6f, and §11-16-8 of said code; to amend said code by adding thereto a new section designated §60-1-3a; to amend said code by adding thereto a new section, designated §60-3-26; to amend and reenact §60-3A-3a, §60-3A-3b, §60-3A-8, and §60-3A-17 of said code; to amend and reenact §60-4-22 and §60-4-23 of said code; to amend and reenact §60-6-24 of said code; to amend and reenact §60-7-2, §60-7-6, §60-7-8a, and 60-7-8f of said code; to amend said code by adding thereto a new section designated §60-7-2a; to amend and reenact §60-8-6c, §60-8-6e, and §60-8-6f of said code; and to amend and reenact §61-8-27 of said code, all relating to nonintoxicating beer, wine, and liquor licenses and requirements; clarifying that licenses are not required to place nonintoxicating beer, wine, and liquor in a bag after purchase; removing requirement that servers at a sampling have specific knowledge of the West Virginia product being sampled; providing for modification of the 300 foot requirement to 200 feet with the option for a college, university, or church to provide a written waiver; directing the Commissioner of the Alcoholic Beverage Control Administration to discontinue the state's acquisition of alcoholic liquors manufactured in the Russian Federation or by any person or entity located therein; establishing duration of the ban; authorizing the commissioner, at the Governor's direction, to sell or auction alcoholic liquors made in the Russian Federation or under the authority of a business located within the federation with the proceeds going to charitable

organizations assisting the people of Ukraine; increasing the maximum convenience fee charge for delivery of nonintoxicating beer and alcoholic liquors to \$20; removing delivery provisions requiring storage of a scanned image of legal identification but requiring review of legal identification for nonintoxicating beer and alcoholic liquors; increasing the markup to private clubs from 110 percent to 115 percent; clarifying licensure requirements for nonintoxicating beer and alcoholic liquors; clarifying licensure requirements for wholesale representatives; removing prohibition against an elected official or his or her relative being employed as a wholesale representative; repealing an exotic entertainment; revising the blood alcohol chart; creating a license for a private bakery to produce confections with alcohol added, setting forth license requirements and setting a license fee; creating a license for a private cigar shop to, where legally permissible, permit the sale of alcohol, food, and cigars for on-premises consumption, setting forth license requirements and setting a license fee; creating a license for a private college sports stadium for alcohol sales in certain areas of Division I, II, or III sports stadiums, setting forth license requirements, and setting a license fee; allowing private multi-sport complex to also serve nonintoxicating beer and nonintoxicating craft beer from a golf cart; creating a license for a private food truck to conduct food and alcohol sales at various locations where permitted by a county or municipality, setting forth license requirements and setting a license fee; permitting private hotels and private resort hotels to apply for a private caterer license; authorizing private hotels and private resort hotels to utilize in-room mini bars for limited nonintoxicating beer and alcoholic liquor sales to adults 21 years of age or over, and setting forth requirements; removing language automatically repealing inconsistent code language; authorizing wine growler sales where wine may be mixed with ice and water by the licensee to produce a frozen alcoholic beverage for sale by the licensee in sealed wine growlers, and additional requirements; and providing additional exceptions to the criminal penalty for the unlawful admission of children to a dance house or other places of

entertainment for certain private clubs with an age verification system.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-5a. Off-premises sales not required to be bagged.

A licensee who is licensed for off-premises sales of nonintoxicating beer or nonintoxicating craft beer is not required to place nonintoxicating beer or nonintoxicating craft beer, in a bag.

§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a

nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third party entity, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code, and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements.* —

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the Class A retail dealer or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) “Prepared food or a meal” shall, for purposes of this article, mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any

other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee may not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third party delivery licensee to the person purchasing may not be greater than \$20 per delivery order where nonintoxicating beer or nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed

(e) *Delivery Requirements.* —

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class A retail dealer or third party delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and shall submit certification of the training to the commissioner;

(3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle

delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit;

(4) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or contiguous counties where the Class A retail dealer is located;

(5) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all sales and municipal taxes;

(6) A Class A retail dealer or third party delivery licensee may not deliver prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

(7) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for resale; and

(8) A Class A retail dealer or third party delivery licensee shall not deliver and leave prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon delivery with the delivery person's visual review and age verification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. A Class A retail dealer or third party delivery licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per §11-16-6d(g) of this code.

(g) *Retail Transportation Permit.* —

(1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class A retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, as required by the commissioner. Upon any change in vehicles or drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) *Enforcement.* —

(1) A Class A retail dealer or third party delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one

violation may be issued for a single violation involving multiple Class A retail dealers or licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class A retail dealer or third party delivery licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class B retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by a telephone, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through a telephone order, a mobile ordering application, or web-based software program. The nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third party licensee, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements.* —

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

(2) Any person purchasing nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail dealer, as set forth in this article. A third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third party delivery licensee to the purchasing person may not be greater than \$20 per delivery order. For any third party licensee also licensed for wine delivery as set forth in §60-8-6f of this code the total convenience fee for any order, sale, and delivery of sealed wine may not exceed \$20.

(e) *Delivery Requirements.* —

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and submit the certification of the training to the commissioner;

(3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of the licensure;

(4) A Class B retail dealer and a third party licensee may deliver food and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail dealer is located;

(5) A Class B retail dealer and a third party licensee may only deliver food and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

(6) A Class B retail dealer and a third party licensee may not deliver food and nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

(7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are only for personal use, and not for resale; and

(8) A Class B retail dealer and a third party licensee shall not deliver and leave food and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the food and nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age verification upon delivery with the delivery person's visual review and age verification;

(2) Any mobile ordering application or web-based software used must create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. A Class B retail dealer and a third party licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

(g) Retail Transportation Permit. —

(1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class B retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, required by the commissioner. Upon any change in vehicles or drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) Enforcement. —

(1) The Class B retail dealer and a third party licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class B retail dealers or third party licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class B

retail dealer or third party licensee, their employees, or independent contractors.

(3) It is a violation for any Class B retail dealer or third party licensee, their employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

§11-16-8. Form of application for license; fee and bond; refusal of license.

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of the residency, and that the applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers. If a person, firm, partnership, limited partnership, limited liability company, association, corporation, or trust applies for a license as a distributor, the person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees, or other persons in active control of the activities of the limited liability company, association, or trust relating to the license, shall include the residency for these persons on the application. All applicants and licensees shall include a manager on the applicant's license application, or a licensee's renewal application, who shall meet all other requirements of licensure. The applicant shall be a United States citizen or a naturalized citizen, pass a background investigation, be at least 21 years of age, and meet other requirements, all as set forth in this article and the rules promulgated thereunder, all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain licensure, a licensee shall notify the commissioner

immediately of a change in managers. If the applicant is a trust or has a trust as an owner, the trustees, or other persons in active control of the activities of the trust relating to the license, shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e) of this code and shall further state, under oath, the names, addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust shall state that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date;

(2) The place of birth of the applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application shall state when and where incorporated, the name and address of each officer, and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary, or other persons in active control of the activities of the trust relating to the license is a citizen of the United States, and if a naturalized citizen, when and where naturalized, each of whom shall qualify and sign the application;

(3) The particular place for which the license is desired and a detailed description thereof;

(4) The name of the owner of the building and, if the owner is not the applicant, that the applicant is the actual and bona fide lessee of the premises;

(5) That the premises or building in which the applicant proposes to do business conforms to all applicable laws of health, fire, and zoning regulations and is a safe and proper place or building; not within 200 feet of a school or church measured from front door to front door, along the street or streets. This requirement does not apply to a Class B license or to a place occupied by a beer licensee so long as it is continuously so occupied. The prohibition does not apply to a college, university, or church that has notified the commissioner, in writing, that it has no objection to the location of a proposed business in a place or building within 200 feet of the college, university, or church;

(6) That the applicant is not incarcerated and has not, in the previous five years before application, (A) been convicted of a felony, (B) been convicted of a crime involving fraud, dishonesty or deceit, and/or (C) been convicted of a felony for violating alcohol-related distribution laws;

(7) That the applicant is the only person in any manner pecuniarily interested in the business to be licensed and that no other person is in any manner pecuniarily interested during the continuance of the license; and

(8) That the applicant has not during five years preceding the date of the application had a nonintoxicating beer license revoked.

(b) In the case of an applicant that is a trust or has a trust as an owner, a distributor license may be issued only upon submission by the trustees or other persons in active control of the activities of the trust relating to the distributor license of a true and correct copy of the written trust instrument to the commissioner for his or her review. Notwithstanding any provision of law to the contrary, the copy of the written trust instrument submitted to the commissioner

pursuant to this section is confidential and is not a public record and is not available for release pursuant to the West Virginia Freedom of Information Act codified in §29B-1-1 *et seq.* of this code.

(c) The provisions and requirements of subsection (a) of this section are mandatory prerequisites for the issuance of a license and, if any applicant fails to qualify, the commissioner shall refuse to issue the license. In addition to the information furnished in any application, the commissioner may make any additional and independent investigation of each applicant, manager, and of the place to be occupied as necessary or advisable and, for this reason, all applications, with license fee and bond, shall be submitted with all true and correct information. For the purpose of conducting the independent investigation, the commissioner may withhold the granting or refusal to grant the license for a 30-day period or until the applicant has completed the conditions set forth in this section. If it appears that the applicant and manager meet the requirements in the code and the rules, including, but not limited to, has not been convicted of a felony in the previous five years before application, has not been convicted of a crime involving fraud, dishonesty or deceit in the previous five years before application, has not been convicted of a felony for violating any alcohol-related distribution laws; having made no false statements or material misrepresentations; involving no hidden ownership; and having no persons with an undisclosed pecuniary interest contained in the application; and if there are no other omissions or failures by the applicant to complete the application, as determined by the commissioner, the commissioner shall issue a license authorizing the applicant to sell nonintoxicating beer or nonintoxicating craft beer.

(d) The commissioner may refuse a license to any applicant under the provisions of this article if the commissioner is of the opinion:

(1) That the applicant or manager has, within the previous five years before application, (A) been convicted of a felony within the previous five years, (B) been convicted of a crime involving fraud,

dishonesty, or deceit, or (C) been convicted of a felony for violating any alcohol-related distribution laws;

(2) That the place to be occupied by the applicant is not a suitable place; or is within 200 feet of any school or church measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. The prohibition does not apply to a college, university, or church that has notified the commissioner, in writing, that it has no objection to the location of any such place within 200 feet;

(3) That the manager, owner, employee, or person is in a contractual relationship to provide goods or services to the applicant is an active employee of the commissioner; or

(4) That the license should not be issued for reason of conduct declared to be unlawful by this article.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-3a. Off-premises sales not required to be bagged.

Alcoholic liquors in this state are not required to be placed in a bag by a licensee who is licensed for off-premises sales of alcoholic liquors.

ARTICLE 3. SALES BY COMMISSIONER.

§60-3-26. Sale of certain liquors prohibited.

(a) Upon the effective date of this section, the commissioner is hereby directed to divest the state of all stocks of alcoholic liquors in the commissioner's possession manufactured in the Russian Federation, or by any person or entity located therein, and to cease purchasing such products during the time this section is in effect.

(b) The commissioner, at the direction of the Governor, is hereby authorized to auction to the highest bidder or sell at a public

event all stocks of alcohol liquors in the commissioner's possession which were either manufactured in the Russian Federation or by a person or entity located therein.

(c) The state's proceeds from the sale authorized by subsection (b) of this section shall be paid to a licensed, recognized charitable organization or organizations engaged in assisting the people of Ukraine.

(d) The provisions of this section shall expire three years from the effective date of the section or until the Governor lifts the ban established in subsection (a) of this section.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-3a. Liquor sampling.

(a) Notwithstanding any provision of this code to the contrary, a Class A retail licensee may conduct a liquor sampling event on a designated sampling day.

(b) At least five business days prior to the liquor sampling, the Class A retail licensee shall submit a written proposal to the commissioner informing the Commissioner that the Class A licensee will hold a liquor sampling event, including:

- (1) The day of the event;
- (2) The location of the event;
- (3) The times for the event; and

(4) The specific brand and flavor of the West Virginia product to be sampled.

(c) Upon approval by the commissioner, a Class A retail licensee may serve a complimentary liquor sample of the approved brand and flavor of the West Virginia product that is purchased by the Class A retail licensee from the commissioner.

(d) The complimentary liquor samples on any sampling day shall not exceed:

(1) One separate and individual sample serving per customer verified to be 21 years of age or older; and

(2) One ounce in total volume.

(e) Servers at the liquor sampling event shall:

(1) Be employees of the Class A retail licensee; and

(2) Be at least 21 years of age or older.

(f) All servers at the liquor sampling event shall verify the age of the customer sampling liquor by requiring and reviewing proper forms of identification. Servers at the liquor sampling event may not serve any person who is:

(1) Under the age of 21 years;

(2) Intoxicated.

(g) A liquor sampling event shall:

(1) Occur only inside the Class A retail licensee's licensed premises; and

(2) Cease on or before 9:00 p.m. on any approved sampling day.

(h) Any liquor bottle used for sampling must be from the inventory of the licensee, and clearly and conspicuously labeled "SAMPLE, NOT FOR RESALE". If the seal is broken on any liquor bottle or if any liquor bottle is opened, then that liquor bottle must be removed from the licensed premises immediately following the event.

(i) Violations of this section are subject to the civil and criminal penalties set forth in sections twenty-four, twenty-five-a, twenty-six and twenty-seven of this article;

§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party; requirements; limitations; third party license fee; private liquor bottle delivery permit; requirements, and curbside in-person and in-vehicle delivery by a retail liquor outlet.

(a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or cans in the original container is permitted for off-premises consumption when completed by the licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for off-premises consumption by a third party licensee when a retail liquor outlet sells to a person purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering application, or a web-based software program. The private liquor delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private liquor delivery license application shall comply with licensure requirements in this article and shall provide any information required by the commissioner.

(d) Sale Requirements. -

(1) The purchase of sealed liquor bottles or cans in the original container may accompany the purchase of food and the completion

of the sale may be accomplished by the delivery of food and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and in §11-16-1 *et seq.* of the code, for nonintoxicating beer or nonintoxicating craft beer.

(3) “Food”, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to five 750 milliliter sealed liquor bottles for each order: *Provided*, That the entire delivery order may not contain any combination of sealed liquor bottles or cans in the original container, where the combination is more than 128 fluid ounces of liquor total; and

(5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet, as set forth in this article. A third party private liquor delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee may not collect a percentage of the liquor delivery order, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third-party private liquor delivery licensee to the purchasing person shall be no greater than \$20 per delivery order where a sealed liquor bottle or can in the original container is ordered by the purchasing person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating craft beer delivery pursuant to §11-16-1 *et seq.* of this code, wine delivery pursuant to §60-8-1 *et seq.* of this code, or a sealed craft cocktail growler delivery pursuant to §60-7-1 *et seq.* of this code, the total convenience fee of any order, sale, and delivery of sealed alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed \$20.

(e) *Private Liquor Delivery Requirements.* —

(1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the original container shall be 21 years of age or older and a retail liquor outlet and a third-party private liquor delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor outlet and a third-party private liquor delivery licensee shall submit certification of the training to the commissioner;

(3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) A retail liquor outlet or third party private liquor delivery licensee shall deliver food and a sealed liquor bottle or can order in the original container in the market zone or contiguous market zone where the licensed retail liquor outlet is located;

(5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food and a sealed liquor bottle or can in the original container to addresses located in West Virginia, The retail liquor outlet or third party private liquor delivery licensee shall pay and account for all sales and municipal taxes;

(6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food and a sealed liquor bottle or can in the original container to any licensee licensed under §11-16-1 *et seq.* of this code, and under this chapter;

(7) Deliveries of food and a sealed liquor bottle or can in the original container are only for personal use, and not for resale; and

(8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and leave food and a sealed liquor bottle

or can in the original container at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the food and a sealed liquor bottle or can in the original container for delivery which is subject to verification upon delivery with the delivery person's visual review and verification;

(2) Any mobile ordering application or web-based software used shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's identification and details of the sale, and shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. A retail liquor outlet or third party private liquor delivery licensee shall retain records for three years, and shall not unreasonably withhold the records from the commissioner's inspection; and

(5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor bottle delivery permit required by subsection (g) of this section for each vehicle that may offer delivery.

(g) *Private Liquor Bottle Delivery Permit.* —

(1) A retail liquor outlet or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of and a sealed liquor bottle or can in the original container.

(2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* —

(1) The retail liquor outlet or the licensed third party are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a sealed liquor bottle. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this chapter.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

(i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and curbside in-person or in-vehicle pick-up of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and delivery through a drive up or drive through structure, approved by the commissioner, of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

(a) Prior to or simultaneously with the submission of a bid for a retail license or the payment of a purchase option for a Class A retail license, each applicant shall file an application with the commissioner, stating under oath, the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner, or member of the entity; a copy of the entity's charter or other agreement under which the entity operates; the names and residence addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant; and all applicants and licensees must list a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, and meet other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to, licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety. In order to maintain active licensure, any change by a licensee in any manager listed on an application must be made immediately to

the commissioner, in order to verify that the new manager meets licensure requirements;

(3) That the applicant and manager have not (A) been convicted in this state or any other state of any felony in the five years preceding the date of application or (B) other crime involving fraud, dishonesty, or deceit in the five years preceding the date of application, or (C) been convicted of any felony in this or any other state court or any federal court for a violation of alcohol-related distribution laws, and if the applicant is other than an individual, that none of its executive officers, other principal officers, partners, or members, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted; and

(4) That the applicant and the manager, each is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership, or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

(b) An applicant and manager shall provide the commissioner any additional information requested by the commissioner including, but not limited to, authorization to conduct a criminal background and credit records check.

(c) Whenever a change occurs in any information provided to the commissioner, the change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-10 of this code and no applicant shall be issued or eligible to hold a retail license under this article, if:

(1) The applicant has been, within the five years preceding the date of application; (A) convicted in this state of any felony or (B) convicted of a crime involving fraud, dishonesty, or deceit or (C) convicted of any felony in this or any other state court or any federal court for a violation of alcohol-related distribution laws; or

(2) Any executive officer or other principal officer, partner, or member of the applicant, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been, within the five years preceding the date of application; (A) convicted in this state of any felony or (B) convicted of a crime involving fraud, dishonesty, or deceit or (C) convicted of any felony in this or any other state court or any federal court for a violation of alcohol-related distribution laws.

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.

§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment.

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to §60-4-3 of this code.

(b) Wholesale prices shall be established in order to yield a net profit for the General Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to the average for the past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into the General Revenue Fund in the manner provided in §60-3-17 of this code.

(c) Notwithstanding any provision of this code to the contrary, the commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other than wine, for resale in this state only from the commissioner, and the provisions of §60-6-12 and §60-6-13 of this code shall not apply to the transportation of the liquor: *Provided*, That a retail licensee shall purchase wine from a wine distributor who is duly licensed under §60-8-1 *et seq.* of this code. All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided, however*, That the commissioner, in his or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

(d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds transfer which shall be initiated by the commissioner on the business day following the retail licensees order or by money order, certified check, or cashier's check which shall be received by the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

(e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of §60-7-1 *et seq.* of this code at less than 115 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

(2) A retail licensee may not sell liquor to the general public at less than 110 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

ARTICLE 4. LICENSES.**§60-4-22. Wholesale representatives' licenses.**

(a) A person, firm or corporation may not be or act or serve as an agent, broker or salesman selling or offering to sell or soliciting or negotiating the sale of alcoholic liquor to the commission or to any distributor licensed pursuant to article eight of this chapter without first obtaining a license so to do in accordance with the provisions of this section. Only salaried employees of distilleries, manufacturers, producers or processors of alcoholic liquor may be licensed hereunder and no person may be licensed hereunder who sells or offers to sell alcoholic liquor to the commission or any distributor on a fee or commission basis. The commission shall be the licensing authority and may grant to persons of good moral character the license herein provided and may refuse to grant such license to any person (1) convicted of a felony, within five years prior to his or her application, (2) convicted of a crime involving fraud, dishonesty, or deceit, within the previous five years before application, or (3) convicted of a felony violation of a state or federal liquor law within the previous five years before application; refuse to grant, suspend or revoke licenses. Licenses shall be on an annual basis for the period from July 1, until June 30 next following. New and renewal licenses shall be granted only upon verified application to the commission presented on forms provided by the commission. Any person representing more than one producer, manufacturer or distributor of alcoholic liquors shall file a separate application and shall obtain a separate license for each such representation. The annual license fee shall be \$100. The fee for any license granted for the remainder of any license year between January 1, and June 30 of the same calendar year shall be \$50.

(b) In addition to all other information which the commission may require to be supplied on the license application forms, each applicant shall be required to state his or her name and his or her residence address and the name and business address of the producer, manufacturer or distributor he or she represents; the name and address of each additional producer, manufacturer or distributor of alcoholic liquors he or she represents; the monetary

total of all alcoholic liquor sales, if any, made by him or her to the commission or to any distributor licensed pursuant to article eight of this chapter during the fiscal year preceding the license year for which he or she is seeking a license; the monetary total of the gross income received by him or her on such sales, if any, during such fiscal year; whether he or she has, during such fiscal year, made or given, voluntarily or on request, any gift, contribution of money or property to any member or employee of the commission or of any distributor licensed pursuant to article eight of this chapter or to or for the benefit of any political party committee or campaign fund; and his or her relationship, if any, by blood or marriage, to any member of the commission or to any elected or appointive state official, county official or municipal official. All such applications shall be verified by oath of the applicant and shall be prepared and filed in duplicate. All such applications and a current list of all licensees hereunder shall be matters of public record and shall be available to public inspection at the commission's offices at the State Capitol. Every licensee who ceases to be an agent, broker or salesman, as herein contemplated, shall so advise the commission in writing and such person's name shall be immediately removed from the license list and his or her license shall be canceled and terminated.

(c) All persons licensed under this section shall be authorized representatives of the wineries, farm wineries, distilleries, mini-distilleries, manufacturers, producers, or processors of alcoholic liquor they represent. A licensed person may not share, divide, or split his or her salary with any person other than his or her wife or some legal dependent, nor may he or she make any contribution to any political party campaign fund in this state.

(d) All licensees shall be subject to all other provisions of this chapter and to the lawful rules promulgated by the commission. Licenses may be refused, suspended, or revoked by the commission for cause, including any of the applicable grounds of revocation specified in section nineteen of this article. Provisions of this article relating to notice, hearing and appeals shall, to the extent applicable, govern procedures on suspension and revocation of licenses hereunder.

(e) Any person, firm or corporation violating any provision of this section, including knowingly making of any false statement in a verified application for a license shall be guilty of a misdemeanor offense and shall, upon conviction thereof, be fined not exceeding \$1,000 or imprisoned in jail not exceeding 12 months, or be subject to both such fine and imprisonment in the discretion of the court.

§60-4-23. License to operate a facility where exotic entertainment is offered; definitions; restrictions, regulations and prohibitions; prohibitions against minors; application, renewal, license fee, restrictions on transfer; effective date; legislative rules; unlawful acts and penalties imposed.

(a) For purposes of this section:

(1) “Exotic entertainment” means live nude dancing, nude service personnel or live nude entertainment, and “nude” means any state of undress in which male or female genitalia or female breasts are exposed.

(2) “Places set apart for traditional family-oriented naturism” means family nudist parks, clubs and resorts chartered by the American association for nude recreation or the naturist society, including all of their appurtenant business components, and also including places temporarily in use for traditional family-oriented naturist activities.

(b) No person may operate any commercial facility where exotic entertainment is permitted or offered unless such person is granted a license by the commissioner to operate a facility where exotic entertainment may be offered. The provisions of this subsection apply whether or not alcoholic liquor, wine or nonalcoholic beer is legally kept, served, sold, or dispensed in a facility, or purchased for use in a facility, or permitted to be brought by others into a facility and whether or not such person holds any other license or permit issued pursuant to chapter 60 of this code.

(c) A licensee is subject to all the regulatory provisions of §60-7-1 *et seq.* of this code, whether or not the licensee is otherwise a

private club. The commissioner shall have all the powers and authorization granted under §60-7-1 *et seq.* of this code to regulate, restrict, and sanction a licensee under this section. No licensee may purchase, keep, sell, serve, dispense, or purchase for use in a licensed facility, or permit others to bring into the facility, any alcoholic liquor, wine, or nonintoxicating beer or nonintoxicating craft beer without having the appropriate license. No licensee may operate a private club without being licensed.

(d) No person or licensee may allow a person under the age of 18 years to perform as an exotic entertainer. No person under the age of 21 years, other than a performing exotic entertainer, may be allowed to be in a commercial facility on any day on which any exotic entertainment is offered therein. No licensee may hold special nonalcoholic entertainment events for persons under age 21 pursuant to the provisions of §60-7-8 of this code in the licensed facility.

(e) A person to whom a license is issued or renewed under the provisions of this section shall pay annually to the commissioner a license fee of \$3,000. A municipal corporation wherein any such licensee is located shall issue a municipal license to any person to whom the commissioner has issued a license and may impose a license fee not in excess of the state license fee.

(f) A person shall not sell, assign, or otherwise transfer a license without the prior written approval of the commissioner. For purposes of this section, the merger of a licensee or the sale of more than 50 percent of the outstanding stock of or partnership interests in the licensee shall be deemed to be a sale, assignment, or transfer of a license under this section. A license shall not be transferred to another location, except within the county of original licensure. A transferee of a licensed facility may apply for reissuance of the transferor's license if the transferee applicant otherwise qualifies for a license. The commissioner is authorized to propose the promulgation of a legislative rule in accordance with the provisions of chapter 29A of this code, to implement the provisions of this subsection.

(g) Any person who violates any provision of this section, or principal of a firm or corporation which violates any provision of this section, or licensee, agent, employee, or member of any licensee who violates any provision of this section, or who violates any of the provisions of §60-7-12 of this code, on the premises of a licensed facility, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$3,000, or imprisoned for a period not to exceed one year, or both so fined and imprisoned.

(h) The provisions of this section do not apply to places set apart for traditional family-oriented naturist activities.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-24. Requirement for posting informational sign.

Any licensee licensed under this chapter to sell alcoholic liquors, including liquor, wine, hard cider, nonintoxicating beer or nonintoxicating craft beer for either on-premises or off-premises consumption, shall post in an open and prominent place within the establishment, a blood-alcohol chart containing information showing the estimated percent of alcohol in the blood by the number of drinks in relation to body weight and time of consumption, as provided in the chart available on the commissioner's website. Enforcement of the posting provisions of this section shall be carried out by the commissioner for all licensees required to post the notice.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-2. Definitions; authorizations; requirements for certain licenses.

Unless the context in which used clearly requires a different meaning, as used in this article:

(1) "Applicant" means a private club applying for a license under the provisions of this article.

(2) “Code” means the official Code of West Virginia, 1931, as amended.

(3) “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.

(4) “Licensee” means the holder of a license to operate a private club granted under this article, which remains unexpired, unsuspended, and unrevoked.

(5) “Private club” means any corporation or unincorporated association which either:

(A) Belongs to or is affiliated with a nationally recognized fraternal or veterans’ organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(B) Is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly-elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests;

(C) Is organized and operated for legitimate purposes which has at least 100 duly- elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly- elected or approved dues-

paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a sufficient number of persons for serving meals to members and their guests; or

(D) Is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park, or at any airport, in which building or premises a club has been established, to which club are admitted only duly-elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(6) “Private bakery” means an applicant for a private club or licensed private club license that has a primary function of operating a food preparation business that produces baked goods, including brownies, cookies, cupcakes, confections, muffins, breads, cakes, wedding cakes, and other baked goods. The applicant or licensee desires to sell baked goods infused with liquor, wine, or nonintoxicating beer or nonintoxicating craft beer, either: (A) In the icing, syrup, drizzle, or some other topping; (B) as an infusion where the alcohol is not processed or cooked out of the baked goods; or (C) the alcohol can be added by the purchaser from an infusion packet containing alcohol no greater than 10 milliliters. This applicant or licensee may not sell liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on or off-premises consumption. This applicant or licensee may sell the baked goods with alcohol added as authorized for on and off-premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this subdivision which:

(i) Has at least 50 members;

(ii) Operates a kitchen that produces baked goods, as specified in this subdivision, including at least: (I) A baking oven and a four-

burner range or hot plate; (II) a sink with hot and cold running water; (III) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (IV) baking utensils and pans, kitchen utensils, and other food consumption apparatus as determined by the commissioner; and (V) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(iii) Maintains, at any one time, \$750 of food inventory capable of being prepared in the private bakery's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, baking items such as flour, sugar, icing, and other confectionary items, or canned prepared foods;

(iv) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private bakery are not sold items containing alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine, and a person under 21 years of age may enter the shop and purchase other items not containing alcoholic liquors; and

(v) Meet and be subject to all other private club requirements.

(7) "Private cigar shop" means an applicant for a private club or licensed private club licensee that has a primary function of operating a cigar shop for sales of premium cigars for consumption on or off the licensed premises. Where permitted by law, indoor on-premises cigar consumption is permitted with a limited food menu, which may be met by utilizing a private caterer, for members and guests while the private club applicant or licensee is selling and serving liquor, wine, or nonintoxicating beer or nonintoxicating craft beer for on-premises consumption. Further, the applicant or licensee shall meet the criteria set forth in this subdivision which:

(A) Has at least 50 members;

(B) Operates a cigar shop and bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen or has on hand at least \$150 in food provided by a private caterer. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 21 years of age is not accompanied by a parent or legal guardian, that person may not be admitted as a guest; and

(E) Meets and is subject to all other private club requirements.

(8) "Private caterer" means a licensed private club restaurant, private hotel, or private resort hotel authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase nonintoxicating beer and nonintoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

(A) Have at least 10 members and guests attending the catering event;

(B) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(C) Operate a private club restaurant on a daily operating basis;

(D) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(E) Provide to the commissioner, at least seven days before the event is to take place:

(i) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(ii) The name of the owner or operator of the unlicensed private venue;

(iii) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(iv) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises:

Provided, That the unlicensed private venue shall: (I) Be inside a building or structure, (II) have other facilities to prepare and serve food and alcohol, (III) have adequate restrooms and sufficient building facilities for the number of members and guests expected to attend the private catering event, and (IV) otherwise be in compliance with health, fire, safety, and zoning requirements;

(F) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

(G) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterer's submitted floorplan and may submit a floorplan extension for authorization to permit alcohol and food at an outdoor event;

(H) Meet and be subject to all other private club requirements; and

(I) Use an age verification system approved by the commissioner.

(9) "Private club bar" means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for those sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Operates a bar with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; (iv) kitchen utensils and other food consumption apparatus as determined by the commissioner; and (v) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar's kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(E) Meets and is subject to all other private club requirements.

(10) "Private food truck" means an applicant for a private club, licensed private club licensee, or licensed private manufacturer's club licensee that has a primary function of operating a food preparation business using an industrial truck, van, or trailer to prepare food and meals for sale at various locations within the state while utilizing a propane or electric generator powered kitchen. The private food truck applicant shall obtain county or municipal approval to operate for food and liquor, wine, and nonintoxicating beer or nonintoxicating craft beer sales and service, while providing a food menu for members and guests. The private food truck applicant shall meet the criteria set forth in this subdivision which:

(A) Has at least 10 members;

(B) Operates with a kitchen, including at least: (i) A two-burner hot plate, air fryer, or microwave oven; (ii) a sink with hot and cold running water; (iii) at least a 10 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer which is not used for alcohol cold storage; and (iv) plastic or metal kitchen utensils and other food consumption apparatus as determined by the commissioner;

(C) Maintains, at any one time, \$500 of food inventory that is fit for human consumption and capable of being prepared and

served from the private food truck's kitchen during all hours of operation;

(D) Shall be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private food truck is to be located and operate, and further each location shall have a bounded and defined area and set hours for private food truck operations, sales, and consumption of alcohol that are not greater than a private club's hours of operation;

(E) Provides the commissioner with a list of all locations, including a main business location, where the private food truck operates, and is approved for sales pursuant to subsection (D) of this section, and immediately update the commissioner when new locations are approved by a county or municipality;

(F) Requires all nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from the licensed distributor where the private food truck has its home location or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code.

(G) Requires wine or hard cider sold, furnished, tendered, or served pursuant to the license created by this section to be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code.

(H) Requires liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private food truck has its main business location, all in accordance with §60-3A-1 *et seq.* of this code.

(I) A licensee authorized by this section shall utilize bona fide employees to sell, furnish, tender, or serve the nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(J) A brewer, resident brewer, winery, farm winery, distillery, mini-distillery, or micro-distillery may obtain a private food truck license;

(K) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor broker representatives may attend a location where a private food truck is located and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer or nonintoxicating craft beer, wine, or liquor.

(L) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 21 who are in the private club bar are not permitted to be served any alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, or wine but may be permitted to purchase food or other items;

(M) Obtains all permits required by §60-6-12 of this code; and

(N) Meets and is subject to all other applicable private club requirements.

(11) “Private club restaurant” means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled with the restaurant, seating requirements for members and guests shall be met by the restaurant area. The applicant for a private club restaurant license which:

(A) Has at least 100 members;

(B) Operate a restaurant and full kitchen with at least: (i) Ovens and four-burner ranges; (ii) refrigerators or freezers, or some combination of refrigerators and freezers greater than 50 cubic feet, or a walk-in refrigerator or freezer; (iii) other kitchen utensils and apparatus as determined by the commissioner; and (iv) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(C) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private club restaurant’s full

kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant:

(E) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale. The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative rules for carrying unconsumed wine off the licensed premises;

(F) Has at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event may a private club restaurant have less than one restroom; and

(G) Meets and is subject to all other private club requirements.

(12) “Private manufacturer club” means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufactures liquor, wine, nonintoxicating beer or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee’s licensed premises and in the area or areas denoted on the licensee’s floorplan, and which:

(A) Has at least 100 members;

(B) Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Maintains, at any one time, \$500 of fresh food inventory capable of being prepared in the private manufacturer club’s full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least one acre which is contiguous bounded or fenced real property that would be listed on the licensee’s floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private manufacturer club’s floorplan that would comprise the licensed premises, which would be authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or

structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(G) Identifies a person, persons, an entity, or entities who or which has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner; and

(I) Meets and is subject to all other private club requirements.

(13) "Private fair and festival" means an applicant for a private club or a licensed private club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county in which the festival, fair, or other event is to be conducted;

(C) Prepares, provides, or engages a food vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements to the commissioner prior to approval;

(D) Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer;

(E) Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(F) Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(14) “Private hotel” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(A) Has at least 2,000 members;

(B) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(C) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(D) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared in the private hotel’s full kitchen and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee’s floorplan and would be used for hotel and conferences and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the

private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements; and

(J) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have secure access via key or key card to an in-room mini-bar in their rented short-term accommodation; the mini-bar may be a small refrigerator not in excess of 1.6 cubic feet for the sale of nonintoxicating beer or nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 72 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding 750 ml of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, and 200 ml, with any combination of those liquor bottles not exceeding 750 ml; and (iv) any combination of canned or packaged food valued at least \$50. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed

premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(15) “Private resort hotel” means an applicant for a private club or licensed private club licensee which:

(A) Has at least 5,000 members;

(B) Offers short term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(C) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(D) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared in the private resort hotel’s full kitchen. In calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee’s floorplan and would be used for destination, resort, and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private resort hotel’s floorplan comprising the licensed premises, would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel’s licensed premises;

(G) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(H) Uses an age verification system approved by the commissioner;

(I) Meets and is subject to all other private club requirements;

(J) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery; and

(K) May provide members and guests who are verified by proper form of identification to be 21 years of age or older to have access via key or key card to an in-room mini-bar in their rented short-term accommodation. The mini-bar may be a small refrigerator not in excess of 3.2 cubic feet for the sale of nonintoxicating beer, nonintoxicating craft beer, wine, hard cider, and liquor sold from the original sealed container, and the refrigerator may contain: (i) Any combination of 12 fluid ounce cans or bottles not exceeding 144 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; (ii) any combination of cans or bottles of wine or hard cider not exceeding one and a half liters of wine or hard cider; (iii) liquor in bottles sized from 50 ml, 100 ml, 200 ml, and 375 ml with any combination of such liquor bottles not exceeding one and a half liters; and (iv) any combination of canned or packaged food valued at least \$100. All markups, fees, and taxes shall be charged on the sale of nonintoxicating beer, nonintoxicating craft beer, wine, and liquor. All nonintoxicating beer or nonintoxicating craft beer available for sale shall be purchased from the licensed distributor in the area where licensed. All wine or hard cider available for sale shall be purchased from a licensed wine distributor or authorized farm winery. All liquor available for sale shall be purchased from the licensed retail liquor outlet in the market zone of the licensed premises. The mini-bar shall be checked daily and replenished as needed to benefit the member and guest.

(16) “Private golf club” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subdivision which:

(A) Has at least 100 members;

(B) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club's floorplan and could be used for golfing events and large contracted-for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph D of this subsection and all adjoining buildings and structures on the private golf club's floorplan comprising the licensed premises, would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(17) "Private nine-hole golf course" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subdivision which:

(A) Has at least 50 members;

(B) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private nine-hole golf course's floorplan comprising the licensed premises, would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf course's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Uses an age verification system approved by the commissioner; and

(H) Meets and is subject to all other private club requirements.

(18) "Private tennis club" means an applicant for a private club or licensed private club licensee which:

(A) Has at least 100 members;

(B) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(C) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private tennis club's floorplan comprising the licensed premises, would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises;

(F) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements; and

(H) Uses an age verification system approved by the commissioner.

(19) "Private college sports stadium" means an applicant for a private club or licensed private club licensee that operates a college or university stadium or coliseum for Division I, II, or III and involves a college public or private or university that is a member of the National Collegiate Athletic Association, or its successor, and uses the facility for football, basketball, baseball, soccer, or other Division I, II, or III sports, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may sell alcoholic liquors when conducting or temporarily hosting non-collegiate sporting events. This license may be issued

in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. All alcohol sales shall take place within the confines of the college stadium: *Provided*, That any outside area approved for alcohol sales shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university's express permission, and under the conditions and restrictions established by the college or university, so that the alcohol sales area is closed in order to prevent entry and access by the general public. Further the applicant shall:

(A) Have at least 100 members;

(B) Maintain an open-air or closed-air stadium or coliseum venue primarily used for sporting events, such as football, basketball, baseball, soccer, or other Division I, II, or III sports, and also weddings, reunions, conferences, meetings, or other events where parties shall reserve the college stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens and equipment that is equivalent or greater than a private club restaurant, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food or meals to its stated members, guests, and patrons who will be attending the event at the private college sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least two contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private college stadium's floorplan and could be used for contracted-for temporary non-collegiate sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private college sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and

nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private college sports stadium's licensed premises and as noted on the private college sports stadium's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(20) "Private professional sports stadium" means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when the events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or hosting non-professional sporting events, and further the applicant shall:

(A) Have at least 1,000 members;

(B) Maintain an open-air or closed-air stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties reserve the stadium venue in advance of the event;

(C) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(D) Own or lease, control, operate, and use acreage amounting to at least three contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium's floorplan and could be used for contracted- for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(E) List the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private professional sports stadium's floorplan comprising the licensed premises, and be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises;

(F) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meet and be subject to all other private club requirements; and

(H) Use an age verification system approved by the commissioner.

(21) "Private farmers market" means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, retailers who sell West Virginia- made products among other products, and other stores who open primarily during daytime hours of 6:00 a.m. to 6:00 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant, and all businesses that are members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering, and consumption of

alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(A) Have at least 100 members;

(B) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator or freezer or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(C) Have one or more members operating who maintain, at any one time, \$1,000 of fresh food inventory capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, pre-packaged foods, or canned prepared foods;

(D) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted-for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(E) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(F) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(G) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association have agreed to the liability responsibility associated with a private farmers market license;

(H) Only use its employees, independent contractors, or volunteers to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer or nonintoxicating craft beer;

(I) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(J) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(K) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, to verify whether a member, patron, or guest is intoxicated and to provide for the public health and safety of members, patrons, and guests;

(L) Use an age verification system approved by the commissioner; and

(M) Meet and be subject to all other private club requirements.

(22) “Private wedding venue or barn” means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(A) Has at least 25 members;

(B) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(C) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises that is capable of serving freshly prepared food, or may engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(D) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that, the property is not less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(E) Lists the entire property from paragraph (D) of this subdivision and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises, and would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises;

(F) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(G) Meets and is subject to all other private club requirements;
and

(H) Uses an age verification system approved by the commissioner.

(23) “Private multi-sport complex” means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(A) Has at least 100 members;

(B) Maintains an open-air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties reserve the parts of the sports complex in advance of the sporting or other event;

(C) Operates a restaurant and full kitchen with ovens in the licensee’s main facility, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private multi-sport complex. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(D) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private multi-sport complex’s full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(E) Owns or leases, controls, operates, and uses acreage amounting to at least 50 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex’s floorplan and could be used for contracted-for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(F) Lists the entire property from paragraph (E) of this subdivision and all adjoining buildings and structures on the private multi-sport complex's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(G) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(H) Meets and is subject to all other private club requirements; and

(I) Uses an age verification system approved by the commissioner.

The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

§60-7-2a. Dual licensing permitted; conditions.

(a) Any licensee defined in §60-7-2 of this code is authorized to apply for and hold additional licenses for the purpose of holding events, such as fairs and festivals, and creating tourism opportunities that will show case businesses in this state.

(b) A licensee may host an event on the licensee's licensed premises if the licensee is in good standing with the Commissioner

and the licensee submits to the Commissioner its floorplan of the licensed venue in which the event would be held to comprise the event's lawful premises, which shall only include spaces in buildings or rooms of the licensed premises where the licensee has control of the space for the set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the event at the licensed premises. The venue's floorplan during the set time period as stated in the contract shall comprise the licensed premises for the event, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed premises: *Provided*, That the venue shall:

(1) Have facilities to prepare and serve food and alcohol,

(2) have adequate restrooms, and sufficient building facilities for the number of members and guests expected to attend the event, and

(3) otherwise be in compliance with health, fire, safety, and zoning requirements.

(c) A licensee defined in §60-7-2 of this code may not be limited or restricted in any way as to the number of events that may be held on the premises so long as the licensee continues to operate its primary business in good standing with the Commissioner.

§60-7-6. Annual license fee; partial fee; and reactivation fee.

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club is \$750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section is \$1,000 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club restaurant, private hotel, or private resort hotel to be licensed as a private caterer as defined in §60-7-2 of this code; \$500 if the private club is a private bakery; \$1,500 if the

private club is a private wedding venue or barn or a private cigar shop; \$2,000 if the private club is a private nine-hole golf course, private farmers market, private food truck, private college sports stadium, private professional sports stadium, private multi-sport complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club restaurant has 1,000 or more members; \$4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code; and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas is \$12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas shall be \$17,500. The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas is \$22,500. A private resort hotel that obtained the license and paid the \$22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per designated area.

(c) The fee for any license issued following January 1 of any year that expires on June 30 of that year is one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional \$150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee shall be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in §60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

(e) The commissioner shall pay the fees to the State Treasurer for deposit into the General Revenue Fund of the state.

(f) The Legislature finds that the hospitality industry has been particularly damaged by the COVID-19 pandemic and that some assistance is warranted to promote reopening and continued operation of private clubs and restaurants licensed under this article. Accordingly, the fees set forth in subsections (a) and (b) of this section are temporarily modified as follows;

(1) License fees for the license period beginning July 1, 2021, shall be reduced to one third of the rate set forth in subsections (a) and (b) of this section;

(2) License fees for the license period beginning July 1, 2022, shall be two thirds of the rate set forth in subsections (a) and (b) of this section; and

(3) License fees for the license period beginning July 1, 2023, and beyond, shall be as set forth in subsections (a) and (b) of this section.

§60-7-8a. Special license for a private fair and festival; licensee fee and application; license fee; license subject to provisions of article; exception.

(a) There is hereby created a special license designated Class S2 private fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer for on-premises consumption.

(b) To be eligible for the license authorized by subsection (a) of this section, the private fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private fair and festival or other event is located;

(2) Shall make application with the commission at least 15 days pursuant to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of \$500; and

(4) Be approved by the commissioner to operate the private fair, festival, or other event.

(c) A private fair and festival license under this section shall be for a duration of no more than 10 consecutive days.

(d) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section must be purchased from the licensed distributor that services the area in which the private fair and festival is held or from a resident brewer acting in a limited capacity as a distributor, all in accordance with §11-16-1 *et seq.* of this code. Sales of sealed containers of nonintoxicating beer or nonintoxicating craft beer may be sold for off-premises consumption if the nonintoxicating beer and nonintoxicating craft beer are purchased from the licensed distributor that services the area in which the private fair, festival, or other event is being held and such licensed distributor agrees to offer such sales prior to the start of the private fair, festival, or other event.

(e) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed distributor, winery, or farm winery in accordance with §60-8-1 *et seq.* of this code. Sales of sealed containers of wine may be sold for off-premises consumption if the wine is purchased from a licensed distributor, winery, or farm winery and the licensed distributor, winery, or farm winery agrees to offer sales prior to the start of the private fair, festival, or other event.

(f) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private fair or festival is occurring, all in accordance with §60-3A-1 *et seq.* of this code. Sales of sealed containers of liquor may be sold for off-premises consumption if the liquor is purchased from the licensed retail liquor outlet in the market zone or contiguous market zone where the private fair, festival, or other event is occurring and the licensed retail liquor outlet agrees to

offer such sales prior to the start of the private fair, festival, or other event.

(g) A licensee authorized by this section may utilize bona fide employees or volunteers to sell, furnish, tender, or serve the nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

(h) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, and liquor broker representatives may attend a private fair and festival and discuss their respective products but shall not engage in the selling, furnishing, tendering, or serving of any nonintoxicating beer, nonintoxicating craft beer, wine, or liquor.

(i) A license issued under this section and the licensee are subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may by rule or order allow certain waivers or exceptions with respect to those provisions, rules, or orders as the circumstances of each private fair and festival require, including without limitation, the right to revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

(j) During events authorized by this section, licensees may also sell promotional and other items relating to promoting their business and its products.

§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; and requirements.

(a) A licensed private club restaurant or private manufacturer club licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed

craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler through a telephone, a mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted by a third party who obtains a license under this section when a private club restaurant or private manufacturer club sells to a person purchasing the sealed craft cocktail growler through telephone orders, a mobile ordering application, or a web-based software program. The private delivery license nonprorated, nonrefundable annual fee is \$200 for each third party entity, with no limit on the number of drivers and vehicles.

(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information required by the commissioner: *Provided*, That the license application may not require a third party applicant to furnish information pursuant to §60-7-12 of this code.

(d) *Sale Requirements.* —

(1) The craft cocktail growler purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or a meal, and craft cocktail growler by the licensed private club restaurant, private manufacturer club, or third party private delivery licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 *et seq.* of the code for nonintoxicating beer or nonintoxicating craft beer.

(3) “Prepared food or a meal” for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for each order of food or meal: *Provided*, That the entire delivery order may not contain any combination of craft cocktail growlers of more than 128 fluid ounces total; and

(5) A third party private delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article. A third party private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third-party private delivery licensee to the purchasing person shall be no greater than \$20 per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed \$20.

(e) *Craft Cocktail Growler Delivery Requirements.* —

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be 21 years of age or older. The licensed private club restaurant, private manufacturer club, or third party

private delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or the private club restaurant or private manufacturing club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee, a private club restaurant, or private manufacturer club may occur in the county or contiguous counties where the licensed private club restaurant or private manufacturer club is located;

(5) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to addresses located in West Virginia. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall account for and pay all sales and municipal taxes;

(6) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to any other licensee;

(7) Deliveries of prepared food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(8) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall not deliver and leave the prepared food or a meal, and a sealed craft cocktail

growler at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person may only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery, subject to age verification upon delivery with the delivery person's visual review and age verification;

(2) Any mobile ordering application or web-based software used shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's identification and details of the sale, accessible by the delivery driver for verification, shall include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall retain records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) The third party private delivery licensee or the private club restaurant or private manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(g) *Private Cocktail Delivery Permit.* —

(1) The licensed private club restaurant, private manufacturer club, or third party private delivery licensee shall obtain and

maintain a retail transportation permit for the delivery of prepared food and a sealed craft cocktail growler, subject to the requirements of this article.

(2) A third party private delivery licensee, a private club restaurant, or private manufacturer club licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* —

(1) The third party private delivery licensee, the private club restaurant, or the private manufacturers club licensed by this section are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a craft cocktail growler. The licensees in violation are subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-7-17. Repealer.

[Repealed.]

ARTICLE 8. SALE OF WINES.**§60-8-6c. Winery and farm winery license to sell wine growers and provide complimentary samples prior to purchasing a wine growler.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of wine and its industry in this state to protect the public health, welfare, and safety of the citizens of this state, and promote hospitality and tourism. Therefore, this section authorizes a licensed winery or farm winery with its principal place of business and manufacture located in this state to have certain abilities to promote the sale of wine manufactured in this state for the benefit of the citizens of this state, the state's growing wine industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of wine.* — A licensed winery or farm winery with its principal place of business and manufacture located in the State of West Virginia may, when licensed under this section, offer only wine manufactured by the licensed winery or farm winery for retail sale to customers from the winery or farm winery's licensed premises for consumption off of the licensed premises only in the form of original container sealed wine kegs, wine bottles, or wine cans, or also a sealed wine growler for personal consumption, and not for resale. A licensed winery or farm winery may not sell, give, or furnish wine for consumption on the premises of the principal place of business and manufacture located in the State of West Virginia, except for the limited purpose of complimentary samples as permitted in subsection (c) of this section or unless separately licensed as a private wine restaurant or a private manufacturer club.

(c) *Complimentary samples.* — A licensed winery or farm winery with its principal place of business and manufacture located

in the State of West Virginia may offer complimentary samples of wine as set forth in §60-4-3b of this code.

(d) *Retail sales.* — Every licensed winery or farm winery under this section shall comply with all the provisions of this article as applicable to wine retailers when conducting wine growler sales and is subject to all applicable requirements and penalties in this article.

(e) *Payment of taxes and fees.* — A winery or farm winery licensed under this section shall pay all taxes and fees required of licensed wine retailers, in addition to any other taxes and fees required, and shall meet applicable licensing provisions as required by this chapter and by rule of the commissioner.

(f) *Advertising.* — A winery or farm winery under this section may advertise a particular brand or brands of wine produced by the licensed winery or farm winery and the price of the wine subject to state and federal requirements or restrictions. The advertisement may not encourage intemperance or target minors.

(g) *Wine Growler defined.* — For purposes of this section and section §60-8-6d of the code, “wine growler” means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and is capable of being securely sealed. The growler may be used by an authorized licensee for purposes of off-premises sales only of wine for personal consumption, and not for resale. The wine served and sold in a sealed wine growler may include ice or water mixed with the wine to create a frozen alcoholic beverage. Any frozen alcoholic beverage machine used for filling wine growlers shall be sanitized daily and shall be under control and served by the licensee from the secure area. Notwithstanding any other provision of this code to the contrary, a securely sealed wine growler is not an open container under state and local law. A wine growler with a broken seal is an open container under state and local law unless it is located in an area of the motor vehicle physically separated from the passenger compartment. For purpose of this article, a secure seal means using a tamper evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending

around the cap or lid of wine growler to form a seal that shall be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the wine growler is opened.

(h) *Wine Growler requirements.* — A winery or farm winery licensed under this section shall prevent patrons from accessing the secure area where the winery or farm winery fills a wine growler and prevent patrons from filling a wine growler. A licensed winery or farm winery under this section shall sanitize, fill, securely seal, and label any wine growler prior to its sale. A licensed winery or farm winery under this section may refill a wine growler subject to the requirements of this section. A winery or farm winery shall visually inspect any wine growler before filling or refilling it. A winery or farm winery may not fill or refill any wine growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container.

(i) *Wine Growler labeling.* — A winery or farm winery licensed under this section selling wine growlers shall affix a conspicuous label on all sold and securely sealed wine growlers listing the name of the licensee selling the wine growler, the brand of the wine in the wine growler, the alcohol content by volume of the wine in the wine growler, and the date the wine growler was filled or refilled. All labeling on the wine growler shall be consistent with all federal labeling and warning requirements.

(j) *Wine Growler sanitation.* — A licensed winery or farm winery authorized under this section shall clean and sanitize all wine growlers it fills or refills in accordance with all state and county health requirements prior to its filling and sealing. In addition, the licensed winery or farm winery shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipelines, barrel tubes, and any other related equipment used to fill or refill growlers. Failure to comply with this subsection may result in penalties under this article.

(k) *Fee.* — There is no additional fee for a licensed winery or farm winery authorized under this section to sell wine growlers, but the licensee shall meet all other requirements of this section.

(l) *Limitations on licensees.* — To be authorized under this section, a licensed winery or farm winery may not produce more than 10,000 gallons of wine per calendar year at the winery or farm winery's principal place of business and manufacture located in the State of West Virginia. A licensed winery or farm winery authorized under this section is subject to the applicable penalties under this article for violations of this section.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, may propose legislative rules concerning sanitation for legislative approval, pursuant to §29A-3-1 *et seq.* of this code, to implement this section.

§60-8-6e. Private wine delivery license for a licensed Class A wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class A wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone, mobile ordering application, or web-based software program, authorized by the licensee's license. There is no additional fee for a Class A wine licensee to obtain a private wine delivery license. The order, sale, and delivery process must meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is

permitted by a third party licensee when sold by a Class A wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program for off-premises consumption. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements.* —

(1) The wine purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of prepared food or a meal, and sealed wine by the licensee or third-party licensee.

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) “Prepared food or a meal” for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of no more than 384 fluid ounces of wine per delivery order; and

(5) A third-party private wine delivery licensee may not have a pecuniary interest in a Class A wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine as provided in this section. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to prepared food or a meal. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person

may be no greater than \$20 per delivery order where wine is ordered by the purchasing person. For any third-party private wine delivery licensee also licensed for nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed \$20.

(e) *Private Wine Delivery Requirements.* —

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class A wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or the Class A wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The third-party private wine delivery licensee shall submit certification of the training to the commissioner;

(3) The third party private wine delivery licensee or Class A wine licensee shall hold a retail transportation permit for each vehicle delivering sealed wine per subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) Delivery of food or a meal, and sealed wine orders by a third-party private wine delivery licensee or Class A wine licensee may occur in the county or contiguous counties where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class A wine licensee may only deliver prepared food or a meal and sealed wine to addresses located in West Virginia. The third-party private wine delivery licensee or Class A wine licensee shall account for and pay all sales and municipal taxes;

(6) The third-party private wine delivery licensee or Class A wine licensee may not deliver prepared food or a meal, and sealed wine to any other wine licensees;

(7) Deliveries of food or a meal, and sealed wine are only for personal use, and not for resale; and

(8) The third-party private wine delivery licensee or Class A wine licensee shall not deliver and leave deliveries of prepared food or a meal, and sealed wine any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person shall only permit the person who placed the order through a telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal, and wine delivery which is subject to age verification upon delivery with the delivery person's visual review and verification;

(2) Any mobile ordering application or web-based software used shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's identification and details of the sale, accessible by the delivery driver for verification, shall include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner, and the third-party private wine delivery licensee and Class A wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class A wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit per subsection (g) of this section.

(g) *Private Wine Retail Transportation Permit.* —

(1) A Class A wine licensee or a third-party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and sealed wine.

(2) A Class A wine licensee or a third-party private wine delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) *Enforcement.* —

(1) The licensee or the third-party private wine delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

§60-8-6f. Private wine delivery license for a licensed Class B wine licensee or a third party; requirements; limitations; third party license fee; private retail transportation permit; and requirements.

(a) A Class B wine licensee who is licensed to sell wine for on-premises consumption may apply for a private wine delivery license permitting the order, sale, and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers, when separately licensed for wine growler sales. The order, sale, and delivery of wine in the original container of sealed bottles, cans, or sealed wine growlers is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the wine through a telephone order, a mobile ordering application, or web-based software program, as authorized by the licensee's license. There is no additional fee for a Class B wine licensee to obtain a private wine delivery license. The order, sale, and delivery process shall meet the requirements of this section, and subject to the penalties of this article.

(b) A third party, not licensed for wine sales or distribution, may apply for a private wine delivery license for the privilege of the ordering and delivery of wine in the original container of sealed bottles, or cans, or sealed wine growlers, from a licensee with a wine growler license. The order and delivery of wine in the original container of sealed bottles or cans, or sealed wine growlers is permitted for off-premises consumption by a third party licensee when sold by a Class B wine licensee to a person purchasing the wine through telephone orders, mobile ordering application, or web-based software program. The private wine delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private wine delivery license application shall comply with licensure requirements in this article and shall contain any information required by the commissioner.

(d) *Sale Requirements.* —

(1) The wine purchase may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed wine by the licensee or third-party private wine delivery licensee.

(2) Any purchasing person must be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of wine.

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed wine bottles, cans, or growlers shall not be in excess of 384 fluid ounces of wine; and

(5) A third-party private wine delivery licensee shall not have a pecuniary interest in a Class B wine licensee, as set forth in this article. A third-party private wine delivery licensee may only charge a convenience fee for the delivery of wine. The third-party private wine delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol but may collect a percentage of the delivery order directly related to food only. The convenience fee charged by the third-party private wine delivery licensee to the purchasing person shall be no greater than \$20 per delivery order where wine is ordered by the purchasing person. For any third-party licensee also licensed for nonintoxicating beer or nonintoxicating craft beer delivery as set forth in §11-16-6f of the code, the total convenience fee of any order, sale, and delivery shall not exceed \$20.

(e) *Private Wine Delivery Requirements.* —

(1) Delivery persons employed for the delivery of sealed wine shall be 21 years of age or older. The third-party private wine delivery licensee or a Class B wine licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The third-party private wine delivery licensee or Class B wine licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and certification. The third-party private wine delivery licensee or Class B wine licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or Class B wine licensee must hold a retail transportation permit for each vehicle delivering sealed wine as required by subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine orders by a third-party private wine delivery licensee or Class B wine licensee in the county where the wine licensee is located;

(5) The third-party private wine delivery licensee or Class B wine licensee may only deliver food and sealed wine to addresses located in West Virginia with all sales and municipal taxes accounted for and paid;

(6) A third-party private wine delivery licensee or Class B wine licensee may not deliver food and sealed wine to any other wine licensees;

(7) Deliveries of food and sealed wine are only for personal use, and not for resale; and

(8) A third-party private wine delivery licensee or Class B wine licensee shall not deliver and leave food and sealed wine at any address without verifying a person's age and identification as required by this section.

(f) *Telephone, mobile ordering application, or web-based software requirements.* —

(1) The delivery person shall only permit the person who placed the order through a telephone, a mobile ordering application, or web-based software to accept the food and wine

delivery which is subject to age verification upon delivery with the delivery person's visual review and verification;

(2) Any mobile ordering application or web-based software used shall include the delivery driver's name and vehicle information and delivery shall be subject to legal identification verification;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's identification and details of the sale, accessible by the delivery driver for verification, must include the delivery driver's name and vehicle information, and delivery shall be subject to legal identification verification;

(4) All records are subject to inspection by the commissioner. The third-party private wine delivery licensee or Class B wine licensee shall retain the records for inspection for three years. The third-party private wine delivery licensee or Class B wine licensee may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering wine shall be issued a private wine retail transportation permit under subsection (g) of this section.

(g) *Private Wine Retail Transportation Permit.* —

(1) A Class B wine licensee or third party private wine delivery licensee shall obtain and maintain a retail transportation permit for the delivery of food and wine.

(2) A Class B wine licensee or third party private wine delivery licensee shall provide vehicle and driver information requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner within 10 days of the change.

(3) In conjunction with §60-6-12 of this code, a private wine retail transportation permit shall meet the requirements of a transportation permit authorizing the permit holder to transport wine subject to the requirements of this chapter.

(h) *Enforcement.* —

(1) The licensee or third-party private wine delivery licensee are each responsible for any violations committed by their employees or agents under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a wine bottle, wine can, or wine growler. A person who violates the provisions of this subdivision is subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.

§61-8-27. Unlawful admission of children to dance house, etc.; penalty.

Any proprietor or any person in charge of a dance house, concert saloon, theater, museum, or similar place of amusement, or other place, where wines or spirituous or malt liquors are sold or given away, or any place of entertainment injurious to health or morals who admits or permits to remain therein any minor under the age of 18 years, unless accompanied by his or her parent or guardian, is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding \$200: *Provided*, That there is exemption from this prohibition for: (a) A private bakery, private cigar shop, private caterer, private club restaurant, private

manufacturer club, private fair and festival, private resort hotel, private hotel, private golf club, private food truck, private nine-hole golf course, private tennis club, private wedding venue or barn, private outdoor dining and private outdoor street dining, private multi-vendor fair and festival license, private farmers market, private college sports stadium or coliseum, private professional sports stadium, and a private multi-sports complex licensed pursuant to §60-7-1 *et seq.* of this code and in compliance with, §60-7-2(6)(iv), §60-7-2(7)(D), §60-7-2(8)(I), §60-7-2(10)(L), §60-7-2(11)(D), §60-7-2(12)(H), §60-7-2(13)(6), §60-7-2(14)(H), §60-7-2(15)(H), §60-7-2(16)(G), §60-7-2(17)(G), §60-7-2(18)(H), §60-7-2(19)(H), §60-7-2(20)(H), §60-7-2(21)(L), §60-7-2(22)(H), §60-7-2(23)(H), §60-7-8c(b)(14), §60-7-8d, and §60-8-32a of this code; or (b) a private club with more than 1,000 members that is in good standing with the Alcohol Beverage Control Commissioner, that has been approved by the Alcohol Beverage Control Commissioner; and which has designated certain seating areas on its licensed premises as nonalcoholic liquor and nonintoxicating beer areas, as noted in the licensee's floorplan, by using a mandatory carding or identification program by which all members or guests being served or sold alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer are asked and required to provide their proper identification to verify their identity and further that they are of legal drinking age, 21 years of age or older, prior to each sale or service of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer.

CHAPTER 11

**(Com. Sub. for S. B. 250 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 12, 2022; in effect from passage]
[Approved by the Governor with objections on March 18, 2022.]

AN ACT making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

TITLE I – GENERAL PROVISIONS.

Section 1. General policy. – The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2023.

Sec. 2. Definitions. — For the purpose of this bill:

“Governor” shall mean the Governor of the State of West Virginia.

“Code” shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

“Spending unit” shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The “fiscal year 2023” shall mean the period from July 1, 2022, through June 30, 2023.

“General revenue fund” shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.Va. Code §12-2-2 or as otherwise provided.

“Special revenue funds” shall mean specific revenue sources which by legislative enactments are not required to be accounted for as general revenue, including federal funds.

“From collections” shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated “from collections,” the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

Sec. 3. Classification of appropriations. — An appropriation for:

“Personal services” shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit. “Personal services” shall include “annual increment” for “eligible employees” and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

Unless otherwise specified, appropriations for “personal services” shall include salaries of heads of spending units.

“Employee benefits” shall mean social security matching, workers’ compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its “unclassified” appropriation,

or its “current expenses” appropriation or other appropriate appropriation. Each spending unit is hereby authorized and required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation and workers compensation. Such expenditures shall be considered an employee benefit.

“BRIM Premiums” shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for “BRIM Premium” be insufficient to cover such cost, the remainder of such costs shall be paid by each spending unit from its “unclassified” appropriation, its “current expenses” appropriation or any other appropriate appropriation to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments. If there is no appropriation for “BRIM Premium” such costs shall be paid by each spending unit from its “current expenses” appropriation, “unclassified” appropriation or other appropriate appropriation.

West Virginia Council for Community and Technical College Education and Higher Education Policy Commission entities operating with special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

“Current expenses” shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands. Each spending unit shall be responsible for and charged monthly for all postage meter service and shall reimburse the appropriate revolving fund monthly for all

such amounts. Such expenditures shall be considered a current expense.

“Equipment” shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

“Repairs and alterations” shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

“Buildings” shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

“Lands” shall mean the purchase of real property or interest in real property.

“Capital outlay” shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.

From appropriations made to the spending units of state government, upon approval of the Governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: *Provided*, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: *Provided, however*, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be transferred to a “personal services and employee benefits” appropriation unless the source funds are also wholly from a “personal services and employee benefits” line, or unless the source funds are from another appropriation that has exclusively funded employment

expenses for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to “personal services and employee benefits,” “current expenses,” “repairs and alterations,” “equipment,” “other assets,” “land,” and “buildings” to other appropriations within the same account and no funds from other appropriations shall be transferred to the “personal services and employee benefits” or the “unclassified” appropriation except that during Fiscal Year 2023, and upon approval from the State Budget Office, agencies with the appropriation “Salary and Benefits of Cabinet Secretary and Agency Heads” may transfer between this appropriation and the appropriation “Personal Services and Employee Benefits” an amount to cover annualized salaries and employee benefits for the fiscal year ending June 30, 2023, as provided by W.V. Code §6-7-2a: *And provided further*, That no authority exists hereunder to transfer funds into appropriations to which no funds are legislatively appropriated: *And provided further*, That if the Legislature consolidates, reorganizes or terminates agencies, boards or functions, within any fiscal year the secretary or other appropriate agency head, or in the case of the termination of a spending unit of the state, the Director of the State Budget Office, in the absence of general law providing otherwise, may transfer the funds formerly appropriated to such agency, board or function, allocating items of appropriation as may be necessary if only part of the item may be allocated, in order to implement such consolidation, reorganization or termination. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit the freedom to spend an appropriation for more than one of the above classifications.

Sec. 4. Method of expenditure. — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

Sec. 5. Maximum expenditures. — No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

TITLE II – APPROPRIATIONS.

ORDER OF SECTIONS

- SECTION 1. Appropriations from general revenue.
- SECTION 2. Appropriations from state road fund.
- SECTION 3. Appropriations from other funds.
- SECTION 4. Appropriations from lottery net profits.
- SECTION 5. Appropriations from state excess lottery revenue.
- SECTION 6. Appropriations of federal funds.
- SECTION 7. Appropriations from federal block grants.
- SECTION 8. Awards for claims against the state.
- SECTION 9. Appropriations from general revenue fund surplus accrued.
- SECTION 10. Appropriations from lottery net profits surplus accrued.

- SECTION 11. Appropriations from state excess lottery revenue surplus accrued.
- SECTION 12. Special revenue appropriations.
- SECTION 13. State improvement fund appropriations.
- SECTION 14. Specific funds and collection accounts.
- SECTION 15. Appropriations for refunding erroneous payment.
- SECTION 16. Sinking fund deficiencies.
- SECTION 17. Appropriations for local governments.
- SECTION 18. Total appropriations.
- SECTION 19. General school fund.

Section 1. Appropriations from general revenue. – From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2023.

LEGISLATIVE

1 - Senate

Fund 0165 FY 2023 Org 2100

	Appropriation	\$	General Revenue Fund
Compensation of Members (R).....	00300		1,010,000
Compensation and Per Diem of Officers and Employees (R)	00500		4,011,332
Current Expenses and Contingent Fund (R)	02100		321,392
Repairs and Alterations (R)	06400		35,000
Technology Repair and Modernization (R)	29800		80,000

Expenses of Members (R).....	39900	450,000
BRIM Premium (R)	91300	<u>44,482</u>
Total.....		\$ 5,952,206

The appropriations for the Senate for the fiscal year 2022 are to remain in full force and effect and are hereby reappropriated to June 30, 2023. Any balances so reappropriated may be transferred and credited to the fiscal year 2022 accounts.

Upon the written request of the Clerk of the Senate, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the Senate, with the approval of the President, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the Auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

For duties imposed by law and by the Senate, the Clerk of the Senate shall be paid a monthly salary as provided by the Senate resolution, unless increased between sessions under the authority of the President, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

Included in the above appropriation for Senate (fund 0165, appropriation 02100), an amount not less than \$5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

2 - House of Delegates

Fund 0170 FY 2023 Org 2200

Compensation of Members (R).....	00300	\$	3,000,000
Compensation and Per Diem of Officers and Employees (R)	00500		575,000
Current Expenses and Contingent Fund (R)	02100		4,399,031
Expenses of Members (R).....	39900		1,350,000
Capitol Outlay, Repairs and Equipment (R).....	58900		500,000
BRIM Premium (R)	91300		<u>80,000</u>
Total.....		\$	9,904,031

The appropriations for the House of Delegates for the fiscal year 2022 are to remain in full force and effect and are hereby reappropriated to June 30, 2023. Any balances so reappropriated may be transferred and credited to the fiscal year 2022 accounts.

Upon the written request of the Clerk of the House of Delegates, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services

that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates' offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Speaker of the House of Delegates shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the House resolution, and the compensation of all personnel shall be as fixed in such House resolution for the session, or fixed by the Speaker during and between sessions of the Legislature, notwithstanding such House resolution. The Clerk of the House of Delegates is hereby authorized to draw requisitions upon the Auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

For duties imposed by law and by the House of Delegates, including salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in the House resolution, unless increased between sessions under the authority of the Speaker and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

Included in the above appropriation for House of Delegates (fund 0170, appropriation 02100), an amount not less than \$5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

3 - Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2023 Org 2300

Joint Committee on Government and Finance (R).....	10400	\$	7,725,138
Legislative Printing (R).....	10500		260,000

Legislative Rule-Making		
Review Committee (R).....	10600	147,250
Legislative Computer System (R).....	10700	1,447,500
Legislative Dues and Fees (R).....	10701	600,000
BRIM Premium (R).....	91300	<u>60,569</u>
Total.....		\$ 10,240,457

The appropriations for the Joint Expenses for the fiscal year 2022 are to remain in full force and effect and are hereby reappropriated to June 30, 2023. Any balances reappropriated may be transferred and credited to the fiscal year 2022 accounts.

Upon the written request of the Clerk of the Senate, with the approval of the President of the Senate, and the Clerk of the House of Delegates, with the approval of the Speaker of the House of Delegates, and a copy to the Legislative Auditor, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

JUDICIAL

4 - Supreme Court –

General Judicial

Fund 0180 FY 2023 Org 2400

Personal Services and		
Employee Benefits (R).....	00100	\$ 124,201,587
Current Expenses (R).....	13000	21,063,451
Repairs and Alterations (R).....	06400	40,000
Equipment (R).....	07000	2,482,300
Military Service Members Court (R)...	09002	300,000
Judges' Retirement System (R).....	11000	797,000
Buildings (R).....	25800	10,000
Other Assets (R).....	69000	200,000
BRIM Premium (R).....	91300	<u>834,000</u>
Total.....		\$ 149,928,338

The appropriations to the Supreme Court of Appeals for the fiscal years 2020, 2021 and 2022 are to remain in full force and

effect and are hereby reappropriated to June 30, 2023. Any balances so reappropriated may be transferred and credited to the fiscal year 2022 accounts.

This fund shall be administered by the Administrative Director of the Supreme Court of Appeals, who shall draw requisitions for warrants in payment in the form of payrolls, making deductions therefrom as required by law for taxes and other items.

The appropriation for the Judges' Retirement System (fund 0180, appropriation 11000) is to be transferred to the Consolidated Public Retirement Board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

EXECUTIVE

5 - Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2023 Org 0100

Personal Services

and Employee Benefits	00100	\$	3,332,448
Current Expenses (R)	13000		799,000
Repairs and Alterations	06400		25,000
Equipment	07000		1,000
National Governors Association	12300		60,700
Herbert Henderson			
Office of Minority Affairs	13400		396,726
Community Food Program	18500		1,000,000
Office of Resiliency (R)	18600		605,234
BRIM Premium	91300		183,645
Total		\$	6,403,753

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, appropriation 09900), Current Expenses (fund 0101, appropriation 13000), and Office of Resiliency (fund 0101, appropriation 18600) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for Herbert Henderson Office of Minority Affairs (fund 0101, appropriation 13400) shall be transferred to the Minority Affairs Fund (fund 1058).

6 - *Governor's Office* –

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2023 Org 0100

Personal Services			
and Employee Benefits.....	00100	\$	396,421
Current Expenses (R).....	13000		182,158
Repairs and Alterations.....	06400		5,000
Equipment.....	07000		<u>1,000</u>
Total.....		\$	584,579

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0102, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Appropriations are to be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

7 - *Governor's Office* –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2023 Org 0100

Milton Flood Wall (R).....	75701	\$	3,500,000
Court Improvement.....	xxxxx		<u>5,000,000</u>
Total.....		\$	8,500,000

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation 13500), Civil Contingent Fund – Total – Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Local Economic Development Assistance – Surplus (fund 0105, appropriation 26600), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), Milton Flood Wall (fund 0105, appropriation 75701), Milton Flood Wall – Surplus (fund 0105, appropriation 75799), Natural Disasters – Surplus (fund 0105, appropriation 76400), and Local Economic Development Assistance (fund 0105, appropriation 81900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From this fund there may be expended, at the discretion of the Governor, an amount not to exceed \$1,000 as West Virginia’s contribution to the interstate oil compact commission.

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the Governor’s Office.

8 - Auditor’s Office –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2023 Org 1200

Personal Services		
and Employee Benefits	00100	\$ 2,461,609
Current Expenses (R)	13000	13,429
BRIM Premium	91300	<u>12,077</u>
Total		\$ 2,487,115

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0116, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0116, appropriation 00100), is \$95,000 for the Salary of the Auditor.

9 - Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2023 Org 1300

Personal Services		
and Employee Benefits	00100	\$ 2,649,270
Unclassified.....	09900	31,463
Current Expenses (R).....	13000	572,684
Abandoned Property Program.....	11800	41,794
Other Assets.....	69000	10,000
ABLE Program	69201	150,000
BRIM Premium.....	91300	<u>59,169</u>
Total.....		\$ 3,514,380

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0126, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0126, appropriation 00100), is \$95,000 for the Salary of the Treasurer.

10 - Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2023 Org 1400

Personal Services		
and Employee Benefits	00100	\$ 6,559,737

Current Expenses (R)	13000	848,115
Animal Identification Program	03900	134,060
State Farm Museum	05500	87,759
Gypsy Moth Program (R)	11900	1,051,759
WV Farmers Market	12801	150,467
Black Fly Control.....	13700	456,724
HEMP Program.....	13701	363,162
Donated Foods Program	36300	45,000
Veterans to Agriculture Program (R)...	36301	262,432
Predator Control (R)	47000	176,400
Bee Research.....	69100	72,752
Microbiology Program.....	78500	102,854
Moorefield Agriculture Center	78600	1,017,582
Chesapeake Bay Watershed.....	83000	115,453
Livestock Care Standards Board.....	84300	8,820
BRIM Premium.....	91300	138,905
State FFA-FHA Camp and Conference Center	94101	756,707
Threat Preparedness	94200	75,618
WV Food Banks.....	96900	426,000
Senior's Farmers' Market Nutrition Coupon Program	97000	<u>55,835</u>
Total.....		\$ 12,906,141

Any unexpended balances remaining in the appropriations for Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Veterans to Agriculture Program (fund 0131, appropriation 36301), Predator Control (fund 0131, appropriation 47000), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0131, appropriation 00100), is \$95,000 for the Salary of the Commissioner.

The above appropriation for Predator Control (fund 0131, appropriation 47000) is to be made available to the United States

Department of Agriculture, Wildlife Services to administer the Predator Control Program.

A portion of the Current Expenses appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

From the above appropriation for WV Food Banks (fund 0131, appropriation 96900), \$20,000 is for House of Hope and the remainder of the appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

11 - West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	836,549
Unclassified.....	09900		77,059
Current Expenses (R)	13000		317,848
Soil Conservation Projects (R).....	12000		9,962,895
BRIM Premium.....	91300		<u>34,428</u>
Total.....		\$	11,228,779

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, appropriation 12000) and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

12 - Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	995,260

Current Expenses (R).....	13000	687,795
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	1,000
Criminal Convictions and Habeas Corpus Appeals (R)....	26000	970,283
Better Government Bureau	74000	283,648
BRIM Premium.....	91300	<u>120,654</u>
Total.....		\$ 5,203,194

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000), Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), and Agency Client Revolving Liquidity Pool (fund 0150, appropriation 36200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0150, appropriation 00100), is \$95,000 for the Salary of the Attorney General.

When legal counsel or secretarial help is appointed by the Attorney General for any state spending unit, this account shall be reimbursed from such spending units specifically appropriated account or from accounts appropriated by general language contained within this bill: *Provided*, That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the Attorney General: *Provided, however*, That if the spending unit and the Attorney General are unable to agree on the amount and terms of the reimbursement, the spending unit and the Attorney General shall submit their proposed reimbursement rates and terms to the Governor for final determination.

16 - Secretary of State

(WV Code Chapters 3, 5, and 59)

Fund 0155 FY 2023 Org 1600

Personal Services			
and Employee Benefits	00100	\$	118,794
Unclassified (R)	09900		8,352
Current Expenses (R)	13000		781,584
BRIM Premium.....	91300		<u>34,500</u>
Total.....		\$	943,230

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900) and Current Expenses (fund 0155, appropriation 13000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0155, appropriation 00100), is \$95,000 for the Salary of the Secretary of State.

17 - State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2023 Org 1601

Personal Services			
and Employee Benefits	00100	\$	2,477
Unclassified.....	09900		75
Current Expenses	13000		<u>4,956</u>
Total.....		\$	7,508

DEPARTMENT OF ADMINISTRATION

18 - Department of Administration –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2023 Org 0201

Personal Services			
and Employee Benefits	00100	\$	452,199
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		168,000

Unclassified.....	09900	9,177
Current Expenses	13000	85,009
Repairs and Alterations.....	06400	100
Equipment.....	07000	1,000
Financial Advisor (R)	30400	27,546
Lease Rental Payments	51600	14,850,000
Design-Build Board	54000	4,000
Other Assets.....	69000	100
BRIM Premium.....	91300	<u>6,736</u>
Total.....		\$ 15,603,867

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The appropriation for Lease Rental Payments (fund 0186, appropriation 51600) shall be disbursed as provided by W.Va. Code §31-15-6b.

19 - Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2023 Org 0205

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

20 - Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2023 Org 0209

Personal Services		
and Employee Benefits.....	00100	\$ 65,453
Unclassified.....	09900	1,400

Current Expenses	13000	53,563
GAAP Project (R)	12500	632,332
BRIM Premium	91300	<u>20,675</u>
Total		\$ 773,423

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, appropriation 12500) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

21 - Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2023 Org 0211

Personal Services		
and Employee Benefits	00100	\$ 2,860,163
Unclassified	09900	20,000
Current Expenses	13000	1,148,349
Repairs and Alterations	06400	500
Equipment	07000	5,000
Fire Service Fee	12600	14,000
Preservation and Maintenance of Statues and Monuments on Capitol Grounds	37100	68,000
Capital Outlay, Repairs and Equipment (R)	58900	23,660,888
BRIM Premium	91300	<u>129,983</u>
Total		\$ 27,906,883

Any unexpended balance remaining in the appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (fund 0230, appropriation 37100), the Division shall consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

The above appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) shall be expended for capital improvements, maintenance, repairs and equipment for state-owned buildings.

22 - Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2023 Org 0213

Personal Services		
and Employee Benefits	00100	\$ 1,072,747
Unclassified.....	09900	144
Current Expenses	13000	1,285
Repairs and Alterations.....	06400	200
BRIM Premium.....	91300	<u>6,922</u>
Total.....		\$ 1,081,298

The Division of Highways shall reimburse Fund 2031 within the Division of Purchasing for all actual expenses incurred pursuant to the provisions of W.Va. Code §17-2A-13.

23 - Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2023 Org 0215

Personal Services		
and Employee Benefits	00100	\$ 823,542
Unclassified.....	09900	12,032
Current Expenses	13000	440,247
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	5,000
Buildings (R).....	25800	100
Other Assets.....	69000	<u>100</u>
Total.....		\$ 1,282,021

Any unexpended balance remaining in the appropriation for Buildings (fund 0615, appropriation 25800) at the close of the

fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

24 - Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2023 Org 0217

Current Expenses	13000	\$	45,550
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To pay expenses for members of the commission on uniform state laws.

25 - West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2023 Org 0219

Personal Services			
and Employee Benefits	00100	\$	999,883
Unclassified.....	09900		1,000
Current Expenses	13000		145,295
Equipment.....	07000		50
BRIM Premium.....	91300		<u>8,740</u>
Total.....		\$	1,154,968

26 - Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2023 Org 0220

Personal Services			
and Employee Benefits	00100	\$	624,669
Unclassified.....	09900		2,200
Current Expenses	13000		104,501
Repairs and Alterations.....	06400		500
Other Assets.....	69000		100
BRIM Premium.....	91300		<u>5,574</u>
Total.....		\$	737,544

27 - Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2023 Org 0221

Personal Services		
and Employee Benefits	00100	\$ 1,859,148
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	119,000
Unclassified.....	09900	333,300
Current Expenses	13000	12,740
Public Defender Corporations.....	35200	22,155,232
Appointed Counsel Fees (R).....	78800	12,691,113
BRIM Premium.....	91300	<u>10,575</u>
Total.....		\$ 37,181,108

Any unexpended balance remaining in the appropriation for Appointed Counsel Fees (fund 0226, appropriation 78800) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, appropriation 35200) to Appointed Counsel Fees (fund 0226, appropriation 78800).

28 - Committee for the Purchase of

Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2023 Org 0224

Personal Services		
and Employee Benefits	00100	\$ 3,187
Current Expenses	13000	<u>868</u>
Total.....		\$ 4,055

29 - Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2023 Org 0225

PEIA Subsidy.....	80100	\$ 21,000,000
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The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.

The above appropriation for PEIA Subsidy (fund 0200, appropriation 80100) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employees Insurance Agency for the purposes of offsetting benefit changes to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

30 - West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2023 Org 0228

Forensic Medical Examinations (R)	68300	\$ 143,697
Federal Funds/Grant Match (R).....	74900	<u>109,007</u>
Total.....		\$ 252,704

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, appropriation 68300) and Federal Funds/Grant Match (fund 0557, appropriation 74900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

31 - Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2023 Org 0233

Personal Services			
and Employee Benefits.....	00100	\$	704,366
Unclassified.....	09900		124
Current Expenses	13000		137,381
Repairs and Alterations.....	06400		100
Equipment.....	07000		2,500
BRIM Premium.....	91300		<u>9,784</u>
Total.....		\$	854,255

DEPARTMENT OF COMMERCE*32 - Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2023 Org 0305

Personal Services			
and Employee Benefits.....	00100	\$	4,798,258
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		111,674
Unclassified.....	09900		21,435
Current Expenses	13000		558,024
Repairs and Alterations.....	06400		80,000
BRIM Premium.....	91300		<u>98,754</u>
Total.....		\$	5,668,145

Any unexpended balance remaining in the appropriation for Equipment (fund 0250, appropriation 07000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Out of the above appropriations a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

33 - Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2023 Org 0306

Personal Services		
and Employee Benefits.....	00100	\$ 1,645,283
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	112,753
Unclassified.....	09900	27,678
Current Expenses	13000	51,524
Repairs and Alterations.....	06400	968
Mineral Mapping System (R)	20700	1,117,464
BRIM Premium.....	91300	<u>24,486</u>
Total.....		\$ 2,980,156

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The above Unclassified and Current Expense appropriations include funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105) for the purpose of providing advance funding for such contracts.

34 - Division of Labor

(WV Code Chapters 21 and 47)

Fund 0260 FY 2023 Org 0308

Personal Services		
and Employee Benefits.....	00100	\$ 1,606,616
Current Expenses	13000	227,000
Repairs and Alterations.....	06400	28,000
Equipment.....	07000	15,000
BRIM Premium.....	91300	<u>8,500</u>
Total.....		\$ 1,885,116

35 - Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2023 Org 0310

Personal Services		
and Employee Benefits.....	00100	\$ 17,909,107
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	113,188
Unclassified.....	09900	184,711
Current Expenses	13000	196,302
Repairs and Alterations.....	06400	100
Equipment.....	07000	100
Buildings (R).....	25800	100
Capital Outlay – Parks (R).....	28800	3,000,000
Litter Control Conservation Officers ...	56400	151,662
Upper Mud River Flood Control.....	65400	166,304
Other Assets.....	69000	100
Land (R).....	73000	100
Law Enforcement.....	80600	2,628,555
BRIM Premium.....	91300	<u>45,141</u>
Total.....		\$ 24,395,470

Any unexpended balances remaining in the appropriations for Buildings (fund 0265, appropriation 25800), Capital Outlay – Parks (fund 0265, appropriation 28800), Land (fund 0265, appropriation 73000), and State Park Improvements – Surplus (fund 0265, appropriation 76300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the Division of Natural Resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

36 - Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2023 Org 0314

Personal Services		
and Employee Benefits	00100	\$ 9,662,673
Unclassified.....	09900	111,016
Current Expenses	13000	1,396,141
Coal Dust and Rock Dust Sampling	27000	493,803
BRIM Premium.....	91300	<u>80,668</u>
Total.....		\$ 11,744,301

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is \$500,000 to be used for coal mine training activities at an established mine training facility in southern West Virginia.

37 - Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2023 Org 0319

Personal Services		
and Employee Benefits	00100	\$ 240,032
Unclassified.....	09900	3,480
Current Expenses	13000	<u>118,138</u>
Total.....		\$ 361,650

Included in the above appropriation for Current Expenses (fund 0280, appropriation 13000) up to \$29,000 shall be used for the Coal Mine Safety and Technical Review Committee.

38 - WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2023 Org 0323

Personal Services		
and Employee Benefits	00100	\$ 51,433
Unclassified.....	09900	593
Current Expenses	13000	<u>6,447</u>
Total.....		\$ 58,473

*39 - Department of Commerce –**Office of the Secretary*

(WV Code Chapter 19)

Fund 0606 FY 2023 Org 0327

Personal Services		
and Employee Benefits	00100	\$ 1,374,092
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	153,750
Unclassified.....	09900	1,490
Current Expenses	13000	<u>353,147</u>
Total.....		\$ 1,882,479

*40 - State Board of Rehabilitation –**Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2023 Org 0932

Personal Services		
and Employee Benefits	00100	\$ 11,913,813
Current Expenses	13000	558,815
Independent Living Services.....	00900	429,418
Workshop Development	16300	1,817,427
Supported Employment		
Extended Services.....	20600	77,960
Ron Yost Personal Assistance Fund	40700	333,828
Employment Attendant Care Program.	59800	131,575
BRIM Premium.....	91300	<u>77,464</u>
Total.....		\$ 15,340,300

The above appropriation for Workshop Development (fund 0310, appropriation 16300) shall be used exclusively with the private nonprofit community rehabilitation program organizations known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services,

and individuals with disabilities currently in place at those organizations.

DEPARTMENT OF TOURISM

41 - Department of Tourism –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0246 FY 2023 Org 0304

Tourism – Brand Promotion (R)	61803	\$	3,000,000
Tourism – Public Relations (R)	61804		1,500,000
Tourism – Events and Sponsorships (R)	61805		500,000
Tourism – Industry Development (R) ..	61806		500,000
State Parks and Recreation Advertising (R)	61900		<u>1,500,000</u>
Total		\$	7,000,000

Any unexpended balances remaining in the appropriations for Tourism – Development Opportunity Fund (fund 0245, appropriation 11601), Tourism – Brand Promotion (fund 0246, appropriation 61803), Tourism – Public Relations (fund 0246, appropriation 61804), Tourism – Events and Sponsorships (fund 0246, appropriation 61805), Tourism – Industry Development (fund 0246, appropriation 61806), and State Parks and Recreation Advertising (fund 0246, appropriation 61900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The Secretary of the Department of Tourism shall have the authority to transfer between the above items of appropriation.

DEPARTMENT OF ECONOMIC DEVELOPMENT

42 - Department of Economic Development –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0256 FY 2023 Org 0307

Personal Services and Employee Benefits	00100	\$	4,151,904
Unclassified.....	09900		108,055
Current Expenses	13000		4,738,464
National Youth Science Camp.....	13200		241,570
Local Economic Development			
Partnerships (R)	13300		1,250,000
ARC Assessment	13600		152,585
Global Economic Development			
Partnerships (R)	20201		150,000
Guaranteed Work Force Grant (R).....	24200		982,630
Mainstreet Program.....	79400		170,493
BRIM Premium.....	91300		3,157
Hatfield McCoy Recreational Trail.....	96000		<u>198,415</u>
Total.....		\$	12,147,273

Any unexpended balances remaining in the appropriations for Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Global Economic Development Partnerships (fund 0256, appropriation 20201), and Guaranteed Work Force Grant (fund 0256, appropriation 24200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Current Expenses (fund 0256, appropriation 13000), \$50,000 shall be used for the Western Potomac Economic Partnership, \$100,000 shall be used for Advantage Valley, \$750,000 shall be used for the Robert C. Byrd Institute, \$548,915 shall be used for West Virginia University, \$298,915 shall be used for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation 13300) shall be used by the

Department of Economic Development for the award of funding assistance to county and regional economic development corporations or authorities participating in the Certified Development Community Program developed under the provisions of W.Va. Code §5B-2-14. The Department of Economic Development shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed \$30,000 per county served by an economic development or redevelopment corporation or authority.

DEPARTMENT OF EDUCATION

43 - State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2023 Org 0402

Personal Services		
and Employee Benefits	00100	\$ 360,144
Current Expenses	13000	<u>2,118,865</u>
Total		\$ 2,479,009

44 - State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2023 Org 0402

Personal Services		
and Employee Benefits	00100	\$ 4,719,032
Unclassified (R)	09900	420,000
Current Expenses (R)	13000	4,580,000
Teachers' Retirement Savings		
Realized	09500	40,523,000
Center for Professional		
Development (R)	11500	150,000
Increased Enrollment	14000	3,260,000

Safe Schools.....	14300	4,530,281
Attendance Incentive Bonus (R).....	15001	2,056,717
National Teacher Certification (R)	16100	300,000
Jobs & Hope – Childhood		
Drug Prevention Education.....	21901	5,000,000
Technology Repair and Modernization	29800	951,003
Hope Scholarship Program	30401	23,350,520
HVAC Technicians	35500	529,650
Early Retirement Notification		
Incentive	36600	300,000
MATH Program	36800	336,532
Assessment Programs (R).....	39600	3,909,374
Benedum Professional Development		
Collaborative (R)	42700	429,775
Governor’s Honors Academy (R).....	47800	1,059,270
21 st Century Fellows	50700	274,899
English as a Second Language.....	52800	96,000
Teacher Reimbursement	57300	297,188
Hospitality Training	60000	275,498
Youth in Government	61600	100,000
High Acuity Special Needs (R).....	63400	1,500,000
Foreign Student Education.....	63600	100,899
State Board of Education		
Administrative Costs	68400	280,429
IT Academy (R)	72100	500,000
Early Literacy Program.....	75600	5,711,675
School Based Truancy Prevention (R).	78101	2,047,366
Communities in Schools (R).....	78103	4,903,026
Mastery Based Education	78104	125,000
Mountain State		
Digital Literacy Program	86401	415,500
21 st Century Learners (R).....	88600	1,790,508
BRIM Premium.....	91300	342,859
21 st Century Assessment		
and Professional Development	93100	2,009,701
21 st Century Technology Infrastructure		
NetworkTools and Support (R)	93300	9,764,417
Special Olympic Games.....	96600	25,000
Educational Program Allowance	99600	516,250
Total.....		<u>\$ 127,481,369</u>

The above appropriations include funding for the state board of education and their executive office.

From the above appropriation for Current Expenses (fund 0313, appropriation 13000), \$2,000,000 shall be used for the Department of Education Child Nutrition Program – Non-traditional Child Hunger Solutions.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), Center for Professional Development (fund 0313, appropriation 11500), Attendance Incentive Bonus (fund 0313, appropriation 15001), National Teacher Certification (fund 0313, appropriation 16100), Assessment Programs (fund 0313, appropriation 39600), Benedum Professional Development Collaborative (fund 0313, appropriation 42700), Governor’s Honors Academy (fund 0313, appropriation 47800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), School Based Truancy Prevention (fund 0313, appropriation 78101), Communities in Schools (fund 0313, appropriation 78103), 21st Century Learners (fund 0313, appropriation 88600), and 21st Century Technology Infrastructure Network Tools and Support (fund 0313, appropriation 93300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for Teachers’ Retirement Savings Realized (fund 0313, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

From the above appropriation for Unclassified (fund 0313, appropriation 09900), \$120,000 shall be for assisting low income students with AP and CLEP exam fees.

The above appropriation for Hospitality Training (fund 0313, appropriation 60000), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools.

Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

From the above appropriation for Educational Program Allowance (fund 0313, appropriation 99600), \$100,000 shall be expended for the Morgan County Board of Education for Paw Paw Schools; \$150,000 shall be for the Randolph County Board of Education for Pickens School; \$100,000 shall be for the Preston County Board of Education for the Aurora School; \$100,000 shall be for the Fayette County Board of Education for Meadow Bridge and \$66,250 is for Project Based Learning in STEM fields.

45 - State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2023 Org 0402

Special Education – Counties	15900	\$	7,271,757
Special Education – Institutions.....	16000		4,078,883
Education of Juveniles			
Held in Predispositional			
Juvenile Detention Centers	30200		683,479
Education of Institutionalized			
Juveniles and Adults (R).....	47200		<u>21,195,471</u>
Total.....		\$	<u>33,229,590</u>

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, appropriation 47200) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriations, the superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

46 - State Board of Education –

State Aid to Schools

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2023 Org 0402

Other Current Expenses	02200	\$ 159,483,873
Advanced Placement.....	05300	594,563
Professional Educators.....	15100	904,942,470
Service Personnel.....	15200	303,757,447
Fixed Charges	15300	105,298,651
Transportation.....	15400	65,257,311
Improved Instructional Programs.....	15600	51,974,496
Professional Student Support Services	65500	61,488,888
21 st Century Strategic Technology		
Learning Growth.....	93600	26,443,757
Teacher and Leader Induction.....	93601	<u>5,478,876</u>
Basic Foundation Allowances.....		1,684,720,332
Less Local Share		(474,379,513)
Adjustments		<u>(2,495,004)</u>
Total Basic State Aid		1,207,845,815
Public Employees'		
Insurance Matching	01200	214,702,113
Teachers' Retirement System	01900	68,915,309
School Building Authority (R).....	45300	24,000,000
Retirement Systems –		
Unfunded Liability.....	77500	<u>276,328,760</u>
Total.....		\$ 1,791,791,997

Any unexpended balances remaining in the appropriations for School Building Authority (fund 0317, appropriation 45300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for School Building Authority (fund 0317, appropriation 45300) shall be transferred to the School Construction Fund (fund 3952).

47 - State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2023 Org 0402

Personal Services		
and Employee Benefits	00100	\$ 1,376,322
Unclassified.....	09900	268,800
Current Expenses	13000	883,106
Wood Products – Forestry		
Vocational Program	14600	82,713
Albert Yanni Vocational Program	14700	132,123
Vocational Aid.....	14800	24,516,692
Adult Basic Education	14900	5,460,891
Jobs & Hope.....	14902	6,250,000
Program Modernization	30500	884,313
High School Equivalency		
Diploma Testing (R).....	72600	807,935
FFA Grant Awards.....	83900	11,496
Pre-Engineering Academy Program	84000	<u>265,294</u>
Total.....		\$ 40,939,685

Any unexpended balances remaining in the appropriations for Jim’s Dream (fund 0390, appropriation 14901) and High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

48 - State Board of Education –

West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2023 Org 0403

Personal Services		
and Employee Benefits	00100	\$ 10,573,588
Unclassified (R)	09900	110,000
Current Expenses (R).....	13000	2,250,696
Repairs and Alterations.....	06400	164,675
Equipment.....	07000	77,000
Buildings (R).....	25800	45,000
Capital Outlay and Maintenance (R) ...	75500	1,670,000

BRIM Premium.....	91300	<u>130,842</u>
Total.....		\$ 15,021,801

Any unexpended balances remaining in the appropriations for Unclassified (fund 0320, appropriation 09900), Current Expenses (fund 0320, appropriation 13000), Buildings (fund 0320, appropriation 25800) and Capital Outlay and Maintenance (fund 0320, appropriation 75500) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

49 - Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2023 Org 0432

Personal Services		
and Employee Benefits.....	00100	\$ 3,513,485
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	120,106
Unclassified (R)	09900	28,483
Current Expenses	13000	610,843
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	1
WV Humanities Council.....	16800	250,000
Buildings (R).....	25800	1
Other Assets.....	69000	1
Educational Enhancements	69500	73,500
Land (R).....	73000	1
Culture and History Programming.....	73200	231,573
Capital Outlay and Maintenance (R) ...	75500	19,600
Historical Highway Marker Program...	84400	57,548
BRIM Premium.....	91300	<u>39,337</u>
Total.....		\$ 4,945,479

Any unexpended balances remaining in the appropriations for Unclassified (fund 0293, appropriation 09900), WV Women's Suffragist Memorial (fund 0293, appropriation 22101), Buildings (fund 0293, appropriation 25800), Capital Outlay, Repairs and

Equipment (fund 0293, appropriation 58900), Capital Improvements – Surplus (fund 0293, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0293, appropriation 67700), Land (fund 0293, appropriation 73000), and Capital Outlay and Maintenance (fund 0293, appropriation 75500) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Educational Enhancements (fund 0293, appropriation 69500) \$73,500 shall be used for the Clay Center.

The Current Expenses appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the Code.

50 - Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2023 Org 0433

Personal Services		
and Employee Benefits	00100	\$ 1,119,022
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	112,000
Current Expenses	13000	139,624
Repairs and Alterations.....	06400	6,500
Services to Blind & Handicapped.....	18100	161,717
BRIM Premium.....	91300	<u>18,205</u>
Total.....		\$ 1,557,068

51 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2023 Org 0439

Personal Services		
and Employee Benefits	00100	\$ 3,274,206
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	120,106
Current Expenses	13000	113,844
Mountain Stage	24900	450,000
Capital Outlay and Maintenance (R) ...	75500	49,250
BRIM Premium.....	91300	<u>47,727</u>
Total.....		\$ 4,055,133

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

52 - Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2023 Org 0311

Personal Services		
and Employee Benefits	00100	\$ 88,590
Current Expenses	13000	28,453
Repairs and Alterations.....	06400	800
Equipment	07000	500
Other Assets	69000	400
BRIM Premium.....	91300	<u>791</u>
Total.....		\$ 119,534

53 - Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2023 Org 0313

Personal Services and Employee Benefits	00100	\$ 4,144,818
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	168,000
Current Expenses	13000	85,816

Water Resources Protection and Management.....	06800	583,086
Dam Safety.....	60700	245,842
West Virginia Stream Partners Program	63700	77,396
Meth Lab Cleanup.....	65600	91,888
WV Contributions to River Commissions.....	77600	148,485
Office of Water Resources Non-Enforcement Activity	85500	<u>1,040,868</u>
Total.....		\$ 6,586,199

54 - Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2023 Org 0325

Personal Services and Employee Benefits.....	00100	\$ 60,737
Current Expenses	13000	11,612
Repairs and Alterations.....	06400	800
Equipment.....	07000	400
Other Assets.....	69000	200
BRIM Premium.....	91300	<u>2,304</u>
Total.....		\$ 76,053

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

55 - Department of Health and Human Resources –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2023 Org 0501

Personal Services and Employee Benefits.....	00100	\$ 387,664
Unclassified.....	09900	6,459
Current Expenses	13000	50,613

Commission for the Deaf and Hard of Hearing	70400	<u>228,560</u>
Total.....		\$ 673,296

56 - Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2023 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 13,051,133
Unclassified.....	09900	671,795
Current Expenses	13000	5,388,459
Chief Medical Examiner (R).....	04500	8,887,105
State Aid for Local		
and Basic Public Health Services ..	18400	15,672,592
Safe Drinking Water Program (R)	18700	1,915,528
Women, Infants and Children	21000	38,621
Early Intervention	22300	8,134,060
Cancer Registry.....	22500	211,359
Office of Drug Control Policy (R)	35401	554,230
Statewide EMS Program Support (R) ..	38300	1,711,912
Office of Medical Cannabis (R).....	42001	1,487,219
Black Lung Clinics	46700	170,885
Vaccine for Children.....	55100	341,261
Tuberculosis Control.....	55300	335,307
Maternal and Child Health Clinics, Clinicians		
Medical Contracts and Fees (R)	57500	5,905,414
Epidemiology Support	62600	1,530,473
Primary Care Support	62800	1,233,045
Sexual Assault Intervention		
and Prevention	72300	2,000,000
Health Right Free Clinics.....	72700	4,250,000
Capital Outlay and Maintenance (R) ...	75500	70,000
Healthy Lifestyles	77800	898,169
Maternal Mortality Review	83400	50,841
Diabetes Education and Prevention	87300	97,125

BRIM Premium.....	91300	169,791
State Trauma and Emergency Care System.....	91800	1,936,450
WVU Charleston Poison Control Hotline	94400	<u>712,942</u>
Total.....		\$ 77,425,716

Any unexpended balances remaining in the appropriations for Chief Medical Examiner (fund 0407, appropriation 04500), Safe Drinking Water Program (fund 0407, appropriation 18700), Office of Drug Control Policy (fund 0407, appropriation 35401), Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402), Statewide EMS Program Support (fund 0407, appropriation 38300), Office of Medical Cannabis (fund 0407, appropriation 42001), Medical Cannabis Surplus (fund 0407, appropriation 42099), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), and Tobacco Education Program (fund 0407, appropriation 90600) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than \$100,000 is for the West Virginia Cancer Coalition; \$50,000 shall be expended for the West Virginia Aids Coalition; \$100,000 is for Adolescent Immunization Education; \$73,065 is for informal dispute resolution relating to nursing home administrative appeals; and

\$1,000,000 shall be used for the administration of the Telestroke program.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) up to \$400,000 may be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and \$11,000 is for the Marshall County Health Department for dental services.

57 - Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2023 Org 0506

Personal Services

and Employee Benefits	00100	\$ 1,693,100
Current Expenses	13000	14,113
Behavioral Health Program (R)	21900	70,186,648
Institutional Facilities Operations (R)..	33500	150,992,263
Substance Abuse		
Continuum of Care (R)	35400	1,840,000
Capital Outlay and Maintenance (R) ...	75500	950,000
BRIM Premium.....	91300	<u>1,296,098</u>
Total.....		\$ 226,972,222

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0525, appropriation 14901), Behavioral Health Program (fund 0525, appropriation 21900), Institutional Facilities Operations (fund 0525, appropriation 33500), Substance Abuse Continuum of Care (fund 0525, appropriation 35400), Institutional Facilities Operations – Surplus (fund 0525, appropriation 63200), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of

the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however,* That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

Included in the above appropriation for Behavioral Health Program (fund 0525, appropriation 21900) is \$100,000 for the Healing Place of Huntington.

The above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500) contains prior year salary increases due to the Hartley court order in the amount of \$2,202,013 for William R. Sharpe Jr. Hospital, and \$2,067,984 for Mildred Mitchel-Bateman Hospital.

From the above appropriation for Substance Abuse Continuum of Care (fund 0525, appropriation 35400), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan.

Additional funds have been appropriated in fund 5156, fiscal year 2023, organization 0506, for the operation of the institutional facilities. The secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations appropriation to facilitate cost effective and cost saving services at the community level.

58 - Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2023 Org 0506

West Virginia Drinking Water Treatment

Revolving Fund-Transfer.....	68900	\$	647,500
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The above appropriation for Drinking Water Treatment Revolving Fund – Transfer shall be transferred to the West Virginia

Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving – Administrative Expense Fund as provided by Chapter 16 of the Code.

59 - Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2023 Org 0510

Personal Services		
and Employee Benefits	00100	\$ 1,003,911
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	112,000
Unclassified.....	09900	4,024
Current Expenses	13000	331,304
BRIM Premium.....	91300	<u>10,764</u>
Total.....		\$ 1,462,003

60 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2023 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 53,717,120
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	45,531
Unclassified.....	09900	5,688,944
Current Expenses	13000	12,072,050
Child Care Development.....	14400	3,118,451
Medical Services.....	18900	294,317,213
Social Services.....	19500	226,056,151
Family Preservation Program	19600	1,565,000
Family Resource Networks.....	27400	1,762,464
Domestic Violence		
Legal Services Fund	38400	400,000
James "Tiger" Morton		
Catastrophic Illness Fund	45500	60,164

I/DD Waiver.....	46600	108,541,736
Child Protective Services		
Case Workers.....	46800	28,889,529
Title XIX Waiver for Seniors.....	53300	13,593,620
WV Teaching Hospitals		
Tertiary/Safety Net	54700	6,356,000
In-Home Family Education.....	68800	1,000,000
WV Works Separate State Program.....	69800	135,000
Child Support Enforcement	70500	6,711,478
Temporary Assistance for Needy Families/ Maintenance of Effort.....	70700	25,819,096
Child Care –		
Maintenance of Effort Match.....	70800	5,693,743
Grants for Licensed		
Domestic Violence Programs and Statewide Prevention	75000	2,500,000
Capital Outlay and Maintenance (R) ...	75500	11,875
Community Based Services		
and Pilot Programs for Youth	75900	1,000,000
Medical Services Administrative Costs	78900	43,681,857
Traumatic Brain Injury Waiver.....	83500	800,000
Indigent Burials (R)	85100	1,550,000
CHIP Administrative Costs.....	85601	701,815
CHIP Services.....	85602	6,390,665
BRIM Premium.....	91300	892,642
Rural Hospitals Under 150 Beds.....	94000	2,596,000
Children’s Trust Fund – Transfer.....	95100	220,000
PATH	95400	<u>7,217,367</u>
Total.....		\$ 863,105,511

From the above appropriation of Current Expenses (fund 0403, appropriation 13000) \$300,000 shall be used for Green Acres Regional Center Inc.

Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0403, appropriation 75500) and Indigent Burials (fund 0403, appropriation 85100) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided*, That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however*, That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

Included in the above appropriation for Social Services (fund 0403, appropriation 19500) is funding for continuing education requirements relating to the practice of social work.

The above appropriation for Domestic Violence Legal Services Fund (fund 0403, appropriation 38400) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

The above appropriation for James “Tiger” Morton Catastrophic Illness Fund (fund 0403, appropriation 45500) shall be transferred to the James “Tiger” Morton Catastrophic Illness Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the Code.

The above appropriation for WV Works Separate State Program (fund 0403, appropriation 69800), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the secretary of the Department of Health and Human Resources.

From the above appropriation for Child Support Enforcement (fund 0403, appropriation 70500) an amount not to exceed \$300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund

0403, appropriation 75000), 50% of the total shall be divided equally and distributed among the fourteen (14) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), shall be distributed according to the formula established by the Family Protection Services Board.

The above appropriation for Children’s Trust Fund – Transfer (fund 0403, appropriation 95100) shall be transferred to the Children’s Trust Fund (fund 5469, org 0511).

DEPARTMENT OF HOMELAND SECURITY

61 - Department of Homeland Security –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2023 Org 0601

Personal Services		
and Employee Benefits	00100	\$ 780,510
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	168,000
Unclassified (R)	09900	30,000
Current Expenses	13000	91,636
Repairs and Alterations	06400	500
Equipment	07000	500
Fusion Center (R)	46900	2,739,870
Other Assets	69000	500
Directed Transfer	70000	32,000
BRIM Premium	91300	22,563
WV Fire and EMS Survivor Benefit (R)	93900	<u>200,000</u>
Total		\$ 4,066,079

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Justice Reinvestment Training –

Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for Directed Transfer (fund 0430, appropriation 70000) shall be transferred to the Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003).

62 - Division of Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2023 Org 0606

Personal Services

and Employee Benefits.....	00100	\$ 2,177,053
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	61,250
Unclassified.....	09900	21,022
Current Expenses	13000	51,065
Repairs and Alterations.....	06400	600
Radiological Emergency Preparedness	55400	17,052
SIRN.....	55401	600,000
Federal Funds/Grant Match (R).....	74900	1,449,990
Mine and Industrial Accident Rapid Response Call Center.....	78100	489,577
Early Warning Flood System (R)	87700	1,290,499
BRIM Premium.....	91300	<u>96,529</u>
Total.....		\$ 6,254,637

Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

63 - *Division of Corrections and Rehabilitation –**West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 2023 Org 0608

Personal Services			
and Employee Benefits	00100	\$	310,869
Unclassified.....	09900		10,000
Current Expenses	13000		334,440
Salaries of Members			
of West Virginia Parole Board	22700		734,286
BRIM Premium.....	91300		<u>6,149</u>
Total.....		\$	1,395,744

The above appropriation for Salaries of Members of West Virginia Parole Board (fund 0440, appropriation 22700) includes funding for salary, annual increment (as provided for in W.Va. Code §5-5-1), and related employee benefits of board members.

64 - *Division of Corrections and Rehabilitation –**Central Office*

(WV Code Chapter 15A)

Fund 0446 FY 2023 Org 0608

Personal Services			
and Employee Benefits	00100	\$	250,577
Salary and Benefits of Cabinet Secretary			
and Agency Heads	00201		126,000
Current Expenses	13000		<u>2,400</u>
Total.....		\$	378,977

65 - *Division of Corrections and Rehabilitation –**Correctional Units*

(WV Code Chapter 15A)

Fund 0450 FY 2023 Org 0608

Employee Benefits	01000	\$ 1,258,136
Unclassified.....	09900	1,578,800
Current Expenses (R).....	13000	57,690,483
Children's Protection Act (R)	09000	838,437
Facilities Planning		
and Administration (R).....	38600	1,274,200
Charleston Correctional Center	45600	3,530,502
Beckley Correctional Center.....	49000	2,633,846
Anthony Correctional Center.....	50400	6,281,339
Huttonsville Correctional Center	51400	19,975,709
Northern Correctional Center.....	53400	8,154,113
Inmate Medical Expenses (R).....	53500	62,226,064
Pruntytown Correctional Center	54300	8,946,953
Corrections Academy.....	56900	1,983,466
Information Technology Services.....	59901	2,759,052
Martinsburg Correctional Center	66300	4,482,115
Parole Services.....	68600	6,023,661
Special Services	68700	5,894,456
Investigative Services	71600	3,502,991
Capital Outlay and Maintenance (R) ...	75500	2,000,000
Salem Correctional Center.....	77400	11,678,166
McDowell County Correctional Center	79000	2,542,590
Stevens Correctional Center.....	79100	7,863,195
Parkersburg Correctional Center.....	82800	6,418,300
St. Mary's Correctional Center.....	88100	15,081,470
Denmar Correctional Center.....	88200	5,367,552
Ohio County Correctional Center	88300	2,211,029
Mt. Olive Correctional Complex	88800	23,032,441
Lakin Correctional Center.....	89600	11,141,496
BRIM Premium.....	91300	<u>2,527,657</u>
Total.....		\$ 288,898,219

Any unexpended balances remaining in the appropriations for Children's Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate

Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0450, appropriation 67700), Capital Outlay and Maintenance (fund 0450, appropriation 75500), Security System Improvements – Surplus (fund 0450, appropriation 75501), and Roof Repairs and Mechanical System Upgrades (fund 0450, appropriation 75502) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between appropriations.

From the above appropriation to Current Expenses (fund 0450, appropriation 13000) payment shall be made to house Division of Corrections and Rehabilitation inmates in federal, county, and/or regional jails.

Any realized savings from Energy Savings Contract may be transferred to Facilities Planning and Administration (fund 0450, appropriation 38600).

66 - Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(WV Code Chapter 15A)

Fund 0570 FY 2023 Org 0608

Statewide Reporting Centers.....	26200	\$	6,991,498
Robert L. Shell Juvenile Center.....	26700		2,649,168
Resident Medical Expenses (R).....	53501		3,604,999
Central Office.....	70100		1,779,854
Capital Outlay and Maintenance (R) ...	75500		250,000
Gene Spadaro Juvenile Center.....	79300		2,789,569
BRIM Premium.....	91300		115,967
Kenneth Honey Rubenstein			
Juvenile Center (R).....	98000		5,941,605
Vicki Douglas Juvenile Center	98100		2,471,185
Northern Regional Juvenile Center.....	98200		2,876,302

Lorrie Yeager Jr. Juvenile Center	98300	2,537,852
Sam Perdue Juvenile Center	98400	2,741,571
Tiger Morton Center	98500	2,754,083
Donald R. Kuhn Juvenile Center	98600	5,287,575
J.M. "Chick" Buckbee Juvenile Center	98700	<u>2,615,359</u>
Total.....		\$ 45,406,587

Any unexpended balances remaining in the appropriations for Resident Medical Expenses (fund 0570, appropriation 53501), Capital Outlay and Maintenance (fund 0570, appropriation 75500), Roof Repairs and Mechanical System Upgrades (fund 0570, appropriation 75502), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, appropriation 98000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The Director of Juvenile Services shall have the authority to transfer between appropriations to the individual juvenile centers above including statewide reporting centers and central office and may transfer funds from the individual juvenile centers to Resident Medical Expenses (fund 0570, appropriation 53501).

67 - West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2023 Org 0612

Personal Services		
and Employee Benefits	00100	\$ 73,886,203
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	139,300
Children's Protection Act	09000	1,040,805
Current Expenses	13000	10,384,394
Repairs and Alterations.....	06400	450,523
Trooper Class.....	52100	3,207,832
Barracks Lease Payments	55600	237,898
Communications		
and Other Equipment (R).....	55800	1,070,968
Trooper Retirement Fund.....	60500	13,324,749

Handgun Administration Expense	74700	80,918
Capital Outlay and Maintenance (R) ...	75500	250,000
Retirement Systems –		
Unfunded Liability.....	77500	35,000
Automated Fingerprint		
Identification System.....	89800	2,229,846
BRIM Premium.....	91300	<u>5,743,921</u>
Total.....		\$ 112,082,357

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, appropriation 55800) and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than \$25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.

68 - Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2023 Org 0619

Current Expenses	13000	\$	63,061
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69 - Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2023 Org 0622

Personal Services			
and Employee Benefits.....	00100	\$	3,186,789
Unclassified (R)	09900		21,991
Current Expenses	13000		422,981
Repairs and Alterations.....	06400		8,500
Equipment (R).....	07000		64,171

BRIM Premium.....	91300	<u>32,602</u>
Total.....		\$ 3,737,034

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, appropriation 07000) and Unclassified (fund 0585, appropriation 09900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

70 - Division of Administrative Services

(WV Code Chapter 15A)

Fund 0546 FY 2023 Org 0623

Personal Services		
and Employee Benefits.....	00100	\$ 591,795
Current Expenses (R).....	13000	233,360
Repairs and Alterations.....	06400	1,804
Child Advocacy Centers (R).....	45800	2,209,526
Community Corrections (R).....	56100	4,599,155
Statistical Analysis Program.....	59700	50,122
Sexual Assault Forensic Examination Commission (R).....	71400	79,340
Qualitative Analysis and Training for Youth Services (R).....	76200	136,732
Law Enforcement		
Professional Standards.....	83800	170,172
Justice Reinvestment Initiative (R).....	89501	2,333,795
BRIM Premium.....	91300	<u>2,123</u>
Total.....		\$ 10,407,924

Any unexpended balances remaining in the appropriations for Current Expenses (fund 0546, appropriation 13000), Child Advocacy Centers (fund 0546, appropriation 45800), Community Corrections (fund 0546, appropriation 56100), Sexual Assault Forensic Examination Commission (fund 0546, appropriation 71400), Qualitative Analysis and Training for Youth Services (fund 0546, appropriation 76200), and Justice Reinvestment Initiative (fund 0546, appropriation 89501) at the close of the fiscal

year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Current Expenses (fund 0546, appropriation 13000), \$100,000 shall be used for Court Appointed Special Advocates.

From the above appropriation for Child Advocacy Centers (fund 0546, appropriation 45800), the division may retain an amount not to exceed four percent of the appropriation for administrative purposes.

71 - Division of Administrative Services

(WV Code Chapter 15A)

Fund 0619 FY 2023 Org 0623

Personal Services			
and Employee Benefits	00100	\$	5,155,206
Unclassified.....	09900		5,000
Current Expenses	13000		<u>600,000</u>
Total.....		\$	5,760,206

DEPARTMENT OF REVENUE

72 - Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2023 Org 0701

Personal Services			
and Employee Benefits	00100	\$	364,034
Salary and Benefits of Cabinet Secretary			
and Agency Heads	00201		168,000
Unclassified.....	09900		437
Current Expenses	13000		81,594
Repairs and Alterations.....	06400		1,262
Equipment.....	07000		8,000
Other Assets.....	69000		<u>500</u>
Total.....		\$	623,827

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation 09600) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

73 - Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2023 Org 0702

Personal Services		
and Employee Benefits (R).....	00100	\$ 19,015,878
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	147,000
Unclassified (R)	09900	174,578
Current Expenses (R)	13000	6,823,635
Repairs and Alterations.....	06400	10,150
Equipment.....	07000	54,850
Tax Technology Upgrade	09400	3,700,000
Multi State Tax Commission	65300	77,958
Other Assets.....	69000	10,000
BRIM Premium.....	91300	<u>15,579</u>
Total.....		\$ 30,029,628

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0470, appropriation 00100), Unclassified (fund 0470, appropriation 09900), Current Expenses (fund 0470, appropriation 13000), and Integrated Tax Assessment System (fund 0470, appropriation 29200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

74 - State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2023 Org 0703

Personal Services		
and Employee Benefits.....	00100	\$ 819,147

Unclassified (R)	09900	9,200
Current Expenses (R)	13000	<u>119,449</u>
Total		\$ 947,796

Any unexpended balances remaining in the appropriations for Unclassified (fund 0595, appropriation 09900) and Current Expenses (fund 0595, appropriation 13000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

75 - West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2023 Org 0709

Personal Services		
and Employee Benefits	00100	\$ 935,715
Unclassified	09900	5,255
Current Expenses (R)	13000	229,374
BRIM Premium	91300	<u>3,062</u>
Total		\$ 1,173,406

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

76 - Division of Professional and Occupational Licenses –

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2023 Org 0933

Personal Services		
and Employee Benefits	00100	\$ 7,200
Current Expenses	13000	<u>29,611</u>
Total		\$ 36,811

DEPARTMENT OF TRANSPORTATION*77 - State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2023 Org 0804

Personal Services			
and Employee Benefits	00100	\$	370,704
Current Expenses	13000		287,707
Other Assets (R).....	69000		1,270,019
BRIM Premium.....	91300		<u>201,541</u>
Total.....		\$	2,129,971

Any unexpended balance remaining in the appropriation for Other Assets (fund 0506, appropriation 69000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

78 - Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2023 Org 0805

Equipment (R).....	07000	\$	100,000
Current Expenses (R).....	13000		2,042,989
Buildings (R).....	25800		100,000
Other Assets (R).....	69000		<u>50,000</u>
Total.....		\$	2,292,989

Any unexpended balances remaining in the appropriations for Equipment (fund 0510, appropriation 07000), Current Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800), and Other Assets (fund 0510, appropriation 69000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriation for Current Expenses (fund 0510, appropriation 13000), \$30,000 shall be used to support the Sistersville Ferry.

79 - Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2023 Org 0807

Personal Services

and Employee Benefits.....	00100	\$	229,791
Current Expenses (R).....	13000		591,839
Repairs and Alterations.....	06400		100
BRIM Premium.....	91300		<u>4,438</u>
Total.....		\$	826,168

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0582, appropriation 13000) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

DEPARTMENT OF VETERANS' ASSISTANCE*80 - Department of Veterans' Assistance*

(WV Code Chapter 9A)

Fund 0456 FY 2023 Org 0613

Personal Services

and Employee Benefits.....	00100	\$	2,036,851
Salary and Benefits of Cabinet Secretary and Agency Heads.....	00201		110,880
Unclassified.....	09900		20,000
Current Expenses.....	13000		161,450
Repairs and Alterations.....	06400		5,000
Veterans' Field Offices.....	22800		405,550
Buildings.....	25800		8,181,000
Veterans' Nursing Home (R).....	28600		7,103,125
Veterans' Toll Free Assistance Line....	32800		2,015
Veterans' Reeducation Assistance (R) ...	32900		40,000
Veterans' Grant Program (R).....	34200		560,000
Veterans' Grave Markers.....	47300		10,000
Veterans' Cemetery.....	80800		402,074

BRIM Premium.....	91300	<u>50,000</u>
Total.....		\$ 19,087,945

Any unexpended balances remaining in the appropriations for Buildings – Surplus (fund 0456, appropriation 25899), Veterans’ Nursing Home (fund 0456, appropriation 28600), Veterans’ Reeducation Assistance (fund 0456, appropriation 32900), Veterans’ Grant Program (fund 0456, appropriation 34200), Veterans’ Bonus – Surplus (fund 0456, appropriation 34400), and Educational Opportunities for Children of Deceased Veterans (fund 0456, appropriation 85400) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

81 - Department of Veterans’ Assistance –

Veterans’ Home

(WV Code Chapter 9A)

Fund 0460 FY 2023 Org 0618

Personal Services

and Employee Benefits.....	00100	\$ 1,296,064
Current Expenses (R).....	13000	46,759
Veterans Outreach Programs (R).....	61700	<u>203,766</u>
Total.....		\$ 1,546,589

Any unexpended balances remaining in the appropriations for Current Expenses (fund 0460, appropriation 13000) and Veterans Outreach Programs (fund 0456, appropriation 61700) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

BUREAU OF SENIOR SERVICES

82 - Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2023 Org 0508

Transfer to Division of Human Services
 for Health Care and Title XIX Waiver
 for Senior Citizens 53900 \$ 19,612,957

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (fund 0420, appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

The above appropriation is in addition to funding provided in fund 5405 for this program.

**WEST VIRGINIA COUNCIL FOR COMMUNITY
 AND TECHNICAL COLLEGE EDUCATION**

83 - West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2023 Org 0420

West Virginia Council for Community and Technical Education (R)	39200	\$	744,232
Transit Training Partnership	78300		34,293
Community College			
Workforce Development (R)	87800		2,788,387
College Transition Program	88700		278,222
West Virginia Advance			
Workforce Development (R)	89300		3,121,387
Technical Program Development (R) ..	89400		1,800,735
WV Invests Grant Program (R)	89401		<u>7,037,672</u>
Total		\$	15,804,928

Any unexpended balances remaining in the appropriations for West Virginia Council for Community and Technical Education (fund 0596, appropriation 39200), Capital Improvements – Surplus

(fund 0596, appropriation 66100), Community College Workforce Development (fund 0596, appropriation 87800), West Virginia Advance Workforce Development (fund 0596, appropriation 89300), Technical Program Development (fund 0596, appropriation 89400), and WV Invests Grant Program (fund 0596, appropriation 89401) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

84 - Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2023 Org 0444

Mountwest Community
and Technical College 48700 \$ 6,716,176

85 - New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2023 Org 0445

New River Community
and Technical College 35800 \$ 6,088,539

86 - Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2023 Org 0446

Pierpont Community
and Technical College 93000 \$ 8,119,152

87 - Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2023 Org 0447

Blue Ridge Community
and Technical College 88500 \$ 8,139,835

88 - West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2023 Org 0464

West Virginia University

– Parkersburg..... 47100 \$ 10,799,686

89 - Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2023 Org 0487

Southern West Virginia Community

and Technical College 44600 \$ 8,557,086

90 - West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2023 Org 0489

West Virginia Northern Community

and Technical College 44700 \$ 7,580,697

91 - Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2023 Org 0492

Eastern West Virginia Community

and Technical College 41200 \$ 2,264,340

92 - BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2023 Org 0493

BridgeValley Community

and Technical College 71700 \$ 8,364,587

HIGHER EDUCATION POLICY COMMISSION*93 - Higher Education Policy Commission –**Administration –**Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2023 Org 0441

Personal Services		
and Employee Benefits.....	00100	\$ 2,789,394
Current Expenses	13000	1,096,902
RHI Program and Site Support –		
RHEP Program Administration (R)...	03700	80,000
Mental Health Provider		
Loan Repayment (R).....	11301	330,000
Higher Education Grant Program	16400	40,619,864
Tuition Contract Program (R).....	16500	1,225,412
Underwood-Smith Scholarship		
Program-Student Awards.....	16700	628,349
Facilities Planning and Administration	38600	1,760,254
Higher Education System Initiatives....	48801	1,635,847
PROMISE Scholarship – Transfer.....	80000	18,500,000
HEAPS Grant Program (R).....	86700	5,017,974
Health Professionals’		
Student Loan Program (R).....	86701	547,470
BRIM Premium.....	91300	<u>17,817</u>
Total.....		\$ 74,249,283

Any unexpended balances remaining in the appropriations for RHI Program and Site Support – RHEP Program Administration (fund 0589, appropriation 03700), Mental Health Provider Loan Repayment (fund 0589, appropriation 11301), Tuition Contract Program (fund 0589, appropriation 16500), Workforce Development Initiative (fund 0589, appropriation 52901), HEAPS Grant Program (fund 0589, appropriation 86700), and Health Professionals’ Student Loan Program (fund 0589, appropriation

86701) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for Facilities Planning and Administration (fund 0589, appropriation 38600) is for operational expenses of the West Virginia Education, Research and Technology Park between construction and full occupancy.

The above appropriation for Higher Education Grant Program (fund 0589, appropriation 16400) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by W.Va. Code §18C-5-3.

The above appropriation for Underwood-Smith Scholarship Program Student Awards (fund 0589, appropriation 16700) shall be transferred to the Underwood-Smith Teacher Scholarship and Loan Assistance Fund (fund 4922, org 0441) established by W.Va. Code §18C-4-1.

The above appropriation for PROMISE Scholarship-Transfer (fund 0589, appropriation 80000) shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

94 - West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2023 Org 0463

WVU School of Health Science –

Eastern Division.....	05600	\$	2,277,794
WVU – School of Health Sciences.....	17400		15,490,163
WVU – School of Health Sciences –			
Charleston Division	17500		2,351,833
Rural Health Outreach Programs (R)...	37700		165,979

West Virginia University School of Medicine

BRIM Subsidy	46000	<u>1,203,087</u>
Total.....		\$ 21,488,856

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0343, appropriation 37700) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*95 - West Virginia University –**General Administrative Fund*

(WV Code Chapter 18B)

Fund 0344 FY 2023 Org 0463

West Virginia University	45900	\$ 99,166,182
Jackson's Mill (R).....	46100	502,471
West Virginia University		
Institute of Technology.....	47900	8,320,240
State Priorities – Brownfield		
Professional Development (R).....	53100	316,556
Energy Express (R).....	86100	382,935
West Virginia University –		
Potomac State	99400	<u>4,709,664</u>
Total.....		\$ 113,398,048

Any unexpended balances remaining in the appropriations for Jackson's Mill (fund 0344, appropriation 46100), State Priorities – Brownfield Professional Development (fund 0344, appropriation 53100), and Energy Express (fund 0344, appropriation 86100) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*96 - Marshall University –**School of Medicine*

(WV Code Chapter 18B)

Fund 0347 FY 2023 Org 0471

Marshall Medical School	17300	\$ 7,272,947
Rural Health Outreach Programs (R)...	37700	157,572
Forensic Lab (R)	37701	227,415
Center for Rural Health (R)	37702	161,043
Marshall University Medical School		
BRIM Subsidy	44900	<u>872,612</u>
Total.....		\$ 8,691,589

Any unexpended balances remaining in the appropriations for Rural Health Outreach Program (fund 0347, appropriation 37700), Forensic Lab (fund 0347, appropriation 37701), and Center for Rural Health (fund 0347, appropriation 37702) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

97 - Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2023 Org 0471

Marshall University	44800	\$ 48,961,949
Luke Lee Listening Language and Learning Lab (R).....	44801	151,939
Vista E-Learning (R).....	51900	229,019
State Priorities – Brownfield Professional Development (R).....	53100	309,606
Marshall University Graduate College Writing Project (R)	80700	25,412
WV Autism Training Center (R)	93200	<u>1,869,776</u>
Total.....		\$ 51,547,701

Any unexpended balances remaining in the appropriations for Luke Lee Listening Language and Learning Lab (fund 0348, appropriation 44801), Vista E-Learning (fund 0348, appropriation 51900), State Priorities – Brownfield Professional Development (fund 0348, appropriation 53100), Marshall University Graduate College Writing Project (fund 0348, appropriation 80700), and WV Autism Training Center (fund 0348, appropriation 93200) at

the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

98 - West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2023 Org 0476

West Virginia			
School of Osteopathic Medicine....	17200	\$	5,247,095
Rural Health Outreach Programs (R)...	37700		169,035
West Virginia School of Osteopathic Medicine			
BRIM Subsidy	40300		153,405
Rural Health Initiative –			
Medical Schools Support.....	58100		<u>403,439</u>
Total.....		\$	5,972,974

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

99 - Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2023 Org 0482

Bluefield State College	40800	\$	6,648,770
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100 - Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2023 Org 0483

Concord University.....	41000	\$	10,836,709
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101 - Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2023 Org 0484

Fairmont State University	41400	\$ 19,273,190
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102 - Glenville State University

(WV Code Chapter 18B)

Fund 0363 FY 2023 Org 0485

Glenville State University.....	xxxxx	\$ 6,768,535
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103 - Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2023 Org 0486

Shepherd University.....	43200	\$ 13,026,830
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104 - West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2023 Org 0488

West Liberty University.....	43900	\$ 9,552,600
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105 - West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2023 Org 0490

West Virginia State University	44100	\$ 11,380,098
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Healthy Grandfamilies (R).....	xxxxx	800,000
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West Virginia State University		
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Land Grant Match.....	95600	<u>3,950,192</u>
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Total.....		\$ <u>16,130,290</u>
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*106 - Higher Education Policy Commission –**Administration -**West Virginia Network for Educational Telecomputing (WVNET)*

(WV Code Chapter 18B)

Fund 0551 FY 2023 Org 0495

WVNET 16900 \$ 1,817,992

MISCELLANEOUS BOARDS AND COMMISSIONS

107 - Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2023 Org 0603

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	\$	189,000
Unclassified (R)	09900		106,798
College Education Fund.....	23200		4,000,000
Civil Air Patrol.....	23400		249,664
Armory Board Transfer.....	70015		2,317,555
Mountaineer ChalleNGe Academy	70900		3,324,624
Military Authority (R).....	74800		6,251,727
Drug Enforcement and Support	74801		<u>1,532,374</u>
Total.....		\$	17,971,742

Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, appropriation 09900), Military Authority (fund 0433, appropriation 74800), and Military Authority – Surplus (fund 0433, appropriation 74899) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

From the above appropriations an amount approved by the Adjutant General may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

The adjutant general shall have the authority to transfer between appropriations.

From the above appropriation and other state and federal funding, the Adjutant General shall provide an amount not less than \$3,324,624 to the Mountaineer Challenge Academy to meet anticipated program demand.

108 - Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2023 Org 0603

Personal Services			
and Employee Benefits	00100	\$	100,000
Current Expenses	13000		<u>57,775</u>
Total		\$	157,775
Total TITLE II, Section 1 – General Revenue			
(Including claims against the state)			<u>\$4,635,701,389</u>

Sec. 2. Appropriations from state road fund. — From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2023.

DEPARTMENT OF TRANSPORTATION

109 - Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)

Fund 9007 FY 2023 Org 0802

			State Road Fund
		Appro- priation	
Personal Services			
and Employee Benefits	00100	\$	36,894,264
Salary and Benefits of Cabinet Secretary			
and Agency Heads	00201		129,500

Current Expenses	13000	22,334,363
Repairs and Alterations	06400	144,000
Equipment	07000	1,080,000
Buildings	25800	10,000
Other Assets	69000	2,480,000
BRIM Premium.....	91300	<u>75,117</u>
Total.....		\$ 63,147,244

110 - Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2023 Org 0803

Salary and Benefits of Cabinet Secretary and Agency Heads	00201	\$ 200,000
Debt Service.....	04000	135,500,000
Maintenance.....	23700	529,881,528
Inventory Revolving	27500	4,000,000
Equipment Revolving	27600	19,400,841
General Operations	27700	178,042,168
Interstate Construction	27800	115,000,000
Other Federal Aid Programs	27900	345,000,000
Appalachian Programs	28000	100,000,000
Highway Litter Control.....	28200	<u>1,650,000</u>
Total.....		\$1,428,674,537

The above appropriations are to be expended in accordance with the provisions of Chapters 17 and 17C of the code.

The Commissioner of Highways shall have the authority to operate revolving funds within the State Road Fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated in addition to the above appropriations, sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Sections 17 and 18, Article 2, Chapter 14 of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated by appropriation may be transferred to other appropriations upon recommendation of the commissioner and approval of the Governor.

Total TITLE II, Section 2 – State Road Fund

(Including claims against the state) \$1,492,255,013

Sec. 3. Appropriations from other funds. — From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2023.

LEGISLATIVE

111 - Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2023 Org 2300

	Other Funds	Appro- priation
Personal Services		
and Employee Benefits	00100	\$ 498,020
Current Expenses	13000	133,903
Repairs and Alterations.....	06400	1,000
Economic Loss Claim Payment Fund..	33400	2,000,000
Other Assets.....	69000	<u>3,700</u>
Total.....		\$ 2,636,623

JUDICIAL*112 - Supreme Court –**Court Advanced Technology Subscription Fund*

(WV Code Chapter 51)

Fund 1704 FY 2023 Org 2400

Current Expenses	13000	\$	100,000
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*113 - Supreme Court –**Adult Drug Court Participation Fund*

(WV Code Chapter 62)

Fund 1705 FY 2023 Org 2400

Current Expenses	13000	\$	200,000
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*114 - Supreme Court –**Family Court Fund*

(WV Code Chapter 51)

Fund 1763 FY 2023 Org 2400

Current Expenses	13000	\$	1,050,000
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*115 - Supreme Court –**Court Facilities Maintenance Fund*

(WV Code Chapter 51)

Fund 1766 FY 2023 Org 2400

Current Expenses	13000	\$	250,000
Repairs and Alterations.....	06400		<u>250,000</u>
Total		\$	500,000

EXECUTIVE*116 - Governor's Office –**Minority Affairs Fund*

(WV Code Chapter 5)

Fund 1058 FY 2023 Org 0100

Personal Services			
and Employee Benefits	00100	\$	233,788
Current Expenses	13000		453,200
Martin Luther King, Jr.			
Holiday Celebration.....	03100		<u>8,926</u>
Total.....		\$	695,914

*117 - Auditor's Office –**Grant Recovery Fund*

(WV Code Chapter 12)

Fund 1205 FY 2023 Org 1200

Repairs and Alterations.....	06400	\$	2,000
Equipment.....	07000		7,000
Current Expenses	13000		<u>191,000</u>
Total.....		\$	200,000

*118 - Auditor's Office –**Land Operating Fund*

(WV Code Chapters 11A, 12, and 36)

Fund 1206 FY 2023 Org 1200

Personal Services			
and Employee Benefits	00100	\$	832,826
Unclassified.....	09900		15,139
Current Expenses	13000		715,291
Repairs and Alterations.....	06400		2,600

Equipment.....	07000	426,741
Cost of Delinquent Land Sales.....	76800	<u>1,841,168</u>
Total.....		\$ 3,833,765

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the necessary amount for the expenditure of funds other than Personal Services and Employee Benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter 11A of the West Virginia Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

119 - Auditor's Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2023 Org 1200

Personal Services		
and Employee Benefits.....	00100	\$ 639,881
Current Expenses	13000	282,030
Repairs and Alterations.....	06400	6,000
Equipment.....	07000	10,805
Other Assets.....	69000	50,000
Statutory Revenue Distribution.....	74100	<u>3,500,000</u>
Total.....		\$ 4,488,716

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer of revenue distribution requirements to provide a proportionate share of rebates back to the general fund of local governments based on utilization of the program in accordance with W.Va. Code §6-9-2b.

120 - Auditor's Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2023 Org 1200

Personal Services		
and Employee Benefits	00100	\$ 2,826,332
Unclassified.....	09900	31,866
Current Expenses	13000	1,463,830
Repairs and Alterations.....	06400	12,400
Equipment.....	07000	594,700
Other Assets.....	69000	<u>1,200,000</u>
Total.....		\$ 6,129,128

*121 - Auditor's Office –**Technology Support and Acquisition Fund*

(WV Code Chapter 12)

Fund 1233 FY 2023 Org 1200

Current Expenses	13000	\$ 10,000
Other Assets.....	69000	<u>5,000</u>
Total.....		\$ 15,000

Fifty percent of the deposits made into this fund shall be transferred to the Treasurer's Office – Technology Support and Acquisition Fund (fund 1329, org 1300) for expenditure for the purposes described in W.Va. Code §12-3-10c.

*122 - Auditor's Office –**Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2023 Org 1200

Personal Services		
and Employee Benefits	00100	\$ 3,192,502
Current Expenses	13000	2,303,622
Repairs and Alterations.....	06400	5,500
Equipment.....	07000	850,000
Other Assets.....	69000	508,886

Statutory Revenue Distribution.....	74100	<u>8,000,000</u>
Total.....		\$ 14,860,510

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer and revenue distribution requirements to the Purchasing Improvement Fund (fund 2264), the Entrepreneurship and Innovation Investment Fund (fund 3014), the Hatfield-McCoy Regional Recreation Authority, and the State Park Operating Fund (fund 3265) per W.Va. Code §12-3-10d.

123 - Auditor's Office –

Chief Inspector's Fund

(WV Code Chapter 6)

Fund 1235 FY 2023 Org 1200

Personal Services		
and Employee Benefits.....	00100	\$ 3,682,850
Current Expenses	13000	765,915
Equipment.....	07000	<u>50,000</u>
Total.....		\$ 4,498,765

124 - Auditor's Office –

Volunteer Fire Department Workers'

Compensation Premium Subsidy Fund

(WV Code Chapters 12 and 33)

Fund 1239 FY 2023 Org 1200

Volunteer Fire Department		
Workers' Compensation Subsidy	83200	\$ 2,500,000

125 - Treasurer's Office –

College Prepaid Tuition and Savings Program

Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2023 Org 1300

Personal Services and Employee Benefits	00100	\$	830,643
Unclassified.....	09900		14,000
Current Expenses	13000		<u>1,397,559</u>
Total.....		\$	<u>2,242,202</u>

*126 - Treasurer's Office-**Jumpstart Savings Program Expense Fund*

(WV Code Chapter 18)

Fund 1303 FY 2023 Org 1300

Unclassified.....	09900	\$	188,502
Current Expenses	13000		<u>411,498</u>
Total.....		\$	<u>600,000</u>

*127 - Department of Agriculture –**Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2023 Org 1400

Personal Services and Employee Benefits	00100	\$	2,534,889
Unclassified.....	09900		37,425
Current Expenses	13000		1,856,184
Repairs and Alterations.....	06400		158,500
Equipment.....	07000		436,209
Other Assets.....	69000		<u>10,000</u>
Total.....		\$	<u>5,033,207</u>

*128 - Department of Agriculture –**West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	80,974
Unclassified.....	09900		10,476
Current Expenses	13000		<u>2,200,000</u>
Total.....		\$	2,291,450

*129 - Department of Agriculture –**General John McCausland Memorial Farm Fund*

(WV Code Chapter 19)

Fund 1409 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	76,415
Unclassified.....	09900		2,100
Current Expenses	13000		89,500
Repairs and Alterations.....	06400		36,400
Equipment.....	07000		<u>15,000</u>
Total.....		\$	219,415

The above appropriations shall be expended in accordance with Article 26, Chapter 19 of the Code.

*130 - Department of Agriculture –**Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	888,219
Unclassified.....	09900		15,173
Current Expenses	13000		1,367,464
Repairs and Alterations.....	06400		388,722

Equipment.....	07000	399,393
Other Assets.....	69000	<u>20,000</u>
Total.....		\$ 3,078,971

131 - Department of Agriculture –

Capital Improvements Fund

(WV Code Chapter 19)

Fund 1413 FY 2023 Org 1400

Unclassified.....	09900	20,000
Current Expenses	13000	510,000
Repairs and Alterations.....	06400	250,000
Equipment.....	07000	350,000
Building Improvements	25800	670,000
Other Assets.....	69000	<u>200,000</u>
Total.....		\$ 2,000,000

132 - Department of Agriculture –

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2023 Org 1400

Personal Services and Employee Benefits.....	00100	\$ 1,074,322
Unclassified.....	09900	45,807
Current Expenses	13000	3,410,542
Repairs and Alterations.....	06400	128,500
Equipment.....	07000	10,000
Other Assets.....	69000	27,000
Land	73000	<u>250,000</u>
Total.....		\$ 4,946,171

133 - Department of Agriculture –

Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2023 Org 1400

Current Expenses	13000	\$	112,500
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*134 - Department of Agriculture –**West Virginia Spay Neuter Assistance Fund*

(WV Code Chapter 19)

Fund 1481 FY 2023 Org 1400

Current Expenses	13000	\$	600,000
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*135 - Department of Agriculture –**Veterans and Warriors to Agriculture Fund*

(WV Code Chapter 19)

Fund 1483 FY 2023 Org 1400

Current Expenses	13000	\$	7,500
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*136 - Department of Agriculture –**State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	1,218,564
Unclassified.....	09900		17,000
Current Expenses	13000		1,143,306
Repairs and Alterations.....	06400		82,500
Equipment.....	07000		76,000
Buildings.....	25800		1,000
Other Assets.....	69000		10,000
Land.....	73000		<u>1,000</u>
Total.....		\$	2,549,370

*137 - Attorney General –**Antitrust Enforcement Fund*

(WV Code Chapter 47)

Fund 1507 FY 2023 Org 1500

Personal Services			
and Employee Benefits	00100	\$	363,466
Current Expenses	13000		148,803
Repairs and Alterations.....	06400		1,000
Equipment.....	07000		<u>1,000</u>
Total.....		\$	514,269

*138 - Attorney General –**Preneed Burial Contract Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2023 Org 1500

Personal Services			
and Employee Benefits	00100	\$	228,620
Current Expenses	13000		54,615
Repairs and Alterations.....	06400		1,000
Equipment.....	07000		<u>1,000</u>
Total.....		\$	285,235

*139 - Attorney General –**Preneed Funeral Guarantee Fund*

(WV Code Chapter 47)

Fund 1514 FY 2023 Org 1500

Current Expenses	13000	\$	901,135
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*140 - Secretary of State –**Service Fees and Collection Account*

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2023 Org 1600

Personal Services		
and Employee Benefits	00100	\$ 1,110,490
Unclassified.....	09900	4,524
Current Expenses	13000	<u>8,036</u>
Total.....		\$ 1,123,050

*141 - Secretary of State –**General Administrative Fees Account*

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2023 Org 1600

Personal Services		
and Employee Benefits	00100	\$ 3,041,423
Unclassified.....	09900	25,529
Current Expenses	13000	976,716
Technology Improvements	59900	<u>870,000</u>
Total.....		\$ 4,913,668

DEPARTMENT OF ADMINISTRATION*142 - Department of Administration –**Office of the Secretary –**Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2023 Org 0201

Tobacco Settlement Securitization

Trustee Pass Thru	65000	\$ 80,000,000
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*143 - Department of Administration –**Office of the Secretary –**Employee Pension and Health Care Benefit Fund*

(WV Code Chapter 18)

Fund 2044 FY 2023 Org 0201

Current Expenses	13000	\$ 40,523,000
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The above appropriation for Current Expenses (fund 2044, appropriation 13000) shall be transferred to the Consolidated Public Retirement Board – Teachers’ Accumulation Fund (fund 2600).

*144 - Department of Administration –**Division of Finance –**Shared Services Section Fund*

(WV Code Chapter 5A)

Fund 2020 FY 2023 Org 0209

Personal Services		
and Employee Benefits	00100	\$ 1,545,384
Current Expenses	13000	<u>500,000</u>
Total		\$ 2,045,384

145 - Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2023 Org 0210

Personal Services		
and Employee Benefits	00100	\$ 23,052,937
Unclassified.....	09900	344,119
Current Expenses	13000	13,418,001
Equipment.....	07000	2,050,000
Other Assets.....	69000	<u>1,045,000</u>
Total.....		\$ 39,910,057

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Division of Information Services and Communications as provided by law.

Each spending unit operating from the General Revenue Fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

146 - Division of Purchasing –

Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2023 Org 0213

Personal Services			
and Employee Benefits	00100	\$	579,296
Current Expenses	13000		9,115
BRIM Premium.....	91300		<u>810</u>
Total.....		\$	589,221

147 - Division of Purchasing –

Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2023 Org 0213

Personal Services			
and Employee Benefits	00100	\$	992,206
Unclassified.....	09900		5,562
Current Expenses	13000		492,066
Repairs and Alterations.....	06400		500
Equipment.....	07000		500
Other Assets.....	69000		500
BRIM Premium.....	91300		<u>850</u>
Total.....		\$	1,492,184

*148 - Travel Management –**Aviation Fund*

(WV Code Chapter 5A)

Fund 2302 FY 2023 Org 0215

Unclassified.....	09900	\$	1,000
Current Expenses	13000		149,700
Repairs and Alterations.....	06400		1,275,237
Equipment.....	07000		1,000
Buildings.....	25800		100
Other Assets.....	69000		100
Land	73000		100
Total.....		\$	1,427,237

149 - Fleet Management Division Fund

(WV Code Chapter 5A)

Fund 2301 FY 2023 Org 0216

Personal Services and Employee Benefits	00100	\$	784,375
Unclassified.....	09900		4,000
Current Expenses	13000		11,630,614
Repairs and Alterations.....	06400		12,000
Equipment.....	07000		800,000
Other Assets.....	69000		2,000
Total.....		\$	13,232,989

150 - Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2023 Org 0222

Personal Services and Employee Benefits	00100	\$	4,781,898
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		122,500

Equipment.....	07000	50,000
Other Assets.....	69000	<u>10,000</u>
Total.....		\$ 718,864

From the above fund, the provisions of W.Va. Code §11B-2-18 shall not operate to permit expenditures in excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

153 - Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2023 Org 0305

Personal Services and Employee Benefits.....	00100	\$ 382,137
Current Expenses.....	13000	282,202
Repairs and Alterations.....	06400	53,000
Equipment.....	07000	<u>300,000</u>
Total.....		\$ 1,017,339

154 - Division of Forestry –

Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2023 Org 0305

Personal Services and Employee Benefits.....	00100	\$ 248,321
Current Expenses.....	13000	87,036
Repairs and Alterations.....	06400	<u>11,250</u>
Total.....		\$ 346,607

155 - Division of Forestry –

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2023 Org 0305

Personal Services and Employee Benefits	00100	\$	559,626
Current Expenses	13000		<u>117,466</u>
Total		\$	677,092

156 - Geological and Economic Survey –

Geological and Analytical Services Fund

(WV Code Chapter 29)

Fund 3100 FY 2023 Org 0306

Personal Services and Employee Benefits	00100	\$	37,966
Unclassified	09900		2,182
Current Expenses	13000		141,631
Repairs and Alterations	06400		50,000
Equipment	07000		20,000
Other Assets	69000		<u>10,000</u>
Total		\$	261,779

The above appropriations shall be used in accordance with W.Va. Code §29-2-4.

157 - Division of Labor –

West Virginia Jobs Act Fund

(WV Code Chapter 21)

Fund 3176 FY 2023 Org 0308

Current Expenses	13000		75,000
Equipment	07000		<u>25,000</u>
Total		\$	100,000

158 - Division of Labor –

HVAC Fund

(WV Code Chapter 21)

Fund 3186 FY 2023 Org 0308

Personal Services			
and Employee Benefits	00100	\$	367,925
Unclassified.....	09900		4,000
Current Expenses	13000		82,000
Repairs and Alterations.....	06400		4,500
Buildings	25800		1,000
BRIM Premium.....	91300		<u>8,500</u>
Total.....		\$	467,925

159 - Division of Labor –

Elevator Safety Fund

(WV Code Chapter 21)

Fund 3188 FY 2023 Org 0308

Personal Services			
and Employee Benefits	00100	\$	304,756
Salary and Benefits of Cabinet Secretary			
and Agency Heads	00201		104,180
Unclassified.....	09900		2,261
Current Expenses	13000		94,712
Repairs and Alterations.....	06400		2,000
Buildings	25800		1,000
BRIM Premium.....	91300		<u>8,500</u>
Total.....		\$	517,409

160 - Division of Labor –

Steam Boiler Fund

(WV Code Chapter 21)

Fund 3189 FY 2023 Org 0308

Personal Services			
and Employee Benefits	00100	\$	80,742
Unclassified.....	09900		1,000
Current Expenses	13000		20,000

Fund 3195 FY 2023 Org 0308

Personal Services			
and Employee Benefits	00100	\$	294,645
Unclassified.....	09900		1,847
Current Expenses	13000		43,700
Repairs and Alterations.....	06400		1,000
Buildings	25800		1,000
BRIM Premium.....	91300		<u>3,404</u>
Total.....		\$	345,596

*164 - Division of Labor –**Weights and Measures Fund*

(WV Code Chapter 47)

Fund 3196 FY 2023 Org 0308

Unclassified.....	09900	\$	1,200
Current Expenses	13000		93,000
Repairs and Alterations.....	06400		10,000
Equipment.....	07000		10,000
BRIM Premium.....	91300		<u>7,000</u>
Total.....		\$	121,200

*165 - Division of Labor –**Bedding and Upholstery Fund*

(WV Code Chapter 21)

Fund 3198 FY 2023 Org 0308

Personal Services			
and Employee Benefits	00100	\$	152,270
Unclassified.....	09900		2,000
Current Expenses	13000		145,400
Repairs and Alterations.....	06400		2,000
Buildings	25800		1,000
BRIM Premium.....	91300		<u>8,700</u>
Total.....		\$	311,370

166 - Division of Labor –

Psychophysiological Examiners Fund

(WV Code Chapter 21)

Fund 3199 FY 2023 Org 0308

Current Expenses	13000	\$	4,000
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167 - Division of Natural Resources –

License Fund – Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2023 Org 0310

Wildlife Resources.....	02300	\$	9,759,535
Administration	15500		2,405,642
Capital Improvements and Land Purchase (R).....	24800		2,410,936
Law Enforcement.....	80600		<u>9,787,279</u>
Total.....		\$	24,363,392

The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Natural Resources.

Any unexpended balance remaining in the appropriation for Capital Improvements and Land Purchase (fund 3200, appropriation 24800) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

168 - Division of Natural Resources –

Natural Resources Game Fish and Aquatic Life Fund

(WV Code Chapter 22)

Fund 3202 FY 2023 Org 0310

Current Expenses	13000	\$	125,000
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*169 - Division of Natural Resources –**Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2023 Org 0310

Personal Services			
and Employee Benefits	00100	\$	694,154
Current Expenses	13000		201,810
Equipment	07000		<u>106,615</u>
Total		\$	1,002,579

*170 - Division of Natural Resources –**Planning and Development Division*

(WV Code Chapter 20)

Fund 3205 FY 2023 Org 0310

Personal Services			
and Employee Benefits	00100	\$	467,117
Current Expenses	13000		1,056,876
Repairs and Alterations	06400		15,016
Equipment	07000		8,300
Buildings	25800		8,300
Other Assets	69000		1,900,000
Land	73000		<u>31,700</u>
Total		\$	3,487,309

*171 - Division of Natural Resources –**State Parks and Recreation Endowment Fund*

(WV Code Chapter 20)

Fund 3211 FY 2023 Org 0310

Current Expenses	13000	\$	6,000
Repairs and Alterations	06400		3,000

Unclassified.....	09900	40,985
Current Expenses	13000	1,954,557
WV Mining Extension Service	02600	150,000
Buildings	25800	2,481,358
Land	73000	<u>1,000,000</u>
Total.....		\$ 6,143,256

175 - Department of Commerce –

Office of the Secretary –

Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2023 Org 0327

Personal Services		
and Employee Benefits.....	00100	\$ 2,148,018
Unclassified.....	09900	30,000
Current Expenses	13000	1,315,078
Equipment.....	07000	<u>36,000</u>
Total.....		\$ 3,529,096

176 - State Board of Rehabilitation –

Division of Rehabilitation Services –

West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2023 Org 0932

Personal Services		
and Employee Benefits.....	00100	\$ 119,738
Current Expenses	13000	1,180,122
Repairs and Alterations.....	06400	85,500
Equipment.....	07000	220,000
Buildings	25800	150,000
Other Assets	69000	<u>150,000</u>
Total.....		\$ 1,905,360

DEPARTMENT OF ECONOMIC DEVELOPMENT*177 - Department of Economic Development –**Office of Energy –**Energy Assistance*

(WV Code Chapter 5B)

Fund 3010 FY 2023 Org 0307

Energy Assistance - Total	64700	\$	7,211
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*178 - Department of Economic Development –**Office of the Secretary –**Entrepreneurship and Innovation Investment Fund*

(WV Code Chapter 5B)

Fund 3014 FY 2023 Org 0307

Entrepreneurship and Innovation Investment Fund	70301	\$	1,500,000
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*179 - Department of Economic Development –**Office of the Secretary –**Broadband Development Fund*

(WV Code Chapter 31G)

Fund 3034 FY 2023 Org 0307

Personal Services and Employee Benefits	00100	\$	647,075
Unclassified.....	09900		2,000,000
Current Expenses	13000		<u>235,302,925</u>
Total.....			\$ 237,950,000

*180 - Department of Economic Development –**Office of the Secretary –**Office of Coalfield Community Development*

(WV Code Chapter 5B)

Fund 3162 FY 2023 Org 0307

Personal Services			
and Employee Benefits	00100	\$	438,687
Unclassified.....	09900		8,300
Current Expenses	13000		<u>399,191</u>
Total.....		\$	846,178

*181 - Department of Economic Development –**Office of the Secretary –**Broadband Enhancement Fund*

(WV Code Chapter 31G)

Fund 3013 FY 2023 Org 0307

Personal Services			
and Employee Benefits	00100	\$	131,682
Current Expenses	13000		<u>1,648,318</u>
Total.....		\$	1,780,000

DEPARTMENT OF EDUCATION*182 - State Board of Education –**Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2023 Org 0402

Personal Services			
and Employee Benefits	00100	\$	35,000

Unclassified.....	09900	26,000
Current Expenses	13000	<u>2,539,000</u>
Total.....		\$ 2,600,000

*183 - School Building Authority –**School Construction Fund*

(WV Code Chapters 18 and 18A)

Fund 3952 FY 2023 Org 0404

SBA Construction Grants	24000	\$ 59,845,818
Directed Transfer	70000	<u>1,371,182</u>
Total.....		\$ 61,217,000

The above appropriation for Directed Transfer (fund 3952, appropriation 70000) shall be transferred to the School Building Authority Fund (fund 3959) for the administrative expenses of the School Building Authority.

184 - School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2023 Org 0404

Personal Services and Employee Benefits.....	00100	\$ 1,171,429
Current Expenses	13000	244,195
Repairs and Alterations.....	06400	13,150
Equipment.....	07000	<u>26,000</u>
Total.....		\$ 1,454,774

DEPARTMENT OF ARTS, CULTURE, AND HISTORY*185 - Division of Culture and History –**Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2023 Org 0432

Personal Services		
and Employee Benefits	00100	\$ 235,943
Current Expenses	13000	862,241
Equipment	07000	75,000
Buildings	25800	1,000
Other Assets	69000	52,328
Land	73000	<u>1,000</u>
Total		\$ 1,227,512

DEPARTMENT OF ENVIRONMENTAL PROTECTION

186 - Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2023 Org 0312

Personal Services		
and Employee Benefits	00100	\$ 869,535
Current Expenses	13000	2,060,457
Repairs and Alterations	06400	1,000
Equipment	07000	5,000
Other Assets	69000	<u>4,403</u>
Total		\$ 2,940,395

187 - Division of Environmental Protection –

Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2023 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 805,575
Unclassified	09900	8,072
Current Expenses	13000	155,969
Repairs and Alterations	06400	500
Equipment	07000	1,505
Other Assets	69000	<u>2,000</u>
Total		\$ 973,621

*188 - Division of Environmental Protection –
Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2023 Org 0313

Personal Services			
and Employee Benefits.....	00100	\$	806,186
Unclassified.....	09900		14,647
Current Expenses	13000		876,863
Repairs and Alterations.....	06400		13,000
Equipment.....	07000		53,105
Other Assets.....	69000		<u>20,000</u>
Total.....		\$	1,783,801

189 - Division of Environmental Protection –

Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2023 Org 0313

Personal Services			
and Employee Benefits.....	00100	\$	1,678,252
Current Expenses	13000		16,185,006
Repairs and Alterations.....	06400		79,950
Equipment.....	07000		130,192
Other Assets.....	69000		<u>32,000</u>
Total.....		\$	18,105,400

190 - Division of Environmental Protection –

Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2023 Org 0313

Personal Services			
and Employee Benefits.....	00100	\$	549,957

Current Expenses	13000	<u>1,956,094</u>
Total.....		\$ 2,506,051

191 - Division of Environmental Protection –

Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2023 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 2,187,791
Unclassified.....	09900	15,700
Current Expenses	13000	932,300
Repairs and Alterations.....	06400	9,500
Equipment.....	07000	500
Other Assets.....	69000	<u>500</u>
Total.....		\$ 3,146,291

192 - Division of Environmental Protection –

Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2023 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 3,635,868
Unclassified.....	09900	920
Current Expenses	13000	2,202,231
Repairs and Alterations.....	06400	60,260
Equipment.....	07000	83,000
Other Assets.....	69000	<u>57,500</u>
Total.....		\$ 6,039,779

193 - Division of Environmental Protection –

Underground Storage Tank

Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2023 Org 0313

Personal Services			
and Employee Benefits	00100	\$	486,251
Unclassified.....	09900		7,520
Current Expenses	13000		318,420
Repairs and Alterations.....	06400		5,350
Equipment.....	07000		3,610
Other Assets.....	69000		<u>3,500</u>
Total.....		\$	824,651

194 - Division of Environmental Protection –

Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

Fund 3331 FY 2023 Org 0313

Personal Services			
and Employee Benefits	00100	\$	614,039
Unclassified.....	09900		10,616
Current Expenses	13000		767,905
Repairs and Alterations.....	06400		7,014
Equipment.....	07000		9,000
Other Assets.....	69000		<u>3,500</u>
Total.....		\$	1,412,074

195 - Division of Environmental Protection –

Solid Waste Reclamation and

Environmental Response Fund

(WV Code Chapter 22)

Fund 3332 FY 2023 Org 0313

Personal Services			
and Employee Benefits	00100	\$	849,562
Unclassified.....	09900		22,900
Current Expenses	13000		3,604,737

Repairs and Alterations.....	06400	25,000
Equipment.....	07000	31,500
Buildings.....	25800	500
Other Assets.....	69000	<u>1,000</u>
Total.....		\$ 4,535,199

196 - Division of Environmental Protection –

Solid Waste Enforcement Fund

(WV Code Chapter 22)

Fund 3333 FY 2023 Org 0313

Personal Services		
and Employee Benefits.....	00100	\$ 3,362,824
Unclassified.....	09900	31,145
Current Expenses.....	13000	940,229
Repairs and Alterations.....	06400	30,930
Equipment.....	07000	23,356
Other Assets.....	69000	<u>25,554</u>
Total.....		\$ 4,414,038

197 - Division of Environmental Protection –

Air Pollution Control Fund

(WV Code Chapter 22)

Fund 3336 FY 2023 Org 0313

Personal Services		
and Employee Benefits.....	00100	\$ 6,112,158
Unclassified.....	09900	70,572
Current Expenses.....	13000	1,469,467
Repairs and Alterations.....	06400	84,045
Equipment.....	07000	103,601
Other Assets.....	69000	<u>52,951</u>
Total.....		\$ 7,892,794

*198 - Division of Environmental Protection –**Environmental Laboratory**Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2023 Org 0313

Personal Services			
and Employee Benefits	00100	\$	364,936
Unclassified.....	09900		1,120
Current Expenses	13000		201,146
Repairs and Alterations.....	06400		1,000
Other Assets.....	69000		<u>163,000</u>
Total.....		\$	731,202

*199 - Division of Environmental Protection –**Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2023 Org 0313

Current Expenses	13000	\$	5,182,076
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*200 - Division of Environmental Protection –**Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2023 Org 0313

Current Expenses	13000	\$	60,000
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*201 - Division of Environmental Protection –**Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2023 Org 0313

Personal Services			
and Employee Benefits	00100	\$	680,241
Unclassified.....	09900		400
Current Expenses	13000		2,754,258
Repairs and Alterations.....	06400		800
Equipment.....	07000		500
Other Assets.....	69000		<u>2,500</u>
Total.....		\$	3,438,699

*202 - Division of Environmental Protection –**Mountaintop Removal Fund*

(WV Code Chapter 22)

Fund 3490 FY 2023 Org 0313

Personal Services			
and Employee Benefits	00100	\$	1,120,989
Unclassified.....	09900		1,180
Current Expenses	13000		589,834
Repairs and Alterations.....	06400		27,612
Equipment.....	07000		23,500
Other Assets.....	69000		<u>11,520</u>
Total.....		\$	1,774,635

*203 - Oil and Gas Conservation Commission –**Special Oil and Gas Conservation Fund*

(WV Code Chapter 22C)

Fund 3371 FY 2023 Org 0315

Personal Services			
and Employee Benefits	00100	\$	165,187
Current Expenses	13000		161,225
Repairs and Alterations.....	06400		1,000
Equipment.....	07000		9,481
Other Assets.....	69000		<u>1,500</u>
Total.....		\$	338,393

DEPARTMENT OF HEALTH AND HUMAN RESOURCES*204 - Division of Health –**Ryan Brown Addiction Prevention and Recovery Fund*

(WV Code Chapter 19)

Fund 5111 FY 2023 Org 0506

Current Expenses	13000	\$ 10,667,392
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*205 - Division of Health –**The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2023 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 1,097,919
Unclassified.....	09900	15,500
Current Expenses	13000	<u>3,557,788</u>
Total.....		\$ 4,671,207

*206 - Division of Health –**Hospital Services Revenue Account**Special Fund**Capital Improvement, Renovation and Operations*

(WV Code Chapter 16)

Fund 5156 FY 2023 Org 0506

Institutional Facilities Operations	33500	\$ 44,555,221
Medical Services Trust Fund – Transfer	51200	<u>27,800,000</u>
Total.....		\$ 72,355,221

The total amount of these appropriations shall be paid from the Hospital Services Revenue Account Special Fund created by

W.Va. Code §16-1-13, and shall be used for operating expenses and for improvements in connection with existing facilities.

Additional funds have been appropriated in fund 0525, fiscal year 2023, organization 0506, for the operation of the institutional facilities. The Secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this fund or in connection with the appropriation designated Institutional Facilities Operations in the Consolidated Medical Service Fund (fund 0525, organization 0506).

207 - Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2023 Org 0506

Personal Services			
and Employee Benefits	00100	\$	985,121
Unclassified.....	09900		18,114
Current Expenses	13000		<u>2,209,105</u>
Total.....		\$	3,212,340

208 - Division of Health –

The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2023 Org 0506

Personal Services			
and Employee Benefits	00100	\$	669,651
Unclassified.....	09900		7,113

*212 - Division of Health –**Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2023 Org 0506

Current Expenses	13000	\$	7,579
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*213 - Division of Health –**Medical Cannabis Program Fund*

(WV Code Chapter 16A)

Fund 5420 FY 2023 Org 0506

Personal Services			
and Employee Benefits	00100	\$	509,658
Current Expenses	13000		<u>2,046,040</u>
Total		\$	2,555,698

*214 - West Virginia Health Care Authority –**Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2023 Org 0507

Personal Services			
and Employee Benefits	00100	\$	1,348,406
Unclassified.....	09900		20,100
Current Expenses	13000		<u>785,445</u>
Total		\$	2,153,951

The above appropriation is to be expended in accordance with and pursuant to the provisions of W.Va. Code §16-29B and from the special revolving fund designated Health Care Cost Review Fund.

215 - West Virginia Health Care Authority –

Certificate of Need Program Fund

(WV Code Chapter 16)

Fund 5377 FY 2023 Org 0507

Personal Services			
and Employee Benefits	00100	\$	844,926
Current Expenses	13000		<u>474,967</u>
Total		\$	1,319,893

216 - Division of Human Services –

Health Care Provider Tax –

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2023 Org 0511

Medical Services	18900	\$	393,594,315
Medical Services			
Administrative Costs	78900		<u>251,273</u>
Total		\$	393,845,588

The above appropriation for Medical Services Administrative Costs (fund 5090, appropriation 78900) shall be transferred to a special revenue account in the treasury for use by the Department of Health and Human Resources for administrative purposes. The remainder of all moneys deposited in the fund shall be transferred to the Medical Services Program Fund (fund 5084).

217 - Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2023 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 24,809,509
Unclassified.....	09900	380,000
Current Expenses	13000	<u>12,810,491</u>
Total.....		\$ 38,000,000

218 - Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2023 Org 0511

Medical Services.....	18900	\$ 82,500,000
Medical Services		
Administrative Costs	78900	<u>646,750</u>
Total.....		\$ 83,146,750

The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of W.Va. Code §9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state match for Medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the Division of Human Services accounts.

219 - Division of Human Services –

James “Tiger” Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2023 Org 0511

Unclassified.....	09900	\$ 7,000
Current Expenses	13000	<u>393,000</u>
Total.....		\$ 400,000

*220 - Division of Human Services –
Domestic Violence Legal Services Fund
(WV Code Chapter 48)*

Fund 5455 FY 2023 Org 0511

Current Expenses	13000	\$	900,000
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221 - Division of Human Services –

*West Virginia Works Separate State College Program Fund
(WV Code Chapter 9)*

Fund 5467 FY 2023 Org 0511

Current Expenses	13000	\$	500,000
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222 - Division of Human Services –

*West Virginia Works Separate State Two-Parent Program Fund
(WV Code Chapter 9)*

Fund 5468 FY 2023 Org 0511

Current Expenses	13000	\$	1,500,000
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223 - Division of Human Services –

*Marriage Education Fund
(WV Code Chapter 9)*

Fund 5490 FY 2023 Org 0511

Personal Services and Employee Benefits	00100	\$	10,000
Current Expenses	13000		<u>25,000</u>
Total		\$	35,000

DEPARTMENT OF HOMELAND SECURITY

224 - Department of Homeland Security –

Office of the Secretary –

Law-Enforcement, Safety and Emergency Worker

Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2023 Org 0601

Current Expenses 13000 \$ 32,000

225 - Division of Emergency Management –

Statewide Interoperable Radio Network Account

(WV Code Chapter 15)

Fund 6208 FY 2023 Org 0606

Current Expenses 13000 \$ 80,000

226 - Division of Emergency Management –

West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2023 Org 0606

Unclassified.....	09900	\$	20,000
Current Expenses	13000		3,980,000
Repairs and Alterations.....	06400		250,000
Equipment.....	07000		<u>250,000</u>
Total.....		\$	<u>4,500,000</u>

227 - Division of Corrections and Rehabilitation –

Parolee Supervision Fees

(WV Code Chapter 15A)

Fund 6362 FY 2023 Org 0608

Personal Services		
and Employee Benefits	00100	\$ 1,164,081
Unclassified.....	09900	9,804
Current Expenses	13000	758,480
Equipment.....	07000	30,000
Other Assets.....	69000	<u>40,129</u>
Total.....		\$ 2,002,494

228 - Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2023 Org 0608

Personal Services		
and Employee Benefits	00100	\$ 1,974,532
Debt Service.....	04000	9,000,000
Current Expenses	13000	<u>245,472</u>
Total.....		\$ 11,220,004

229 - West Virginia State Police –

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2023 Org 0612

Personal Services		
and Employee Benefits	00100	\$ 1,965,212
Current Expenses	13000	1,488,211
Repairs and Alterations	06400	204,500
Equipment.....	07000	3,770,751
Buildings.....	25800	534,000
Other Assets.....	69000	5,000
BRIM Premium.....	91300	<u>302,432</u>
Total.....		\$ 8,270,106

The total amount of these appropriations shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

230 - West Virginia State Police –

Forensic Laboratory Fund

(WV Code Chapter 15)

Fund 6511 FY 2023 Org 0612

Personal Services		
and Employee Benefits	00100	\$ 1,615,128
Current Expenses	13000	90,000
Repairs and Alterations.....	06400	5,000
Equipment.....	07000	<u>545,000</u>
Total.....		\$ 2,255,128

231 - West Virginia State Police –

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2023 Org 0612

Current Expenses	13000	\$ 1,327,000
Equipment.....	07000	3,491,895
BRIM Premium.....	91300	<u>154,452</u>
Total.....		\$ 4,973,347

The total amount of these appropriations shall be paid from the special revenue fund out of receipts collected pursuant to W.Va. Code §11-15-9a and 16 and paid into a revolving fund account in the State Treasury.

232 - West Virginia State Police –

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2023 Org 0612

Buildings	25800	\$ 1,022,778
Land	73000	1,000
BRIM Premium.....	91300	<u>77,222</u>
Total.....		\$ 1,101,000

233 - West Virginia State Police –

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2023 Org 0612

Current Expenses	13000	\$ 225,000
Repairs and Alterations.....	06400	20,000
Equipment.....	07000	250,000
Buildings	25800	40,000
Other Assets.....	69000	45,000
BRIM Premium.....	91300	<u>5,000</u>
Total.....		\$ 585,000

234 - West Virginia State Police –

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2023 Org 0612

Personal Services		
and Employee Benefits.....	00100	\$ 268,731
Current Expenses	13000	376,443
Repairs and Alterations.....	06400	500
Equipment.....	07000	300,500
Other Assets.....	69000	300,500
BRIM Premium.....	91300	<u>18,524</u>
Total.....		\$ 1,265,198

235 - West Virginia State Police –

Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2023 Org 0612

Current Expenses	13000	\$	8,300
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236 - West Virginia State Police –

State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2023 Org 0612

Current Expenses	13000	\$	160,000
Repairs and Alterations.....	06400		<u>40,000</u>
Total.....		\$	200,000

237 - Fire Commission –

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2023 Org 0619

Personal Services			
and Employee Benefits.....	00100	\$	3,616,684
Unclassified.....	09900		3,800
Current Expenses	13000		1,646,550
Repairs and Alterations.....	06400		58,500
Equipment.....	07000		140,800
BRIM Premium.....	91300		<u>65,000</u>
Total.....		\$	5,531,334

238 - Division of Administrative Services –

WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2023 Org 0623

Personal Services			
and Employee Benefits	00100	\$	166,250
Unclassified.....	09900		750
Current Expenses	13000		1,846,250
Repairs and Alterations.....	06400		<u>1,000</u>
Total.....		\$	2,014,250

239 - Division of Administrative Services –

Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2023 Org 0623

Personal Services			
and Employee Benefits	00100	\$	24,748
Current Expenses	13000		<u>1,478,135</u>
Total.....		\$	1,502,883

240 - Division of Administrative Services –

Second Chance Driver's License Program Account

(WV Code Chapter 17B)

Fund 6810 FY 2023 Org 0623

Current Expenses	13000	\$	125,000
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DEPARTMENT OF REVENUE

241 - Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2023 Org 0303

Personal Services			
and Employee Benefits	00100	\$	2,653,645
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		119,000

Current Expenses	13000	650,475
Equipment.....	07000	<u>8,500</u>
Total.....		\$ 3,431,620

242 - Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2023 Org 0701

Retirement Systems –

Unfunded Liability.....	77500	\$ 20,000,000
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The above appropriation for Retirement System – Unfunded Liability shall be transferred to the Consolidated Public Retirement Board – West Virginia Teachers Retirement System Employers School Aid Formula Funds Holding Account Fund (fund 2606).

243 - Home Rule Board Operations

(WV Code Chapter 8)

Fund 7010 FY 2023 Org 0701

Personal Services		
and Employee Benefits.....	00100	\$ 25,000
Unclassified.....	09900	680
Current Expenses	13000	42,000
Repairs and Alterations.....	06400	120
Equipment.....	07000	<u>200</u>
Total.....		\$ 68,000

244 - Tax Division –

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2023 Org 0702

Personal Services		
and Employee Benefits.....	00100	\$ 27,441

Equipment.....	07000	<u>15,000</u>
Total.....		\$ 50,000

248 - Tax Division –

Local Sales Tax and Excise Tax

Administration Fund

(WV Code Chapter 11)

Fund 7099 FY 2023 Org 0702

Personal Services		
and Employee Benefits.....	00100	\$ 1,567,732
Unclassified.....	09900	10,000
Current Expenses.....	13000	784,563
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	<u>5,000</u>
Total.....		\$ 2,368,295

249 - State Budget Office –

Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2023 Org 0703

Public Employees Insurance Reserve Fund		
– Transfer.....	90300	\$ 6,800,000

The above appropriation for Public Employees Insurance Reserve Fund – Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.

250 - Insurance Commissioner –

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2023 Org 0704

Personal Services		
and Employee Benefits	00100	\$ 760,866
Current Expenses	13000	1,357,201
Repairs and Alterations	06400	3,000
Equipment	07000	81,374
Buildings	25800	8,289
Other Assets	69000	<u>11,426</u>
Total		\$ 2,222,156

251 - Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2023 Org 0704

Personal Services		
and Employee Benefits	00100	\$ 584,078
Current Expenses	13000	202,152
Repairs and Alterations	06400	5,000
Equipment	07000	34,225
Buildings	25800	4,865
Other Assets	69000	<u>19,460</u>
Total		\$ 849,780

252 - Insurance Commissioner –

Insurance Commission Fund

(WV Code Chapter 33)

Fund 7152 FY 2023 Org 0704

Personal Services		
and Employee Benefits	00100	\$ 24,627,046
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	136,500
Current Expenses	13000	8,797,758
Repairs and Alterations	06400	68,614
Equipment	07000	1,728,240

Buildings	25800		25,000
Other Assets	69000		<u>340,661</u>
Total			\$ 35,723,819

253 - Insurance Commissioner –

Insurance Fraud Prevention Fund

(WV Code Chapter 33)

Fund 7153 FY 2023 Org 0704

Current Expenses	13000	\$	15,000
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254 - Insurance Commissioner –

Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2023 Org 0704

Employee Benefits	01000	\$	50,000
Current Expenses	13000		<u>250,500,000</u>
Total			\$ 250,550,000

255 - Insurance Commissioner –

Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2023 Org 0704

Current Expenses	13000	\$	15,000,000
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256 - Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2023 Org 0704

Current Expenses	13000	\$	9,000,000
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257 - Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2023 Org 0704

Current Expenses	13000	\$	14,000,000
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258 - Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2023 Org 0706

Personal Services			
and Employee Benefits	00100	\$	321,604
Current Expenses	13000		154,344
Equipment	07000		<u>100</u>
Total		\$	476,048

259 - Racing Commission –

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2023 Org 0707

Medical Expenses – Total	24500	\$	154,000
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The total amount of this appropriation shall be paid from the special revenue fund out of collections of license fees and fines as provided by law.

No expenditures shall be made from this fund except for hospitalization, medical care and/or funeral expenses for persons contributing to this fund.

260 - Racing Commission –

Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2023 Org 0707

Personal Services		
and Employee Benefits	00100	\$ 272,430
Current Expenses	13000	85,433
Other Assets	69000	<u>5,000</u>
Total		\$ 362,863

261 - Racing Commission –

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2023 Org 0707

Personal Services		
and Employee Benefits	00100	\$ 2,380,713
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	48,443
Current Expenses	13000	497,284
Repairs and Alterations	06400	5,000
Other Assets	69000	<u>40,000</u>
Total		\$ 2,971,440

262 - Racing Commission –

Administration, Promotion, Education, Capital Improvement

and Greyhound Adoption Programs

to include Spaying and Neutering Account

(WV Code Chapter 19)

Fund 7307 FY 2023 Org 0707

Personal Services		
and Employee Benefits	00100	\$ 924,832
Current Expenses	13000	160,099
Other Assets	69000	<u>200,000</u>
Total		\$ 1,284,931

*263 - Alcohol Beverage Control Administration –**Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2023 Org 0708

Personal Services		
and Employee Benefits	00100	\$ 147,213
Current Expenses	13000	54,186
Repairs and Alterations.....	06400	7,263
Equipment.....	07000	10,000
Buildings.....	25800	100,000
Transfer Liquor Profits and Taxes	42500	30,750
Other Assets.....	69000	<u>100</u>
Total.....		\$ 349,512

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

264 - Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2023 Org 0708

Personal Services		
and Employee Benefits	00100	\$ 5,849,609
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	122,500
Current Expenses	13000	2,890,577
Repairs and Alterations.....	06400	91,000
Equipment.....	07000	108,000
Buildings.....	25800	375,100
Purchase of Supplies for Resale.....	41900	76,500,000
Transfer Liquor Profits and Taxes	42500	21,200,000
Other Assets.....	69000	125,100
Land	73000	<u>100</u>
Total.....		\$ 107,261,986

The total amount of these appropriations shall be paid from a special revenue fund out of liquor revenues and any other revenues available.

The above appropriations include the salary of the commissioner and the salaries, expenses, and equipment of administrative offices, warehouses, and inspectors.

The above appropriations include funding for the Tobacco/Alcohol Education Program.

There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.

265 - State Athletic Commission Fund

(WV Code Chapter 29)

Fund 7009 FY 2023 Org 0933

Personal Services			
and Employee Benefits	00100	\$	17,500
Current Expenses	13000		<u>28,000</u>
Total		\$	45,500

DEPARTMENT OF TRANSPORTATION

266 - Division of Motor Vehicles –

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2023 Org 0802

Current Expenses	13000	\$	189,000
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267 - Division of Motor Vehicles –

Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2023 Org 0802

Personal Services		
and Employee Benefits	00100	\$ 3,929,736
Current Expenses	13000	4,372,596
Repairs and Alterations.....	06400	16,000
Equipment.....	07000	75,000
Other Assets.....	69000	10,000
BRIM Premium.....	91300	<u>75,116</u>
Total.....		\$ 8,478,448

*268 - Division of Highways –**A. James Manchin Fund*

(WV Code Chapter 22)

Fund 8319 FY 2023 Org 0803

Current Expenses	13000	\$ 2,500,000
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*269 - State Rail Authority -**West Virginia Commuter Rail Access Fund*

(WV Code Chapter 29)

Fund 8402 FY 2023 Org 0804

Current Expenses	13000	\$ 600,000
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DEPARTMENT OF VETERANS' ASSISTANCE*270 - Veterans' Facilities Support Fund*

(WV Code Chapter 9A)

Fund 6703 FY 2023 Org 0613

Current Expenses	13000	\$ 1,654,234
Other Assets.....	69000	<u>10,000</u>
Total.....		\$ 1,664,234

271 - Department of Veterans' Assistance –

WV Veterans' Home –

Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2023 Org 0618

Current Expenses	13000	\$	289,400
Repairs and Alterations.....	06400		<u>10,600</u>
Total.....		\$	300,000

BUREAU OF SENIOR SERVICES

272 - Bureau of Senior Services –

Community Based Service Fund

(WV Code Chapter 29)

Fund 5409 FY 2023 Org 0508

Personal Services			
and Employee Benefits.....	00100	\$	140,202
Salary and Benefits of Cabinet Secretary			
and Agency Heads	00201		25,795
Current Expenses	13000		<u>10,348,710</u>
Total.....		\$	10,514,707

The total amount of these appropriations are funded from annual table game license fees to enable the aged and disabled citizens of West Virginia to stay in their homes through the provision of home and community-based services.

HIGHER EDUCATION POLICY COMMISSION

273 - Higher Education Policy Commission –

System –

Tuition Fee Capital Improvement Fund

*(Capital Improvement and Bond Retirement Fund)**Control Account*

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2023 Org 0442

Debt Service.....	04000	\$ 27,402,035
General Capital Expenditures	30600	5,000,000
Facilities Planning and Administration	38600	<u>456,239</u>
Total.....		\$ 32,858,274

The total amount of these appropriations shall be paid from the Special Capital Improvement Fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for Debt Service, may be transferred to special revenue funds for capital improvement projects at the institutions.

274 - Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2023 Org 0442

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to W.Va. Code §18-12B-8, which have since been refunded.

275 - Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2023 Org 0442

Any unexpended balance remaining in the appropriation for Capital Improvements – Total (fund 4908, appropriation 95800) at the close of fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

The total amount of this appropriation shall be paid from the sale of the Series 2017 Community and Technical College Capital Improvement Refunding Revenue Bonds and anticipated interest earnings.

276 - West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2023 Org 0463

Personal Services		
and Employee Benefits	00100	\$ 11,118,758
Current Expenses	13000	4,524,300
Repairs and Alterations.....	06400	425,000
Equipment.....	07000	512,000
Buildings	25800	150,000
Other Assets.....	69000	<u>50,000</u>
Total.....		\$ 16,780,058

277 - Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund xxxx FY 2023 Org 0471

Marshall Medical School	17300	\$ 5,500,000
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278 - West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund xxxx FY 2023 Org 0476

West Virginia School of Osteopathic Medicine	17200	\$	3,900,000
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MISCELLANEOUS BOARDS AND COMMISSIONS

279 - Board of Barbers and Cosmetologists –

Barbers and Beauticians Special Fund

(WV Code Chapters 16 and 30)

Fund 5425 FY 2023 Org 0505

Personal Services and Employee Benefits	00100	\$	568,198
Current Expenses	13000		234,969
Repairs and Alterations.....	06400		<u>5,000</u>
Total.....		\$	808,167

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Board of Barbers and Cosmetologists as provided by law.

280 - Hospital Finance Authority –

Hospital Finance Authority Fund

(WV Code Chapter 16)

Fund 5475 FY 2023 Org 0509

Personal Services and Employee Benefits	00100	\$	10,000
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		93,339

Unclassified.....	09900	1,501
Current Expenses	13000	<u>55,268</u>
Total.....		\$ 160,108

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

281 - State Armory Board –

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2023 Org 0603

Personal Services and Employee Benefits.....	00100	\$ 1,687,298
Current Expenses	13000	650,000
Repairs and Alterations.....	06400	385,652
Equipment.....	07000	250,000
Buildings.....	25800	520,820
Other Assets.....	69000	350,000
Land	73000	<u>200,000</u>
Total.....		\$ 4,043,770

From the above appropriations, the Adjutant General may receive and expend funds to conduct operations and activities to include functions of the Military Authority. The Adjutant General may transfer funds between appropriations, except no funds may be transferred to Personal Services and Employee Benefits (fund 6057, appropriation 00100).

282 - WV State Board of Examiners for Licensed Practical Nurses –

Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2023 Org 0906

Personal Services and Employee Benefits.....	00100	\$ 507,607
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Current Expenses	13000	<u>107,700</u>
Total.....		\$ 615,307

283 - WV Board of Examiners for Registered Professional Nurses –

Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2023 Org 0907

Personal Services		
and Employee Benefits	00100	\$ 1,342,970
Current Expenses	13000	312,655
Repairs and Alterations.....	06400	3,000
Equipment.....	07000	25,000
Other Assets.....	69000	<u>4,500</u>
Total.....		\$ 1,688,125

284 - Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2023 Org 0926

Personal Services		
and Employee Benefits	00100	\$ 12,543,164
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	318,640
Unclassified.....	09900	147,643
Current Expenses	13000	2,507,202
Repairs and Alterations.....	06400	120,000
Equipment.....	07000	160,000
Buildings.....	25800	10
PSC Weight Enforcement.....	34500	4,742,560
Debt Payment/Capital Outlay	52000	350,000
Land	73000	10
BRIM Premium.....	91300	<u>172,216</u>
Total.....		\$ 21,061,445

The total amount of these appropriations shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to transfer up to \$500,000 from this fund to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

285 - Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2023 Org 0926

Personal Services			
and Employee Benefits.....	00100	\$	288,700
Salary and Benefits of Cabinet Secretary			
and Agency Heads.....	00201		11,949
Unclassified.....	09900		3,851
Current Expenses.....	13000		93,115
Repairs and Alterations.....	06400		<u>4,000</u>
Total.....		\$	401,615

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

286 - Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2023 Org 0926

Personal Services		
and Employee Benefits	00100	\$ 2,367,199
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	67,711
Unclassified.....	09900	29,233
Current Expenses	13000	577,557
Repairs and Alterations	06400	23,000
Equipment.....	07000	<u>50,000</u>
Total.....		\$ 3,114,700

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

287 - Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2023 Org 0926

Personal Services		
and Employee Benefits	00100	\$ 889,096
Current Expenses	13000	386,472
Equipment.....	07000	9,872
BRIM Premium.....	91300	<u>4,660</u>
Total.....		\$ 1,290,100

The total amount of these appropriations shall be supported by cash from a special revenue fund out of collections made by the Public Service Commission.

288 - Real Estate Commission –

Real Estate License Fund

(WV Code Chapter 30)

Fund 8635 FY 2023 Org 0927

Personal Services			
and Employee Benefits	00100	\$	628,277
Current Expenses	13000		293,122
Repairs and Alterations	06400		2,500
Equipment	07000		<u>5,000</u>
Total		\$	928,899

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

289 - WV Board of Examiners for Speech-Language

Pathology and Audiology –

Speech-Language Pathology and Audiology Operating Fund

(WV Code Chapter 30)

Fund 8646 FY 2023 Org 0930

Personal Services			
and Employee Benefits	00100	\$	97,564
Current Expenses	13000		<u>63,499</u>
Total		\$	161,063

290 - WV Board of Respiratory Care –

Board of Respiratory Care Fund

(WV Code Chapter 30)

Fund 8676 FY 2023 Org 0935

Personal Services			
and Employee Benefits	00100	\$	88,904
Current Expenses	13000		<u>62,709</u>
Total		\$	151,613

291 - WV Board of Licensed Dietitians –

Dietitians Licensure Board Fund

(WV Code Chapter 30)

Fund 8680 FY 2023 Org 0936

Personal Services and Employee Benefits	00100	\$	20,219
Current Expenses	13000		<u>20,250</u>
Total		\$	40,469

*292 - Massage Therapy Licensure Board –**Massage Therapist Board Fund*

(WV Code Chapter 30)

Fund 8671 FY 2023 Org 0938

Personal Services and Employee Benefits	00100	\$	112,641
Current Expenses	13000		<u>42,388</u>
Total		\$	155,029

*293 - Board of Medicine –**Medical Licensing Board Fund*

(WV Code Chapter 30)

Fund 9070 FY 2023 Org 0945

Personal Services and Employee Benefits	00100	\$	1,577,216
Current Expenses	13000		1,108,789
Repairs and Alterations	06400		<u>8,000</u>
Total		\$	2,694,005

*294 - West Virginia Enterprise Resource Planning Board –**Enterprise Resource Planning System Fund*

(WV Code Chapter 12)

Fund 9080 FY 2023 Org 0947

Personal Services and Employee Benefits	00100	\$	5,494,051
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Unclassified.....	09900	132,000
Current Expenses	13000	17,214,993
Repairs and Alterations.....	06400	300
Equipment.....	07000	502,000
Buildings.....	25800	2,000
Other Assets.....	69000	<u>2,004,500</u>
Total.....		\$ 25,349,844

295 - Board of Treasury Investments –

Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2023 Org 0950

Personal Services		
and Employee Benefits.....	00100	\$ 857,714
Unclassified.....	09900	14,850
Current Expenses	13000	580,889
BRIM Premium.....	91300	31,547
Fees of Custodians, Fund Advisors		
and Fund Managers.....	93800	<u>3,500,000</u>
Total.....		\$ 4,985,000

There is hereby appropriated from this fund, in addition to the above appropriation if needed, an amount of funds necessary for the Board of Treasury Investments to pay the fees and expenses of custodians, fund advisors and fund managers for the consolidated fund of the State as provided in Article 6C, Chapter 12 of the Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

296 - Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2023 Org 0951

Personal Services		
and Employee Benefits.....	00100	\$ 2,559,000

Repairs and Alterations.....	06400	10,000
Unclassified.....	09900	21,000
Current Expenses	13000	500,000
BRIM Premium.....	91300	<u>8,500</u>
Total.....		\$ 3,098,500
Total TITLE II, Section 3 – Other Funds (Including claims against the state)		<u>\$ 2,001,383,914</u>

Sec. 4. Appropriations from lottery net profits. — Net profits of the lottery are to be deposited by the Director of the Lottery to the following accounts in the amounts indicated. The Director of the Lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the Director of the Lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 for that purpose. Upon receipt of reimbursement of amounts so transferred, the Director of the Lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

297 - Education, Arts, Sciences and Tourism –

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2023 Org 0211

	Appropriation	Lottery Funds
Debt Service – Total	31000	\$ 10,000,000

*298 - Department of Tourism –**Office of the Secretary*

(WV Code Chapter 5B)

Fund 3067 FY 2023 Org 0304

Tourism – Telemarketing Center	46300	\$	82,080
Tourism – Advertising (R).....	61800		2,422,407
Tourism – Operations (R).....	66200		<u>4,339,884</u>
Total.....		\$	6,844,371

Any unexpended balances remaining in the appropriations for Tourism – Advertising (fund 3067, appropriation 61800) and Tourism – Operations (fund 3067, appropriation 66200) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

299 - Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2023 Org 0310

Personal Services			
and Employee Benefits.....	00100	\$	2,558,278
Current Expenses	13000		26,900
Pricketts Fort State Park.....	32400		106,560
Non-Game Wildlife (R).....	52700		405,088
State Parks and Recreation			
Advertising (R).....	61900		<u>494,578</u>
Total.....		\$	3,591,404

Any unexpended balances remaining in the appropriations for Capital Outlay – Parks (fund 3267, appropriation 28800), Non-Game Wildlife (fund 3267, appropriation 52700), and State Parks and Recreation Advertising (fund 3267, appropriation 61900) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

300 - State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2023 Org 0402

FBI Checks.....	37200	\$	119,574
Vocational Education			
Equipment Replacement.....	39300		800,000
Assessment Program (R).....	39600		490,439
Literacy Project.....	89900		350,000
21 st Century Technology Infrastructure			
Network Tools and Support (R)	93300		<u>12,611,880</u>
Total.....		\$	14,371,893

Any unexpended balances remaining in the appropriations for Assessment Program (fund 3951, appropriation 39600), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, appropriation 93300) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

*301 - State Department of Education –**School Building Authority –**Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2023 Org 0404

Debt Service – Total	31000	\$	15,320,363
Directed Transfer	70000		<u>2,679,637</u>
Total.....		\$	18,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

The above appropriation for Directed Transfer (fund 3963, appropriation 70000) may be transferred to the Department of

Education, State Board of Education, School Building Authority, School Construction Fund, fund 3952, organization 0404 to be used for school construction and maintenance projects.

302 - Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2023 Org 0432

Huntington Symphony	02700	\$	59,058
Preservation West Virginia (R).....	09200		491,921
Fairs and Festivals (R)	12200		1,346,814
Commission for National and Community Service (R)	19300		380,275
Archeological Curation/Capital Improvements (R).....	24600		38,546
Historic Preservation Grants (R).....	31100		417,933
West Virginia Public Theater.....	31200		120,019
Greenbrier Valley Theater	42300		115,000
Theater Arts of West Virginia.....	46400		90,000
Marshall Artists Series	51800		36,005
Grants for Competitive Arts Program (R)	62400		811,500
West Virginia State Fair.....	65700		31,241
Save the Music	68000		40,000
Contemporary American Theater Festival	81100		57,281
Independence Hall	81200		27,277
Mountain State Forest Festival	86400		38,187
WV Symphony.....	90700		59,058
Wheeling Symphony.....	90800		59,058
Appalachian Children's Chorus.....	91600		54,554
Total.....		\$	4,273,727

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree Museum (Fayette)

\$2,673, Arts Monongahela (Monongalia) \$11,881, Barbour County Arts and Humanities Council \$891, Beckley Main Street (Raleigh) \$2,970, Buffalo Creek Memorial (Logan) \$2,970, Carnegie Hall (Greenbrier) \$46,899, Ceredo Historical Society (Wayne) \$1,188, Ceredo Kenova Railroad Museum (Wayne) \$1,188, Ceredo Museum (Wayne) \$720, Children's Theatre of Charleston (Kanawha) \$3,127, Chuck Mathena Center (Mercer) \$62,532, Collis P. Huntington Railroad Historical Society (Cabell) \$5,941, Country Music Hall of Fame and Museum (Marion) \$4,159, First Stage Children's Theater Company \$1,188, Flannigan Murrell House (Summers) \$3,781, Fort Ashby Fort (Mineral) \$891, Fort New Salem (Harrison) \$2,198, Fort Randolph (Mason) \$2,970, General Adam Stephen Memorial Foundation (Berkeley) \$11,006, Grafton Mother's Day Shrine Committee (Taylor) \$9,029, Hardy County Tour and Crafts Association \$11,881, Heartwood in the Hills (Calhoun) \$5,040, Heritage Farm Museum & Village (Cabell) \$29,703, Historic Fayette Theater (Fayette) \$3,267, Historic Middleway Conservancy (Jefferson) \$594, Jefferson County Black History Preservation Society \$2,970, Jefferson County Historical Landmark Commission \$4,753, Maddie Carroll House (Cabell) \$4,455, Marshall County Historical Society \$5,049, McCoy Theater (Hardy) \$11,881, Memorial Day Patriotic Exercise (Taylor) \$20,000, Morgantown Theater Company (Monongalia) \$11,881, Mountaineer Boys' State (Lewis) \$5,941, Nicholas Old Main Foundation (Nicholas) \$1,188, Norman Dillon Farm Museum (Berkeley) \$5,941, Old Opera House Theater Company (Jefferson) \$8,911, Parkersburg Arts Center (Wood) \$11,881, Pocahontas Historic Opera House \$3,564, Raleigh County All Wars Museum \$5,941, Rhododendron Girl's State (Ohio) \$5,941, Roane County 4-H and FFA Youth Livestock Program \$2,970, Society for the Preservation of McGrew House (Preston) \$2,079, Southern West Virginia Veterans' Museum (Raleigh) \$3,393, Summers County Historic Landmark Commission \$2,970, Those Who Served War Museum (Mercer) \$2,376, Three Rivers Avian Center (Summers) \$5,311, Veterans Committee for Civic Improvement of Huntington (Wayne) \$2,970, West Virginia Museum of Glass (Lewis) \$2,970, West Virginia Music Hall of Fame (Kanawha) \$20,792, YMCA Camp Horseshoe

(Tucker) \$59,406, Youth Museum of Southern West Virginia (Raleigh) \$7,129, Z.D. Ramsdell House (Wayne) \$720.

From the above appropriation for Fairs and Festivals (fund 3534, appropriation 12200) funding shall be provided to A Princeton 4th (Mercer) \$1,800, African-American Cultural Heritage Festival (Jefferson) \$2,970, Alderson 4th of July Celebration (Greenbrier) \$2,970, Allegheny Echo (Pocahontas) \$4,456, Alpine Festival/Leaf Peepers Festival (Tucker) \$6,683, American Civil War (Grant) \$3,127, American Legion Post 8 Veterans Day Parade (McDowell) \$1,250, Angus Beef and Cattle Show (Lewis) \$891, Annual Don Redman Heritage Concert & Awards (Jefferson) \$938, Annual Ruddle Park Jamboree (Pendleton) \$4,690, Antique Market Fair (Lewis) \$1,188, Apple Butter Festival (Morgan) \$3,564, Arkansaw Homemaker's Heritage Weekend (Hardy) \$2,079, Armed Forces Day-South Charleston (Kanawha) \$1,782, Arthurdale Heritage New Deal Festival (Preston) \$2,970, Athens Town Fair (Mercer) \$1,188, Augusta Fair (Randolph) \$2,970, Autumn Harvest Fest (Monroe) \$2,448, Back Home Festival (Wetzel) \$5,000, Barbour County Fair (Barbour) \$14,851, Barboursville Octoberfest (Cabell) \$2,970, Battelle District Fair (Monongalia) \$3,340, Battle of Dry Creek (Greenbrier) \$891, Battle of Point Pleasant Memorial Committee (Mason) \$2,970, Belle Town Fair (Kanawha) \$2,673, Belleville Homecoming (Wood) \$11,881, Bergoo Down Home Days (Webster) \$1,485, Berkeley County Youth Fair (Berkeley) \$10,990, Black Bear 4K Mountain Bike Race (Kanawha) \$684, Black Heritage Festival (Harrison) \$3,564, Black Walnut Festival (Roane) \$5,940, Blacksville VFD Memorial Day Celebration (Monongalia) \$1,000, Blast from the Past (Upshur) \$1,440, Blue-Gray Reunion (Barbour) \$2,079, Blue Ridge Arts and Crafts Festival (Jefferson) \$5,000, Boone County Fair (Boone) \$5,940, Boone County Labor Day Celebration (Boone) \$2,376, Bradshaw Fall Festival (McDowell) \$1,188, Bramwell Labor Day (Mercer) \$5,000, Brandonville Heritage Day (Preston) \$1,048, Braxton County Fair (Braxton) \$6,832, Braxton County Monster Fest / West Virginia Autumn Festival (Braxton) \$1,485, Brooke County Fair (Brooke) \$2,079, Bruceton Mills Good Neighbor Days (Preston) \$1,188, Buckwheat Festival (Preston) \$5,050, Buffalo

4th of July Celebration (Putnam) \$400, Buffalo October Fest (Putnam) \$3,240, Burlington Apple Harvest Auxiliary (Mineral) \$13,821, Burlington Pumpkin Harvest Festival (Raleigh) \$2,970, Burlington Volunteer Fire and Rescue Carnival (Mineral) \$4,000, Burnsville Freedom Festival (Braxton) \$1,407, Cabell County Fair (Cabell) \$5,940, Calhoun County Wood Festival (Calhoun) \$1,188, Campbell's Creek Community Fair (Kanawha) \$1,485, Cape Coalwood Festival Association (McDowell) \$1,485, Cacapon River Fest (Hampshire) \$2,500, Capon Bridge Founders Day Festival (Hampshire) \$1,188, Capon Springs Ruritan 4th of July (Hampshire) \$684, Cass Homecoming (Pocahontas) \$1,188, Cedarville Town Festival (Gilmer) \$684, Celebration of America (Monongalia) \$3,564, Chapmanville Apple Butter Festival (Logan) \$684, Chapmanville Fire Department 4th of July (Logan) \$1,782, Charles Town Christmas Festival (Jefferson) \$2,970, Charles Town Heritage Festival (Jefferson) \$2,970, Cherry River Festival (Nicholas) \$3,861, Chester Fireworks (Hancock) \$891, Chester 4th of July Festivities (Hancock) \$2,970, Chilifest West Virginia State Chili Championship (Cabell) \$1,563, Christmas In Our Town (Marion) \$3,127, Christmas in Shepherdstown (Jefferson) \$2,376, Christmas in the Park (Brooke) \$2,970, Christmas in the Park (Logan) \$14,851, Christmas on Main Street (Hancock) \$11,881, City of Dunbar Critter Dinner (Kanawha) \$5,940, City of New Martinsville Festival of Memories (Wetzel) \$6,534, Clay County Golden Delicious Apple Festival (Clay) \$4,158, Clay District Fair (Monongalia) \$3,341, Clendenin Homecoming Festival (Kanawha) \$1,000, Coal Field Jamboree (Logan) \$20,792, Coalton Days Fair (Randolph) \$4,158, Covered Bridge Festival (Marion) \$3,000, Craigsville Fall Festival (Nicholas) \$2,079, Cruise into Princeton (Mercer) \$2,160, Culturefest World Music & Arts Festival (Mercer) \$4,690, Delbarton Homecoming (Mingo) \$2,079, Doddridge County Fair (Doddridge) \$4,158, Dorcas Ice Cream Social (Grant) \$3,564, Durbin Days (Pocahontas) \$2,970, Elbert/Filbert Reunion Festival (McDowell) \$891, Fairview 4th of July Celebration (Marion) \$684, Farm Safety Day (Preston) \$1,188, Farmer's Day Festival (Monroe) \$2,330, Fenwick Mountain Old Time Community Festival (Nicholas) \$2,880, FestivALL Charleston (Kanawha) \$11,881, Flemington Days Fair and Festival (Taylor) \$2,379, Fly

in Festival (Cabell) \$5,000, Follansbee Community Days (Brooke) \$4,900, Fort Gay Mountain Heritage Days (Wayne) \$2,970, Fort Henry Days (Ohio) \$3,148, Fort Henry Living History (Ohio) \$1,563, Fort New Salem Spirit of Christmas Festival (Harrison) \$2,432, Frankford Autumnfest (Greenbrier) \$2,970, Franklin Fishing Derby (Pendleton) \$10,709, Freshwater Folk Festival (Greenbrier) \$2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) \$2,970, Frontier Days (Harrison) \$1,782, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) \$1,485, Gassaway Days Celebration (Braxton) \$2,970, Gilbert Elementary Fall Blast (Mingo) \$2,188, Gilbert Spring Fling (Mingo) \$3,595, Gilmer County Farm Show (Gilmer) \$2,376, Grant County Arts Council (Grant) \$1,188, Great Greenbrier River Race (Pocahontas) \$5,940, Greater Quinwood Days (Greenbrier) \$781, Guyandotte Civil War Days (Cabell) \$5,941, Hamlin 4th of July Celebration (Lincoln) \$2,970, Hampshire Civil War Celebration Days (Hampshire) \$684, Hampshire County 4th of July Celebration (Hampshire) \$11,881, Hampshire County Fair (Hampshire) \$5,002, Hampshire Highlands Art & Music Festival (Hampshire) \$4,252, Hancock County Oldtime Fair (Hancock) \$2,970, Hardy County Commission - 4th of July (Hardy) \$5,940, Hatfield McCoy Matewan Reunion Festival (Mingo) \$12,330, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) \$2,970, Heat'n the Hills Chilifest (Lincoln) \$2,970, Heritage Craft Festival (Monroe) \$1,044, Heritage Days Festival (Roane) \$891, Hilltop Festival (Cabell) \$684, Hilltop Festival of Lights (McDowell) \$1,188, Hinton Railroad Days (Summers) \$4,347, Holly River Festival (Webster) \$891, Hometown Mountain Heritage Festival (Fayette) \$2,432, Hundred 4th of July (Wetzel) \$4,307, Huntersville Traditions Day (Pocahontas) \$4,000, Hurricane 4th of July Celebration (Putnam) \$2,970, Jaeger Town Fair (McDowell) \$891, Irish Heritage Festival of West Virginia (Raleigh) \$2,970, Irish Spring Festival (Lewis) \$684, Italian Heritage Festival-Clarksburg (Harrison) \$17,821, Jackson County Fair (Jackson) \$2,970, Jamboree (Pocahontas) \$2,970, Jane Lew Arts and Crafts Fair (Lewis) \$684, Jefferson County Fair Association (Jefferson) \$14,851, Jersey Mountain Ruritan Pioneer Days (Hampshire) \$684, John Henry Days Festival (Monroe) \$4,698, Johnnie Johnson Blues and Jazz Festival (Marion) \$2,970, Johnstown

Community Fair (Harrison) \$1,485, Junior Heifer Preview Show (Lewis) \$1,188, Kanawha Coal Riverfest-St. Albans 4th of July Festival (Kanawha) \$2,970, Keeper of the Mountains-Kayford (Kanawha) \$1,485, Kenova Autumn Festival (Wayne) \$4,377, Kermit Fall Festival (Mingo) \$1,782, Keystone Reunion Gala (McDowell) \$1,563, King Coal Festival (Mingo) \$2,970, Kingwood Downtown Street Fair and Heritage Days (Preston) \$1,188, Knights of Columbus Irish Road Bowling (Marshall County) \$3,000, L.Z. Rainelle West Virginia Veterans Reunion (Greenbrier) \$2,970, Lady of Agriculture (Preston) \$684, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) \$5,940, Larry Joe Harless Community Center Spring Middle School Event (Mingo) \$2,970, Last Blast of Summer (McDowell) \$2,970, Lewisburg Shanghai (Greenbrier) \$1,188, Lincoln County Fall Festival (Lincoln) \$4,752, Lincoln County Winterfest (Lincoln) \$2,970, Lindsie Veterans' Day Parade (Monroe) \$720, Little Levels Heritage Festival (Pocahontas) \$1,188, Lost Creek Community Festival (Harrison) \$4,158, Main Street Arts Festival (Upshur) \$3,127, Main Street Martinsburg Chocolate Fest and Book Fair (Berkeley) \$2,813, Malden Salt Fest (Kanawha) \$2,000, Mannington District Fair (Marion) \$3,564, Maple Syrup Festival (Randolph) \$684, Marion County FFA Farm Fest (Marion) \$1,485, Marmet Labor Day Celebration (Kanawha) \$3,078, Marshall County Antique Power Show (Marshall) \$1,485, Marshall County Fair (Marshall) \$5,000, Mason County Fair (Mason) \$2,970, Matewan Massacre Reenactment (Mingo) \$5,004, Matewan-Magnolia Fair (Mingo) \$15,932, McARTS-McDowell County (McDowell) \$11,881, McGrew House History Day (Preston) \$1,188, McNeill's Rangers (Mineral) \$4,752, Meadow Bridge Hometown Festival (Fayette) \$743, Meadow River Days Festival (Greenbrier) \$1,782, Mercer County Fair (Mercer) \$1,188, Mercer County Heritage Festival (Mercer) \$3,474, Milton Christmas in the Park (Cabell) \$1,485, Milton Old Timey Days (Cabell) \$1,485, Mineral County Fair (Mineral) \$1,040, Mineral County Veterans Day Parade (Mineral) \$891, Molasses Festival (Calhoun) \$1,188, Monongahfest (Marion) \$3,752, Monongalia County Fair (Monongalia) \$7,250, Moon Over Mountwood Fishing Festival (Wood) \$1,782, Morgan County Fair-History Wagon (Morgan) \$891, Moundsville Bass Festival (Marshall) \$2,376, Moundsville

July 4th Celebration (Marshall) \$2,970, Mount Liberty Fall Festival (Barbour) \$1,485, Mountain Festival (Mercer) \$2,747, Mountain Heritage Arts and Crafts Festival (Jefferson) \$2,970, Mountain Music Festival (McDowell) \$1,485, Mountain State Apple Harvest Festival (Berkeley) \$4,456, Mountain State Arts & Crafts Fair Cedar Lakes (Jackson) \$26,732, Mullens Dogwood Festival (Wyoming) \$4,158, Multi-Cultural Festival of West Virginia (Kanawha) \$11,881, Music and Barbecue - Banks District VFD (Upshur) \$1,278, New Cumberland Christmas Parade (Hancock) \$1,782, New Cumberland 4th of July (Hancock) \$2,970, New Martinsville Regatta (Wetzel) \$9,000, New River Bridge Day Festival (Fayette) \$23,762, Nicholas County Fair (Nicholas) \$2,970, Nicholas County Potato Festival (Nicholas) \$2,079, Oak Leaf Festival (Fayette) \$6,253, Oceana Heritage Festival (Wyoming) \$4,000, Oglebay City Park - Festival of Lights (Ohio) \$47,524, Oglebay Festival (Ohio) \$5,940, Ohio County Country Fair (Ohio) \$5,346, Ohio River Fest (Jackson) \$4,320, Ohio Valley Black Heritage Festival (Ohio) \$3,267, Old Brick Playhouse (Randolph) \$7,000, Old Central City Fair (Cabell) \$2,970, Old Tyme Christmas (Jefferson) \$1,425, Osage Street Fair (Monongalia) \$1,000, Paden City Labor Day Festival (Wetzel) \$3,861, Parkersburg Homecoming (Wood) \$8,754, Patty Fest (Monongalia) \$1,188, Paw Paw District Fair (Marion) \$2,079, Pax Reunion Committee (Fayette) \$2,970, Pendleton County 4-H Weekend (Pendleton) \$1,188, Pendleton County Committee for Arts (Pendleton) \$8,910, Pennsboro Country Road Festival (Ritchie) \$1,188, Petersburg 4th of July Celebration (Grant) \$11,881, Petersburg HS Celebration (Grant) \$5,940, Piedmont-Annual Back Street Festival (Mineral) \$2,376, Pinch Reunion (Kanawha) \$1,500, Pine Bluff Fall Festival (Harrison) \$2,376, Pine Grove 4th of July Festival (Wetzel) \$4,158, Pineville Festival (Wyoming) \$3,564, Pleasants County Agriculture Youth Fair (Pleasants) \$2,970, Poca Heritage Days (Putnam) \$1,782, Pocahontas County Pioneer Days (Pocahontas) \$4,159, Point Pleasant Stern Wheel Regatta (Mason) \$2,970, Pratt Fall Festival (Kanawha) \$1,485, Princeton Autumnfest (Mercer) \$1,563, Princeton Street Fair (Mercer) \$2,970, Putnam County Fair (Putnam) \$2,970, Quartets on Parade (Hardy) \$2,376, Rainelle Fall Festival (Greenbrier) \$3,127, Rand Community Center

Festival (Kanawha) \$1,485, Randolph County Community Arts Council (Randolph) \$1,782, Randolph County Fair (Randolph) \$4,158, Randolph County Ramps and Rails (Randolph) \$2,188, Ranson Christmas Festival (Jefferson) \$2,970, Ranson Festival (Jefferson) \$2,970, Renick Liberty Festival (Greenbrier) \$684, Ripley 4th of July (Jackson) \$8,910, Ritchie County Fair and Exposition (Ritchie) \$2,970, Ritchie County Pioneer Days (Ritchie) \$684, River City Festival (Preston) \$684, Roane County Agriculture Field Day (Roane) \$1,782, Rock the Park (Kanawha) \$3,240, Rocket Boys Festival (Raleigh) \$1,710, Romney Heritage Days (Hampshire) \$1,876, Ronceverte River Festival (Greenbrier) \$2,970, Rowlesburg Labor Day Festival (Preston) \$684, Rupert Country Fling (Greenbrier) \$1,876, Saint Spyridon Greek Festival (Harrison) \$1,485, Salem Apple Butter Festival (Harrison) \$2,376, Sistersville 4th of July (Tyler) \$3,267, Skirmish on the River (Mingo) \$1,250, Smoke on the Water (Wetzel) \$1,782, South Charleston Summerfest (Kanawha) \$5,940, Southern Wayne County Fall Festival (Wayne) \$684, Spirit of Grafton Celebration (Taylor) \$6,240, Spring Mountain Festival (Grant) \$2,500, St. Albans City of Lights - December (Kanawha) \$2,970, Sternwheel Festival (Wood) \$1,782, Stoco Reunion (Raleigh) \$1,485, Stonewall Jackson Heritage Arts & Crafts Jubilee (Lewis) \$6,534, Stonewall Jackson's Roundhouse Raid (Berkeley) \$7,200, Strawberry Festival (Upshur) \$17,821, Sylvester Big Coal River Festival (Boone) \$1,944, Tacy Fair (Barbour) \$684, Taste of Parkersburg (Wood) \$2,970, Taylor County Fair (Taylor) \$3,567, The Gathering at Sweet Creek (Wood) \$1,782, Three Rivers Coal Festival (Marion) \$4,604, Thunder on the Tygart - Mothers' Day Celebration (Taylor) \$7,300, Town of Delbarton 4th of July Celebration (Mingo) \$1,782, Town of Fayetteville Heritage Festival (Fayette) \$4,456, Town of Rivesville 4th of July Festival (Marion) \$3,127, Town of Winfield - Putnam County Homecoming (Putnam) \$3,240, St. Albans Train Fest (Kanawha) \$6,120, Treasure Mountain Festival (Pendleton) \$16,851, Tri-County Fair (Grant) \$22,548, Tucker County Arts Festival and Celebration (Tucker) \$10,692, Tucker County Fair (Tucker) \$2,821, Tucker County Health Fair (Tucker) \$1,188, Turkey Festival (Hardy) \$1,782, Tyler County Fair (Tyler) \$3,088, Tyler County Fireworks Celebration (Tyler) \$2,000, Union Community

Irish Festival (Barbour) \$648, Upper Kanawha Valley Oktoberfest (Kanawha) \$1,485, Upper Ohio Valley Italian Festival (Ohio) \$7,128, Valley District Fair (Preston) \$2,079, Veterans Welcome Home Celebration (Cabell) \$938, Vietnam Veterans of America # 949 Christmas Party (Cabell) \$684, Volcano Days at Mountwood Park (Wood) \$2,970, War Homecoming Fall Festival (McDowell) \$891, Wardensville Fall Festival (Hardy) \$2,970, Wayne County Fair (Wayne) \$2,970, Wayne County Fall Festival (Wayne) \$2,970, Webster County Fair (Webster) \$3,600, Webster County Wood Chopping Festival (Webster) \$8,910, Webster Wild Water Weekend (Webster) \$1,188, Welcome Home Family Day (Wayne) \$1,900, Wellsburg 4th of July Celebration (Brooke) \$4,456, Wellsburg Apple Festival of Brooke County (Brooke) \$2,970, West Virginia Blackberry Festival (Harrison) \$2,970, West Virginia Chestnut Festival (Preston) \$684, West Virginia Coal Festival (Boone) \$5,940, West Virginia Coal Show (Mercer) \$1,563, West Virginia Dairy Cattle Show (Lewis) \$5,940, West Virginia Dandelion Festival (Greenbrier) \$2,970, West Virginia Day at the Railroad Museum (Mercer) \$1,800, West Virginia Fair and Exposition (Wood) \$4,812, West Virginia Freedom Festival (Logan) \$4,456, West Virginia Fireman's Rodeo (Fayette) \$1,485, West Virginia Oil and Gas Festival (Tyler) \$6,534, West Virginia Peach Festival (Hampshire) \$3,240, West Virginia Polled Hereford Association (Braxton) \$891, West Virginia Pumpkin Festival (Cabell) \$5,940, West Virginia Rivers and Rails Festival (Pleasants) \$1,099, West Virginia State Folk Festival (Gilmer) \$2,970, West Virginia Water Festival - City of Hinton (Summers) \$9,144, Weston VFD 4th of July Firemen Festival (Lewis) \$1,188, Wetzel County Autumnfest (Wetzel) \$3,267, Wetzel County Town and Country Days (Wetzel) \$10,098, Wheeling Celtic Festival (Ohio) \$1,166, Wheeling City of Lights (Ohio) \$4,752, Wheeling Sternwheel Regatta (Ohio) \$5,940, Wheeling Vintage Raceboat Regatta (Ohio) \$11,881, Whipple Community Action (Fayette) \$1,485, Wine Festival and Mountain Music Event (Harrison) \$2,970, Winfield Watersports Weekend (Putnam) \$3,240, Wirt County Fair (Wirt) \$1,485, Wirt County Pioneer Days (Wirt) \$1,188, Wyoming County Civil War Days (Wyoming) \$1,296, Youth Stockman Beef Expo (Lewis) \$1,188.

Any unexpended balances remaining in the appropriations for Preservation West Virginia (fund 3534, appropriation 09200), Fairs and Festivals (fund 3534, appropriation 12200), Commission for National and Community Service (fund 3534, appropriation 19300), Archeological Curation/Capital Improvements (fund 3534, appropriation 24600), Historic Preservation Grants (fund 3534, appropriation 31100), and Grants for Competitive Arts Program (fund 3534, appropriation 62400) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

Any Fairs & Festivals awards shall be funded in addition to, and not in lieu of, individual grant allocations derived from the Arts Council and Cultural Grant Program allocations.

303 - Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2023 Org 0433

Books and Films	17900	\$	360,784
Services to Libraries	18000		550,000
Grants to Public Libraries	18200		9,439,571
Digital Resources	30900		219,992
Infomine Network.....	88400		<u>943,353</u>
Total.....		\$	11,513,700

304 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 3587 FY 2023 Org 0439

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 3587, appropriation 75500) at the close of fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

*305 - Higher Education Policy Commission –**Lottery Education –**Higher Education Policy Commission –**Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2023 Org 0441

RHI Program and Site Support (R).....	03600	\$	1,915,854
RHI Program and Site Support – RHEP Program Administration	03700		146,653
RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (R).....	03800		89,586
Minority Doctoral Fellowship (R)	16600		129,604
Health Sciences Scholarship (R).....	17600		225,908
Vice Chancellor for Health Sciences – Rural Health Residency Program (R).....	60100		62,725
WV Engineering, Science, and Technology Scholarship Program....	86800		<u>452,831</u>
Total.....		\$	3,023,161

Any unexpended balances remaining in the appropriations for RHI Program and Site Support (fund 4925, appropriation 03600), RHI Program and Site Support – Grad Med Ed and Fiscal Oversight (fund 4925, appropriation 03800), Minority Doctoral Fellowship (fund 4925, appropriation 16600), Health Sciences Scholarship (fund 4925, appropriation 17600), and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4925, appropriation 60100) at the close of fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (fund 4925, appropriation 86800) shall be transferred to the West Virginia Engineering,

Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

306 - Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2023 Org 0442

Debt Service – Total	31000	\$	5,000,000
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Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) at the close of fiscal year 2022 is hereby appropriated for expenditure during the fiscal year 2023.

307 - Higher Education Policy Commission –

Lottery Education –

West Virginia University – School of Medicine

(WV Code Chapter 18B)

Fund 4185 FY 2023 Org 0463

WVU Health Sciences –

RHI Program and Site Support (R)....	03500	\$	1,208,106
MA Public Health Program and Health Science Technology (R).....	62300		52,445
Health Sciences Career Opportunities Program (R)	86900		336,987
HSTA Program (R)	87000		1,802,118
Center for Excellence in Disabilities (R).....	96700		<u>318,711</u>
Total.....		\$	3,718,367

Any unexpended balances remaining in the appropriations for WVU Health Sciences – RHI Program and Site Support (fund 4185, appropriation 03500), MA Public Health Program and

Health Science Technology (fund 4185, appropriation 62300), Health Sciences Career Opportunities Program (fund 4185, appropriation 86900), HSTA Program (fund 4185, appropriation 87000), and Center for Excellence in Disabilities (fund 4185, appropriation 96700) at the close of fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

308 - Higher Education Policy Commission –

Lottery Education –

Marshall University – School of Medicine

(WV Code Chapter 18B)

Fund 4896 FY 2023 Org 0471

Marshall Medical School –

RHI Program and Site Support (R).....	03300	\$	434,910
Vice Chancellor for Health Sciences –			
Rural Health			
Residency Program (R).....	60100		<u>174,109</u>
Total.....		\$	609,019

Any unexpended balances remaining in the appropriations for Marshall Medical School – RHI Program and Site Support (fund 4896, appropriation 03300) and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4896, appropriation 60100) at the close of fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

309 - Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2023 Org 0508

Personal Services

and Employee Benefits.....	00100	\$	142,503
Salary and Benefits of Cabinet Secretary			
and Agency Heads.....	00201		70,720

Current Expenses	13000	332,284
Repairs and Alterations	06400	1,000
Local Programs Service		
Delivery Costs	20000	2,435,250
Silver Haired Legislature	20200	18,500
Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens	53900	14,203,501
Roger Tompkins Alzheimer's Respite Care.....	64300	2,304,286
WV Alzheimer's Hotline	72400	45,000
Regional Aged and Disabled Resource Center.....	76700	425,000
Senior Services Medicaid Transfer.....	87100	16,400,070
Legislative Initiatives for the Elderly....	90400	9,671,239
Long Term Care Ombudsman.....	90500	297,226
BRIM Premium.....	91300	7,718
In-Home Services and Nutrition for Senior Citizens	91700	<u>6,845,941</u>
Total.....		\$ 53,200,238

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, appropriation 46200) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

Included in the above appropriation for Current Expenses (fund 5405, appropriation 13000), is funding to support an in-home direct care workforce registry.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

Total TITLE II, Section 4 – Lottery Revenue \$134,145,880

Sec. 5. Appropriations from state excess lottery revenue fund. — In accordance with W.Va. Code §29-22-18a, §29-22A-

10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following appropriations shall be deposited and disbursed by the Director of the Lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the Director of the Lottery shall provide funding from the State Excess Lottery Revenue Fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the State Excess Lottery Revenue Fund are sufficient to meet all the appropriations required made pursuant to this section, then the Director of the Lottery shall then provide the funds available for fund 5365, appropriation 18900.

310 - Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2023 Org 0100

Appropriation	Excess Lottery Funds
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Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

311 - Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2023 Org 0231

Any unexpended balances remaining in the appropriations for Cyber Security (fund 2532, appropriation 99001), Enterprise Data Center (fund 2532, appropriation 99002), and Enterprise Telephony Modernization (fund 2532, appropriation 99003) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

312 - Department of Economic Development –

Office of the Secretary –

West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2023 Org 0307

Any unexpended balance remaining in the appropriation for Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

313 - Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2023 Org 0310

Current Expenses (R).....	13000	\$	23,300
Repairs and Alterations (R)	06400		161,200
Equipment (R).....	07000		200,000
Buildings (R).....	25800		100,000
Other Assets (R).....	69000		<u>1,020,500</u>
Total.....		\$	1,505,000

Any unexpended balances remaining in the appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation 69000) at the close of the fiscal year 2022 are hereby reappropriated for expenditure during the fiscal year 2023.

314 - West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2023 Org 0316

Directed Transfer	70000	\$ 46,000,000
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The above appropriation shall be allocated pursuant to W.Va. Code §29-22-18d and §31-15-9.

315 - Department of Education –

School Building Authority

Fund 3514 FY 2023 Org 0404

Debt Service - Total	31000	\$ 18,999,900
Directed Transfer	70000	<u>100</u>
Total.....		\$ 19,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18a.

The above appropriation for Directed Transfer (fund 3514, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund (fund 3952, organization 0404) to be used for school construction and maintenance projects.

316 - Higher Education Policy Commission –

Education Improvement Fund

Fund 4295 FY 2023 Org 0441

PROMISE Scholarship – Transfer.....	80000	\$ 29,000,000
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The above appropriation shall be transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

The Legislature has explicitly set a finite amount of available appropriations and directed the administrators of the Program to provide for the award of scholarships within the limits of available appropriations.

*317 - Higher Education Policy Commission –
Higher Education Improvement Fund*

Fund 4297 FY 2023 Org 0441

Directed Transfer 70000 \$ 15,000,000

The above appropriation for Directed Transfer shall be transferred to Higher Education Policy Commission – System – Tuition Fee Capital Improvement Fund (fund 4903, org 0442) as authorized by Senate Concurrent Resolution No. 41.

318 - Higher Education Policy Commission –

Administration –

Control Account

Fund 4932 FY 2023 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, appropriation 02800) at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

319 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2023 Org 0511

Medical Services 18900 \$ 26,697,960

320 - Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapter 15A)

Fund 6283 FY 2023 Org 0608

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500)

at the close of the fiscal year 2022 is hereby reappropriated for expenditure during the fiscal year 2023.

321 - Lottery Commission –

General Purpose Account

Fund 7206 FY 2023 Org 0705

General Revenue Fund – Transfer	70011	\$ 65,000,000
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The above appropriation shall be transferred to the General Revenue Fund as determined by the Director of the Lottery in accordance with W.Va. Code §29-22-18a.

322 - Lottery Commission –

Refundable Credit

Fund 7207 FY 2023 Org 0705

Directed Transfer	70000	\$ 10,000,000
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The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be completed by the Director of the Lottery upon the commissioner's request.

323 - Lottery Commission –

Distributions to Statutory Funds and Purposes

Fund 7213 FY 2023 Org 0705

Parking Garage Fund – Transfer	70001	\$	500,000
2004 Capitol Complex Parking Garage Fund			
– Transfer	70002		216,478
Capitol Dome and Improvements Fund			
– Transfer	70003		1,796,256
Capitol Renovation and Improvement Fund			
– Transfer	70004		2,381,252

Development Office Promotion Fund		
– Transfer.....	70005	1,298,864
Research Challenge Fund – Transfer ...	70006	1,731,820
Tourism Promotion Fund – Transfer ...	70007	4,808,142
Cultural Facilities and Capitol Resources		
Matching Grant Program Fund		
– Transfer.....	70008	1,250,535
State Debt Reduction Fund – Transfer.	70010	20,000,000
General Revenue Fund – Transfer	70011	1,167,799
West Virginia Racing Commission		
Racetrack Video Lottery Account ...	70012	3,463,637
Historic Resort Hotel Fund	70013	24,010
Licensed Racetrack Regular Purse Fund	70014	<u>22,383,247</u>
Total.....		\$ 61,022,040

324 - Racing Commission

Fund 7308 FY 2023 Org 0707

Special Breeders Compensation		
(WVC §29-22-18a, subsection (I))	21800	\$ 2,000,000

325 - Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2023 Org 0944

Debt Service – Total	31000	\$ 19,000,000
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Pursuant to W.Va. Code §29-22-18a, subsection (f), excess lottery revenues are authorized to be transferred to the lottery fund as reimbursement of amounts transferred to the economic development project fund pursuant to section four of this title and W.Va. Code §29-22-18, subsection (f).

326 - Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2023 Org 0944

Debt Service..... 04000 \$ 2,032,000

327 - Economic Development Authority –

State Parks Lottery Revenue Debt Service Fund

Fund 9068 FY 2023 Org 0944

Debt Service..... 04000 \$ 4,395,000

Total TITLE II, Section 5 – Excess Lottery Funds \$ 300,652,000

Sec. 6. Appropriations of federal funds. — In accordance with Article 11, Chapter 4 of the Code from federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2023.

LEGISLATIVE

328 - Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2023 Org 2300

	Appropriation	Federal Funds
Economic Loss Claim Payment Fund.....	33400	\$ 1,100,000

JUDICIAL

329 - Supreme Court

Fund 8867 FY 2023 Org 2400

Personal Services		
and Employee Benefits.....	00100	\$ 1,813,000
Current Expenses	13000	1,557,000

Repairs and Alterations.....	06400	100,000
Equipment.....	07000	250,000
Other Assets.....	69000	<u>280,000</u>
Total.....		\$ 4,000,000

EXECUTIVE*330 - Governor's Office –**Coronavirus State Fiscal Recovery Fund*

(WV Code Chapter 4)

Fund 8823 FY 2023 Org 0100

Personal Services and Employee Benefits.....	00100	\$ 941,932,089
Unclassified.....	09900	13,554,899
Current Expenses	13000	400,000,000
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	1,000
Other Assets.....	69000	<u>1,000</u>
Total.....		\$1,355,489,988

331 - Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2023 Org 1400

Personal Services and Employee Benefits.....	00100	\$ 2,708,867
Unclassified.....	09900	50,534
Current Expenses	13000	6,828,661
Repairs and Alterations.....	06400	650,000
Equipment.....	07000	910,500
Buildings.....	25800	1,000,000
Other Assets.....	69000	550,000
Land	73000	500,000
Federal Coronavirus Pandemic.....	89101	<u>1,098,839</u>
Total.....		\$ 14,297,401

*332 - Department of Agriculture –**Meat Inspection Fund*

(WV Code Chapter 19)

Fund 8737 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	685,045
Unclassified.....	09900		8,755
Current Expenses	13000		136,012
Repairs and Alterations.....	06400		5,500
Equipment.....	07000		<u>114,478</u>
Total.....		\$	949,790

*333 - Department of Agriculture –**State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	97,250
Current Expenses	13000		<u>15,599,974</u>
Total.....		\$	15,697,224

*334 - Department of Agriculture –**Land Protection Authority*Fund 8896 FY 2023 Org 1400

Personal Services			
and Employee Benefits	00100	\$	46,526
Unclassified.....	09900		5,004
Current Expenses	13000		<u>448,920</u>
Total.....		\$	500,450

*335 - Attorney General –**Medicaid Fraud Unit*Fund 8882 FY 2023 Org 1500

Personal Services		
and Employee Benefits	00100	\$ 1,434,886
Unclassified.....	09900	15,336
Current Expenses	13000	599,513
Repairs and Alterations.....	06400	4,313
Equipment.....	07000	7,500
Other Assets.....	69000	<u>11,336</u>
Total.....		\$ 2,072,884

*336 - Secretary of State –**State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2023 Org 1600

Personal Services		
and Employee Benefits	00100	\$ 210,240
Unclassified.....	09900	7,484
Current Expenses	13000	415,727
Repairs and Alterations.....	06400	15,000
Other Assets.....	69000	<u>100,000</u>
Total.....		\$ 748,451

DEPARTMENT OF COMMERCE*337 - Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2023 Org 0305

Personal Services		
and Employee Benefits	00100	\$ 610,888
Unclassified.....	09900	51,050

Current Expenses	13000	5,232,560
Repairs and Alterations	06400	155,795
Equipment	07000	100,000
Other Assets	69000	<u>1,808,300</u>
Total		\$ 7,958,593

338 - Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2023 Org 0306

Personal Services		
and Employee Benefits	00100	\$ 54,432
Unclassified	09900	2,803
Current Expenses	13000	195,639
Repairs and Alterations	06400	5,000
Equipment	07000	7,500
Other Assets	69000	<u>15,000</u>
Total		\$ 280,374

339 - Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2023 Org 0308

Personal Services		
and Employee Benefits	00100	\$ 427,254
Unclassified	09900	5,572
Current Expenses	13000	167,098
Repairs and Alterations	06400	<u>500</u>
Total		\$ 600,424

340 - Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2023 Org 0310

Personal Services		
and Employee Benefits	00100	\$ 10,318,396

Unclassified.....	09900	107,693
Current Expenses	13000	7,887,660
Repairs and Alterations.....	06400	566,250
Equipment.....	07000	2,126,141
Administration	15500	50,325
Buildings.....	25800	951,000
Other Assets.....	69000	4,768,670
Land	73000	<u>2,893,920</u>
Total.....		\$ 29,670,055

*341 - Division of Miners' Health,
Safety and Training*

(WV Code Chapter 22)

Fund 8709 FY 2023 Org 0314

Personal Services and Employee Benefits.....	00100	\$ 670,029
Current Expenses	13000	<u>150,000</u>
Total.....		\$ 820,029

342 - WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2023 Org 0323

Unclassified.....	09900	\$ 5,127
Current Expenses	13000	667,530
Reed Act 2002 – Unemployment Compensation	62200	4,446,737
Reed Act 2002 – Employment Services	63000	<u>3,246,737</u>
Total.....		\$ 8,366,131

Pursuant to the requirements of 42 U.S.C. 1103, Section 903 of the Social Security Act, as amended, and the provisions of W.Va. Code §21A-9-9, the above appropriation to Unclassified and Current Expenses shall be used by WorkForce West Virginia for the specific purpose of administration of the state's unemployment insurance program or job service activities, subject to each and

every restriction, limitation or obligation imposed on the use of the funds by those federal and state statutes.

343 - State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2023 Org 0932

Personal Services		
and Employee Benefits	00100	\$ 12,042,929
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	138,000
Current Expenses	13000	34,440,940
Repairs and Alterations	06400	350,400
Equipment	07000	<u>1,275,870</u>
Total		\$ 48,248,139

344 - State Board of Rehabilitation –

Division of Rehabilitation Services –

Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2023 Org 0932

Personal Services		
and Employee Benefits	00100	\$ 12,945,086
Current Expenses	13000	13,383,206
Repairs and Alterations	06400	1,100
Equipment	07000	<u>83,350</u>
Total		\$ 26,412,742

DEPARTMENT OF TOURISM

345 - Department of Tourism –

Tourism Workforce Development Fund

(WV Code Chapter 5B)

Fund 8903 FY 2023 Org 0304

Federal Coronavirus Pandemic	89101	<u>5,148,017</u>
Total.....		\$ 5,148,017

DEPARTMENT OF ECONOMIC DEVELOPMENT

346 - Department of Economic Development –

Office of the Secretary

(WV Code Chapter 5B)

Fund 8705 FY 2023 Org 0307

Personal Services		
and Employee Benefits	00100	\$ 1,521,231
Unclassified.....	09900	50,000
Current Expenses	13000	<u>21,304,019</u>
Total.....		\$ 22,875,250

347 - Department of Economic Development –

Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2023 Org 0307

Personal Services		
and Employee Benefits	00100	\$ 985,462
Unclassified.....	09900	7,350
Current Expenses	13000	<u>8,266,076</u>
Total.....		\$ 9,258,888

348 - Department of Economic Development –

Office of the Secretary –

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8901 FY 2023 Org 0307

Personal Services			
and Employee Benefits	00100	\$	854,189
Repairs and Alterations	06400		250
Equipment	07000		6,000
Unclassified.....	09900		106,795
Current Expenses	13000		<u>20,303,081</u>
Total.....		\$	21,270,315

DEPARTMENT OF EDUCATION*349 - State Board of Education –**State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2023 Org 0402

Personal Services			
and Employee Benefits	00100	\$	5,890,196
Unclassified.....	09900		2,000,000
Current Expenses	13000		1,434,146,008
Repairs and Alterations	06400		10,000
Equipment	07000		10,000
Other Assets	69000		10,000
Federal Coronavirus Pandemic	89101		<u>4,990,123</u>
Total.....		\$	1,447,056,327

*350 - State Board of Education –**School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2023 Org 0402

Personal Services			
and Employee Benefits	00100	\$	1,924,124
Unclassified.....	09900		1,150,500
Current Expenses	13000		258,781,265

Repairs and Alterations.....	06400	20,000
Equipment.....	07000	100,000
Other Assets.....	69000	<u>25,000</u>
Total.....		\$ 262,000,889

*351 - State Board of Education –
Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2023 Org 0402

Personal Services		
and Employee Benefits.....	00100	\$ 1,938,607
Unclassified.....	09900	155,000
Current Expenses	13000	17,820,081
Repairs and Alterations.....	06400	10,000
Equipment.....	07000	10,000
Other Assets.....	69000	<u>10,000</u>
Total.....		\$ 19,943,688

*352 - State Board of Education –
Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2023 Org 0402

Personal Services		
and Employee Benefits.....	00100	\$ 3,540,241
Unclassified.....	09900	1,000,000
Current Expenses	13000	133,346,390
Repairs and Alterations.....	06400	10,000
Equipment.....	07000	10,000
Other Assets.....	69000	10,000
Federal Coronavirus Pandemic	89101	<u>17,336,635</u>
Total.....		\$ 155,253,266

DEPARTMENT OF ARTS, CULTURE, AND HISTORY*353 - Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2023 Org 0432

Personal Services		
and Employee Benefits	00100	\$ 851,130
Current Expenses	13000	1,947,372
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	1,000
Buildings.....	25800	1,000
Other Assets.....	69000	1,000
Land	73000	360
Federal Coronavirus Pandemic	89101	<u>765,400</u>
Total.....		\$ 3,568,262

354 - Commission for National and Community Service

(WV Code Chapter 5F)

Fund 8841 FY 2023 Org 0432

Personal Services		
and Employee Benefits	00100	\$ 446,874
Current Expenses	13000	5,587,325
Repairs and Alterations.....	06400	1,000
Federal Coronavirus Pandemic	89101	<u>1,960,558</u>
Total.....		\$ 7,995,757

355 - Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2023 Org 0433

Personal Services		
and Employee Benefits	00100	\$ 368,524
Current Expenses	13000	1,076,162
Equipment.....	07000	543,406

Federal Coronavirus Pandemic	89101	<u>2,388,880</u>
Total.....		\$ 4,376,972

356 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2023 Org 0439

Equipment.....	07000	\$ 1,000
Federal Coronavirus Pandemic	89101	<u>710,176</u>
Total.....		\$ 711,176

DEPARTMENT OF ENVIRONMENTAL PROTECTION

357 - Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2023 Org 0313

Personal Services		
and Employee Benefits	00100	\$ 32,273,598
Unclassified.....	09900	1,923,580
Current Expenses	13000	153,850,118
Repairs and Alterations.....	06400	739,783
Equipment.....	07000	1,712,238
Other Assets.....	69000	2,177,261
Land	73000	<u>80,000</u>
Total.....		\$ 192,756,578

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

358 - Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2023 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 1,660,962
Unclassified.....	09900	73,307

Current Expenses	13000	92,583,302
Federal Coronavirus Pandemic	89101	<u>4,886,344</u>
Total.....		\$ 99,203,915

359 - Division of Health –

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2023 Org 0506

Personal Services and Employee Benefits	00100	\$ 16,607,893
Unclassified.....	09900	856,614
Current Expenses	13000	102,758,622
Equipment.....	07000	456,972
Buildings	25800	155,000
Other Assets.....	69000	380,000
Federal Coronavirus Pandemic	89101	<u>248,935,941</u>
Total.....		\$ 370,151,042

360 - Division of Health –

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2023 Org 0506

West Virginia Drinking Water Treatment Revolving Fund – Transfer.....	68900	\$ 16,000,000
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361 - Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2023 Org 0510

Personal Services and Employee Benefits	00100	\$ 455,925
Unclassified.....	09900	5,050

Current Expenses	13000	<u>64,950</u>
Total.....		\$ 525,925

362 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2023 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 80,538,993
Unclassified.....	09900	22,855,833
Current Expenses	13000	112,181,984
Medical Services	18900	3,935,000,000
Medical Services Administrative Costs	78900	132,380,661
CHIP Administrative Costs.....	85601	4,549,783
CHIP Services.....	85602	49,752,412
Federal Economic Stimulus	89100	5,002,723
Federal Coronavirus Pandemic	89101	<u>151,642,105</u>
Total.....		\$ 4,493,904,494

DEPARTMENT OF HOMELAND SECURITY*363 - Office of the Secretary*

(WV Code Chapter 5F)

Fund 8876 FY 2023 Org 0601

Unclassified.....	09900	\$ 5,000
Current Expenses	13000	<u>495,000</u>
Total.....		\$ 500,000

364 - Division of Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2023 Org 0606

Personal Services		
and Employee Benefits	00100	\$ 1,418,043
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	61,250

Current Expenses	13000	20,429,281
Repairs and Alterations	06400	5,000
Equipment	07000	<u>100,000</u>
Total		\$ 22,013,574

365 - Division of Corrections and Rehabilitation

(WV Code Chapters 15A)

Fund 8836 FY 2023 Org 0608

Unclassified.....	09900	\$ 1,100
Current Expenses	13000	<u>108,900</u>
Total.....		\$ 110,000

366 - West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2023 Org 0612

Personal Services and Employee Benefits	00100	\$ 2,502,056
Current Expenses	13000	2,125,971
Repairs and Alterations	06400	42,000
Equipment	07000	2,502,285
Buildings	25800	750,500
Other Assets	69000	144,500
Land	73000	<u>500</u>
Total.....		\$ 8,067,812

367 - Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2023 Org 0619

Current Expenses	13000	\$ 80,000
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368 - Division of Administrative Services

(WV Code Chapter 15)

Fund 8803 FY 2023 Org 0623

Personal Services		
and Employee Benefits	00100	\$ 1,270,062
Unclassified.....	09900	25,185
Current Expenses	13000	75,381,973
Repairs and Alterations.....	06400	<u>1,750</u>
Total.....		\$ 76,678,970

DEPARTMENT OF REVENUE*369 - Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2023 Org 0704

Personal Services		
and Employee Benefits	00100	\$ 145,000
Current Expenses	13000	2,825,000
Equipment.....	07000	<u>30,000</u>
Total.....		\$ 3,000,000

DEPARTMENT OF TRANSPORTATION*370 - Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2023 Org 0802

Personal Services		
and Employee Benefits	00100	\$ 551,394
Current Expenses	13000	5,448,106
Repairs and Alterations.....	06400	<u>500</u>
Total.....		\$ 6,000,000

371 - Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2023 Org 0805

Personal Services		
and Employee Benefits	00100	\$ 1,040,576
Current Expenses	13000	18,863,149
Repairs and Alterations.....	06400	2,500
Equipment.....	07000	3,501,714
Buildings	25800	2,450,000
Other Assets	69000	<u>250,000</u>
Total.....		\$ 26,107,939

372 - Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2023 Org 0807

Current Expenses	13000	\$ 400,000
Other Assets	69000	<u>100</u>
Total.....		\$ 400,100

DEPARTMENT OF VETERANS' ASSISTANCE

373 - Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 8858 FY 2023 Org 0613

Personal Services		
and Employee Benefits	00100	\$ 3,016,683
Salary and Benefits of Cabinet Secretary		
and Agency Heads	00201	57,120
Current Expenses	13000	2,840,300
Repairs and Alterations.....	06400	20,000
Equipment.....	07000	25,000
Buildings	25800	250,000
Land	73000	500
Veterans' Cemetery	80800	175,000
Federal Coronavirus Pandemic	89101	<u>1,900,000</u>
Total.....		\$ 8,284,603

*374 - Department of Veterans' Assistance –**Veterans' Home*

(WV Code Chapter 9A)

Fund 8728 FY 2023 Org 0618

Personal Services			
and Employee Benefits	00100	\$	951,931
Current Expenses	13000		595,700
Repairs and Alterations.....	06400		60,500
Equipment.....	07000		10,500
Buildings.....	25800		500
Other Assets.....	69000		6,500
Land	73000		100
Federal Coronavirus Pandemic	89101		<u>1,600,000</u>
Total.....		\$	3,225,731

BUREAU OF SENIOR SERVICES*375 - Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2023 Org 0508

Personal Services			
and Employee Benefits	00100	\$	783,001
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		8,840
Current Expenses	13000		13,811,853
Repairs and Alterations.....	06400		3,000
Federal Coronavirus Pandemic	89101		<u>16,400,000</u>
Total.....		\$	31,006,694

MISCELLANEOUS BOARDS AND COMMISSIONS*376 - Adjutant General –**State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2023 Org 0603

Unclassified.....	09900	\$	982,705
Mountaineer ChalleNGe Academy.....	70900		11,573,992
Martinsburg Starbase	74200		547,801
Charleston Starbase.....	74300		516,838
Military Authority.....	74800		<u>88,132,332</u>
Total.....		\$	101,753,668

The Adjutant General shall have the authority to transfer between appropriations.

*377 - Adjutant General –**West Virginia National Guard Counterdrug Forfeiture Fund*

(WV Code Chapter 15)

Fund 8785 FY 2023 Org 0603

Personal Services			
and Employee Benefits.....	00100	\$	1,350,000
Current Expenses	13000		150,000
Repairs and Alterations.....	06400		50,000
Equipment.....	07000		200,000
Buildings.....	25800		100,000
Other Assets.....	69000		100,000
Land	73000		<u>50,000</u>
Total.....		\$	2,000,000

*378 - Public Service Commission –**Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2023 Org 0926

Personal Services			
and Employee Benefits.....	00100	\$	1,410,819

*381 - Department of Economic Development –**Office of the Secretary –**Community Development*Fund 8746 FY 2023 Org 0307

Personal Services		
and Employee Benefits	00100	\$ 10,662,609
Unclassified.....	09900	2,375,000
Current Expenses	13000	<u>224,476,883</u>
Total.....		\$ 237,514,492

*382 - Department of Economic Development –**Office of the Secretary –**Office of Economic Opportunity –**Community Services*Fund 8902 FY 2023 Org 0307

Personal Services		
and Employee Benefits	00100	\$ 771,289
Unclassified.....	09900	125,000
Current Expenses	13000	17,781,811
Repairs and Alterations.....	06400	1,500
Equipment.....	07000	<u>9,000</u>
Total.....		\$ 18,688,600

*383 - WorkForce West Virginia –**Workforce Investment Act*Fund 8749 FY 2023 Org 0323

Personal Services		
and Employee Benefits	00100	\$ 2,941,437
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	124,018

Federal Coronavirus Pandemic	89101	<u>14,965,070</u>
Total.....		\$ 26,618,533

387 - Division of Health –

Community Mental Health Services

Fund 8794 FY 2023 Org 0506

Personal Services		
and Employee Benefits	00100	\$ 571,034
Unclassified.....	09900	33,533
Current Expenses	13000	4,883,307
Federal Coronavirus Pandemic	89101	<u>12,480,519</u>
Total.....		\$ 17,968,393

388 - Division of Human Services –

Energy Assistance

Fund 8755 FY 2023 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 1,959,926
Unclassified.....	09900	350,000
Current Expenses	13000	38,182,151
Federal Coronavirus Pandemic	89101	<u>48,296,777</u>
Total.....		\$ 88,788,854

389 - Division of Human Services –

Social Services

Fund 8757 FY 2023 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 9,106,066
Unclassified.....	09900	171,982
Current Expenses	13000	<u>8,870,508</u>
Total.....		\$ 18,148,556

*390 - Division of Human Services –**Temporary Assistance for Needy Families*Fund 8816 FY 2023 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 21,331,693
Unclassified.....	09900	1,250,000
Current Expenses	13000	105,871,588
Federal Coronavirus Pandemic	89101	<u>4,617,546</u>
Total.....		\$ 133,070,827

*391 - Division of Human Services –**Child Care and Development*Fund 8817 FY 2023 Org 0511

Personal Services		
and Employee Benefits	00100	\$ 2,867,623
Unclassified.....	09900	350,000
Current Expenses	13000	47,000,307
Federal Coronavirus Pandemic	89101	<u>330,722,313</u>
Total.....		\$ 380,940,243

Total TITLE II, Section 7 –

Federal Block Grants \$ 998,789,094

Sec. 8. Awards for claims against the state. — There are hereby appropriated for fiscal year 2023, from the fund as designated, in the amounts as specified, general revenue funds in the amount of \$17,924, special revenue funds in the amount of \$63,003 and state road funds in the amount of \$433,232 for payment of claims against the state.

Sec. 9. Appropriations from general revenue fund surplus accrued. — The following items are hereby appropriated from the state fund, general revenue, and are to be available for expenditure during the fiscal year 2023 out of surplus funds only, accrued from

the fiscal year ending June 30, 2022, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriations be payable only from surplus as of July 31, 2022 from the fiscal year ending June 30, 2022, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2022, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriation in this section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

392 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2023 Org 0511

Medical Services – Surplus..... 63300 \$ 8,800,000

393 - Department of Tourism –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0246 FY 2023 Org 0304

Tourism – Brand Promotion - Surplus 61893 \$ 7,000,000

394 - Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2023 Org 0613

Personal Services

and Employee Benefits – Surplus 24301 \$ 293,474

Veterans' Nursing Home – Surplus	29100		<u>652,530</u>
Total.....		\$	946,004

395 - Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2023 Org 0618

Personal Services			
and Employee Benefits – Surplus	24301	\$	69,783
Current Expenses – Surplus	13099		<u>80,000</u>
Total.....		\$	149,783

396 - Division of Environmental Protection -

(WV Code Chapter 22)

Fund 0273 FY 2023 Org 0313

Directed Transfer – Surplus	70099	\$	50,000,000
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The above appropriation for Directed Transfer – Surplus (fund 0273, appropriation 70099) shall be transferred to the Mining Mutual Insurance Company Fund (fund xxxx).

397 - Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2023 Org 0327

Directed Transfer – Surplus	70099	\$	1,000,000
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The above appropriation for Directed Transfer – Surplus (fund 0606, appropriation 70099) shall be transferred to the Marketing and Communications Operating Fund (fund 3002).

398 - Division of Administrative Services

(WV Code Chapter 15)

Fund 0546 FY 2023 Org 0623

Current Expenses – Surplus	13099	\$ 11,400,000
Justice Reinvestment Initiative –		
Surplus	89599	<u>750,000</u>
Total		\$ 12,150,000

From the above appropriation for Current Expenses – Surplus (fund 0546, appropriation 13099) \$11,400,000 shall be used for the Victims of Crime Act (VOCA).

399 - Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2023 Org 0211

Capital Outlay, Repairs and Equipment –		
Surplus	67700	\$ 4,000,000

*400 - Department of Economic Development –**Office of the Secretary*

(WV Code Chapter 5B)

Fund 0256 FY 2023 Org 0307

Directed Transfer – Surplus	70099	\$ 500,000
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The above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 70099) shall be transferred to the Broadband Enhancement Fund (fund 3013).

401 - Division of Personnel

(WV Code Chapter 29)

Fund 0206 FY 2023 Org 0222

Directed Transfer – Surplus 70099 \$ 1,500,000

The above appropriation for Directed Transfer – Surplus (fund 0206, appropriation 70099) shall be transferred to the Department of Administration, Division of Personnel (fund 2440).

402 - Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2023 Org 0603

Armory Board Transfer – Surplus 70199 \$ 1,525,000

403 - Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapter 15A)

Fund 0450 FY 2023 Org 0608

Current Expenses – Surplus 13099 \$ 4,200,000

404 - Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2023 Org 0310

Equine Enrichment – Surplus xxxxx \$ 1,000,000

405 - Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2023 Org 0432

National Youth Science Camp –

Surplus xxxxx \$ 100,000

406 - Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2023 Org 0100

Congressional Earmark

Maintenance of Effort - Surplus xxxxxx \$ 100,000,000

~~* 407 – Department of Revenue~~

~~(WV Code Chapter 11)~~

~~Fund 0465 FY 2023 Org 0701~~

~~General Revenue Fund – Transfer –~~

~~Surplus xxxxxx \$ 265,000,000~~

~~The above appropriation for General Revenue Fund – Transfer – Surplus (fund 0465, appropriation #####) shall be credited to Fiscal Year 2023 General Revenue collections.~~

408 - Department of Economic Development -

Office of the Secretary

(WV Code Chapter 5B)

Fund 0256 FY 2023 Org 0307

***NOTE:** The Governor deleted item 407 in its entirety, which stated:

“407 – Department of Revenue

(WV Code Chapter 11)

Fund 0465 FY 2023 Org 0701

General Revenue Fund – Transfer – Surplus.... xxxxxx \$ 265,000,000

The above appropriation for General Revenue Fund – Transfer – Surplus (fund 0465, appropriation #####) shall be credited to Fiscal Year 2023 General Revenue collections.”

Directed Transfer – Surplus 70099 \$ 600,000,000

The above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 70099) shall be transferred to Industrial Development Loans (fund 9061).

409 - Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2023 Org 0432

Educational Enhancements - Surplus.... 92700 \$ 500,000

From the above appropriation for Educational Enhancements – Surplus (fund 0293, appropriation 92700) \$500,000 shall be used for Save the Children.

Total TITLE II, Section 9 –

General Revenue Surplus Accrued \$ 1,058,370,787

Sec. 10. Appropriations from lottery net profits surplus accrued. — The following item is hereby appropriated from the lottery net profits, and is to be available for expenditure during the fiscal year 2023 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2022, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2022.

In the event that surplus revenues available from the fiscal year ending June 30, 2022, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

410 - Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2023 Org 0508

Senior Services Medicaid Transfer –		
Lottery Surplus	68199	\$ 14,750,000
In-Home Services and Nutrition for Senior Citizens – Surplus	76699	<u>2,000,000</u>
Total		16,750,000

*411 - Department of Arts Culture and History –**Division of Culture and History*

(WV Code Chapter 5A)

Fund 3534 FY 2023 Org 0432

Save the Music– Lottery Surplus	xxxxx	\$ 100,000
Capital Outlay and Maintenance –		
Lottery Surplus	76099	<u>3,000,000</u>
Total		3,100,000
Total TITLE II, Section 10 –		
Surplus Accrued.....		<u>\$ 19,850,000</u>

Sec. 11. Appropriations from state excess lottery revenue surplus accrued. — The following item is hereby appropriated from the state excess lottery revenue fund, and is to be available for expenditure during the fiscal year 2023 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2022, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2022.

In the event that surplus revenues available from the fiscal year ending June 30, 2022, are not sufficient to meet the appropriation

made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

412 - Racing Commission –

General Administration

(WV Code Chapter 19)

Fund 7308 FY 2023 Org 0707

Directed Transfer 70000 \$ 800,000

From the above appropriation for Directed Transfer (fund 7308, appropriation 70000), \$800,000 shall be transferred to the Racing Commission – General Administration (Fund 7305).

413 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2023 Org 0511

Medical Services – Lottery Surplus..... 68100 \$ 16,200,000

Total TITLE II, Section 11 –

Surplus Accrued..... \$ 17,000,000

Sec. 12. Special revenue appropriations. — There are hereby appropriated for expenditure during the fiscal year 2023 special revenues collected pursuant to general law enactment of the Legislature which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2 and are not expressly appropriated under this act: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.Va. Code §12-2-1 et seq., W.Va. Code §12-3-1 et seq., and W.Va. Code §11B-2-1 et seq., unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund; and

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended: *Provided, however*, That federal funds received by the state may be expended only in accordance with Sections (6) or (7) of this Title and with W.Va. Code §4-11-1, *et seq. Provided further*, That federal funds that become available to a spending unit for expenditure while the Legislature is not in session and the availability of such funds could not reasonably have been anticipated and included in this act may be only be expended in the limited circumstances provided by W. Va. Code §4-11-5(d): *And provided further*, That no provision of this Act may be construed to authorize the expenditure of federal funds except as provided in this section.

During Fiscal Year 2023, the following funds are hereby available and are to be transferred to the appropriate funds as specified from available balances per the following:

414 - Treasurer’s Office –

Unclaimed Property Trust Fund

(WV Code Chapter 12)

Fund 1342 FY 2023 Org 1300

Directed Transfer 70000 \$ 5,000,000

From the above appropriation for Directed Transfer (Fund 1342, appropriation 70000), \$5,000,000 shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

Total TITLE II, Section 12 –

Special Revenue..... \$ 5,000,000

Sec. 13. State improvement fund appropriations. — Requests or donations of nonpublic funds, received by the Governor on behalf of the state during the fiscal year 2023, for the

purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year 2023 to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 14. Specific funds and collection accounts. — A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 15. Appropriations for refunding erroneous payment. — Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his or her warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 16. Sinking fund deficiencies. — There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by W.Va. Code §31-18-20b, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds

necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the Governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 17. Appropriations for local governments. — There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

- (a) For redemption of lands;
- (b) By public service corporations;
- (c) For tax forfeitures.

Sec. 18. Total appropriations. — Where only a total sum is appropriated to a spending unit, the total sum shall include personal services and employee benefits, annual increment, current expenses, repairs and alterations, buildings, equipment, other assets, land, and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I – GENERAL PROVISIONS, Sec. 3.

Sec. 19. General school fund. — The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.Va. Code §18-9A-16.

TITLE III – ADMINISTRATION

Sec. 1. Appropriations conditional. — The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are

conditioned upon the compliance by the spending unit with the requirements of Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

Sec. 2. Constitutionality. — If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

●

CHAPTER 12

**(Com. Sub. for S. B. 515 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2022, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022, and further included recommended expirations to the unappropriated surplus balance of the State Fund General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0226, fiscal year 2022, organization 0221, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27 – Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2022 Org 0221

	Appro- priation	General Revenue Fund
4a Unclassified – Surplus	09700	\$ 200,000
6a Public Defender Corporations – Surplus.....	35299	1,810,000
6b Appointed Counsel Fees – Surplus	43500	17,990,000

●

CHAPTER 13

(S. B. 517 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2022, in the amount of \$22,500,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2022; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2022, in the State Excess Lottery Revenue Fund be decreased by expiring the amount of \$22,500,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2022.

●

CHAPTER 14

(S. B. 525 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2022, in the amount of \$125,000 from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of Lottery Net Profits Fund, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2022; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2022, in Lottery Net Profits be decreased by expiring the amount of \$125,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2022.

●

CHAPTER 15

(S. B. 526 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Commerce, Department of Commerce – Office of the Secretary, fund 0606, fiscal year 2022, organization 0327, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor’s Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0606, fiscal year 2022, organization 0327, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

39 – Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2022 Org 0327

	Appro- p riation	General Revenue Fund
6a Directed Transfer – Surplus.....	70099	\$ 500,000

The above appropriation for Directed Transfer - Surplus (fund 0606, appropriation 70099) shall be transferred to the Marketing and Communications Operating Fund (fund 3002).

●

CHAPTER 16

(S. B. 527 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Office of Technology, fund 0204, fiscal year 2022, organization 0231, by supplementing and amending chapter 11, Acts of the Legislature, regular session, 2021, known as the Budget Bill for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 11, Acts of the Legislature, regular session, 2021, known as the Budget Bill, be supplemented and amended by adding a new item of appropriation to Title II, Section 1 thereof, the following:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

30a – Office of Technology

(WV Code Chapter 5A)

Fund 0204 FY 2022 Org 0231

	Appro- priation	General Revenue Fund
1 Directed Transfer - Surplus	70099	\$ 2,000,000

The above appropriation for Directed Transfer – Surplus (fund 0204, appropriation 70099) shall be transferred to the Department of Administration, Office of Technology – Chief Technology Officer Administration Fund (fund 2531).

●

CHAPTER 17

**(Com. Sub. for S. B. 528 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 11, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2022, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0525, fiscal year 2022, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

58 – Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2022 Org 0506

	Appro- priation	General Revenue Fund
6a Institutional Facilities and Operations – Surplus (R)	63200	\$ 15,625,000

●

CHAPTER 18

(S. B. 624 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2022, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2022, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 5163, fiscal year 2022, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

207 - Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2022 Org 0506

	Appropriation	Other Funds
3 Current Expenses	13000	1,093,531

●

CHAPTER 19

(Com. Sub. for S. B. 625 - By Senators Blair (Mr. President) and Baldwin)

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor with objections on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2022, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – The Vital Statistics Account, fund 5144, fiscal year 2022, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 5144, fiscal year 2022, organization 0506, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

*205 - Division of Health –**The Vital Statistics Account*

(WV Code Chapter 16)

Fund 5144 FY 2022 Org 0506

	Appropriation	Other Funds
1 Personal Services and Employee Benefits.....00100	\$ 108,000	
3 Current Expenses.....*	01300	800,000

*NOTE: The Governor struck out Appropriation Number "01300" on line three.

●

CHAPTER 20

(S. B. 626 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing, amending, and increasing existing items of appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2022, organization 0802, for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a Statement of the State Road Fund, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenues for the fiscal year 2022, less regular appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor's Statement of the State Road Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 9007, fiscal year 2022, organization 0802, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from the state road fund.

DEPARTMENT OF TRANSPORTATION*110 - Division of Motor Vehicles*

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)

Fund 9007 FY 2022 Org 0802

	Appro- priation	State Road Fund
1 Personal Services and Employee Benefits.....00100	\$ 8,450,000	
4 Current Expenses.....13000		69,000

●

CHAPTER 21

(S. B. 627 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing, amending, and increasing an existing item of appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2022, organization 0803, for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 12, 2022, which included a Statement of the State Road Fund setting forth therein the cash balances and investments as of July 1, 2021, and further included the revised estimate of revenues for the fiscal year 2022, less regular appropriations for the fiscal year 2022; and

Whereas, It appears from the Statement of the State Road Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 9017, fiscal year 2022, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

111 - Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2022 Org 0803

	Appropriation	State Road Fund
7 General Operations	27700	21,200,000

●

CHAPTER 22

(S. B. 628 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Commerce, Division of Natural Resources, fund 0265, fiscal year 2022, organization 0310, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0265, fiscal year 2022, organization 0310, be

supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

35 – Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2022 Org 0310

	Appropriation	General Revenue Fund
1 Personal Services and Employee Benefits.....00100	\$	184,162
9 Capital Outlay - Parks (R)28800		1,000,000

●

CHAPTER 23

(S. B. 629 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Education, State Board of Education – Vocational Division, fund 0390, fiscal year 2022, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor’s Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0390, fiscal year 2022, organization 0402, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

48 – State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2022 Org 0402

	Appropriation	General Revenue Fund
8 Jobs & Hope	14902	214,800

●

CHAPTER 24

(S. B. 630 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Higher Education Policy Commission, Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2022, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor’s Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0589, fiscal year 2022, organization 0441, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

94 – Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2022 Org 0441

	Appropriation	General Revenue Fund
9 Facilities Planning and Administration ..	38600	400,683

●

CHAPTER 25

(S. B. 633 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Health and Human Resources, Consolidated Medical Services Fund, fund 0525, fiscal year 2022, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0525, fiscal year 2022, organization 0506, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

58 – Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2022 Org 0506

	Appropriation	General Revenue Fund
5 Institutional Facilities Operations (R)33500		10,000,000

●

CHAPTER 26

(S. B. 634 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2022, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health – Hospital Services Revenue Account Special Fund Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2022, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 5156, fiscal year 2022, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

206 - Division of Health –

Hospital Services Revenue Account

Special Fund

Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2022 Org 0506

	Appropriation	Other Funds
1 Institutional Facilities Operations.....33500		\$ 16,000,000

●

CHAPTER 27

(S. B. 636 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Revenue, West Virginia Office of Tax Appeals, fund 0593, fiscal year 2022, organization 0709, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0593, fiscal year 2022, organization 0709, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF REVENUE

76 – West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2022 Org 0709

	Appropriation	General Revenue Fund
3 Current Expenses (R).....	13000	74,816

●

CHAPTER 28

(S. B. 637 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 15, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2022, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0105, fiscal year 2022, organization 0100, be

supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7 – Governor’s Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2022 Org 0100

	Appropriation	General Revenue Fund
2a Local Economic Development		
Assistance (R).....	81900	15,000,000

●

CHAPTER 29

(S. B. 715 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury in the State Fund, General Revenue, by decreasing items of appropriation to the Department of Economic Development - Office of the Secretary, fund 0256, fiscal year 2022, organization 0307; and by increasing items of appropriation to the Department of Commerce - Office of the Secretary, fund 0606, fiscal year 2022, organization 0327 for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriations for the fiscal year ending June 30, 2022, to fund 0256, fiscal year 2022, organization 0307 be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ECONOMIC DEVELOPMENT

42 – Department of Economic Development –

Office of the Secretary

(WV Code Chapter 5B)

Fund 0256 FY 2022 Org 0307

1	Personal Services and Employee Benefits.....00100	\$	686,550
3	Current Expenses.....13000		121,300

And, That the total appropriations for the fiscal year ending June 30, 2022, to fund 0606, fiscal year 2022, organization 0327 be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF COMMERCE

39 – Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2022 Org 0327

			General Revenue Fund
		Appro- priation	
1	Personal Services and Employee Benefits.....	00100	\$ 686,550
5	Current Expenses	13000	121,300

●

CHAPTER 30

(S. B. 716 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Education, State Board of Education - Strategic Staff Development, fund 3937, fiscal year 2022, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Education, State Board of Education - Strategic Staff Development, fund 3937, fiscal year 2022, organization 0402, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 3937, fiscal year 2022, organization 0402, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF EDUCATION

*181 – State Board of Education –**Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2022 Org 0402

	Appropriation	Other Funds
2 Unclassified	09900	17,000
3 Current Expenses	13000	1,683,000

●

CHAPTER 31

(S. B. 717 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to Miscellaneous Boards and Commissions, Board of Medicine - Medical Licensing Board Fund, fund 9070, fiscal year 2022, organization 0945, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in Miscellaneous Boards and Commissions, Board of Medicine - Medical Licensing Board Fund, fund 9070, fiscal year 2022, organization 0945, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 9070, fiscal year 2022, organization 0945, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

291 – Board of Medicine –
Medical Licensing Board Fund
 (WV Code Chapter 30)
 Fund 9070 FY 2022 Org 0945

	Appropriation	Other Funds
Personal Services and Employee Benefits.....00100	\$	75,000

●

CHAPTER 32

(S. B. 718 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Administration, Travel Management - Aviation Fund, fund 2302, fiscal year 2022, organization 0215, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Administration, Travel Management - Aviation Fund, fund 2302, fiscal year 2022, organization 0215, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 2302, fiscal year 2022, organization 0215, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

147 – Travel Management –

Aviation Fund

(WV Code Chapter 5A)

Fund 2302 FY 2022 Org 0215

	Appropriation	Other Funds
3 Repairs and Alterations.....	06400	400,000

●

CHAPTER 33

(S. B. 719 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Homeland Security, Fire Commission - Fire Marshal Fees, fund 6152, fiscal year 2022, organization 0619, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Homeland Security, Fire Commission - Fire Marshal Fees, fund 6152, fiscal year 2022, organization 0619, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 6152, fiscal year 2022, organization 0619, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

237 – Fire Commission –

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2022 Org 0619

	Appropriation	Other Funds
3 Current Expenses	13000	400,000

●

CHAPTER 34

(S. B. 720 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Executive, Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2022, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Governor's Statement of the State Fund, General Revenue, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0105, fiscal year 2022, organization 0100, be

supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7 – Governor’s Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2022 Org 0100

	Appropriation	General Revenue Fund
1c Civil Contingent Fund - Total.....	11400	\$ 27,915,000

●

CHAPTER 35

(S. B. 722 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT expiring funds to the balance of the Department of Environmental Protection, Division of Environmental Protection - Reclamation of Abandoned and Dilapidated Property Program Fund, fund 3305, fiscal year 2022, organization 0313, in the amount of \$10,000,000, from the Executive, Governor's Office, Coronavirus State Fiscal Recovery Fund, fund 8823, fiscal year 2022, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor finds the account balance in the Executive, Governor's Office - Coronavirus State Fiscal Recovery Fund, fund 8823, organization 0100 exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2022, to the Governor's Office - Coronavirus State Fiscal Recovery Fund, fund 8823, organization 0100, be decreased by expiring the amount of \$10,000,000 to the Department of Environmental Protection, Division of Environmental Protection - Reclamation of Abandoned and Dilapidated Property Program Fund, fund 3305, fiscal year 2022, organization 0313.

●

CHAPTER 36

(S. B. 723 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Agriculture - West Virginia Spay Neuter Assistance Fund, fund 1481, fiscal year 2022, organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in Department of Agriculture - West Virginia Spay Neuter Assistance Fund, fund 1481, fiscal year 2022, organization 1400, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 1481, fiscal year 2022, organization 1400, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

EXECUTIVE

133– Department of Agriculture –

West Virginia Spay Neuter Assistance Fund

(WV Code Chapter 19)

Fund 1481 FY 2022 Org 1400

	Appropriation	Other Funds
1 Current Expenses	13000	\$ 100,000

●

CHAPTER 37

(S. B. 724 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Homeland Security, Division of Corrections and Rehabilitation - Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2022, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Homeland Security, Division of Corrections and Rehabilitation - Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2022, organization 0608, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 6675, fiscal year 2022, organization 0608, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

228 – Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2022 Org 0608

	Appropriation	Other Funds
1 Personal Services and Employee Benefits.....00100	\$	1,370,735

CHAPTER 38

(S. B. 725 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT supplementing and amending chapter eleven, Acts of the Legislature, regular session, 2021, known as the budget bill, as amended, in Title II from the appropriations of public moneys out of the State Treasury in the State Fund, General Revenue, to the Department of Homeland Security, West Virginia State Police, fund 0453, fiscal year 2022, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022, by adding new language; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0453, fiscal year 2022, organization 0612, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

68 – West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2022 Org 0612

1	Personal Services and Employee Benefits.....00100	\$ 7,602,361
1a	Personal Services and Employee Benefits – Surplus.....24399	27,256,787
2	Salary and Benefits of Cabinet Secretary and 3 Agency Heads.....00201	13,194
3a	Salary and Benefits of Cabinet Secretary and 3b Agency Heads – Surplus02099	63,053
4	Children’s Protection Act09000	616,039
4a	Children’s Protection Act – Surplus09099	196,745
5	Current Expenses13000	10,384,394
6	Repairs and Alterations.....06400	450,523
7	Trooper Class.....52100	2,722,992
7a	Trooper Class – Surplus.....66000	242,420
8	Barracks Lease Payments55600	237,898
9	Communications and Other Equipment (R)55800	1,070,968
10	Trooper Retirement Fund60500	9,592,923
11	Handgun Administration Expense74700	77,892
12	Capital Outlay and Maintenance (R)75500	250,000
13	Retirement Systems – Unfunded Liability77500	17,798,000
14	Automated Fingerprint Identification System.....89800	2,211,693
15	BRIM Premium91300	5,743,921
16	Total.....	\$ 86,531,803

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, appropriation 55800) and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than \$25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.

The West Virginia State Police shall have the authority to transfer funds from any of the above appropriations, with the exception of Trooper Retirement Fund (fund 0453, appropriation 60500) or Retirement Systems – Unfunded Liability (fund 0453, appropriation 77500), for the fiscal year ending June 30, 2022, to the appropriation for Capital Outlay and Maintenance (fund 0453, appropriation 75500) in an amount not to exceed \$2,600,000.

●

CHAPTER 39

(S. B. 731 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Department of Tourism – Tourism Workforce Development Fund, fund 8903, fiscal year 2022, organization 0304, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2022, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 8903, fiscal year 2022, organization 0304, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations from federal funds.

DEPARTMENT OF TOURISM

340a – Department of Tourism –

Tourism Workforce Development Fund

Fund 8903 FY 2022 Org 0304

	Appropriation	Federal Funds
1 Federal Coronavirus Pandemic.....	89101	\$ 5,148,017

●

CHAPTER 40

(S. B. 732 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2022, to the Hospital Finance Authority – Hospital Finance Authority Fund, fund 5475, fiscal year 2022, organization 0509, by supplementing and amending the appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor has established that there now remains an unappropriated balance in the Hospital Finance Authority – Hospital Finance Authority Fund, fund 5475, fiscal year 2022, organization 0509, that is available for expenditure during the fiscal year ending June 30, 2022, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 5475, fiscal year 2022, organization 0509, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

278 – Hospital Finance Authority –

Hospital Finance Authority Fund

(WV Code Chapter 16)

Fund 5475 FY 2022 Org 0509

	Appropriation	Other Funds
2a Personal Services and Employee Benefits.....00100	\$	10,000



CHAPTER 41

(S. B. 733 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 18, 2022.]

AN ACT supplementing and amending appropriations of public moneys out of the State Treasury in the State Fund, General Revenue, by decreasing an existing item of appropriation and adding a new item of appropriation to the Executive, Governor's Office, fund 0101, fiscal year 2022, organization 0100, by supplementing and amending appropriations for the fiscal year ending June 30, 2022.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 12, 2022, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2021, and further included the revised estimate of revenue for the fiscal year 2022, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2022; and

Whereas, It appears from the Executive Budget document, Statement of the State Fund, General Revenue, and this legislation, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2022; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2022, to fund 0101, fiscal year 2022, organization 0100, be

supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

5 – Governor’s Office

(WV Code Chapter 5)

Fund 0101 FY 2022 Org 0100

	Appropriation	General Revenue Fund
2 Current Expenses (R).....	13000	10,000

And, That the total appropriation for the fiscal year ending June 30, 2022, to fund 0101, fiscal year 2022, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

5 – Governor’s Office

(WV Code Chapter 5)

Fund 0101 FY 2022 Org 0100

	Appropriation	General Revenue Fund
3a Equipment.....	07000	10,000



CHAPTER 42

**(Com. Sub. for Com. Sub. for S. B. 434 - By Senators Nelson,
Jeffries, Takubo, Swope, and Lindsay)**

[Passed March 11, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §8-28-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-29-1, §8-29-3, §8-29-8, §8-29-9, §8-29-12, §8-29-17, and §8-29-20 of said code; to amend said code by adding thereto a new section, designated §8-29-8a; and to amend and reenact §8-29B-2, §8-29B-3, and §8-29B-5 of said code, relating generally to airport authorities and operations; increasing the criminal fine for vehicular and pedestrian traffic near airports; authorizing airport authorities to establish and operate international and ancillary airports; defining terms; clarifying that certain airports may be established near research or business parks; expanding the powers and authority of airport authorities related to acquisition and use of property; establishing a procedure for the disposition of derelict or abandoned aircraft; providing airport authorities with a lien on a derelict or abandoned aircraft; providing for sale and disposal of abandoned and derelict aircraft and purchaser's ownership rights; authorizing airport authorities to promulgate rules to control vehicular and pedestrian traffic; increasing criminal fines for violations of certain airport rules and regulations; providing airport authorities with the right of immediate entry following eminent domain; and expanding areas over which airport police have jurisdiction.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 28. INTERGOVERNMENTAL RELATIONS —
AIRPORTS AND AVIGATION.**

**PART II. CONTROL OF VEHICULAR AND PEDESTRIAN
TRAFFIC NEAR AIRPORTS.**

**§8-28-5. Rules and regulations to control vehicular and
pedestrian traffic within quarter mile of airport; violation
of rule and regulation a misdemeanor; penalty.**

(a) The governing body or county court is hereby empowered and authorized to adopt and promulgate rules and regulations to:

(1) Control the movement and disposition of vehicular and pedestrian traffic within 1/4 mile of any building or installation of any airport owned or operated or owned and operated by any such municipality or county court;

(2) Regulate and control vehicular parking within such areas by the installation of parking meters or by other methods; and

(3) Impose reasonable charges for the use of the parking space so metered or otherwise allocated, so as to provide maximum opportunity for the public use thereof.

(b) Violation of any such rule and regulation shall constitute a misdemeanor and, the offender, upon conviction in the manner provided by law, may be fined not less than \$10 nor more than \$30 for each such violation.

(c) Magistrates shall have concurrent jurisdiction with the circuit courts and with statutory courts of record having criminal jurisdiction for the trial of offenses under this section.

**ARTICLE 29. INTERGOVERNMENTAL RELATIONS —
AIRPORTS.**

§8-29-1. Airport authorities authorized; definitions.

(a) Any two or more municipalities, any two or more contiguous counties, or any county or two or more contiguous counties and one or more municipalities located therein or partly

therein, of this state, are hereby authorized to create and establish one or more authorities for the purpose of acquiring, establishing, constructing, equipping, improving, financing, maintaining, and operating a regional airport or international airport and ancillary airports, as the case may be, for the use of aircraft: *Provided*, That no such municipality or county shall participate in such authority unless and until the governing body or county court so provides.

(b) As used in this article, the following terms have the following meanings:

(1) “Abandoned aircraft” means either:

(A) An aircraft left in a wrecked, inoperative, or partially dismantled condition on an airport for 45 consecutive calendar days and without a contractual agreement in force between the owner or operator of the aircraft and the airport authority for use of the airport premises; or

(B) An aircraft that has remained in an idle state on an airport for 45 consecutive calendar days without a contractual agreement between the owner or operator of the aircraft and the airport authority for use of the airport premises;

(2) “Aircraft” has the meaning provided in §29-2A-1 of this code;

(3) “Airport” means any airport, heliport, helistop, vertiport, gliderport, seaplane base, ultralight flightpark, manned balloon launching facility, or other aircraft landing or takeoff area operated by an airport operator as that term is defined in §8-29B-2(3);

(4) “Ancillary airport” means any airport, heliport, helistop, vertiport, gliderport, seaplane base, ultralight flightpark, manned balloon launching facility, or other aircraft landing or takeoff area that is owned and operated or operated by agreement by another authority as defined in §8-29-1 of this code;

(5) “Authority” means a regional airport authority created pursuant to the provisions of this article;

(6) “Contiguous counties” means two or more counties which constitute a compact territorial unit within an unbroken boundary wherein one county touches at least one other county but does not require that each county touch all of the other counties so combining; and

(7) “Derelict aircraft” means any aircraft that is not in a flyable condition, does not have a current certificate of air worthiness issued by the federal aviation administration, and whose owner cannot produce satisfactory written documentation from a licensed third-party aircraft mechanic evidencing that they have been hired to actively and fully repair the aircraft to both an airworthy and properly registered condition within six calendar months from the date notice is given to the owner.

§8-29-3. Authorities empowered and authorized to acquire, operate, etc., airports and develop industrial parks; state aeronautics commission.

Each authority is hereby empowered and authorized to acquire, establish, construct, equip, improve, finance, maintain, and operate an international airport, a regional airport, or other airport or landing field and appurtenant facilities so located to best serve the region in which they are located, including, but not limited to, industrial, research, and business parks. Each authority shall be subject to the jurisdiction of the state aeronautics commission to the same extent as a state or municipal airport.

PART II. GENERAL POWERS OF AUTHORITIES.

§8-29-8. Powers of authorities generally.

Each authority is hereby given plenary power and authority as follows:

(1) To make and adopt all necessary bylaws and rules for its organization and operations not inconsistent with law;

(2) To elect its own officers, to appoint committees and to employ and fix the compensation for personnel necessary for its operation;

(3) To enter into contracts with any person, including both public and private corporations, or governmental department or agency, and generally to do any and all things necessary or convenient for the purpose of acquiring, establishing, constructing, equipping, improving, financing, maintaining, and operating a public airport to best serve the region in which it is located, including the development of an industrial, research, or business park in the same general area;

(4) To delegate any authority given to it by law to any of its officers, committees, agents, or employees;

(5) To apply for, receive, and use grants-in-aid, donations, and contributions from any source or sources, including, but not limited to, the federal government and any department or agency thereof, and this state subject to any Constitutional and statutory limitations with respect thereto, and to accept and use bequests, devises, gifts, and donations from any person;

(6) To acquire, receive, take, and hold property, whether by purchase, gift, lease, devise, or otherwise, and to use and manage said property, and to develop, improve, and maintain any property owned, leased or controlled by it;

(7) To purchase, own, hold, sell, and dispose of personal property and to sell, lease, or otherwise dispose of any real property which it may own;

(8) To borrow money and execute and deliver negotiable notes, mortgage bonds, other bonds, debentures, and other evidences of indebtedness therefor, and give such security therefor as shall be requisite, including giving a mortgage or deed of trust on its airport properties and facilities or assigning or pledging the gross or net revenues therefrom;

(9) To raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of §8-16-1 *et seq.* of this code, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, each authority is a “governing body” as that term is used in said article only;

(10) To establish, charge, and collect reasonable fees and charges for services or for the use of any part of its property or facilities, or for both services and such use;

(11) To expend its funds in the execution of the powers and authority herein given;

(12) To apply for, receive, and use loans, grants, donations, technical assistance, and contributions from any regional or area commissions that may be established;

(13) To prescribe by bylaw the manner of financial participation by members;

(14) To construct, acquire, establish, improve, extend, enlarge, reconstruct, equip, maintain, and repair buildings, structures, and facilities, including roadway access, suitable for use as manufacturing plants, industrial plants, and facilities; research parks and facilities; business parks and facilities; retail shopping areas or centers; parks; exhibits; exhibitions; or the conduct of any lawful business, heliport, or aircraft landing area owned or operated by such authority, and to lease or let such buildings, structures, and facilities or any one or more of them to such tenant or tenants for such term or terms, at such compensation or rental and subject to such provisions, limitations, and conditions as the authority may require or approve; and

(15) To enter into a management agreement or agreements with any county, city, or town in the state for the management by the authority of an existing airport upon such terms and conditions as may be mutually agreeable.

(16) An authority may only exercise the powers delegated to it in this section in the county in which the airport is located or any county contiguous to the county in which the airport is located: *Provided*, That nothing in this subsection shall prohibit an authority from entering into a management agreement for an existing airport with a county that is not contiguous to the county in which the existing airport is located or a city or town located in a county that is not contiguous to the county in which the airport is located.

§8-29B-8a. Abandoned or derelict aircraft.

(a) If an abandoned or derelict aircraft is discovered on an airport, the airport authority shall:

(1) Make a record of the date the aircraft was discovered on the airport; and

(2) Inquire as to the name and address of any person having an equitable or legal interest in the aircraft, including the owner and any lien holders, by:

(A) Contacting the federal aviation administration, aircraft registration branch, and making a diligent search of the appropriate records; or

(B) Contacting an aircraft title search company.

(b) Within 10 business days of receiving the information requested pursuant to subsection (a) of this section, the airport authority shall notify the owner and all other interested parties by certified mail, return receipt requested:

(1) Of the location of the abandoned or derelict aircraft on the airport;

(2) That fees and charges for the use of the airport by the aircraft have accrued and the amount of those fees and charges;

(3) That the aircraft is subject to a lien pursuant to this section for any unpaid and accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft;

(4) That the lien is subject to enforcement pursuant to this section;

(5) That the airport may use, trade, sell, or remove the aircraft as described in §8-29-3 of this code if, within 30 calendar days after the date of receipt of the notice, the owner or other interested party has not removed the aircraft from the airport and paid in full all

accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft; and

(6) That the airport authority may remove the aircraft in less than 30 calendar days if the aircraft poses a danger to the health or safety of users of the airport, as determined by the airport authority.

(c) If, after the inquiry required by subdivision (2), subsection (a) of this section, the owner of the aircraft is unknown or cannot be found, the airport authority shall place a notice upon the aircraft in a conspicuous position containing the information required by subdivisions (2) through (6) of subsection (b) of this section: *Provided*, That said notice shall be not less than eight inches by 10 inches and shall be laminated or otherwise sufficiently weatherproof to withstand normal exposure to rain, snow, and other conditions.

(d) If, after 30 calendar days of the owner or other interested party receiving the inquiry required by subsection (b) of this section or after 30 calendar days of posting the notice on the aircraft required by subsection (c) of this section, whichever occurs sooner, the owner or other interested party has not removed the aircraft from the airport and paid in full all accrued fees and charges for the use of the airport and for the transportation, storage, and removal of the aircraft, or shown reasonable cause for the failure to do so, the airport authority may:

(1) Retain the aircraft for use by the airport, the state, or the unit of local government owning or operating the airport;

(2) Trade the aircraft to another unit of local government or a state agency;

(3) Sell the property; or

(4) Dispose of the property through an appropriate refuse removal company or a company that provides salvage services for aircraft.

(e) If the airport authority elects to sell the aircraft in accordance with subsection (d) of this section, the aircraft shall be

sold at public auction after giving notice of the time and place of sale, at least 10 calendar days prior to the date of sale, in a newspaper of general circulation within the county where the airport is located and after providing written notice of the intended sale to all parties known to have an interest in the aircraft.

(f) If the airport authority elects to dispose of the aircraft in accordance with subdivision (4), subsection (d) of this section, the airport authority may negotiate with the company for a price to be received from the company in payment for the aircraft, or, if circumstances so warrant, a price to be paid to the company by the airport authority for the costs of disposing of the aircraft. All information and records pertaining to the establishment of the price and the justification for the amount of the price shall be prepared and maintained by the airport authority.

(g) If the sale price or the negotiated price is less than the airport authority's then current fees and charges against the aircraft, the owner of the aircraft shall remain liable to the airport authority for the fees and charges that are not offset by the sale price or negotiated price.

(h) All costs incurred by the airport authority in the removal, storage, and sale of any aircraft shall be recoverable against the owner of the aircraft.

(i) The airport authority shall have a lien on an abandoned or derelict aircraft for all unpaid fees and charges for the use of the airport by the aircraft and for all unpaid costs incurred by the airport authority for the transportation, storage, and removal of the aircraft. As a prerequisite to perfecting a lien under this section, the airport authority shall serve a notice in accordance with §8-29-2 of this code on the last registered owner and all persons having an equitable or legal interest in the aircraft.

(j)(1) For the purpose of perfecting its lien under this section, the airport authority shall record a claim of lien that states:

(A) The name and address of the airport;

(B) The name of the last registered owner of the aircraft and all persons having a legal or equitable interest in the aircraft;

(C) The fees and charges incurred by the aircraft for the use of the airport and the costs for the transportation, storage, and removal of the aircraft; and

(D) A description of the aircraft sufficient for identification.

(2) The claim of lien shall be signed and sworn to or affirmed by the airport authority's director or the director's designee.

(3) The claim of lien shall be served on the last registered owner of the aircraft and all persons having an equitable or legal interest in the aircraft. The claim of lien shall be so served before recordation.

(4) The claim of lien shall be recorded with the register of the county where the airport is located. The recording of the claim of lien shall be constructive notice to all persons of the contents and effect of such claim. The lien shall attach at the at the time of recordation and shall take priority as of that time.

(k)(1) If the aircraft is sold pursuant to this section, the airport authority shall satisfy the airport authority's lien, plus the reasonable expenses of notice, advertisement, and sale, from the proceeds of the sale.

(2) The balance of the proceeds of the sale, if any, shall be held by the airport authority, and delivered on demand to the owner of the aircraft.

(3) If no person claims the balance within 12 months of the date of sale, the airport authority shall retain the funds and use the funds for airport operations.

(l) Any person acquiring a legal interest in an aircraft pursuant to this section shall be the lawful owner of the aircraft and all other legal or equitable interests in that aircraft shall be divested: *Provided*, That the holder of any legal or equitable interest was notified of the intended disposal of the aircraft as required by this

section. The airport authority may issue documents of disposition to the purchaser or recipient of an aircraft disposed of pursuant to this section.

PART III. CONTROL OF VEHICULAR AND
PEDESTRIAN TRAFFIC NEAR AIRPORTS.

§8-29-9. Rules and regulations to control vehicular and pedestrian traffic within quarter mile of airport; violation of rule and regulation a misdemeanor; penalty.

(a) The airport authority or the county court of the county in which any such airport or the major portion thereof is located is hereby empowered and authorized, upon request of the authority, may adopt and promulgate rules and regulations to:

(1) Control the movement and disposition of vehicular and pedestrian traffic within 1/4 mile of any building or installation of any such airport;

(2) Regulate and control vehicular parking within such areas by the installation of parking meters or by other methods; and

(3) Impose reasonable charges for the use of the parking space so metered or otherwise allocated, so as to provide maximum opportunity for the public use thereof.

(b) Violation of any such rule and regulation shall constitute a misdemeanor and, the offender, upon conviction in the manner provided by law, may be fined not less than \$10 nor more than \$30 for each such violation.

(c) Magistrates shall have concurrent jurisdiction with the circuit courts and with statutory courts of record having criminal jurisdiction for the trial of offenses under this section.

§8-29-12. Authorities to have right of eminent domain.

Whenever it shall be deemed necessary by an authority, in connection with the exercise of its powers herein conferred, to take or acquire any lands, structures or buildings or other rights, either

in fee or as easements, for the purposes herein set forth, the authority may purchase the same directly or through its agents from the owner or owners thereof, or failing to agree with the owner or owners thereof, the authority may exercise the power of eminent domain in the manner provided for condemnation proceedings in chapter 54 of this code, and such purposes are hereby declared to be public uses for which private property may be taken or damaged.

§8-29-17. Participation.

(a) The municipalities and counties or any one or more of them participating therein, jointly or severally, may appoint members of the said authorities and to contribute to the cost of acquiring, establishing, constructing, equipping, improving, and maintaining and operating the said airports and appurtenant facilities.

(b) Any of the municipalities or counties as provided in section one of this article may convey or transfer to the authorities property of any kind heretofore acquired by the municipalities or counties for airport purposes.

§8-29-20. Liberal construction of article.

The purposes of this article are to provide for the acquisition, establishment, construction, equipping, improvement, financing, maintenance, and operation of airports in a prudent and economical manner, and this article shall be liberally construed as giving to any authority created and established hereunder full and complete power reasonably required to give effect to the purposes hereof. The provisions of this article are in addition to and not in derogation of any power granted to or vested in municipalities and county courts under any Constitutional, statutory, or charter provisions which may now or hereafter be in effect.

ARTICLE 29B. AIRPORT SECURITY.

§8-29B-2. Definitions.

As used in this article:

(1) “Aircraft” has the meaning provided in §29-2A-1 of this code.

(2) “Airport” means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft, as defined above, any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon as well as any heliport, helistop, vertiport, gliderport, seaplane base, ultralight flightpark, manned balloon launching facility, or other aircraft landing or takeoff area operated by an airport operator as that term is defined in §8-29B-2(3) of this code.

(3) “Airport operator” means a governing body, regional airport authority, or county airport authority, under §8-28-1 *et seq.*, §8-29-1 *et seq.*, or §8-29A-1 *et seq.* of this code, or a board, commission, authority, or committee operating under any local act of the Legislature, charged with the operation and management of an airport.

(4) “Airport police officer” means any individual assigned, appointed, or designated by an airport operator, to serve as a police officer at an airport.

§8-29B-3. Rules and regulations; penalties.

Each airport operator shall have plenary power and authority to manage and control the airport under its jurisdiction, to promulgate rules and regulations concerning the management and control of such airport, and to enforce any such rules and regulations so promulgated. Any rules and regulations promulgated shall be printed and posted in a conspicuous public place on the airport premises. The violation of any such rule or regulation shall constitute a misdemeanor and, any person convicted of any such violation shall be punished by a fine of not less than \$50 nor more than \$500 or confined in jail for a period not exceeding 30 days, or by both such fine and confined. Justices of the peace of the county shall have concurrent jurisdiction with the circuit court and other courts of record having criminal jurisdiction of any misdemeanor offenses arising under this article. Violation of any such rule or

regulation which also constitutes the violation of any federal or state law or municipal ordinance may be prosecuted and punished as a violation of such federal or state law or municipal ordinance rather than under the provisions of this article. It shall be the duty of every airport operator in this state to promulgate all rules and regulations deemed necessary for airport security.

§8-29B-5. Jurisdiction of airport police officers; insurance coverage; bonds.

(a) The following areas shall be under the jurisdiction of airport police officers:

(1) Any area under the jurisdiction and control of the airport operator, or in connection with the airport;

(2) Any property leased, operated, managed, utilized, or controlled by a regional airport authority; or

(3) Any area upon which a regional airport authority facilitates training activities pursuant to a written agreement.

(b) The jurisdiction of airport police officers shall include any area entered into in pursuit of one or more individuals from one of the areas described in subsection (a) of this section.

(c) When exercising the jurisdiction authorized by this section, airport police officers shall have:

(1) All of the power and authority which a regularly appointed deputy sheriff of a county in this state has in enforcing the criminal laws of this state;

(2) Full power and authority to enforce any and all federal laws and rules and regulations relating to airports, air passengers, baggage inspection, the screening of air passengers, and other airport security measures;

(3) Full power and authority to enforce any and all rules and regulations promulgated by the airport operator; and

(4) The power to search persons, packages, containers, and baggage and the power to arrest persons: *Provided*, That the foregoing provisions of this section shall under no circumstances whatever be construed as in any way limiting the power and authority of a municipal police officer or deputy sheriff who has been assigned to serve as an airport police officer which he or she has by virtue of his or her being a municipal police officer or deputy sheriff, and under no circumstances whatever shall the assignment or appointment or designation of one or more airport police officers at an airport be deemed in any way to supersede or limit the power and authority of other peace officers to preserve law and order at such airport.

(d) Consistent with the provisions of §61-7-5 of this code, any municipal police officer or deputy sheriff assigned as an airport police officer pursuant to §8-29B-4(b) of this code, and (notwithstanding any provision of this code to the contrary) any person appointed or designated as an airport police officer pursuant to §8-29B-4(c) of this code, shall not be required to obtain a state license to carry a deadly weapon, as provided for in §61-7-2 of this code. Any municipal police officer or deputy sheriff assigned as an airport police officer pursuant to the provisions of §8-29B-4(b) of this code shall not be required to furnish any bond under §61-7-5 of this code, other than the bond furnished thereunder as such municipal police officer or deputy sheriff.

(e) When one or more policies of public liability insurance are obtained providing insurance coverage for legal liability of an airport police officer for bodily injury, personal injury, or damage (including, but not limited to, false arrest and false imprisonment) and property damage, and affording said airport police officer insurance coverage against any and all legal liability arising from, growing out of, or by reason of, or in any way connected with, any acts or omissions of said airport police officer in the performance of his or her official duties, and so long as the coverage aforesaid remains in full force and effect as to such airport police officer, then the bond specified in §61-7-5 of this code shall not be required as to such airport police officer: *Provided*, That such bond shall otherwise be required and must be furnished.

CHAPTER 43

(Com. Sub. for S. B. 643 - By Senators Swope and Trump)

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §8-29A-2 of the Code of West Virginia, 1931, as amended, relating to removing the residency requirement of some members appointed to a county airport authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 29A. COUNTY AIRPORT AUTHORITIES.

§8-29A-2. Appointment of members; powers and duties; compensation; terms; removal or replacement.

(a) The management and control of the county airport authority, its property, operations, business, and affairs, shall be lodged in a board of five persons who shall be known as Members of the Authority. The board shall constitute and be a public corporation under the name of “County Airport Authority” and as such shall have perpetual succession, may contract, and be contracted with, sue and be sued, plead and be impleaded, and have and use a common seal.

(b) All members shall be appointed by the county commission: *Provided*, That one member of the authority shall be a member of the county commission: *Provided, however*, That of the remaining four members of the authority no more than two shall be members of the same political party. At least a majority of members shall be residents of the county and be appointed for a term of five years, except that as to the first four appointed to the first board appointed, the term of one member shall expire on July 1, next ensuing and

the term of the next member shall expire on July 1, two years thereafter, the term of another member shall expire on July 1, three years thereafter and the term of the remaining member shall expire on July 1, four years thereafter: *Provided further*, That the county commissioner appointed to serve as a member of the authority shall not serve for a term as member of the authority which is longer than the term of office as a member of the county commission.

(c) The members of the board shall receive no compensation for their services, but they are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board. They may not be personally interested, directly or indirectly, in any contract entered into by the board, or hold any remunerative position in connection with the establishment, construction, improvement, extension, development, maintenance or operation of any of the property under their control as members of the board: *Provided*, That nothing herein may be construed to prevent or make unlawful under this chapter or any other chapter of this code, the appointment to the board of any person whose only interest in any property under the control of the board is that the person in a noncommercial manner leases hangar space, purchases fuel, or contracts for any other goods or service provided by the airport authority subject to the control and management of the board.

(d) The county commission may remove any member of the authority for consistent violations of any provisions of this article, for reasonable cause which shall include, but not be limited to, a continued failure to attend meetings of the authority, failure to diligently pursue the objectives for which the authority was created or failure to perform any other duty prescribed by law, or for any misconduct in office: *Provided*, That if the county commission desires to remove a member of the authority it shall notify said member in writing, stating the reasons for the county commission desiring said removal. Within 10 days of the receipt of the written notice of removal by the member of the authority, the member may request a hearing before the county commission, and any such hearing shall be held within 10 days of the member's request for said hearing.

If any member of the authority dies, resigns, or is removed, or for any other reason ceases to be a member of the authority, the county commission shall within 30 days appoint another person to fill the unexpired portion of the term of that member.

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CHAPTER 44

**(Com. Sub. for H. B. 4667 - By Delegates Howell, Hanshaw
(Mr. Speaker), Summers and Fast)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend of the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated †§5B-2-18 and §5B-2-18a, all relating to uncrewed aircraft operation in the state; establishing the West Virginia Uncrewed Aircraft Systems Advisory Council within the Department of Economic Development; establishing membership, expense reimbursement, and duties of Council; clarifying that all uncrewed aircraft operation in the state must comply with federal regulations; prohibiting political subdivisions from regulating advanced air mobility aircraft or advanced air mobility systems; and defining terms.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

†§5B-2-18. West Virginia Uncrewed Aircraft Systems Advisory Council.

(a) The West Virginia Uncrewed Aircraft Systems Advisory Council is hereby created within the Department of Economic Development.

(b) The council consists of the following nine members, including the chairperson:

†NOTE: H. B. 4418 (Chapter 92), and H. B. 4002 (Chapter 91), which passed prior to this act, also created a new Section 18. Therefore, this has been redesignated as Section 20 for the code.

(1) The Secretary of the Department of Economic Development or his or her designee, ex officio, who shall serve as the chair of the council, and who shall vote when necessary in the event the appointed members of the council become deadlocked;

(2) The following eight members shall be appointed by the Governor and serve at his or her will and pleasure:

(A) One member representing the Secretary of the Department of Transportation;

(B) One member from the Adjutant General's Department;

(C) One member representing the uncrewed aircraft system industry with at least five years of experience operating an uncrewed aircraft;

(D) One member representing a national association of the uncrewed aerial vehicle industry;

(E) One member with experience managing a commercial services airport;

(F) One member representing business and industry, generally;

(G) One member representing academia; and

(H) One member representing the advanced air mobility industry developing human transit capabilities.

(3) Members of the council will receive no compensation but are entitled to reimbursement for mileage expenses while attending meetings of the committee to the extent that funds are available through the Department of Economic Development.

(c) The council shall:

(1) Identify trends and technologies driving innovation in uncrewed aircraft systems;

(2) Develop comprehensive strategies, including, but not limited to, the promotion of research and development, education,

economic growth, and jobs in the uncrewed aircraft system industry in West Virginia; public acceptance of the uncrewed aircraft system industry; business planning; air vehicle technology and manufacturing; and airspace management and national airspace system integration; and

(3) Develop recommended legislation addressing specific issues and in furtherance of the comprehensive strategies identified in subdivision (2), subsection (c) of this section.

(d) The council shall meet at least annually and may convene public meetings to gather information or receive public comments.

(e) The council shall report on the status of its duties, goals, accomplishments, and recommendations to the Legislature on at least an annual basis.

§5B-2-18a. Applicability of federal laws and Federal Aviation Administration regulations; permissible use of uncrewed aircraft.

(a) Notwithstanding any provision of this article to the contrary, any person or entity operating an uncrewed aircraft system may do so in compliance with applicable federal law and applicable regulations of the Federal Aviation Administration.

(b) Except as authorized by law, a political subdivision of the state shall not enact or adopt an ordinance, policy, or rule that relates to the ownership or operation of an advanced air mobility aircraft or advanced air mobility system, and shall not otherwise engage in the regulation of any uncrewed aircraft system, advanced air mobility aircraft, or advanced air mobility system. Any ordinance, policy, or rule, to the extent that it violates any provision of this subsection, whether enacted or adopted by the political subdivision before or after the effective date of this section, is void.

(c) As used in this section, “advanced air mobility aircraft” or “advanced air mobility system” means a system that transports people and property by air between points in the United States using aircraft, as defined in §29-2A-1 of this code, including electric aircraft and electric vertical takeoff and landing aircraft, in both controlled and uncontrolled airspace.

CHAPTER 45

(H. B. 4827 - By Delegates Howell, Riley, B. Ward and Hamrick)

[Passed March 12, 2022; in effect from passage.]
 [Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated †§5B-2K-1, †§5B-2K-2, †§5B-2K-3, †§5B-2K-4 and †§5B-2K-5, and †§5B-2K-6, all relating to the promotion of the development of public-use vertiports; establishing policy of state; defining “vertiport”; providing for applicability of article; establishing requirements for vertiport design and performance characteristics and vertiport layout plans; prohibiting political subdivisions from exercising zoning and land use authority to grant or permit exclusive rights to vertiport owners or operators; requiring political subdivisions to use zoning and land use authority to promote reasonable access to advanced air mobility operators and public vertiports within their jurisdiction; providing for harmonization of article with federal law.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2K. PROMOTING PUBLIC-USE VERTIPORTS ACT.

†§5B-2K-1. Policy.

It is the policy of this state to promote the development of a network of vertiports that will provide equitable access to

†NOTE: H. B. 4479 (Chapter 143), which passed prior to this act, also created a new Article 2K. H. B. 4502 (Ch. 93), created a new Article 2L. Therefore, this has been redesignated as Article 2M for the code.

citizens of this state who may benefit from advanced air mobility operations for cargo and passenger service, and to avoid any vertiport monopolization or discrimination, by: (i) Funding the planning for and construction of public-use vertiports, with any funding appropriated by the Legislature; (ii) encouraging local zoning and other land use authorities to ensure an adequate number and a varied location of vertiports to serve citizens throughout the state; and (iii) promoting competition and equity of access by prohibiting the grant of an exclusive right to one or more vertiport owners and operators or to vertiport operators at one or more vertiports.

†§5B-2K-2. Definitions.

For purposes of this article, “vertiport” means infrastructure or a system with supporting services and equipment intended for landing, ground-handling, and take-off of manned or unmanned vertical take-off and landing (VTOL) aircraft.

†§5B-2K-3. Applicability.

This article applies to any vertiport that is available for public use by any advanced air mobility operator authorized by the U.S. Department of Transportation or Federal Aviation Administration to engage in passenger and/or cargo services in scheduled or non-scheduled service in or affecting interstate commerce.

†§5B-2K-4. Vertiport safety.

(a) *Vertiport Design.* – Each vertiport subject to this article shall comply with any Federal Aviation Administration published rule or advisory circular containing standards for vertiport design and performance characteristics.

(b) *Vertiport Layout Plan.* – Each vertiport subject to this article shall submit a vertiport layout plan to the administrator of the Federal Aviation Administration in the form and manner

†NOTE: H. B. 4479 (Chapter 143), which passed prior to this act, also created a new Article 2K. H. B. 4502 (Ch. 93), created a new Article 2L. Therefore, this has been redesignated as Article 2M for the code.

determined by the administrator, and no operations may be conducted at the vertiport until such layout plan is approved.

†§5B-2K-5. Exclusionary and discriminatory zoning prohibited.

A political subdivision of this state shall not exercise its zoning and land use authority to grant or permit an exclusive right to one or more vertiport owners or operators and shall use such authority to promote reasonable access to advanced air mobility operators at public-use vertiports within the jurisdiction of the subdivision.

†§5B-2K-6. Harmonization.

The provisions of this article are intended to supplement any provision of federal law pertaining to the design, construction, operations, or maintenance of a vertiport designed or constructed with a grant under 49 U.S.C. § 47101 *et seq.*, and any provision of this article found in conflict with or otherwise preempted by federal law shall be null and void, without invalidating any other provision of this article.

†NOTE: H. B. 4479 (Chapter 143), which passed prior to this act, also created a new Article 2K. H. B. 4502 (Ch. 93), created a new Article 2L. Therefore, this has been redesignated as Article 2M for the code.

CHAPTER 46

(H. B. 4778 - By Delegate Criss)

[Passed March 10, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §31A-4-33 of the Code of West Virginia, 1931, as amended, all relating to establishing duties of financial institutions with regard to multiple-fiduciary accounts and payments of multiple fiduciary accounts; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-33. Deposits in trust; deposits in more than one name; limitation on liability of institutions making payments from certain accounts; notice requirements; pledges or garnishment of joint accounts; financial institutions duties; multiple-fiduciary accounts; payment of multiple-fiduciary accounts.

(a) If any deposit in any banking institution be made by any person describing him or herself in making such deposit as trustee for another, and no other or further notice of the existence and terms of a legal and valid trust than such description shall be given in writing to the banking institution, in the event of the death of the person so described as trustee, such deposit, or any part thereof, together with the interest thereon, may be paid to the person for whom the deposit was thus stated to have been made.

(b) When a deposit is made by any person in the name of such depositor and another or others and in form to be paid to any one of such depositors, or the survivor or survivors of them, such

deposit, and any additions thereto, made by any of such persons, upon the making thereof, shall become the property of such persons as joint tenants. All such deposits, together with all interest thereon, shall be held for the exclusive use of the persons so named, and may be paid to any one of them during the lifetime of them, or to the survivor or survivors after the death of any of them.

(c) Payment to any joint depositor and the receipt or the acquittance of the one to whom such payment is made shall be a valid and sufficient release and discharge for all payments made on account of such deposit, prior to the receipt by the banking institution of notice in writing, signed by any one of such joint tenants not to pay such deposit in accordance with the terms thereof. Prior to the receipt of such notice no banking institution shall be liable for the payment of such sums.

(d) When any joint deposit account is opened on or after July 1, 1994, the owners thereof shall be given written notice either on a signature card or in connection with the execution of a signature card, on a form to be approved by the banking commissioner, that the entire balance of any such account may be paid to a creditor or other claimant of any one of the joint tenants pursuant to legal process, including, but not limited to, garnishment, suggestion, or execution, regardless of the receipt of any notice from any of the joint tenants. Such notice shall also advise the owners of a joint deposit account that the entire balance of any such account may be paid to any of the named joint tenants at any time; pledged as security to a banking institution by any of the named joint tenants; or otherwise encumbered at the request of any of the named joint tenants unless written notice is given to the banking institution, signed by any one of the joint tenants, not to permit such payment, pledge or encumbrance. The giving of the notice required by this section to any of the joint deposit account owners shall be deemed effective notice to all owners of the joint deposit account.

(e) If a pledge or encumbrance of any joint account created pursuant to this section is made to a banking institution and the banking institution has not received, prior to the date of the pledge, any written notice signed by any one of the joint tenants prohibiting such a pledge or encumbrance, the banking institution shall not be

liable to any one of the joint tenants for its recourse against the deposit in accordance with the terms of the pledge.

(f) A banking institution may pay the entire amount of a deposit account created pursuant to this section to a creditor or other claimant of any one of the joint tenants in response to legal process employed by the creditor including, but not limited to, garnishment, suggestion, or execution, regardless of any notice received from any of the joint tenants. Upon such payment, the banking institution shall be released and discharged from all payments on account of such deposit: *Provided*, That payment by a banking institution to any such creditor shall be without prejudice to any right or claim of any joint tenant against the creditor or any other person to recover his or her interest in the deposit.

(g) A banking institution may enter into multiple-fiduciary accounts with more than one fiduciary to the same extent that they may enter into fiduciary accounts with one fiduciary. Any multiple-fiduciary account may be paid, on request, (i) to any one or more fiduciaries, including any successor fiduciary upon proof showing that the successor fiduciary is duly authorized to act, or (ii) at the direction of any one or more of the fiduciaries. For the purposes of this section:

(1) "Fiduciary account" means (i) an estate account for a decedent, (ii) an account established by one or more agents under a power of attorney or an existing account of a principal to which one or more agents under a power of attorney are added, (iii) an account established by one or more conservators, (iv) an account established by one or more committees, (v) a regular trust account under a testamentary trust or a trust agreement that has significance apart from the account, or (vi) an account arising from a fiduciary relationship such as an attorney-client relationship. "Fiduciary account" does not include a trust account;

(2) "Multiple-fiduciary account" means a fiduciary account where more than one fiduciary is authorized to act.

(h) The commissioner shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the approval of forms and procedures required by this section.

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CHAPTER 47

(Com. Sub. for H. B. 4779 - By Delegate Criss)

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-13-22a of said code; to amend and reenact §12-1-4 of said code; and to amend and reenact §18-9-6 of said code, all relating to county, municipal, state, and county Board of Education public depositories; and giving those public depositories which redeposit public monies to ensure they are federally insured the discretion on whether or not to accept a reciprocal deposit.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2. Bond of depositories.

(a) No designation is binding on any county, nor shall any public money be deposited thereunder in excess of the amount insured by an agency of the federal government, until the banking institution designated executes a bond with good and sufficient sureties, to be accepted and approved by the county commission, payable to the State of West Virginia, in a sum as the county commission shall direct, and which may not be less than the amount of the deposit that exceeds the amount insured by an agency of the federal government in the depository at any one time. The bond shall be executed by at least four resident freeholders as sureties owning in the aggregate unencumbered real estate having an assessed valuation thereon equal to the penalty of the bond, or by a fidelity or indemnity company authorized to do business

within the state, satisfactory to, and acceptable by the county commission, and having not less than \$600,000 capital; and the bond shall be conditioned for the receipt, safekeeping, and payment over of all money which may be deposited in or come under the custody of the banking institution designated a county depository under the provisions hereof, together with the interest thereon at the rate specified by this article; and the bond shall be further conditioned for the faithful performance, by the banking institution so designated, of all the duties imposed by this article upon a depository of public moneys: *Provided*, That the clerk of the county commission shall keep a record of each surety on all personal bonds given as hereinbefore provided and the clerk shall notify the county commission of every recorded conveyance of real estate made by any surety on said personal bond.

(b) An action shall lie on the bond at the instance of the county commission, or the sheriff, for the recovery of any money deposited in the depository, upon failure or default of the depository to fully and faithfully account for and pay over any and all public moneys deposited by the sheriff and of all interests earned and accrued thereon as required by this article. A bond may not be accepted by the county commission until it has been submitted to the prosecuting attorney, and certified by him or her to be in due and legal form, and conformable to the provisions of this article, which certificate shall be endorsed thereon: *Provided*, That the county commission may, in lieu of the bond provided hereinbefore, accept as security for money deposited as aforesaid, interest-bearing securities of the United States, or of a state, county, district or municipal corporation, or of the federal land banks, or endorsed county and district warrants of the county in which the depository is located, or letters of credit of the federal land banks, or federal home loan banks, or any other letters of credit approved by the treasurer; the face value of which securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted; or the county commission may accept the securities as partial security to the extent of their face value for the money so deposited, and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and in the bond so required, the

acceptance of securities as partial security, and the extent thereof, shall be set forth: *Provided, however,* That a banking institution is not required to provide a bond or security in lieu of bond if the public deposits accepted are placed in certificates of deposit meeting the following requirements:

(1) The funds are invested through a designated state depository selected by the county;

(2) The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county;

(3) The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;

(4) The selected depository acts as custodian for the county with respect to such certificates of deposit issued for the county's account; and

(5) On the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations.

(c) The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All the securities shall be delivered to or deposited for the account of the county commission, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county commission by order of record, but the collateral security shall be released only by order of record of the county commission when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. In the event actual possession of the hypothecated securities are delivered to the county commission, it shall make ample provision for the

safekeeping thereof and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county commission may permit the deposit under proper receipt of the securities with one or more banking institutions within or without the State of West Virginia and may contract with any institution for safekeeping and exchange of any hypothecated securities and may prescribe the rules for handling and protecting the same.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

§8-13-22a. Investment of municipal funds.

(a) All municipal funds, the investment of which is not governed by other provisions of this code and not required for the payment of current obligations and not otherwise prohibited, may be invested and reinvested in:

(1) Any direct obligation of, or obligation guaranteed as to the payment of both principal and interest by, the United States of America;

(2) Any evidence of indebtedness issued by any United States government agency guaranteed as to the payment of both principal and interest, directly or indirectly, by the United States of America including, but not limited to, the following: Government National Mortgage Association, federal land banks, federal home loan banks, federal intermediate credit banks, banks for cooperatives, Tennessee Valley Authority, United States postal service, farmers home administration, export-import bank, federal financing bank, federal home loan mortgage corporation, student loan marketing association and federal farm credit banks;

(3) Any evidence of indebtedness issued by the Federal National Mortgage Association to the extent such indebtedness is guaranteed by the government National Mortgage Association;

(4) Any evidence of indebtedness that is secured by a first lien deed of trust or mortgage upon real property situate within this

state, if the payment thereof is substantially insured or guaranteed by the United States of America or any agency thereof;

(5) Direct and general obligations of this state;

(6) Any undivided interest in a trust, the corpus of which is restricted to mortgages on real property and, unless all of such property is situate within the state and insured, the trust at the time of the acquisition of the undivided interest, is rated in one of the three highest rating grades by an agency which is nationally known in the field of rating pooled mortgage trusts;

(7) Any bond, note, debenture, commercial paper or other evidence of indebtedness of any private corporation or association: *Provided*, That any such security is, at the time of its acquisition, rated in one of the three highest rating grades by an agency which is nationally known in the field of rating corporate securities: *Provided, however*, That if any commercial paper or any such security will mature within one year from the date of its issuance, it shall, at the time of its acquisition, be rated in one of the two highest rating grades by any such nationally known agency and commercial paper or other evidence of indebtedness of any private corporation or association shall be purchased only upon the written recommendation from an investment advisor that has over \$300 million in other funds under its management;

(8) Negotiable certificates of deposit issued by any bank, trust company, national banking association or savings institution which mature in no more than five years and are fully collateralized;

(9) Interest earning deposits including certificates of deposit, with any duly designated state depository, which deposits are fully secured by a collaterally secured bond as provided in §12-1-4 of this code: *Provided*, That a banking institution is not required to provide this collaterally secured bond, or other security in lieu of bond, if the public deposits accepted are placed in certificates of deposit meeting the following requirements:

(A) The funds are invested through a designated state depository selected by the municipality;

(B) The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the municipality;

(C) The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;

(D) The selected depository acts as custodian for the municipality with respect to such certificates of deposit issued for the municipality's account; and

(E) On the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations.

(10) Mutual funds registered with the Securities and Exchange Commission which have assets in excess of \$300 million; and

(11) Deposits with any duly designated state depository that is selected and authorized by the municipality to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(b) On or after the date that the municipal funds are received the selected depository:

(1) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and

(2) Serves as custodian for the municipality with respect to the funds deposited into such accounts.

(c) Municipal funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal

Deposit Insurance Corporation shall be secured in accordance with §12-1-4 of this code.

(d) The full amount of the funds of the municipality redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this subsection (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(e) On the same date that the funds of the municipality are redeposited pursuant to this subsection, the selected depository receives an amount of deposits from customers of other financial institutions through the direct placement program that are equal to the amount of the municipality's funds redeposited by the selected depository.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-4. Bonds to be given by depositories.

(a) Before allowing any money to be deposited with any eligible depository in excess of the amount insured by an agency of the federal government or insured by a deposit guaranty bond issued by a valid bankers surety company acceptable to the treasurer, the state Treasurer shall require the depository to give a collaterally secured bond, in the amount of not less than \$10,000, payable to the State of West Virginia, conditioned upon the prompt payment, whenever lawfully required, of any state money, or part thereof, that may be deposited with that depository, or of any accrued interest on deposits. The bond shall be a continuous bond but may be increased or decreased in amount or replaced by a new bond with the approval of the state Treasurer. The collateral security for the bond shall consist of bonds of the United States, or bonds or letters of credit of the federal land banks, of the federal home loan banks, or bonds of the State of West Virginia or of any county, district or municipality of this state, or other bonds, letters of credit, or securities approved by the treasurer. All bonds so secured are here designated as collaterally secured bonds.

Withdrawal or substitution of any collateral pledged as security for the performance of the conditions of the bond may be permitted with the approval in writing of the treasurer. All depository bonds shall be recorded by the treasurer in a book kept in his or her office for the purpose, and a copy of the record, certified by the treasurer, shall be prima facie evidence of the execution and contents of the bond in any suit or legal proceeding. All collateral securities shall be delivered to or deposited for the account of the treasurer of the State of West Virginia and in the event said securities are delivered to the treasurer, he or she shall furnish a receipt therefor to the owner thereof. The treasurer and his or her bondsmen shall be liable to any person for any loss by reason of the embezzlement or misapplication of the securities by the treasurer or any of his or her employees, and for the loss thereof due to his or her negligence or the negligence of his or her employees; and the securities shall be delivered to the owner thereof when liability under the bond which they are pledged to secure has terminated. The treasurer may permit the deposit under proper receipt of the securities with one or more banking institutions within or outside the State of West Virginia and may contract with any institution for safekeeping and exchange of any collateral securities and may prescribe the rules for handling and protecting the collateral securities.

(b) A banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements:

(1) The funds are invested through a designated state depository selected by the Treasurer;

(2) The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the state;

(3) The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;

(4) The selected depository acts as custodian for the state with respect to such certificates of deposit issued for the state's account; and

(5) On the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations.

(c) A banking institution is not required to provide a bond or security in lieu of bond pursuant to this section if the deposits accepted are placed in a designated state depository that is selected and authorized by the state to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(1) On or after the date that the funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the state with respect to the funds redeposited into such accounts.

(2) State funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with §7-6-2 of this code.

(3) The full amount of the funds of the state redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation.

(4) On the same date that the funds of the state are redeposited pursuant to this section, the selected depository receives an amount of deposits from customers of other financial institutions through the deposit placement program that are equal to the amount of the state funds redeposited by the selected depository.

CHAPTER 18. EDUCATION.**ARTICLE 9. SCHOOL FINANCES.****§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.**

The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. The transfer of funds shall be made as of the balances on hand on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than August 1 of that year. The transfer shall be adjudged complete and final upon the approval of the sheriff's official settlement for the fiscal year ending on June 30 of the year in which the board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after June 30 of the year in which the board of Education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month.

On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. The treasurer is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: *Provided*, That once a board of education has appointed a treasurer other than the sheriff, the sheriff may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, the treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will

handle within any period of two months. The premium on the bond shall be paid by the board of education.

The board of education may open a bank account, or accounts, as required to adequately and properly transact the business of the district in a depository, or banks, within the county. The depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. However, the county board of education may, in lieu of such bond, accept as security for money deposited letters of credit from a federal home loan bank, securities of the United States, or of a state, county, district or municipal corporation, or federal agency securities: *Provided*, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in certificates of deposit meeting the following requirements: (1) The funds are invested through a designated state depository selected by the county board of education; (2) the selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county board of education; (3) the full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for the county board of education with respect to such certificates of deposit issued for the county's account; and (5) on the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations: *Provided, however*, That a banking institution is not required to provide a bond or security in lieu of bond if the deposits accepted are placed in a designated state depository that is selected and authorized by the county board of education to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions: (1) On or after the date that the county board of education funds are received the selected depository: (i) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and (ii) serves as custodian for the county with respect to the money redeposited into

such accounts. (2) County board of education funds deposited in a selected depository in accordance with this section and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with the second and third sentences of this paragraph. (3) The full amount of the funds of the county board of education redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this section (plus accrued interest, if any) shall be insured by the Federal Deposit Insurance Corporation. (4) On the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations.

One hundred ten percent of the face or par value of the securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted, or the county board of education may accept the securities as partial security to the extent of their face value for the money so deposited and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and, in the bond so required, the acceptance of securities as partial security and the extent thereof shall be set forth. The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All such securities shall be delivered to or deposited for the account of the county board of education, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county board of education by order of record, but the collateral security shall be released only by order of record of the county board of education when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. If actual possession of the hypothecated securities is delivered to the county board of education, it shall make ample provision for the safekeeping thereof, and the interest thereon when paid shall be turned over to the banking institution, so long as it is not in default as aforesaid. The county board of

education may permit the deposit under proper receipt of such securities with one or more banking institutions within the State of West Virginia and may contract with any such institution for safekeeping and exchange of any such hypothecated securities, and may prescribe the rules for handling and protecting the same.

On and after July 1, 1973, all levies and any other school moneys received by the sheriff and paid to the treasurer of the county board of education shall be deposited in these accounts, and all proper payments from such funds shall be made by the designated depository or bank upon order or draft presented for payment and signed by the duly authorized signatories of the Board of Education: *Provided*, That in determining the depository for Board of Education funds a board member who has a pecuniary interest in a bank within the county shall not participate in the determination of the depository for such funds.

If it is considered that sufficient funds are on hand in any account at any one time which may be more than are normally required for the payment of incurred expenses, the funds in the amount so considered available may be invested by the treasurer of the county board with the West Virginia Municipal Bond Commission, or in guaranteed certificates of deposit issued by the depository or bank, or other guaranteed investments such as treasury bills, treasury notes or certificates of deposit issued by either the United States government or a banking institution in which federal or state guarantees are applicable. Interest earned in such investments is to be credited to the fund from which the moneys were originally available.

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CHAPTER 48

**(Com. Sub. for S. B. 231 - By Senators Tarr, Romano,
Lindsay, Baldwin, Plymale, Jeffries, Stollings, and Woelfel)**

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §31G-4-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §31G-4-7, all relating to broadband connectivity; defining terms; requiring engineering reports on available telecommunication cable space; providing for shared costs for the report; requiring notice from pole owner or manager to telecommunication carriers of available space; requiring notice to pole owner or manager of intent to use any available space; and exempting pole owners which have electronic permitting and notification software system for processing pole attachment applications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

As used in this article, the following terms are defined as follows:

(1) “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including, but not limited to, the National Electrical Safety Code, or any local amendments to those codes: *Provided*, That notwithstanding any other provisions of said applicable codes, the Code of West Virginia, or the West Virginia Code of State Rules, variances for the installation and maintenance

of broadband service infrastructure on utility poles shall be permitted if these are agreed upon between infrastructure owners.

(2) “Attacher” means any person, corporation, or other entity, or the agents or contractors of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line, or facility of any kind to a utility pole in the right of way or its adjacent ground space.

(3) “Attachment application” means the application made by an attacher to a pole owner for attachment of equipment, antenna, line, or facility of any kind to a utility pole. It shall include:

(A) Proof of insurance; or

(B) An indemnification agreement prepared by the pole owner.

(4) “Broadband service” means the same as that term is defined in §31G-1-2 of this code.

(5) “Commission” means the Public Service Commission as set forth in §24-1-1 *et seq.* of this code.

(6) “Make-ready-costs” means the costs incurred by an attacher associated with the transfer of the facilities, antenna, lines, or equipment of a pre-existing third-party user, undertaken by an attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that are to be paid by an attacher include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any pre-existing third-party user as may be necessary to accommodate an attacher’s attachment.

(7) “Telecommunications carrier” means either:

(A) A telecommunication carrier as determined by the Department of Economic Development; or

(B) A telecommunication carrier that meets the definition of such with respect to the Federal Communication Commission, as set forth in 47 U.S.C. § 153.

(8) “Pole owner” means a person, corporation, or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

(9) “Pre-existing third-party user” means the owner of any currently operating facilities, antenna, lines, or equipment on a pole or its adjacent ground space in the right of way.

(10) “Utility facility” means the same as that term is defined in §17-2A-17a of this code.

(11) “Utility poles” or “poles” means poles that are used to support electrical, cable television, telephone, and broadband service.

(12) “Wireless access” means access to and use of a right-of-way for the purpose of constructing, installing, maintaining, using, or operating telecommunications facilities for wireless communication purposes.

§31G-4-7. Ready pole access notification and cost sharing.

A pole owner or manager which has determined a utility pole ready for telecommunication fibers to be added, and the additional available capacity for that pole, is required to make such known to the West Virginia Department of Economic Development. Telecommunication carriers will be notified by the West Virginia Department of Economic Development within 15 days of the available space and the telecommunication carrier who intends to use the pole will share in the cost of the engineering work required. The telecommunication carrier shall be given 30 days to notify the pole owner or manager they will use the pole or poles for connectivity. The pole owner will be excluded from the requirements of this paragraph if the pole owner has an electronic permitting and notification software system for processing pole attachment applications.

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CHAPTER 49

(S. B. 542 - By Senators Maynard, Swope, Sypolt, Roberts, and Plymale)

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §31G-1-3 of the Code of West Virginia, 1931, as amended, relating to transferring the Broadband Enhancement Council from the Department of Commerce to the Department of Economic Development; removing the Secretary of Commerce from the Broadband Enhancement Council; designating the Secretary of the Department of Economic Development as a voting member; and removing archaic language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

§31G-1-3. Broadband Enhancement Council; members of council; administrative support.

(a) The Broadband Enhancement Council is hereby continued. The current members, funds, and personnel shall continue in effect and be wholly transferred from the Department of Commerce to the Department of Economic Development; except as may be hereinafter provided. With regard to the terms of the public members appointed under subdivision five, subsection (c) of this section, at the next regular meeting of the council following July 1, 2017, the currently serving public members shall draw by lot for the length of their terms, three members to serve for one additional year, three members to serve for two additional years and the last three members to serve for three additional years, with all public

members in future to serve for the duration of the term described below.

(b) The council is a governmental instrumentality of the state. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public purpose. The council shall be situated within the Department of Economic Development for administrative, personnel, and technical support services only.

(c) The council shall consist of 13 voting members, designated as follows:

(1) The Secretary of the Department of Economic Development or his or her designee;

(2) The Chief Information Officer or his or her designee;

(3) The Vice Chancellor for Administration of the Higher Education Policy Commission or his or her designee;

(4) The State Superintendent of Schools or his or her designee;

(5) Nine public members that shall serve no more than three consecutive three-year terms from the date of their appointment and are appointed by and serve at the will and pleasure of the Governor with the advice and consent of the Senate, as follows:

(i) One member representing users of large amounts of broadband services in this state;

(ii) One member from each congressional district representing rural business users in this state;

(iii) One member from each congressional district representing rural residential users in this state;

(iv) One member representing urban business users in this state; and

(v) One member representing urban residential users in this state; and

(6) Additionally, the President of the Senate shall name two Senators from the West Virginia Senate, one from each party, and the Speaker of the House shall name two Delegates from the West Virginia House of Delegates, one from each party, each to serve in the capacity of ex officio, nonvoting advisory members of the council.

(d) A chair and vice chair shall be elected from the members of the council for a term of two years: *Provided*, That a chair or vice-chair may not serve more than two consecutive full or partial terms in that capacity. In the absence of the chair, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

(e) The council may appoint committees or subcommittees to investigate and make recommendations to the full council. Members of these committees or subcommittees need not be members of the council.

(f) Seven voting members of the council constitute a quorum and the affirmative vote of a simple majority of those members present is necessary for any action taken by vote of the council.

(g) The gubernatorial appointed members shall be deemed part-time public officials, and may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in, or otherwise associated with a broadband deployment project, project sponsor, or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited under §6B-2-5 of this code and is not subject to prosecution for violation of that section when the violation is created solely as a result of his or her relationship with the broadband deployment project, project sponsor, or project participant so long as the member recuses himself or herself from

board participation regarding the conflicting issue in the manner set forth in §6B-2-5 of this code and the legislative rules promulgated by the West Virginia Ethics Commission.

(h) No member of the council who serves by virtue of his or her office may receive any compensation or reimbursement of expenses for serving as a member. The public members and members of any committees or subcommittees are entitled to be reimbursed for actual and necessary expenses incurred for each day or portion thereof engaged in the discharge of his or her official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(i) No person is subject to antitrust or unfair competition liability based on membership or participation in the council, which provides an essential governmental function and enjoys state action immunity.

●

CHAPTER 50

(Com. Sub. for H. B. 4662 - By Delegates Steele, Crouse, Tully and Dean)

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-2-115a, relating to licensure of Head Start facilities in this state; permitting deemed licensee to request to utilize West Virginia for Clearance Access Registry and Employment Screening program; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-115a. Head Start program licenses.

(a) A Head Start program in good standing with the United States Department of Health and Human Services pursuant to 42 USC §9381 *et seq.* may request to be deemed a licensee to operate a child care program for the sole purpose of utilizing the West Virginia Clearance for Access: Registry and Employment Screenings program. At the discretion of the secretary, a deemed license may not permit the licensee to access the other services provided by the Bureau for Family Assistance as it relates to the specific deemed child care license.

(b) The section may not be construed to prevent the department from investigating complaints regarding the health, safety, or welfare of children.

(c) The department shall propose a legislative rule for promulgation by July 1, 2022, to effectuate this section.



CHAPTER 51

**(Com. Sub. for S. B. 571 - By Senators Tarr, Sypolt, Stollings,
and Jeffries)**

[Passed March 11, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

§1. Finding and declaring certain claims against the Legislature, Joint Committee on Government and Finance; Department of Environmental Protection; Department of Environmental Protection, Office of Special Reclamation; Department of Health & Human Resources; Department of Homeland Security, Division of Corrections and Rehabilitation; Department of Transportation, Division of Highways; Department of Transportation, Division of Motor Vehicles; Department of Veterans Affairs; and West Virginia Parole Board to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Legislative Claims Commission concerning various claims against the state and agencies thereof and, in respect to each of the following claims, the Legislature adopts those findings of fact as its own and in respect of the claims herein, the Legislature has independently made findings of fact and determinations of award and hereby declares it to be the moral obligation of the state to pay each such claim in the amount specified below and directs the Auditor to issue warrants

for the payment thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Legislature, Joint Committee on Government and Finance:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) John’s Lock and Key Service\$135.00

(b) Claim against the Department of Environmental Protection:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Kemron Environmental Services\$325.00

(2) Kemron Environmental Services\$3103.00

(3) Mon Valley Integration, Inc.\$47293.01

(c) Claim against the Department of Environmental Protection, Office of Special Reclamation:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(4) Chemstream, Inc.\$11966.40

(d) Claim against the Department of Health & Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(5) Cindy L. Harrison and Daniel L. Harrison, Sr.\$751.29

(e) Claims against the Department of Homeland Security, Division of Corrections and Rehabilitation:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Willie Jay Copley\$1,250.00

(2) Michael Dwayne Cosner\$380.00

(3) Tracy Craft.....\$434.97

(4)	Miguel Delgado	\$23.75
(5)	Miguel Delgado	\$50.00
(6)	Henry T. Duncan	\$57.65
(7)	Henry T. Duncan	\$226.84
(8)	Henry T. Duncan	\$553.13
(9)	Henry T. Duncan	\$44.22
(10)	Thomas Ferguson	\$26.00
(11)	Kevin Hamill	\$18.00
(12)	Douglas Lee Landers.....	\$1,753.44
(13)	Michael Neel	\$222.60
(14)	Kenneth R. Peck, Jr.	\$1,200.00
(15)	Quantel O. Saunders.....	\$1,589.21
(16)	Thomas M. White, Jr.	\$80.84

(f) Claims against Department of Transportation, Division of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1)	Malihch Abed	\$237.95
(2)	Donald Abel and Sherry Abel	\$500.00
(3)	Edward L. Abraham	\$500.00
(4)	Gregory L. Adams, Sr.	\$4,500.00
(5)	Jared Adkins	\$500.00
(6)	James E. Adkins, Jr.	\$182.36
(7)	Farhan Ahmed	\$463.45

(8)	David S. Allard and Stephanie Allard	\$1,000.00
(9)	Brenda C. Allred.....	\$278.12
(10)	Michelle Altizer.....	\$250.00
(11)	Kathy J. Anderson	\$500.00
(12)	Timothy Andrew and Mekell J. Demary-Andrew ...	\$265.36
(13)	Amy Arnett.....	\$203.13
(14)	Marc D. Arnold	\$340.50
(15)	John Arthur.....	\$669.36
(16)	Clinton E. Ashley and Kathy Ashley	\$370.95
(17)	Greg Aucremanne.....	\$500.00
(18)	Barry W. Bailey.....	\$2,000.00
(19)	Gary Bailey.....	\$500.00
(20)	Melissa Baker	\$231.65
(21)	Kimberly A. Baldwin	\$500.00
(22)	Jared Barger and Wendy Barger.....	\$500.00
(23)	Christopher L. Barnett and Melissa J. Barnett.....	\$249.99
(24)	Rodney Dee Bartlett	\$500.00
(25)	Jackie Bates	\$489.72
(26)	Jeffrey Earl Bennett.....	\$472.31
(27)	Darla Bentley.....	\$155.99
(28)	Harry V. Bertram.....	\$100.34
(29)	Kelly R. Bigley and Douglas Bigley	\$500.00

(30)	Anthony Blaine Bishop and Cherie Howell	\$257.11
(31)	Sharon J. Blake.....	\$249.05
(32)	Charles D. Bland and Thelma J. Bland	\$500.00
(33)	David B. Blankenship.....	\$430.00
(34)	Christopher N. Blount and Amy Blount.....	\$644.91
(35)	Charles Bobela.....	\$250.00
(36)	Benjamin T. Bolen.....	\$328.63
(37)	John Bonner.....	\$1,422.46
(38)	Curtis Bradley Bowen	\$2,835.00
(39)	Clayton C. Brandli, Jr.....	\$756.31
(40)	Jamea Brinckman and Kaylie Brinckman	\$819.09
(41)	Rita Brooks and Samuel Brooks.....	\$362.72
(42)	Rita Brooks and Samuel Brooks.....	\$353.10
(43)	Lola A. Brown.....	\$1,000.00
(44)	James E. Brown, Sr.	\$500.00
(45)	Wesley E. Brown, Sr.	\$500.00
(46)	Robert Browning, Jr. and Jo Ellen Browning.....	\$500.00
(47)	Allen Buckley, Jeff Buckley and Gene Buckley	\$45,252.00
(48)	Emerson Bungard	\$175.01
(49)	Jessica Buracker	\$419.40
(50)	Dovel E. Burcham and Stephanie D. Burcham	\$297.46
(51)	Mark Burdette.....	\$500.00

(52)	Ann E. Burkhammer.....	\$187.25
(53)	Cabell County EMS.....	\$2,500.00
(54)	Tracy Calloway	\$500.00
(55)	Curtis Carroll.....	\$500.00
(56)	Craig D. Carter	\$500.00
(57)	Evan Cavallo	\$500.00
(58)	Kathy Chadwell and Jerry Chadwell.....	\$215.34
(59)	Tiffany Chandler and Brandon Chandler	\$972.00
(60)	Heather Nicole Chewning	\$500.00
(61)	Dovie Christian.....	\$156.64
(62)	Larry Clay.....	\$1,000.00
(63)	Melissa G. Clevinger.....	\$477.66
(64)	David W. Clipp and Marina J. Clipp.....	\$174.74
(65)	William P. Cobb, Jr.	\$225.78
(66)	Michael Cochran and Debra Cochran	\$500.00
(67)	Jacqueline Paige Coffman	\$254.40
(68)	Collision Appraisal Reinspection Service	\$497.54
(69)	Leah Comer and Stephen Comer.....	\$603.76
(70)	Elline Conley.....	\$322.94
(71)	Melissa D. Cook	\$924.43
(72)	Jordan Andrew Cox.....	\$500.00
(73)	Shawn David Crist.....	\$2,831.00

(74)	Robert L. Crosby	\$500.00
(75)	Michele Crow	\$292.12
(76)	Alexander Cruzzavala	\$244.95
(77)	Ronnie K. Cutlip.....	\$500.00
(78)	Morri Dabney	\$490.19
(79)	Christopher F. Daniels.....	\$14,000.00
(80)	Patricia M. D'Aurora.....	\$174.82
(81)	Diana Davis	\$317.04
(82)	Rex Redford Deal.....	\$10,000.00
(83)	Jeremy Deitz and Rebel Deitz	\$250.00
(84)	Anthony Domico and Lindsey Domico.....	\$149.80
(85)	Rex Donahue, Jr.	\$260.12
(86)	Charles Donley, II	\$215.88
(87)	Pearl A. Downing	\$3,350.00
(88)	Joshua T. Duff and Karey Jones.....	\$100.00
(89)	Jerry Wayne Dunbar, II and Cristie R. Dunbar	\$475.88
(90)	Deborah C. Dunlap.....	\$616.00
(91)	Ernest L. Dunlap.....	\$500.00
(92)	John Durkee, Sr. and Nancy Durkee	\$500.00
(93)	Stephen Dye.....	\$300.00
(94)	Stephen Dye.....	\$300.00
(95)	Michael East.....	\$234.72

(96)	Terry E. Echard	\$500.00
(97)	Michael A. Efaw and Julie Efaw	\$1,165.67
(98)	Amanda Ejimofor	\$749.37
(99)	Kenneth Elbon	\$250.00
(100)	Joey L. Epling and Jeremy Epling.....	\$500.00
(101)	Timothy L. Evans	\$448.14
(102)	Shirley Fabin	\$97.94
(103)	Taylor Ferrell.....	\$101.25
(104)	Barry Dustin Fields.....	\$8,500.00
(105)	Kristi L. Fleming-Frum	\$323.95
(106)	Priscilla Flora.....	\$282.52
(107)	Charles B. Forinash	\$500.00
(108)	Guy Gage.....	\$132.00
(109)	Casey L. Gates.....	\$13,000.00
(110)	Tom J. George	\$250.00
(111)	Paige Gerlach.....	\$500.00
(112)	Kristi A. Gibbons.....	\$37,484.00
(113)	Sierra Gier	\$293.58
(114)	Stuart M. Gimblin and Margaret A. Gimblin	\$500.00
(115)	Karen J. Goetz	\$285.49
(116)	Jennifer C. Goldcamp and Edward M. Goldcamp.....	\$442.66
(117)	Carmen Gore	\$500.00

(118)	Chadwick Gothard and Amy Gothard.....	\$500.00
(119)	Catherine J. Graceson.....	\$331.37
(120)	James Gray	\$262.15
(121)	Michael Green	\$318.86
(122)	Harold R. Guthrie	\$417.23
(123)	Robert Hagerman and Robyn Hagerman	\$92.60
(124)	Jason Hall	\$371.24
(125)	Paul Michael Hall.....	\$911.51
(126)	Donald L. Hardman.....	\$1,864.95
(127)	Larry W. Harper	\$820.49
(128)	Mendy Harvey.....	\$421.47
(129)	James R. Haught.....	\$84.09
(130)	Rick Haynie.....	\$447.34
(131)	Cheryl Hendricks.....	\$500.00
(132)	James C. Henry, IV	\$83.21
(133)	Larry D. Hensley and Brad Hensley.....	\$639.21
(134)	Lindsey Hess	\$500.00
(135)	Renea Hetrick	\$258.14
(136)	J. Kay Hill and Boyd D. Hill	\$117.96
(137)	April E. Hilliard.....	\$500.00
(138)	Derek Hudson.....	\$500.00
(139)	Jessica Hughart-Calloway	\$361.66

(140)	Kathy L. Humphries	\$295.47
(141)	Grant H. Isenhart	\$156.70
(142)	Lawrence E. Jarrell and Sherri L. Jarrell	\$500.00
(143)	Alex Jarvis	\$273.91
(144)	David M. Jecklin and Kristy Jecklin	\$500.00
(145)	Bill Jeffrey, Edna Jeffrey and Adriana Fleming.....	\$139.09
(146)	Soran Jenkins and Jonathan Jenkins	\$500.00
(147)	Kimberly D. Jenkins and Thomas Jenkins	\$401.80
(148)	Joyce Johnson.....	\$128.61
(149)	Joyell Johnston-Bishop.....	\$783.57
(150)	James A. Jones.....	\$345.28
(151)	Jerry L. Jones.....	\$145.45
(152)	Justin Jones	\$318.86
(153)	Kerry C. Jones	\$500.00
(154)	Vickie S. Jones	\$451.05
(155)	Todd C. Jordan	\$275.24
(156)	Carolyn R. Justice.....	\$250.00
(157)	Perry J. Keller and Alanna J. Keller	\$250.00
(158)	Trudy Kelly and Brad Kelly	\$63.60
(159)	Jeanne Kendall.....	\$267.50
(160)	Helen E. Kidd and Arnold B. Kidd	\$465.82
(161)	Melissa J. Kidd and Jackie L. Kidd Romaca.....	\$1,800.00

(162)	Trisha Ann Kinney	\$205.64
(163)	Trisha Ann Kinney	\$97.52
(164)	John Kohelis and Mary Kohelis	\$500.00
(165)	Linda Kupec	\$1,000.00
(166)	Rachel Lambert	\$442.60
(167)	James R. Layne.....	\$328.31
(168)	Jennifer Jo Lemley	\$431.41
(169)	Kevin S. Linville	\$5,000.00
(170)	Andra Lloyd.....	\$292.00
(171)	Leah B. Lowe	\$933.85
(172)	Cheryl Lynch.....	\$500.00
(173)	John MacLeod	\$500.00
(174)	Kelly Manko and Dustin Manko	\$250.00
(175)	Danny J. Marshall and Linda K. Marshall	\$300.00
(176)	Kimberly Joan Martin.....	\$400.00
(177)	Paul David Martin and Penny Lee Martin.....	\$5,726.63
(178)	Ronald M. Mauer and Patricia Mauer	\$340.17
(179)	James May	\$500.00
(180)	Pamela K. Mays.....	\$59.50
(181)	Angela Maze.....	\$354.41
(182)	Steven P. McAlister and Sandra McAlister.....	\$136,581.60
(183)	Thomas McCormick and Alice McCormick	\$500.00

(184)	Caycee McCoy, Michele McCoy and Michael McCoy...	\$166.00
(185)	Barbara McDonald	\$466.35
(186)	Shirley McElfresh.....	\$382.30
(187)	Mary McNair	\$213.86
(188)	Jessica K. Meadows.....	\$442.62
(189)	Michael E. Meadows and Barbara B. Meadows	\$500.00
(190)	Deanna L. Medlen	\$2,300.00
(191)	Macilia J. Miller	\$481.49
(192)	Jennifer L. Moss	\$437.63
(193)	Marc Mullins	\$167.52
(194)	Kathryn Mullins and Leola Linkinogger.....	\$725.80
(195)	Deborah Mullins-Ayscue.....	\$100.00
(196)	Selena Musick	\$1,000.00
(197)	Jennifer Myers	\$87.93
(198)	Sally L. Nelson	\$743.58
(199)	Bryan O'Dell and Erin O'Dell	\$500.00
(200)	Sandra O'Neil and Christopher O'Neil	\$208.60
(201)	Randall Osborne and Melody Osborne	\$500.00
(202)	Jessica L. Otte.....	\$170.55
(203)	Drew Parsons.....	\$250.00
(204)	Drew J. Parsons	\$137.78
(205)	Andrew S. Paton and Allison Paton	\$357.16

(206)	Susan A. Pauley.....	\$286.14
(207)	Matthew S. Pelurie	\$379.01
(208)	Samantha Perry and Michael Perry	\$500.00
(209)	Dianna G. Petty and Stephen Petty.....	\$272.62
(210)	Tim Phillips and Dominique Phillips	\$800.00
(211)	Kimberly Pitsenbarger.....	\$100.00
(212)	Amanda R. Price.....	\$500.00
(213)	Wendy S. Printy.....	\$322.88
(214)	Cecil N. Pritt.....	\$500.00
(215)	Robert M. Rakes and Angela Rakes.....	\$1,000.00
(216)	Christopher L. Ratliff and Amy Ratliff	\$126.99
(217)	Tammy Redden and Alan Redden.....	\$500.00
(218)	Shannon Reed.....	\$500.00
(219)	CJ Reed and Herbert A. Chapman	\$299.98
(220)	Patricia M. Reynolds	\$250.00
(221)	Brenda Lou Rhodes	\$238.60
(222)	Ryan Rhodes.....	\$200.00
(223)	Dana Richardson	\$400.34
(224)	Krista Richmond.....	\$286.08
(225)	Nathan Richmond and Eden Richmond	\$500.00
(226)	John W. Richmond, Jr.	\$987.26
(227)	Michelle R. Riggleman.....	\$399.64

(228)	Robert Riley.....	\$308.16
(229)	Jacquelyn Robey.....	\$500.00
(230)	Brittany Robinette	\$500.00
(231)	Amie Robinson.....	\$133.75
(232)	Cody Rogers and Kim Weaver.....	\$1,000.00
(233)	Edward Ross.....	\$500.00
(234)	Terry Ross	\$500.00
(235)	Edward Ross and Donna Ross.....	\$215.60
(236)	Shelley Rowe and Brett Rowe.....	\$379.54
(237)	Steven Ruppert	\$500.00
(238)	Matthew J. Rux and Hannah L. Rux	\$1,005.04
(239)	Debbie M. Sansom and Lloyd Sansom	\$500.00
(240)	Tracie Satterfield and Ronald L. Satterfield, Jr.	\$189.53
(241)	Tracie Satterfield and Ronald L. Satterfield, Jr.	\$162.63
(242)	Jerry G. Sayer	\$9,210.00
(243)	Candace Scarberry.....	\$205.05
(244)	Elizabeth K. Scarnato	\$250.00
(245)	Carrie A. Schwartz	\$500.00
(246)	Selective Service, LLC.....	\$5,000.00
(247)	Mary D. Shears.....	\$466.44
(248)	Cynthia A. Sheets	\$187.25
(249)	Melissa Dawn Shull and Kevin L. Shull	\$426.81

(250)	Troy Shutler and Christina Shutler.....	\$500.00
(251)	Robert Silberstein.....	\$1,000.00
(252)	Kelsey Silvester.....	\$450.00
(253)	Myra L. Simmons.....	\$225.51
(254)	Cynthia D. Sims.....	\$500.00
(255)	Theresa Slack.....	\$174.45
(256)	Cynthia E. Slate.....	\$219.35
(257)	Tammra Smith.....	\$193.65
(258)	John M. Snyder.....	\$159.16
(259)	Cameron J. Spaulding.....	\$324.34
(260)	Scott Spence and Lorrie Spence.....	\$375.38
(261)	Tonya Spencer and Bryant Spencer.....	\$272.51
(262)	Erica Spencer, Lori Spencer and Archie Spencer...\$1,000.00	
(263)	Phyllis W. Sprout.....	\$350.84
(264)	Regina A. Squires.....	\$155.14
(265)	Donna L. St. Clair.....	\$500.00
(266)	Beth Stafford.....	\$365.87
(267)	Mike Steele.....	\$301.36
(268)	Stacy Strait and Matthew Lacovey.....	\$189.50
(269)	Scott Sunyog and Elizabeth Sunyog.....	\$340.26
(270)	Felisha Sutherland.....	\$50.00
(271)	Rena Kay Taft.....	\$500.00

(272)	Shellie Terry, Sandra Terry and Kanawha Valley Enrichment Center, LLC.....	\$500.00
(273)	Kitty Thaxton and Buddy Thaxton.....	\$500.00
(274)	Raymond D. Thistlethwaite.....	\$217.79
(275)	Austin Thompson	\$500.00
(276)	Sarrah Thompson.....	\$200.00
(277)	James Thompson, Jr.	\$605.05
(278)	Victoria Tillery and David Morgan.....	\$1,000.00
(279)	Michael Toth	\$500.00
(280)	Marcina S. Townsend.....	\$500.00
(281)	Clint P. Treadway and Sarah A. Treadway	\$1,000.00
(282)	Douglas E. Triplett	\$466.73
(283)	Sadie Tunison	\$224.34
(284)	Justin Turner	\$657.30
(285)	Larry Underwood	\$279.38
(286)	Opal Vance	\$267.50
(287)	Mark A. Waid.....	\$250.00
(288)	Justin Walker	\$178.08
(289)	Rosalyn Lee Wallace.....	\$500.00
(290)	Xzavier Colt Walls and David E. Hensley	\$197.58
(291)	Xzavier Colt Walls and David E. Hensley	\$219.49
(292)	Robert A. Ward	\$500.00
(293)	Robin Watson and Greg Watson	\$227.90

(294)	David Watterson.....	\$250.00
(295)	Donna Watts	\$589.04
(296)	Rodney Weese, Jr. and Aleacea Weese.....	\$500.00
(297)	Heidi Wehner.....	\$500.00
(298)	Angela M. Wertheim.....	\$500.00
(299)	Karen Westfall.....	\$976.35
(300)	Lawrence Joseph White.....	\$259.65
(301)	Claire L. White and Frederick J. White.....	\$211.89
(302)	Brittany R. Willard.....	\$1,000.00
(303)	Susan Willey and Shawn Willey, Sr.....	\$787.52
(304)	James Williams.....	\$165.25
(305)	Kristen Wilson.....	\$110.64
(306)	Hannah Wisecup.....	\$500.00
(307)	Nicholas Withrow and Connie Clark	\$188.29
(308)	David F. Wolen	\$275.60
(309)	David Wolford.....	\$500.00
(310)	Brian Yanok.....	\$160.50
(311)	Amy Young	\$195.86

(g) *Claim against the Department of Transportation, Division of Motor Vehicles:*

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1)	Jackson Kelly, PLLC.....	\$315.00
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(h) *Claim against the Department of Veterans Affairs:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) The Davis Group, Inc. dba Teays Maids.....\$ 2470.00

(i) *Claim against the West Virginia Parole Board:*

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Ted Alford White\$ 3051.54

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Legislative Claims Commission shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Legislative Claims Commission shall deliver all releases obtained from claimants to the department against which the claim was allowed.

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CHAPTER 52

**(Com. Sub. for H. B. 4484 - By Delegates Householder,
Gearheart, Storch, Rowan, Riley, Espinosa, Criss, Williams,
Rowe, Graves, and Ellington)**

[Passed March 7, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT recognizing and declaring certain claims against agencies of the state to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Health and Human Resources and Department of Tax and Revenue to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agency thereof, which have arisen due to over-expenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Legislative Claims Commission which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Legislative Claims Commission on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Legislative Claims Commission as its

own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements, or other satisfactory documents as required by §12-3-10 of the Code of West Virginia, 1931, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

(a) Claim against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

- | | | |
|-----|---|------------|
| (1) | Affordable Funeral and Cremation Center/Bolyard
Funeral Home | \$1,250.00 |
| (2) | Evans-Calfee Funeral Service | \$1,250.00 |

(b) Claims against the Department of Tax and Revenue:

(TO BE PAID FROM GENERAL REVENUE FUND)

- | | | |
|-----|--|----------|
| (1) | Samco Financial Services Corporation | \$720.00 |
| (2) | Samco Financial Services Corporation | \$385.00 |

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CHAPTER 53

**(S. B. 4 - By Senators Takubo, Nelson, Jeffries, Lindsay,
Woelfel, Woodrum, Karnes, Plymale, and Roberts)**

[Passed January 31, 2022; in effect 90 days from passage.]

[Approved by the Governor on February 8, 2022.]

AN ACT to repeal §16-27A-1 and §16-27A-2 of the Code of West Virginia, 1931, as amended, relating to a ban on construction of nuclear power plants.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of the article banning construction of nuclear power plants.

That §16-27A-1 and §16-27A-2 of the Code of West Virginia, 1931, as amended, are repealed.

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CHAPTER 54

**(H. B. 4060 - By Delegates Rohrbach, Summers, Reed, Tully,
Pack, G. Ward, Bates, Worrell, Rowan, Forsht
and Jennings)**

[Passed February 21, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2022.]

AN ACT to repeal §16-5Z-1, §16-5Z-2, §16-5Z-3, §16-5Z-4, and §16-5Z-5 of the Code of West Virginia, 1931, as amended; to repeal §16-52-1, §16-52-2, §16-52-3, §16-52-4, and §16-52-5 of said code; and to repeal §16-55-1, §16-55-2, §16-55-3, §16-55-4, §16-55-5, §16-55-6, and §16-55-7 of said code, all relating to repealing outdated sections of code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5Z. COALITION FOR DIABETES MANAGEMENT.

§1. Repeal of article creating the State Coalition for Diabetes Management.

That §16-5Z-1 through §16-5Z-5 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 52. COALITION FOR RESPONSIBLE PAIN MANAGEMENT.

§1. Repeal of article creating the State Coalition for Responsible Pain Management.

That §16-52-1 through §16-52-5 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 55. STATE ADVISORY COALITION ON PALLIATIVE CARE.

§1. Repeal of article creating the State Advisory Coalition on Palliative Care.

That §16-55-1 through §16-55-7 of the Code of West Virginia, 1931, as amended, are repealed.

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CHAPTER 55

(H. B. 4396 - By Delegates Householder and Criss)

(By Request of the State Tax Department)

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §11-21-12h of the Code of West Virginia, 1931, as amended, relating to the repeal of the modification reducing federal adjusted gross income relating to tolls for travel on West Virginia toll roads and paid electronically through use of Parkways Authority Commuter (PAC) cards.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to Additional modification reducing federal adjusted gross income relating to tolls for travel on West Virginia toll roads and paid electronically through use of parkways authority commuter (PAC) cards.

That §11-21-12h of the Code of West Virginia, 1931, as amended, is repealed.

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CHAPTER 56

**(Com. Sub. for H. B. 4426 - By Delegates Westfall, D. Jeffries,
Criss, Espinosa and Hott)**

[Passed March 7, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to repeal §16-2L-1, §16-2L-2, §16-2L-3, §16-2L-4, §16-2L-5, §16-2L-6 and §16-2L-7 of the Code of West Virginia, 1931, as amended; and to repeal §33-25G-1, §33-25G-2, §33-25G-3, §33-25G-4, and §33-25G-5 of said code, all relating to Provider Sponsored Networks.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2L. PROVIDER SPONSORED NETWORKS.

§1. Repeal of article creating provider sponsored networks.

That §16-2L-1 through §16-2L-7 of the Code of West Virginia, 1931, as amended, are repealed.

ARTICLE 25G. PROVIDER SPONSORED NETWORKS.

§1. Repeal of article creating provider sponsored networks.

That §33-25G-1 through §33-25G-5 of the Code of West Virginia, 1931, as amended, are repealed.

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CHAPTER 57

(H. B. 4517 - By Delegates Steele, Foster, and Kessinger)

[Passed March 7, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §61-8E-1, §61-8E-2, and §61-8E-3 of the Code of West Virginia, 1931, as amended, all relating to the repealing requirements to display video ratings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8E. DISPLAY OF VIDEO RATINGS OR LACK THEREOF.

§1. Repeal of article relating to Display of Video Ratings or Lack Thereof.

That §61-8E-1 through §61-8E-3 of the Code of West Virginia, 1931, as amended are repealed.

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CHAPTER 58

**(Com. Sub. for S. B. 536 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to repeal §60A-4-415 of the Code of West Virginia, 1931, as amended; to amend and reenact §60A-4-401 and §60A-4-409 of said code; and to amend said code by adding thereto a new section, designated §60A-4-418, all relating generally to controlled substance criminal offenses; increasing the penalty for manufacture, delivery, or possession with intent to manufacture or deliver fentanyl; creating the offenses of counterfeit fentanyl or adulterating another controlled substance with fentanyl; creating the offense of using minors to illegally manufacture, distribute, or possess with intent to distribute; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts; penalties

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state

correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned: *Provided*, That any person who violates this section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000, or be imprisoned in a state correctional facility for not less than 3 nor more than 15 years, or both fined and imprisoned;

(ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both fined and imprisoned;

(ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than \$15,000, or both fined and imprisoned;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this act. Any person who violates this subsection is guilty of a misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction thereof, the person may be confined in jail not less than 90 days nor more than six months, or fined not more than \$1,000, or both fined and confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypropylvalerone (MPVD) and 3,4-methylenedioxypropylvalerone and/or mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute, deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess, sell, or otherwise transfer any equipment with the intent that the equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both fined and confined. Any person 18 years old or more who violates subdivision (1) of this subsection and distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than that person is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than \$10,000, or both fined and imprisoned.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

(e) It is unlawful for any person knowingly or intentionally:

(1) To adulterate another controlled substance using fentanyl as an adulterant;

(2) To create a counterfeit substance or imitation controlled substance using fentanyl; or

(3) To cause the adulteration or counterfeiting or imitation of another controlled substance using fentanyl.

(4) Any person who violates this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years, or fined not more than \$50,000, or both fined and imprisoned.

(5) For purposes of this section:

(i) A controlled substance has been adulterated if fentanyl has been mixed or packed with it; and

(ii) Counterfeit substances and imitation controlled substances are further defined in §60A-1-101 of this code.

§60A-4-409. Prohibited acts – Transportation of controlled substances into state; penalties

(a) Except as otherwise authorized by the provisions of this code, it is unlawful for any person to transport or cause to be transported into this state a controlled substance with the intent to deliver the same or with the intent to manufacture a controlled substance.

(b) Any person who violates this section with respect to:

(1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than one year nor more than 15 years, or fined not more than \$25,000, or both: *Provided*, That any person who violates this section knowing that the controlled substance classified in Schedule II is fentanyl, either alone or in combination with any other substance shall be fined not more than \$50,000 or imprisoned in a state correctional facility for a definite term of not less than 10 nor more than 20 years, or both fined and imprisoned.

(2) Any other controlled substance classified in Schedule I, II or III shall be guilty of a felony and, upon conviction thereof, may be imprisoned in the state correctional facility for not less than one year nor more than 10 years, or fined not more than \$15,000, or both: *Provided*, That for the substance marijuana, as scheduled in subdivision (24) subsection (d), §60A-2-204 of this code, the penalty, upon conviction of a violation of this subsection, shall be that set forth in subdivision (3) of this subsection.

(3) A substance classified in Schedule IV shall be guilty of a felony and, upon conviction thereof, may be imprisoned in the state

correctional facility for not less than one year nor more than five years, or fined not more than \$10,000, or both;

(4) A substance classified in Schedule V shall be guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than \$5,000, or both: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(c) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving one kilogram or more of heroin, five kilograms or more of cocaine or cocaine base, 100 grams or more of phencyclidine, 10 grams or more of lysergic acid diethylamide, or 50 grams or more of methamphetamine or 500 grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than 30 years.

(d) Notwithstanding the provisions of subsection (b) of this section, any person violating or causing a violation of subsection (a) of this section involving 100 but fewer than 1,000 grams of heroin, not less than 500 but fewer than 5,000 grams of cocaine or cocaine base, not less than ten but fewer than 99 grams of phencyclidine, not less than one but fewer than 10 grams of lysergic acid diethylamide, or not less than five but fewer than 50 grams of methamphetamine or not less than 50 grams but fewer than 500 grams of a substance or material containing a measurable amount of methamphetamine, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than 20 years.

(e) Notwithstanding the provisions of subsection (b) of this section, any person violating or attempting to violate the provisions of subsection (a) of this section involving not less than 10 grams nor more than 100 grams of heroin, not less than 50 grams nor more than 500 grams of cocaine or cocaine base, not less than two grams

nor more than 10 grams of phencyclidine, not less than 200 micrograms nor more than one gram of lysergic acid diethylamide, or not less than 499 milligrams nor more than five grams of methamphetamine or not less than 20 grams nor more than 50 grams of a substance or material containing a measurable amount of methamphetamine is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two nor more than 15 years.

(f) The offense established by this section shall be in addition to and a separate and distinct offense from any other offense set forth in this code.

§60A-4-415. Unlawful manufacture, delivery, transport into state, or possession of fentanyl.

[Repealed.]

§60A-4-418. Use of a minor to commit a felony drug offense; penalties.

Any person over the age of 21 who knowingly and intentionally causes, aids, abets, or encourages a person under the age of 18 to distribute, dispense, manufacture, or possess with the intent to distribute a controlled substance in violation of the provisions of this chapter is guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in a state correctional facility for not more than five years, or both fined and imprisoned.

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CHAPTER 59

(H. B. 2817 - By Delegates Graves, Pack and Tully)

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §60B-1-1, §60B-1-2, §60B-1-3, §60B-1-4, §60B-1-5, §60B-1-6, §60B-1-7, and §60B-1-8, all relating to creating the Donated Drug Repository Program; establishing the West Virginia Board of Pharmacy has the authority to administer the program; setting forth eligibility requirements; establishing how the drugs are to be treated; permitting a handling fee; defining terms; providing for liability protection; providing criminal immunity; providing that entity participating in a drug donation operated by another state may participate in this program and in the case of a pharmacy may dispense donated drugs to the residents of this state; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 60B. DONATED DRUG REPOSITORY PROGRAM.

ARTICLE 1. DONATED DRUG REPOSITORY PROGRAM.

§60B-1-1. Definitions.

As used in this chapter:

“Board” means the West Virginia Board of Pharmacy.

“Controlled substance” means a drug, substance, or immediate precursor in Schedules I through V of §60A-2-1 *et seq.* of this code, and Schedules I through V of 21 CFR Part 1308.

“Donor” means any person, including an individual member of the public, or any entity legally authorized to possess drugs with a license or permit in good standing in the state in which it is located, including, but not limited to, a wholesaler or distributor, third party logistic provider, pharmacy, dispenser, clinic, surgical or health center, detention and rehabilitation center, laboratory, medical or pharmacy school, prescriber or other health care professional, or healthcare facility. Donor also means government agencies and entities that are federally authorized to possess drugs including, but not limited to, drug manufacturers, repackagers, relabelers, outsourcing facilities, Veteran Affairs hospitals, and prisons.

“Drugs” means both prescription and nonprescription (“over-the-counter”) drugs.

“Eligible patient” means an indigent person. However, if the recipient’s supply of donated drugs exceeds the need for donated drugs by indigent patients, then any other person in need of a particular drug can be an eligible patient.

“Eligible recipient” means a pharmacy, wholesaler, reverse distributor, hospital, federally qualified health center, nonprofit clinic, healthcare facility, an entity participating in a drug donation or repository program pursuant to another state’s law, or private office of a healthcare professional that has been authorized by the West Virginia Board of Pharmacy.

“Healthcare facility” means a facility licensed by the State of West Virginia as a:

- (1) Nursing home;
- (2) Personal care home;
- (3) Assisted living community;
- (4) Residential care facility for the elderly;
- (5) Hospice;
- (6) Hospital;

- (7) Home health agency; or
- (8) A similar entity licensed in the state in which it is located.

“Health care professional” means a person who is licensed by the State of West Virginia to practice as a:

- (1) Physician;
- (2) Registered nurse or licensed practical nurse;
- (3) Physician assistant;
- (4) Dentist or dental hygienist;
- (5) Optometrist; or
- (6) Pharmacist

“Indigent patient” means a patient whose income is at or below the income eligibility requirements of the West Virginia Medicaid program, or who is uninsured, underinsured, or enrolled in a public assistance health benefits program.

“Program” means the donated drug repository program established by rule pursuant to §60B-1-8 of this code.

“Transaction date” means the date on which ownership of the drugs is transferred between two participants of the program as established by contract or other arrangement. If no such contract or arrangement exists, the transaction date shall be the date the drug was accepted into inventory by the recipient.

§60B-1-2. Authority and waivers.

(a) A donor or eligible recipient may request a waiver or variance from the board with regard to any rule related to this program upon a showing that such action would be in the interest of public health and safety.

(b) The board and its rules have sole regulatory authority over the program. Notwithstanding any rule to the contrary:

(1) A person or entity may dispose of an eligible drug by donating it to an eligible recipient in accordance with the rules of this program.

(2) An eligible recipient including, but not limited to, a pharmacy may receive drugs from a donor in accordance with the rules of this program.

(3) An eligible recipient may accept donated drugs that are in tamper-evident packaging, including, but not limited to, drugs that have a tamper-evident seal on either their immediate, outer, secondary, or shipping container.

(4) An eligible recipient, including, but not limited to, a pharmacy, may receive, accept, replenish, repackage, and store donated drug samples in accordance with the rules of this program.

§60B-1-3. Eligible drugs.

(a) Drugs may only be dispensed pursuant to the program if:

(1) For prescription drugs, they do not expire before the completion of the medication by the eligible patient based on the prescribing health care professional's directions for use and, for over-the-counter drugs, they do not expire before use by the eligible patient based on the directions for use on the manufacturer's label; and

(2) The drugs were donated in unopened tamper-evident packaging as defined by United States Pharmacopeia General Chapter 659, Packaging and Storage Requirements, including, but not limited to, unopened unit-dose and multiple-dose packaging.

(b) The following drugs may not be donated to the program:

(1) Controlled substances;

(2) Drugs subject to a federal Food and Drug Administration managed risk evaluation and mitigation strategy pursuant to 21 U.S.C. §355-1 if inventory transfer is prohibited by such strategy; or

- (3) Drugs that there is reason to believe are adulterated.

§60B-1-4. Eligible recipients.

(a) A pharmacy, hospital, wholesaler, reverse distributor, federally qualified health center, nonprofit clinic, healthcare facility, an entity participating in a drug donation or repository program pursuant to another state's law, or healthcare professional that is otherwise legally authorized to possess prescription drugs may become an eligible recipient for a period of one year by giving written notice to the board. That notice serves as authority for the recipient to participate in the program for a period of one year, unless revoked by the board. An eligible recipient may renew its authority by sending written notice in subsequent years.

(b) The board shall publish on its website the list of authorized recipients.

(c) An entity which chooses to participate in the program shall comply with this chapter and shall make all records available for audit by the board within five business days. Failure to comply with any provision of this chapter or statutes governing prescription drugs may result in revocation of authority to participate in the program. Such revocation shall be provided as a written notice to the recipient and shall include the specific requirements that were violated and the corrective actions necessary for the recipient to reinstate its authority to participate in the program.

§60B-1-5. Receipt, storage, and handling of donated drugs by an eligible recipient.

(a) A donor may donate drugs to an eligible recipient.

(b) An eligible recipient may receive, accept, donate, dispose, replenish, and store drugs that were either donated or repackaged as provided in subsection (f) of this section.

(c) Prior to the first donation from a new donor, a recipient shall verify and record the following:

(1) The donor meets the definition of “donor” as provided in §60B-1-1 of this code;

(2) The donor’s name, address, phone number, and license number if applicable;

(3) The donor shall only make donations of drugs in accordance with the program;

(4) The donor shall ensure integrity of any drug requiring temperature control other than “room temperature storage” that is delivered by enclosing in the drug’s packaging a USP-recognized method by which the eligible recipient can easily detect improper storage or temperature variations; and

(5) If applicable, the donor shall remove or redact any patient names and prescription numbers on donated drugs or otherwise maintain patient confidentiality by executing a confidentiality agreement with the eligible recipient.

(d) An eligible recipient shall store and maintain donated drugs in a secure and temperature-controlled environment that meets the drug manufacturers’ recommendations and United States Pharmacopeial Convention (USP) standards.

(e) A participating eligible recipient shall keep all donated drugs physically or electronically separated from other inventory. Donated inventory may be used to replenish purchased inventory with the same drug name and strength that was previously dispensed or administered to an eligible patient. Replenishment shall follow applicable provisions of the federal 340B Drug Pricing Program.

(f) Drugs may be repackaged as necessary for storage, replenishment, dispensing, administration, or further donation. Repackaged drugs shall be labeled with the drug name, strength, and expiration date, and shall be kept in a separate designated area until inspected and initialed by a health care professional authorized to dispense.

(g) All donations received but not yet accepted into inventory shall be kept in a separate designated area.

(h) Prior to or upon accepting a donation into inventory, an eligible recipient shall maintain a written or electronic inventory of the donation, including:

- (1) The transaction date;
- (2) The name, strength, and quantity of each accepted drug; and
- (3) The name, address, and phone number of the donor.

(i) No record of a donation other than as described in subsection (h) of this section may be required.

(j) All records required by this chapter shall be retained in physical or electronic format, on or off the recipient's premise for a period of six years.

(k) A donor or eligible recipient may contract with one another or a third-party to create and/or maintain records on each other's behalf.

(l) An identifier, such as a serial number or barcode, may be used in place of any or all information required by a record or label pursuant to this chapter if it allows for such information to be readily retrievable. Upon audit by the board the identifier on requested records shall be replaced with the original information. An identifier may not be used on patient labels when dispensing or administering a drug.

(m) A drug wholesaler, distributor, supplier, or outsourcing facility registered pursuant to state law except reverse distributors, shall comply with the requirements of 21 U.S.C. §§ 360eee-1 - 360eee-4 relating to drug supply chain security. If a donation's transaction history is required, the record of transaction history begins with the donor of the drugs, shall include all prior donations, and, if the drug was previously dispensed, may not include drug information that is not otherwise required to be on the drug's label.

§60B-1-6. Dispensing and distribution of donated drugs.

(a) An eligible recipient may only dispense or administer prescription drugs if otherwise permitted by law.

(b) Donation and the brokering or other facilitation of a donation of a drug pursuant to this program may not be considered wholesale distribution and may not require licensure as a wholesaler.

(c) Donated prescription drugs may only be dispensed to eligible patients pursuant to a valid prescription drug order. That patient shall be provided with appropriate counseling on the use of the prescription drug, including any potential side effects and the fact that the drug was donated.

(d) An eligible recipient may further donate unused prescription drugs to or receive unused prescription drugs from another eligible recipient in the program when one has the need for a drug, and another has it available. An inventory of such donations shall be created in accordance with the program unless both eligible recipients are under common ownership or common control.

(e) An eligible recipient shall dispose of any drug that does not meet all of the requirements of the program in one of the following ways:

(1) Return the drug to the donor;

(2) Destroy the drug through an incinerator licensed with the Environmental Protection Agency or other lawful method; or

(3) Transfer the drug to a reverse distributor.

(f) All such donated drugs to be disposed shall be quarantined in a separately designated area.

(g) An eligible recipient shall maintain a written or electronic record of disposal, including:

(1) The disposal method as described in subdivision (2), subsection (e) of this section;

(2) The date of disposal or quarantine; and

(3) The name, strength, and quantity of each drug disposed.

(h) No record of disposal other than as described in subsection (g) of this section may be required.

(i) Donated drugs may not be resold and shall be considered nonsalable. However, reimbursement for any handling fee authorized pursuant to this chapter does not constitute reselling.

(j) Before dispensing a donated drug, an eligible recipient shall inspect the drug to determine that it has not adulterated. The drug shall be repackaged into a new container or all previous patient information and pharmacy labeling shall be redacted or removed from the donated container.

(k) Dispensed drugs shall clearly indicate the final dispensers information and current patient information, and shall be properly labeled in accordance with the regulations of the board.

(l) An eligible recipient that provides donated drugs to an eligible patient shall maintain patient-specific written or electronic records in accordance with West Virginia law and the rules of the board. If also providing patients with purchased drugs, the eligible recipient shall also note, either on the face of a written prescription or in the electronic record of prescription, that a donated drug was dispensed to the patient.

(m) An expiration date is required on all donated drugs dispensed. The expiration date shall be brought forward to the filled prescription. If multiple packaged donated drugs are used to fill a single prescription with varied expiration dates, the shortest expiration date shall be used for the dispensed prescription.

(n) Dispensed drugs may not expire before the use by the patient based on the prescribing practitioners directions for use or, for over-the-counter medicine not dispensed pursuant to a prescription, the directions for use on the packages label.

(o) Dispensed drugs subject to a United States Food and Drug Administration managed risk evaluation and mitigation strategy pursuant to 21 U.S.C. §355-1 shall be managed and dispensed according to the requirements of that strategy.

(p) When complying with the provisions of this article and the rules and regulations adopted pursuant to this article, unless an action or omission constitutes willful or wanton misconduct, the following persons or entities shall not be subject to criminal or civil prosecution, criminal or civil liability for injury, death, or loss to person or property, other criminal or civil action, or disciplinary actions by licensing, professional, or regulatory agencies:

(1) A person that donates or gives drugs to an eligible recipient, including a drug wholesaler, drug manufacturer, reverse distributor pharmacy, third-party logistics provider, government entity, hospital, or health care facility;

(2) An eligible recipient;

(3) A health care professional who prescribes or dispenses a donated drug;

(4) The Board of Pharmacy;

(5) An intermediary that helps administer the program by facilitating the donation or transfer of drugs to eligible recipients;

(6) A repackager or manufacturer of a donated drug; and

(7) Any employee, volunteer, trainee, or other staff of individuals and entities listed in subdivisions (1) through (6).

(q) An entity participating in a drug donation or repository program operated by another state may participate in this program, and in the case of a pharmacy, may dispense donated drugs to residents of this state. This entity is required to comply with all laws and rules in this state unless such laws or rules differ or conflict with the laws or rules of the state in which the entity is located.

§60B-1-7. Handling fees.

(a) An eligible recipient may not charge or collect any fees from an eligible patient for drugs dispensed pursuant to this program. However, an eligible recipient may charge a handling fee for each donated drug that is dispensed. A handling fee may not exceed the reasonable costs of participating in the program including, but not limited to, the current and anticipated costs of educating eligible donors, providing technical support to participating donors, shipping and handling, labor, storage, licensing, utilities, advertising, technology, supplies, and equipment.

(b) Nothing in the preceding paragraph limits an eligible recipient from charging fees, including, but not limited to, a usual and customary charge, to donors, eligible recipients, health plans, pharmacy benefit managers, and other entities.

§60B-1-8. Rule-making.

The board shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this chapter.

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CHAPTER 60

**(Com. Sub. for H. B. 4373 - By Delegates Rohrbach, Reed,
Worrell, Bates, Tully, G. Ward, Miller, Criss, and Mandt)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §47-19-3 of the Code of West Virginia, 1931, as amended; and to amend §60A-4-403a of said code, all relating to excluding fentanyl test strips from the definition of drug paraphernalia; and specifying that possession, sale, or purchase of fentanyl test strips are not prohibited under Chapter 60A of this code.

Be it enacted by the Legislature of West Virginia:

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 19. DRUG PARAPHERNALIA.

§47-19-3. Drug paraphernalia defined.

(a) The following items, if marketed for use or designed for the use with controlled substances, are considered drug paraphernalia for the purpose stated in section one of this article:

(1) Kits marketed for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits marketed for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;

(3) Isomerization devices marketed for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment marketed for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances; *Provided*, That fentanyl test strips shall not be considered drug paraphernalia for the purpose stated in section one of this article;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters marketed for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;

(8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes and other containers marketed for use, or designed for use in packaging small quantities of controlled substances;

(10) Hypodermic syringes, needles and other objects marketed for use, or designed for use in parenterally injecting controlled substances into the human body;

(11) Paper of colorful design, with names oriented for use with controlled dangerous substances and displayed: *Provided*, That white paper or tobacco oriented paper not necessarily designed for use with controlled substances is not covered;

(12) Pipes displayed in the proximity of roach clips, or literature encouraging illegal use of controlled substances, are

covered by this article: *Provided*, That pipes otherwise displayed are not covered by this article;

(13) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(14) Miniature cocaine spoons, and cocaine vials; or

(15) Chillums or bongs.

(b) In determining whether an object is marketed for use or designed for use as drug paraphernalia, the State Tax Commissioner or other authority should consider the following:

(1) The proximity of the object, in time and space, to a controlled substance;

(2) The existence of any residue of controlled substances on the object;

(3) Instructions, oral or written, provided with the object concerning its use;

(4) Descriptive materials accompanying the object which explain or depict its use;

(5) National and local advertising concerning its use;

(6) The manner in which the object is displayed for sale;

(7) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(8) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise;

(9) The existence and scope of legitimate uses for the object in the community.

**CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES
ACT.**

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-403a. Prohibition of illegal drug paraphernalia businesses; definitions; places deemed common and public nuisances; abatement; suit to abate nuisances; injunction; search warrants; forfeiture of property; penalties.

(a) Any person who conducts, finances, manages, supervises, directs or owns all or part of an illegal drug paraphernalia business is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$5,000, or confined in jail not less than six months nor more than one year, or both.

(b) A person violates subsection (a) of this section when:

(1) The person conducts, finances, manages, supervises, directs, or owns all or part of a business which for profit, in the regular course of business or as a continuing course of conduct, manufactures, sells, stores, possesses, gives away or furnishes objects designed to be primarily useful as drug devices.

(2) The person knows or has reason to know that the design of such objects renders them primarily useful as drug devices.

(c) As used in this section, “drug device” means an object usable for smoking marijuana, for smoking controlled substances defined as tetrahydrocannabinols, or for ingesting or inhaling cocaine, and includes, but is not limited to:

(i) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips; meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) Chamber pipes;

(vii) Carburetor pipes;

(viii) Electric pipes;

(ix) Air-driven pipes;

(x) Chillums;

(xi) Bongs;

(xii) Ice pipes or chillers; and

(xiii) Miniature cocaine spoons, and cocaine vials.

In any prosecution under this section, the question whether an object is a drug device shall be a question of fact.

(d) A place where drug devices are manufactured, sold, stored, possessed, given away or furnished in violation of this section shall be deemed a common or public nuisance. Conveyances or vehicles of any kind shall be deemed places within the meaning of this section and may be proceeded against under the provisions of subsection (e) of this section. A person who shall maintain, or shall aid or abet or knowingly be associated with others in maintaining such common or public nuisance shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than \$1,000, or by confinement in jail not more than six months for each offense, and judgment shall be given that such nuisance be abated or closed as a place for the manufacture, sale, storage, possession, giving away or furnishing of drug devices.

(e) The prosecuting attorney or a citizen of the county or municipality where a nuisance as defined in subsection (d) is located, may maintain a suit in the name of the state to abate and perpetually enjoin the same. Circuit courts shall have jurisdiction thereof. The injunction may be granted at the commencement of

the suit and no bond shall be required if such action for injunction be brought by the prosecuting attorney. If such suit for injunction be brought or maintained by a citizen of the county or municipality where such nuisance is alleged to be located, then the court may require a bond as in other cases of injunction. On the finding that the material allegations of the complaint are true, the court or judge thereof in vacation shall order the injunction for such period of time as it or he or she may think proper, with the right to dissolve the injunction upon the application of the owner of the place, if a proper case is shown for such dissolution.

The continuance of the injunction as provided in this section may be ordered, although the place complained of may not at the time of hearing be unlawfully used.

(f) If there be complaint on oath or affirmation supported by affidavit or affidavits setting forth the facts for such belief that drug devices are being manufactured, sold, kept, stored or in any manner held, used or concealed in a particular house or other place with intent to engage in illegal drug paraphernalia business in violation of law, a magistrate or a circuit court, or the judge thereof in vacation to whom such complaint is made, if satisfied that there is probable cause for such belief, shall issue a warrant to search such house or other place for such devices. Such warrants, except as herein otherwise provided, shall be issued, directed and executed in accordance with the laws of West Virginia pertaining to search warrants. Warrants issued under this section for the search of any automobile, boat, conveyance or vehicle, or for the search of any trunk, grip or other article of baggage, for such devices, may be executed in any part of the state where the same are overtaken, and shall be made returnable before any magistrate or circuit court, or the judge thereof in vacation, within whose jurisdiction such automobile, boat, conveyance, vehicle, trunk, grip or other article of baggage, or any of them, were transported or attempted to be transported.

An officer charged with the execution of a warrant issued under this section, may, whenever it is necessary, break open and enter a house, or other place herein described.

(g) Any property, including money, used in violation of the provisions of this section may be seized and forfeited to the state.

(h) Nothing in this chapter prohibits the possession, sale or purchase of fentanyl test strips.



CHAPTER 61

(Com. Sub. for S. B. 441 - By Senator Trump)

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-4-8a, relating to the confidentiality of video, incident reports, or investigation reports of a correctional or juvenile facility; providing that the commissioner's agents, representatives, or other designees may view any video, incident report, or investigation report of a correctional or juvenile facility; permitting the disclosure of video, incident reports, or investigation reports to law enforcement under certain conditions; requiring the law enforcement agency to treat the records as confidential pursuant to §49-5-101(a); permitting the disclosure of such items in a civil or administrative proceeding upon and appropriate order; providing that release of records from a juvenile facility related to an employee grievance shall be in accordance with §49-5-101; permitting the viewing of facility video to any licensed state attorney investigating a potential claim against the division; preventing the disclosure to any licensed state attorney unless a protective order is entered; and extending the confidentiality provisions of this section to any person receiving copies of the video, incident report, or investigation report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-8a. Facility video and security records confidential; exceptions.

(a) The contents of any correctional or juvenile facility video, incident report, or investigation report related to the safe and secure management of inmates and residents may be disclosed or released to the commissioner's agents, representatives, and designees, but such records are otherwise confidential and not subject to public disclosure or release except as set forth in this section.

(b) Notwithstanding any provision of this code to the contrary, the contents of any correctional or juvenile facility video, incident report, or investigation report related to the safe and secure management of inmates and residents may be disclosed or released to an appropriate law-enforcement agency, when disclosure or release is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the correctional institution: *Provided*, That, with respect to records relating to juvenile residents, the law-enforcement agency in receipt of any such records shall treat the records as confidential pursuant to the provisions set forth in §49-5-101(a) of this code.

(c) Disclosure or release may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal with the entry of an appropriate protective order prohibiting the misuse and reproduction of disclosed or released records: *Provided*, That the disclosure or release of records from a juvenile facility required for an employee grievance shall be made strictly in accordance with the provisions of §49-5-101 of this code.

(d) The commissioner may authorize an attorney, licensed before the bar of this state and who is representing a person with a potential claim for personal injury or a violation of the United States Constitution or West Virginia Constitution allegedly caused by the division, to view facility video, incident reports, or investigation reports related to the safe and secure management of inmates and residents for purposes of determining the validity of a claim against the division, but such video, incident reports, or investigation reports related to the safe and secure management of inmates and residents shall not be released to the licensed attorney prior to institution of a suit or petition for pre-suit discovery in the

appropriate forum and after the entry of an appropriate protective order prohibiting the misuse and reproduction of disclosed records.

(e) The confidentiality provisions of this section shall extend to any person receiving such records and may not be used for any unauthorized purpose except upon order of a court of record.

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CHAPTER 62

(Com. Sub. for S. B. 466 - By Senators Trump and Weld)

[Passed March 8, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §25-1A-9, relating to limitations on civil actions or appeals brought by inmates by prohibiting an inmate to proceed in forma pauperis in civil actions when an inmate has, on three or more prior occasions, had a civil action or appeal dismissed on the grounds that the action was frivolous, malicious, or failed to state a claim upon which relief may be granted, unless permitted by a circuit court; exempting civil actions where an inmate alleges imminent danger of serious physical injury and states with particularity the factual basis of the assertion; and further exempting actions where the inmate seeks habeas relief relating solely to the propriety of custody.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. WEST VIRGINIA PRISONER LITIGATION REFORM ACT.

§25-1A-9. Limitations on civil actions brought by prisoners in forma pauperis.

(a) Absent an order of a circuit court permitting the filing, an inmate is not permitted to proceed in forma pauperis when bringing a civil action or appealing a judgment in a civil action or proceeding if he or she has, on three or more occasions, while incarcerated or detained in any correctional facility, brought an action or appeal in any court of this state that was dismissed on the grounds it was frivolous, malicious, or failed to state a claim upon

which relief may be granted, unless the inmate is under imminent danger of serious physical injury.

(b) Any civil action asserting an inmate is under imminent danger of serious physical injury shall state with particularity the factual basis of the assertion.

(c) The provisions of subsection (a) of this section do not apply to an inmate seeking a writ of habeas corpus ad subjiciendum relating solely to the propriety of an inmate's custody.

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CHAPTER 63

(Com. Sub. for H. B. 4497 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §15A-3-16 of the Code of West Virginia, 1931, as amended, relating to setting the regional jail per diem rate through July 1, 2023.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

(a) Any special revenue funds previously administered by the Regional Jail and Correctional Facility Authority or its executive director are continued, and shall be administered by the commissioner.

(b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay operations of nonjail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis for shared staff and for operational expenses of facilities being used as both prisons and jails.

(c) Whenever the commissioner determines that the balance in these funds is more than the immediate requirements of this article, he or she may request that the excess be invested until needed. Any excess funds so requested shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any moneys invested pursuant to this section shall be credited to these funds.

(d) These funds consist of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(2) Contributions, grants, and gifts from any source, both public and private, specifically directed to the operations of jails under the control of the commissioner;

(3) All sums paid pursuant to §15A-3-16(g) of this code; and

(4) All interest earned on investments made by the state from moneys deposited in these funds.

(e) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts deposited shall be pledged first to the debt service on any bonded indebtedness;

(2) After any requirements of debt service have been satisfied, the commissioner shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article, as limited by this section;

(3) The commissioner shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts that are necessary for the maintenance and operation of jails under his or her control. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs, or fines required by law to be deposited in these funds

and amounts from the jail improvement funds of the various counties;

(4) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred; and

(5) Any amounts deposited in these funds from other sources permitted by this article shall be expended based on particular needs to be determined by the commissioner.

(f)(1) After a jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the previously promulgated, and hereby transferred standards and procedures developed by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate courts are authorized to:

(A) Detain persons who have been arrested or charged with a crime in a county or municipal jail specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 96 hours; or

(B) Commit persons convicted of a crime in a county or municipal jail, specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 14 days.

(g) When inmates are placed in a jail facility under the jurisdiction of the commissioner pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a municipal violation, shall pay into this fund a cost per day for each

incarcerated inmate, to be determined by the state Budget Office annually by examining the most recent three fiscal years of costs submitted by the commissioner for the cost of operating the jail facilities and units under his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail facilities or units: *Provided*, That beginning July 1, 2018, and continuing through July 1, 2023, in no case shall any county or municipality be required to pay a rate that exceeds \$48.25 per day, per inmate. Nothing in this section shall be construed to mean that the per diem cannot be decreased or be less than \$48.25 per day per inmate.

(h) The per diem costs for incarcerating inmates may not include the cost of construction, acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of 24 hours pass from the original time of incarceration.

(i) The county is responsible for costs incurred by the division for housing and maintaining inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of housing shall be borne by the division on a felony conviction on which an inmate is incarcerated beginning the calendar day following the day of sentencing: *Provided*, That beginning July 1, 2019, the costs of housing shall be borne by the division on a felony conviction when an inmate is incarcerated beginning the calendar day following the day of conviction. In no case shall the county be responsible for any costs of housing and maintaining felony convicted inmate populations.

(j) The county is responsible for the costs incurred by the authority for housing and maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is awaiting transportation to a state correctional facility for a 60-day evaluation period as provided in §62-12-7a of this code.

(k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of phasing out the county and municipal per diem charges required by §15A-3-16(g) of this code. This report shall include information regarding savings realized because of the consolidation of the former Division of Corrections, Division of Juvenile Services, and the operations of the Regional Jail and Correctional Facility Authority, as well as any other recommendations that might ease the burden of paying the per diem inmate costs by the counties or municipalities. On or before January 1, 2019, January 1, 2020, January 1, 2021, and January 1, 2023 the commissioner shall report to the Joint Committee on Government and Finance and the co-chairmen of the Joint Standing Committee on Finance the actual per diem rate as calculated pursuant to §15A-3-16(g) of this code and any amount not assessed to counties if the actual per diem cost is larger than the amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1, 2018, and July 1, 2023.

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CHAPTER 64

(S. B. 172 - By Senators Trump, Lindsay, Jeffries, Phillips, Caputo, and Stollings)

[Passed March 11, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 21, 2022.]

AN ACT to amend and reenact §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as amended, all relating to increasing the compensation of elected county officials.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-1. Legislative findings and purpose.

(a) The Legislature finds that it has, since January 1, 2015, consistently and annually imposed upon the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys in each county new and additional duties by the enactment of new provisions and amendments to this code. The new and additional duties imposed upon the aforesaid county officials by these enactments are such that they would justify the increases in compensation as provided in section four of this article, without violating the provisions of section 38, article VI of the Constitution of West Virginia.

(b) The Legislature further finds that there are, from time to time, additional duties imposed upon all county officials through the acts of the Congress of the United States and that such acts constitute new and additional duties for county officials and, as such, justify the increases in compensation as provided by section

four of this article, without violating the provisions of section 38, article VI of the Constitution of West Virginia.

(c) The Legislature further finds that there is a direct correlation between the total assessed property valuations of a county on which the salary levels of the county commissioners, sheriffs, county and circuit clerks, assessors and prosecuting attorneys are based, and the new and additional duties that each of these officials is required to perform as they serve the best interests of their respective counties. Inasmuch as the reappraisal of the property valuations in each county has now been accomplished, the Legislature finds that a change in classification of counties by virtue of increased property valuations will occur on an infrequent basis. However, it is the further finding of the Legislature that when such change in classification of counties does occur, that new and additional programs, economic developments, requirements of public safety and the need for new services provided by county officials all increase, that the same constitute new and additional duties for county officials as their respective counties reach greater heights of economic development, as exemplified by the substantial increases in property valuations and, as such, justify the increases in compensation provided in section four of this article, without violating the provisions of section 38, article VI of the Constitution of West Virginia.

(d) The Legislature further finds and declares that the amendments enacted to this article are intended to modify the provisions of this article so as to cause the same to be in full compliance with the provisions of the Constitution of West Virginia and to be in full compliance with the decisions of the Supreme Court of Appeals of West Virginia.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

(1) The increased salaries to be paid to the county commissioners and the other elected county officials described in this section on and after July 1, 2014, and on and after July 1, 2022, are set out in subsections (5) and (7) of this section. Every county commissioner and elected county official in each county, whose

term of office commenced prior to or on or after July 1, 2014, shall receive the same annual salary by virtue of legislative findings of extra duties as set forth in §7-7-1 of this code.

(2) Before the increased salaries, as set out in subsections (5) and (7) of this section, are paid to the county commissioners and the elected county officials, the following requirements must be met:

(A) The Auditor has certified that the fiscal condition of the county, considering costs, revenues, liabilities, and significant trends of the same; maintenance standards; and the commitment to the provision of county services has sufficiently improved over the previous fiscal years so that there exists an amount sufficient for the payment of the increase in the salaries set out in subsections (5) and (7) of this section and the related employment taxes: *Provided*, That the Auditor may not provide the certification for the payment of the increase in the salaries where any proposed annual county budget contains anticipated receipts which are unreasonably greater or lesser than that of the previous year. For purposes of this subsection, the term “receipts” does not include unencumbered fund balance or federal or state grants: *Provided, however*, That the Auditor shall not be held liable for relying upon information and data provided by a county commission in assessing the county’s fiscal condition or a proposed annual county budget; and

(B) Each county commissioner or other elected official described in this section in office on the effective date of the increased salaries provided by this section who desires to receive the increased salary shall have prior to that date filed in the office of the clerk of the county commission his or her written request for the salary increase. The salary for the person who holds the office of county commissioner or other elected official described in this section who fails to file the written request as required by this subdivision shall be the salary for that office in effect immediately prior to the effective date of the increased salaries provided by this section until the person vacates the office or his or her term of office expires, whichever first occurs.

Any request for a salary increase shall use the following language:

I, [name of office holder], the duly elected [name of office] in and for the County of [name of county], West Virginia, do hereby request a salary increase pursuant to W. Va. Code §7-7-4 of this code, as amended. This salary increase is effective (_____).

[Signature of office holder]

[Date]

(3) If the Auditor has failed to certify that there is an amount sufficient for the payment of the increase in the salaries and the related employment taxes pursuant to this section, then the salaries of that county's elected officials and commissioners shall remain at the level in effect at the time certification was sought.

(4) In any county having a tribunal in lieu of a county commission, the county commissioners of that county may be paid less than the minimum salary limits of the county commission for that particular class of the county.

(5) Prior to July 1, 2014:

COUNTY COMMISSIONERS

Class I \$36,960

Class II \$36,300

Class III \$35,640

Class IV \$34,980

Class V \$34,320

Class VI \$28,380

Class VII \$27,720

Class VIII \$25,080

Class IX \$24,420

Class X \$19,800

After June 30, 2014:

COUNTY COMMISSIONERS

Class I \$41,395

Class II \$40,656

Class III \$39,917

Class IV \$39,178

Class V \$38,438

Class VI \$31,786

Class VII \$31,046

Class VIII \$28,090

Class IX \$27,350

Class X \$22,176

After June 30, 2022:

COUNTY COMMISSIONERS

Class I \$45,535

Class II \$44,722

Class III \$43,909

Class IV \$43,096

Class V \$42,282

Class VI \$34,965

Class VII \$34,151

Class VIII \$30,899

Class IX \$30,085

Class X \$24,394

(6) For the purpose of determining the salaries to be paid to the elected county officials of each county, the salaries for each county office by class, set out in subsection (7) of this section, are established and shall be used by each county commission in determining the salaries of each of their county officials other than salaries of members of the county commission.

(7) Prior to July 1, 2014:

OTHER ELECTED OFFICIALS

		County	Circuit		Prosecuting
	Sheriff	Clerk	Clerk	Assessor	Attorney
Class I	\$44,880	\$55,440	\$55,440	\$44,880	\$96,600
Class II	\$44,220	\$54,780	\$54,780	\$44,220	\$94,400
Class III	\$43,890	\$53,460	\$53,460	\$43,890	\$92,200
Class IV	\$43,560	\$53,154	\$53,154	\$43,560	\$90,000
Class V	\$43,230	\$52,800	\$52,800	\$43,230	\$87,800
Class VI	\$42,900	\$49,500	\$49,500	\$42,900	\$59,400
Class VII	\$42,570	\$48,840	\$48,840	\$42,570	\$56,760
Class VIII	\$42,240	\$48,180	\$48,180	\$42,240	\$54,120
Class IX	\$41,910	\$47,520	\$47,520	\$41,910	\$50,160
Class X	\$38,280	\$42,240	\$42,240	\$38,280	\$46,200

After June 30, 2014:

OTHER ELECTED OFFICIALS

		County	Circuit		Prosecuting
	Sheriff	Clerk	Clerk	Assessor	Attorney
Class I	\$50,266	\$62,093	\$62,093	\$50,266	\$108,192
Class II	\$49,526	\$61,354	\$61,354	\$49,526	\$105,728
Class III	\$49,157	\$59,875	\$59,875	\$49,157	\$103,264
Class IV	\$48,787	\$59,532	\$59,532	\$48,787	\$100,800
Class V	\$48,418	\$59,136	\$59,136	\$48,418	\$98,336
Class VI	\$48,048	\$55,440	\$55,440	\$48,048	\$66,528
Class VII	\$47,678	\$54,701	\$54,701	\$47,678	\$63,571
Class VIII	\$47,309	\$53,962	\$53,962	\$47,309	\$60,614
Class IX	\$46,939	\$53,222	\$53,222	\$46,939	\$56,179
Class X	\$42,874	\$47,309	\$47,309	\$42,874	\$51,744

After June 30, 2022:

OTHER ELECTED OFFICIALS

		County	Circuit		Prosecuting
	Sheriff	Clerk	Clerk	Assessor	Attorney
Class I	\$56,793	\$68,302	\$68,302	\$56,793	\$119,011
Class II	\$55,979	\$67,489	\$67,489	\$55,979	\$116,301
Class III	\$55,573	\$65,863	\$65,863	\$55,573	\$113,590
Class IV	\$55,166	\$65,485	\$65,485	\$55,166	\$110,880
Class V	\$54,760	\$65,050	\$65,050	\$54,760	\$108,170

Class VI	\$54,353	\$60,984	\$60,984	\$53,853	\$73,181
Class VII	\$53,946	\$60,171	\$60,171	\$53,446	\$69,928
Class VIII	\$53,540	\$59,358	\$59,358	\$52,940	\$66,675
Class IX	\$53,133	\$58,544	\$58,544	\$52,533	\$61,797
Class X	\$48,661	\$52,040	\$52,040	\$47,811	\$56,918

(8) Any county clerk, circuit clerk, county assessor, prosecuting attorney, or sheriff of a Class I through Class V county, inclusive, any assessor or any sheriff of a Class VI through Class IX county, inclusive, shall devote full time to his or her public duties to the exclusion of any other employment: *Provided*, That any public official whose term of office begins when his or her county's classification imposes no restriction on his or her outside activities may not be restricted on his or her outside activities during the remainder of the term for which he or she is elected.

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CHAPTER 65

**(Com. Sub. for S. B. 443 - By Senators Nelson, Clements,
Trump, Plymale, and Hamilton)**

[Passed March 10, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §8-22-18 of the Code of West Virginia, 1931, as amended, relating to including retired police officers or firefighters as electors of trustees for pension and relief funds.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-18. Members of board of trustees; how elected; presiding officers; secretary.

(a) The Board of Trustees of the Policemen's Pension and Relief Fund shall consist of the mayor of the municipality and four members of the paid police department, to be chosen as hereinafter in this section specified. The mayor of such municipality shall give notice of an election to be held on the second Monday of the month following the adoption of the ordinance providing for the establishment and maintenance of such fund, which notice shall be served upon each member of the paid police department and which shall notify each member that between the hours of 9:00 a.m. and 6:00 p.m., on the day designated for such election, an election will be held for such purpose and that each member shall furnish in

writing the names of four members of the paid police department voted for; and all votes so cast shall be counted and canvassed by the mayor and the governing body for the first election, and thereafter the votes shall be counted by the then existing members of such board, who after such election shall announce the results, and the four members of the paid police department receiving the highest number of votes shall, with the mayor, constitute "The Board of Trustees of the Policemen's Pension and Relief Fund of (name of municipality)". As to the first election held following the adoption of the ordinance providing for the establishment and maintenance of such fund, the member receiving the highest number of votes shall serve for a period of four years, the member receiving the second highest number of votes shall serve for a period of three years, the member receiving the third highest number of votes shall serve for a period of two years and the member receiving the fourth highest number of votes shall serve for a period of one year.

(b) After the first election, the board shall hold a similar election each year to elect one member to succeed, for a term of four years, the retiring member. In the case of a tie vote being received by any two individuals for the office of trustee, such tie vote shall be decided by casting lots, or in any other way which may be agreed upon by the individuals for whom such tie vote was cast. The results of such election shall be entered in the record of the proceedings of the board and the members so elected shall, except as herein above specified with respect to the first election, serve for four years and until their successors are elected and have qualified. The election for such members of the board of trustees shall be held annually upon the second Monday of the same month during which the first election was held. In case of a vacancy by death or resignation among the members so elected, the remaining members of the board shall choose the successor, or successors, until the next annual election at which latter time all vacancies shall be filled: *Provided*, That in the case of an elected member retiring during his or her term, the retired member may continue to serve the remainder of his or her term.

(c) The Board of Trustees of the Firemen's Pension and Relief Fund shall consist of the mayor of the municipality and four members of the paid fire department, to be chosen in the same manner and for such terms as is provided above in this section for the election of policemen to the policemen's pension and relief fund board of trustees.

(d) The presiding officer of any such board of trustees shall be the mayor of the municipality and the secretary thereof shall be appointed by the board. It shall be the duty of such secretary to keep a full and permanent record of all of the proceedings of the board and said trustees may fix the secretary's compensation for this work, which shall be paid out of the funds of said policemen's pension and relief fund or firemen's pension and relief fund, as the case may be.

(e) For all pension and relief funds closed after January 1, 2010, pursuant to §8-22-20(e) of this code and those closed after April 1, 2011, pursuant to §8-22-20(f) of this code, the boards shall continue to elect four trustees until there are no more beneficiaries to be paid from the fund. The electors of trustees for pension and relief funds closed after January 1, 2010, pursuant to §8-22-20(e) of this code and those closed after April 1, 2011, pursuant to §8-22-20(f) of this code are to include active police officers or firefighters as the case may be, as well as retired members of the pension fund. Trustees are elected in the same manner and for the same terms but may be members of the paid police or fire departments or retirees from the paid police or fire departments.

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CHAPTER 66

**(Com. Sub. for S. B. 445 - By Senators Nelson, Clements,
Trump, and Plymale)**

[Passed February 18, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 1, 2022.]

AN ACT to amend and reenact §8-22-24 of the Code of West Virginia, 1931, as amended, relating to modifying police and firemen pension plans for trustees.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM, OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-24. Disability pensions.

(a) The monthly sum to be paid to each member eligible for disability received as a proximate result of service rendered in the performance of his or her duties under the provisions of §8-22-23(a) of this code is equal to 60 percent of the monthly salary being received by the member, at the time he or she is so disabled, or the sum of \$500 per month, whichever is greater: *Provided*, That the limitation provided in subsection (b) of this section is not exceeded.

(b) Effective for any member who becomes eligible for disability benefits on or after July 1, 1981, under the provisions of §8-22-23a of this code, as a proximate result of service rendered in the performance of the member's duties within such departments, the member's monthly disability payment as provided in

subsection (a) of this section may not, when aggregated with the monthly amount of state workers' compensation, result in the disabled member receiving a total monthly income from the sources in excess of 100 percent of the basic compensation which is paid to members holding the same position which the member held within the department at the time of the member's disability. Lump sum payments of state workers' compensation benefits are not considered for purposes of this subsection unless the lump sum payments represent commuted values of monthly state workers' compensation benefits.

(c) Any member who has served on active duty with the armed forces of the United States as described in §8-22-27 of this code, whether prior or subsequent to becoming a member of a paid police or fire department covered by the provisions of this article, and who, on July 1, 1986, is receiving or thereafter receives a disability pension, shall receive in addition to the 60 percent or minimum \$500 authorized in subsection (a) of this section, one additional percent for each year served in active military duty, up to a maximum of four additional percent.

(d) Beginning on and after April 1, 1991, the monthly sum to be paid to a member who becomes eligible for total disability incurred not in the line of duty is the monthly benefit provided in subsection (a) of this section: *Provided*, That for any person receiving benefits under this subsection who is self-employed or employed by another, there shall be offset against the benefits the amount of \$1 for each \$3 of income derived from self-employment or employment by another: *Provided, however*, That a person receiving disability benefits must file a certified copy of his or her tax return on or before April 15 of each year to demonstrate either unemployment or income earned from self-employment or employment by another. If the retirant refuses or is unable to provide the certified copy of his or her tax return by April 15 for the previous year, the trustees of the policemen's pension and relief fund or firemen's pension and relief fund shall hold the member's monthly disability pension in abeyance until the retirant complies. If the retirant has completed an application for automatic extension of time to file U.S. individual tax return, a copy of the same must

be submitted to the board. Thereupon, the member's monthly disability pension shall continue to be paid. If the retirant then refuses or is unable to provide the certified copy of his or her tax return by October 15 for the previous year, the trustees of the policemen's pension and relief fund or firemen's pension and relief fund shall hold the member's monthly disability pension in abeyance until the retirant complies: *Provided further*, That there is no offset of benefit for any income derived from self-employment or employment by another when the annual total amount of the income is \$18,200 or less.

(e) The \$18,200 limit in subsection (d) of this section shall be automatically increased when the minimum wage, as provided in §21-5C-2 of this code, increases by the same percentage of the increase in the minimum wage.

CHAPTER 67

(S. B. 639 - By Senator Nelson)

[Passed February 28, 2022; in effect 90 from passage.]
[Approved by the Governor on March 9, 2022.]

AN ACT to amend and reenact §8-11-4 of the Code of West Virginia, 1931, as amended, relating to municipal corporations; providing for powers and duties with respect to ordinances and ordinance procedures; and providing a 45-day waiting period before a water and/or sewer rate increase may go into effect for any local rate-regulated municipality.

Be it enacted by the Legislature of West Virginia:

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

§8-11-4. Ordinance procedures.

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

(1) A proposed ordinance shall be read by title at not less than two meetings of the governing body with at least one week intervening between each meeting, unless a member of the

governing body demands that the ordinance be read in full at one or both meetings. If such demand is made, the ordinance shall be read in full as demanded.

(2) At least five days before the meeting at which a proposed ordinance, the principal object of which is the raising of revenue for the municipality, is to be finally adopted, the governing body shall cause notice of the proposed adoption of the proposed ordinance to be published as a Class I-0 legal advertisement in compliance with §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the municipality. The notice shall state the subject matter and general title or titles of the proposed ordinance, the date, time, and place of the proposed final vote on adoption, and the place or places within the municipality where the proposed ordinance may be inspected by the public. A reasonable number of copies of the proposed ordinance shall be kept at such place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

(3) A proposed ordinance may not be materially amended at the same meeting at which finally adopted. A proposed ordinance to increase water and/or sewer service rates shall contain language that: (i) The rate increase may not be effective until 45 days following the passage of the ordinance; and (ii) the rate increase shall take effect for service rendered on or after the effective date.

(b) Notwithstanding any charter provision to the contrary, which was in effect on the effective date of this section, the governing body of any municipality may adopt, by ordinance, building codes, housing codes, plumbing codes, sanitary codes, electrical codes, fire prevention codes, or any other technical codes dealing with general public health, safety or welfare, or a combination of the same, or a comprehensive code of ordinances, in the manner prescribed in this subsection. Before any such ordinance shall be adopted, the code shall be either printed or typewritten and shall be presented in pamphlet form to the governing body of the municipality at a regular meeting, and copies of the code shall be made available for public inspection. The ordinance adopting the code may not set out the code in full, but

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

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

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

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CHAPTER 68

(Com. Sub. for S. B. 641 - By Senator Nelson)

[Passed March 11, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §7-14D-7 of the Code of West Virginia, 1931, as amended, relating to the deputy sheriff retirement system; allowing the Consolidated Public Retirement Board to set employer contribution levels; requiring the level to be set actuarially; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-7. Members' contributions; employer contributions.

(a) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. An additional amount shall be paid to the fund by the county commission of the county in which the member is employed in covered employment in an amount determined by the board: *Provided*, That in any year preceding July 1, 2011, the total of the contributions provided in this section, to be paid by the county commission, may not exceed 10 and one-half percent of the total payroll for the members in the employ of the county commission: *Provided, however*, That on or after July 1, 2011, the total of the contributions provided in this section, to be paid by the county commission, may not exceed 13 percent of the total payroll for the members in the employ of the county commission: *Provided further*, That effective July 1, 2023, the total amount of the contributions of the county commission

shall be set actuarially by the Consolidated Public Retirement Board. If the board finds that the benefits provided by this article can be actually funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than 15 days following the end of the calendar month.

(b) Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code shall make an additional contribution to the fund of eight and one-half percent of his or her monthly salary earned from any additional employment which requires the deputy sheriff to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code. An additional amount shall be paid to the fund by the concurrent employer for which the member is employed in an amount determined by the board: *Provided*, That in any year preceding July 1, 2011, the total of the contributions provided in this section, to be paid by the concurrent employer, may not exceed 10.5 percent of the monthly salary of the employee: *Provided, however*, That on or after July 1, 2011, the total of the contributions provided in this section, to be paid by the concurrent employer, may not exceed 13 percent of the monthly salary of the employee: *Provided further*, That effective July 1, 2023, the total amount of the contributions of the county commission shall be set actuarially by the Consolidated Public Retirement Board. If the board finds that the benefits provided by this article can be funded with a lesser contribution, then the board shall reduce the required member or employer contributions or both. The sums withheld each calendar month shall be paid to the fund no later than 15 days following the end of the calendar month.

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CHAPTER 69

**(Com. Sub. for H. B. 4430 - By Delegates Storch, Gearheart,
Evans, Anderson and Pethtel)**

(By Request of the Municipal Pensions Oversight Board)

[Passed March 8, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §8-22-16 of the Code of West Virginia, 1931, as amended, relating to providing definitions of “base salary” and “overtime and other remuneration” for a policemen’s pension and relief fund and a firemen’s pension and relief fund.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN’S PENSION AND RELIEF FUND;
FIREMEN’S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

**§8-22-16. Pension and relief funds for policemen and firemen;
creation of boards of trustees; definitions; continuance of
funds; average adjusted salary.**

(a) Except as provided in subsection (e) of this section, passed into law during the fourth extraordinary session of the Legislature in 2009, in every Class I and Class II city having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body shall, and in every Class III city and Class IV town or village having, or which may hereafter have, a paid police department and a paid fire department, or either of such departments, the governing body

may, by ordinance provide for the establishment and maintenance of a policemen's pension and relief fund and for a firemen's pension and relief fund for the purposes hereinafter enumerated and, thereupon, there shall be created boards of trustees which shall administer and distribute the moneys authorized to be raised by this section and the following sections of this article. For the purposes of this section and §8-22-17 through §8-22-28, inclusive, of this code, the term "paid police department" or "paid fire department" means only a municipal police department or municipal fire department, as the case may be, maintained and paid for out of public funds and whose employees are paid on a full-time basis out of public funds. The term may not be taken to mean any department whose employees are paid nominal salaries or wages or are only paid for services actually rendered on an hourly basis.

(b) Any policemen's pension and relief fund and any firemen's pension and relief fund established in accordance with the provisions of former §8-6-1 *et seq.* of this code or this article shall be or remain mandatory and shall be governed by §8-22-16 through §8-22-28, inclusive, of this code (with like effect, in the case of a Class III city or Class IV town or village, as if such Class III city or Class IV town or village were a Class I or Class II city) and may not be affected by the transition from one class of municipal corporation to a lower class as specified in §8-1-3 of this code: *Provided*, That any Class III or Class IV town or village that hereafter becomes a Class I or Class II city may not be required to establish a pension and relief fund if the town or village is a participant in an existing pension plan regarding paid firemen and/or policemen.

(c) After June 30, 1981, for the purposes of §8-22-16 through §8-22-28, inclusive, of this code, the word "member" means any paid police officer or firefighter who at time of appointment to a paid police or fire department met the medical requirements of chapter 2-2 of the National Fire Protection Association Standards Number 1001 — Firefighters Professional Qualifications >74 as updated from year to year: *Provided*, That any police officer or firefighter who was a member of the fund prior to July 1, 1981, shall be considered a member after June 30, 1981.

(d) (1) For purposes of §8-22-16 through §8-22-28, inclusive, of this code, the words “salary or compensation” mean remuneration actually received by a member, plus the member’s deferred compensation under sections 125, 401(k), 414(h)(2) and 457 of the United States Internal Revenue Code of 1986, as amended: *Provided*, That the remuneration received by the member during any 12-consecutive-month period used in determining benefits which is in excess of an amount which is 20 percent greater than the “average adjusted salary” received by the member in the two consecutive 12-consecutive-month periods immediately preceding the 12-consecutive-month period used in determining benefits shall be disregarded: *Provided, however*, That the “average adjusted salary” means the arithmetic average of each year’s adjusted salary, the adjustment made to reflect current salary rate and such average adjusted salary shall be determined as follows: Assuming “year-one” means the second 12-consecutive-month period preceding such 12-consecutive-month period used in determining benefits, “year-two” means the 12-consecutive-month period immediately preceding the 12-consecutive-month period used in determining benefits and “year-three” means the 12-consecutive-month period used in determining benefits, year-one total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-one base salary, exclusive of all overtime and other remuneration, such product shall equal “year-one adjusted salary”; year-two total remuneration shall be multiplied by the ratio of year-three base salary, exclusive of all overtime and other remuneration, to year-two base salary, exclusive of all overtime and other remuneration, such product shall equal “year-two adjusted salary”; and the arithmetic average of year-one adjusted salary and year-two adjusted salary shall equal the average adjusted salary. For inclusion in base salary or overtime and other remuneration, any payments to a member shall have pension deductions withheld from the payment to the member.

(2) “Base salary” means the pay the member receives for his or her regularly scheduled shift. The regularly scheduled shift includes all scheduled hours, all scheduled overtime hours, all holiday pay received by the member during the regularly scheduled

shift, and hours of paid leave taken in lieu of work. Base salary also includes longevity pay for years of service, pay for perfect attendance, and any hourly adjustments for position title or special skill sets.

(3) “Overtime and other remuneration” mean all unscheduled hours worked which includes any hours not on the member’s regular work schedule paid at straight time rates and or overtime rates, all payouts of accrued paid time off not used in lieu of work (i.e. payouts of accrued holiday hours, compensatory time, vacation time, sick time), and any bonuses granted and paid to the member. Any payment to a member that is not part of the member’s regularly scheduled work cycle is overtime and other remuneration. Any other payments to members where pension deductions are made that do not meet the definition of base salary.

(e)(1) Any municipality, as that term is defined in §8-1-2 of this code, or municipal subdivision as defined in §8-22A-2 of this code may, by a majority vote of its governing body, close its existing policemen’s or firemen’s pension and relief fund to employees newly hired on or after January 1, 2010, if the municipality enrolls those newly hired police officers or firefighters in a retirement plan created in §8-22A-1 *et seq.* of this code and approved and administered by the West Virginia Consolidated Public Retirement Board. On and after July 1, 2010, no new policemen’s or firemen’s pension and relief fund may be established under this section. A Class I or Class II municipality forming a new paid police department or paid fire department after June 30, 2010, shall, notwithstanding the provisions of §8-22A-2 of this code, enroll the department members in the Municipal Police Officers and Firefighters Retirement System established in §8-22A-1 *et seq.* of this code.

(2) Any municipality using the alternative method of financing that elects to close an existing pension and relief fund to new hires pursuant to this subsection shall also adopt either the optional method of financing the unfunded actuarial accrued liability of the existing policemen’s or firemen’s pension and relief fund as provided in §8-22-20(e) of this code, or the conservation method as provided in §8-22-20 (f) of this code.

(3) Except as provided in §8-22A-32 of this code, if the qualifying municipality elects to close enrollment in an existing municipal pension and relief fund to newly hired police officers and firefighters pursuant to this section, all current active members, retirees, and other beneficiaries covered by the existing policemen's or firemen's pension and relief fund shall remain covered by that plan and shall be paid all benefits of that plan in accordance with Part III of this article.

CHAPTER 70

**(H. B. 4433 - By Delegates Storch, Gearhart, Evans,
Anderson, Bates, and Pethtel)**

(By Request of the Municipal Pensions Oversight Board)

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-22-25b, relating to the protection of benefits and assets of members of a policemen's pension and relief fund or a firemen's pension and relief fund from execution, assignment or other process and certain taxes; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

§8-22-25b. Right to benefits not subject to execution, etc.; assignments prohibited; deductions for group insurance; setoffs for fraud; exception for certain domestic relations orders; assets exempt from taxes.

The right of a person to any benefit provided in this article shall not be subject to execution, attachment, garnishment, the operation of bankruptcy or insolvency laws, or other process whatsoever, nor shall any assignment thereof be enforceable in any court except that the benefits or contributions under municipal policemen's pension and relief funds and firemen's pension and relief funds shall be

subject to “qualified domestic relations orders” as that term is defined in Section 414(p) of the Internal Revenue Code as applicable to governmental plans: *Provided*, That should a member be covered by a group insurance or prepayment plan participated in by a participating municipality, and should he or she be permitted to, and elect to, continue such coverage as a retirant, he or she may authorize the board of trustees to have deducted from his or her retirement pension the payments required of him or her to continue coverage under such group insurance or prepayment plan: *Provided, however*, That a participating municipality shall have the right of setoff for any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary. The assets of the retirement system are exempt from state, county and municipal taxes.

CHAPTER 71

**(H. B. 4462 - By Delegates Storch, Pethtel, Evans, Anderson,
Bates, Graves and Espinosa)**

(By Request of the Municipal Pensions Oversight Board))

[Passed March 7, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §8-22-25a of the Code of West Virginia, 1931, as amended, relating to requiring actuarial reports to be prepared and presented to the Legislature's Joint Committee on Pensions and Retirement regarding active deferred retirement option plans every five years.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 22. RETIREMENT BENEFITS GENERALLY;
POLICEMEN'S PENSION AND RELIEF FUND;
FIREMEN'S PENSION AND RELIEF FUND; PENSION
PLANS FOR EMPLOYEES OF WATERWORKS
SYSTEM, SEWERAGE SYSTEM OR COMBINED
WATERWORKS AND SEWERAGE SYSTEM.**

**§8-22-25a. Deferred retirement option plans; authorization;
requirements; limitations.**

(a) A deferred retirement option plan (DROP) is a method to encourage retention of a worker beyond normal retirement age by permitting the worker to freeze retirement benefits at a certain time prior to ceasing work, to continue to work for a specified period, and to have retirement benefits which accrue while the employee continues working set aside in an account which the worker will then receive in a lump sum upon finally discontinuing work. The Legislature acknowledges that a DROP may be a useful and economical tool for retaining experienced and trained employees

and for planning for turnovers in the workforce. Experience, however, dictates that a DROP may place a heavy financial burden on the employer and the affected retirement system, negating any positive benefit offered by the DROP if the DROP is not carefully planned to be economically favorable to the employer and revenue neutral for the affected retirement system while remaining attractive to the targeted employee.

(b)(1) The governing bodies of municipalities participating in policemen's and firemen's pension and relief funds pursuant to §8-22-16 through §8-22-28 of this code, are authorized to voluntarily offer DROPs. A participating municipality may design and establish a DROP to best meet the municipality's needs so long as the DROP complies with federal law, the requirements set forth in this section and be approved by the Municipal Pensions Oversight Board.

(2) Prior to approval by the Municipal Pensions Oversight Board, a municipality shall submit a proposed DROP to the board for analysis by the qualified actuary retained or employed by the board. The actuary shall examine the plan and, in light of the elements of the DROP and the actuarial projections of the impact of the DROP on the affected pension and relief fund, advise the board of the anticipated impact on the municipal pension and relief fund. The board shall seek to approve only those DROPs which, in the best judgment of the actuary, are designed to have no negative impact on the member's pension and relief fund. The submitting municipality shall reimburse the board for actuarial costs of analyzing the plan.

(c) To be eligible to enter a DROP, the member of the policemen's or firemen's pension and relief fund must be in active employment and an active member of his or her pension and relief fund for at least six months beyond attaining eligibility for regular retirement as provided in §8-22-25 of this code and have received a satisfactory performance evaluation within the prior 12 months. The member may defer retirement for a period of not less than one nor more than five years but must complete the period by age 65. The member may elect to commence participation after July 1, 2011.

(d)(1) During the DROP participation period, the member shall continue with full-time employment in a covered position subject to the municipality's requirements. A member's retirement benefits are calculated as of the DROP participation date and a member may not accumulate additional retirement benefits during the DROP participation period. Upon beginning participation, the member is treated as retired and receiving benefits for purposes of the retirement system: *Provided*, That for the purpose of distributing premium tax proceeds required in §33-3-14d of this code, he or she shall be included in the calculation of the municipality's average number of policemen or firemen for each month that he or she works at least one hundred hours. During the DROP participation period, the employer shall continue to make regular contributions to the employee's pension and relief fund.

(2) Benefit payments are accumulated for the member in the pension and relief fund in an accumulation account during the DROP participation period. At the end of the participation period, the amount in the accumulation account owing to the member, plus interest not to exceed three and one-half percent, shall be paid to the member in a lump sum. Monthly retirement payments shall be paid directly to the member starting in the month following the end of the DROP participation period.

(3) A member may voluntarily terminate DROP participation early with 60 days' advance notice. Deferred accumulated benefits will be paid with no interest for the DROP period and benefits payments will commence following the early termination date. Covered employment must terminate before benefit distributions may be made. Should the employer wish to terminate the employment during the participation period, the member may terminate participation with 30 days' notice and the deferred accumulation balance shall be paid with interest according to the DROP design: *Provided*, That if the employee is terminated for cause during the participation period, the member may terminate participation with 30 days' notice and the deferred accumulation balance shall be paid without interest according to the DROP design.

(4) A member who is unable to continue working because of disability shall cease participation the first day of the month following notice of disability to the employer and the pension and relief fund. The accumulation account balance shall be paid to the member with no interest. No additional benefits are due the member on account of the disability.

(5) In the event of death of a member during DROP participation, the accumulation account of the member through the member's date of death is payable to the member's beneficiary or beneficiaries, with interest according to DROP design.

(6) A member entering the DROP is contractually obligated to terminate employment at the end of the DROP participation period. Failure to terminate voluntarily results in termination of employment for cause, except that a member who continues to work with the consent of the employer past the DROP participation period shall have all benefits frozen during the extension period and no additional benefit accumulates. During the period of time the member continues to work beyond the end of the DROP participation period with the consent of the employer, the employer shall continue to make regular contributions to the employee's pension and relief fund. Regular retirement benefits will commence the month following eventual employment termination or death. The member's accumulation account balance is frozen in value following the end of the DROP participation period.

(e) The oversight board shall annually report to the Legislature's Joint Committee on Pensions and Retirement, and to the Legislature as required by §4-1-23 and §5-1-20 of this code, on DROPs submitted to the board for approval and the status of any DROP that has been approved. Once every five years, the oversight board shall have its contracted actuary provide a report to the Legislature's Joint Committee on Pensions and Retirement on the status of each active Deferred Retirement Option Plan (DROP). The reports shall include any experienced impact on an affected pension and relief fund.

CHAPTER 72

**(Com. Sub. for H. B. 4688 - By Delegates Barrett, Hardy,
Storch, Graves, Householder, Criss and Hott)**

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §16-5V-2, §16-5V-6 and §16-5V-31 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §16-5V-6a and §16-5V-6b, all relating to the Emergency Medical Services Retirement System; defining terms; updating terms to comply with federal laws; authorizing certain 911 personnel and county firefighters to be members of the Emergency Medical Services Retirement System under certain circumstances; providing for transfer of assets pertaining to county firefighters; requiring certain computations to be made by the Consolidated Public Retirement Board; and terminating liability of the Public Employees Retirement System.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 5V. EMERGENCY MEDICAL SERVICES
RETIREMENT SYSTEM ACT.**

***§16-5V-2. Definitions.**

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) “Accrued benefit” means on behalf of any member two and six 10ths percent per year of the member’s final average salary for the first 20 years of credited service. Additionally, two percent per

*NOTE: This section was also amended by H. B. 4540 (Chapter 256), which passed prior to this act.

year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may not exceed the limits of section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(1) The board may, upon the recommendation of the board's actuary, increase the employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of section 3401(a) of the Internal Revenue Code, but determined without

regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and section 401(a)(17) of the Internal Revenue Code.

(f) “Annual leave service” means accrued annual leave.

(g) “Annuity starting date” means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, “retirement” means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member’s normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) “Board” means the Consolidated Public Retirement Board.

(i) “Contributing service” or “contributory service” means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan.

(j) “County commission or political subdivision” has the meaning ascribed to it in this code.

(k) “Covered employment” means either: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic or emergency medical services/registered nurse and the active performance of the duties required of emergency medical services officers; or (2) the period of time during which active duties are not performed but disability benefits are received under this article; or (3) concurrent employment by an

emergency medical services officer in a job or jobs in addition to his or her employment as an emergency medical services officer where the secondary employment requires the emergency medical services officer to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided*, That the emergency medical services officer contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

(l) "Credited service" means the sum of a member's years of service, active military duty, disability service and accrued annual and sick leave service.

(m) "Dependent child" means either:

(1) An unmarried person under age 18 who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B) or (C), subdivision (1) of this subsection.

(n) “Dependent parent” means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member’s death.

(o) “Disability service” means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(p) “Early retirement age” means age 45 or over and completion of 20 years of contributory service.

(q) “Effective date” means January 1, 2008.

(r) “Emergency medical services officer” means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(s) “Employer error” means an omission, misrepresentation or deliberate act in violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Rules or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(t) “Final average salary” means the average of the highest annual compensation received for covered employment by the

member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(u) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1040 hours per year service in that position.

(v) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(w) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence or any combination thereof and without regard to whether the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §16-5V-19 or §16-5V-20 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political

subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement or payment is made.

(x) “Member” means a person first hired as an emergency medical services officer by an employer which is a participating public employer of the Public Employees Retirement System or the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (q) of this section, or an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(y) “Monthly salary” means the W-2 reportable compensation received by a member during the month.

(z) “Normal form” means a monthly annuity which is one twelfth of the amount of the member’s accrued benefit which is payable for the member’s life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(aa) “Normal retirement age” means the first to occur of the following:

(1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service, excluding active military duty, disability service and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory years of service equals or exceeds 70 years;

(3) While still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or

(4) Attainment of age 62 years and completion of five or more years of regular contributory service.

(bb) “Participating public employer” means any county commission or political subdivision in the state which has elected to cover its emergency medical services officers, as defined in this article, under the West Virginia Emergency Medical Services Retirement System.

(cc) “Plan” means the West Virginia Emergency Medical Services Retirement System established by this article.

(dd) “Plan year” means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(ee) “Political subdivision” means a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns: *Provided*, That any public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

(ff) “Public Employees Retirement System” means the West Virginia Public Employee’s Retirement System created by West Virginia Code.

(gg) “Regular interest” means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(hh) “Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(ii) “Retirant” means any member who commences an annuity payable by the plan.

(jj) “Retire” or “retirement” means a member’s withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(kk) “Retirement income payments” means the monthly retirement income payments payable under the plan.

(ll) “Spouse” means the person to whom the member is legally married on the annuity starting date.

(mm) “Surviving spouse” means the person to whom the member was legally married at the time of the member’s death and who survived the member.

(nn) “Totally disabled” means a member’s inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer but also cannot, considering his or her age, education and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless

of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(oo) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Year of Service Credited.
Less than 500	0
500 to 999	1/3
1,000 to 1,499	2/3
1,500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of

employment pursuant to §16-5V-18 of this code or §5-10-30 of this code, shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section §16-5V-18 of this code or has prior to the effective date made the repayment pursuant to §5-10-18 of this code.

§16-5V-6. Members.

(a) Any emergency medical services officer first employed by a county or political subdivision in covered employment after the effective date of this article or 911 personnel hired on or after July 1, 2022, by a participating public employer shall be a member of this retirement plan as a condition of employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That any emergency medical services officer or 911 personnel who has concurrent employment in an additional job or jobs which would require the emergency medical services officer or 911 personnel to be a member of the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, or the West Virginia Natural Resources Police Officer Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail.

(b) Any emergency medical services officer employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county or officials in the political subdivision in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2007. Any emergency medical services officer who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the emergency

medical services officer remains employed in covered employment by an employer which is currently a participating public employer of this plan: *Provided*, That any emergency medical services officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any emergency medical services officer who was employed as an emergency medical services officer prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as an emergency medical services officer. For purposes of this section, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the emergency medical services officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the emergency medical services officer's covered employment shall be counted as years of service for the purposes of this article.

(d) Any emergency medical services officer employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer's service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as an emergency medical services officer. All credited service standing to the transferring emergency medical services officer's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all service

transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as an emergency medical services officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(e) Once made, the election made under this section is irrevocable. All emergency medical services officers employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and emergency medical services officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

(f) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a “leased employee” means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§16-5V-6a. County Firefighter Members.

(a) Notwithstanding any other provision of this article to the contrary, a person employed as a county firefighter may be a member of this retirement plan subject to the provisions of this

section. Full-time employment as a county firefighter satisfies the definition of “covered employment” as defined in this article.

(b) Any county firefighter first employed by a county after the effective date of the revisions to this article made in the 2022 legislative session, shall be a member of this retirement plan by virtue of that employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided*, That if a member has concurrent employment in an additional job or jobs the relevant concurrent employment provisions of this code shall apply.

(c) Any county firefighter employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2022. Any county firefighter who elects to become a member of the plan ceases to be a member or have any credit for covered employment in any other retirement system administered by the board and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the county firefighter remains employed in covered employment by an employer which is currently a participating public employer of this plan: *Provided*, That any county firefighter who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire as a county firefighter.

(d) Any county firefighter who was employed as a county firefighter prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as a county firefighter. For purposes of this section, the member’s years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the county firefighter has not received the return of his or her accumulated

contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the county firefighter's covered employment shall be counted as years of service for the purposes of this article.

(e) Any county firefighter employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (c) of this section shall be given credited service at the time of transfer for all credited service then standing to the county firefighter's service credit in the Public Employees Retirement System regardless of whether the credited service, as defined in §5-10-2 of this code, was earned as a county firefighter. All credited service standing to the transferring county firefighter's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring county firefighter shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring county firefighter would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring county firefighter receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided*, That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (c) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as a county firefighter and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(f) Once made, the election made under this section is irrevocable. All county firefighters employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and county firefighters electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

§16-5V-6b. Transfer of county firefighter member assets from Public Employees Retirement System.

(a) The Consolidated Public Retirement Board shall, within one hundred eighty days of January 1, 2023, transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund.

(b) The amount of assets to be transferred for each transferring county firefighter shall be computed as of January 1, 2023, using July 1, 2022, actuarial valuation of the Public Employees Retirement System, and updated with 7.25 percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring county firefighter in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2022, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees and terminated inactive members as of July 1, 2022, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2022, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, 2022, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2022, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2022, for active emergency medical services officers transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at 7.25 percent for the period from the calculation date of July 1, 2022, through the first day of the month in which the asset transfer is to be completed.

(c) Once a county firefighter has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (b) of this section by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Public Employees Retirement System and constitutes an agreement whereby the transferring county firefighter forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that emergency medical services officer obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever

for the amounts transferred to the Emergency Medical Services Retirement System.

§16-5V-31. How a county commission, political subdivision, or county 911 public safety answering point becomes a participating public employer.

Any county commission, or political subdivision, or county 911 public safety answering point employing emergency medical services officers or 911 personnel may by a three-fifths vote of its governing body, or by a majority vote of its electors, elect to become a participating public employer and thereby include its emergency medical services officers and 911 personnel in the membership of the plan. The clerk or secretary of each such county commission, or political subdivision, or county 911 public safety answering point governing board electing to become a participating public employer shall certify the determination of the county commission, or political subdivision, or county 911 public safety answering point governing board to the Consolidated Public Retirement Board within 10 days from and after the vote of the governing body or the canvass of votes upon such action. Once a county commission, or political subdivision, or county 911 public safety answering point governing board elects to participate in the plan, the action is final and it may not, at a later date, elect to terminate its participation in the plan.

CHAPTER 73

(Com. Sub. for H. B. 4756 - By Delegate Storch)

[Passed March 12, 2022; in effect from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§8-12-24; to amend and reenact §8-22-19 and §8-22-20 of said code; to amend and reenact §8-33-4 of said code; to amend said code by adding thereto two new sections, designated §8-33-4a and §8-33-4b; and to amend and reenact §33-3-14d of said code, all relating to authorizing Class I, Class II and Class III municipalities to create pension funding programs to reduce the unfunded liability of policemen's pension and relief funds and firemen's pension and relief funds; authorizing a municipality's allocable portion of funds from the Municipal Pensions Security Fund created in §8-22-18b to be paid to the trustee of an issue of pension funding revenue bonds to be used for the purpose of paying debt service on such bonds until such bonds are paid in full; authorizing municipal building commissions to use the proceeds from pension funding revenue bonds to fund the costs of a municipality's pension funding program; authorizing a municipal building commission to use rentals from real property owned or leased by such commission to pay debt service and administrative expenses associated with outstanding pension funding revenue bonds; authorizing a municipal building commission to issue pension funding revenue bonds to fund a municipality's pension funding program; requiring that each issuance of pension funding revenue bonds provide for a contingency reserve fund in an

†NOTE: H. B. 3223 (Chapter 215), which passed prior to this act, created a new Section 22, however Sections 22 and 23 existed in code. Therefore, H. B. 3223 (Chapter 215), has been redesignated as Section 24 for the code, and this act, H. B. 4756 (Chapter 73), has been redesignated as Section 25 for the code.

amount equal to at least 10 percent of the original principal amount of such bonds; requiring that an issue of pension funding revenue bonds be in a principal amount at least equal to the then unfunded liability of such applicable policemen's or firemen's pension and relief fund; providing for the use of excess moneys held by a bond trustee upon the payment in full of pension funding revenue bonds; requiring the approval of the Municipal Pension Oversight Board of the issuance of certain pension funding revenue bonds and requiring the submission of information relating to such bonds to the Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 12. GENERAL CORPORATE POWERS OF MUNICIPALITIES.

†§8-12-24. Authorizing certain municipalities to create a pension funding program.

In addition to all other powers and duties conferred by law upon municipalities, Class I, Class II and Class III municipalities are empowered and authorized to create pension funding programs as defined in §8-33-4a of this code.

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-19. Levy to maintain fund.

(a)(1) In order for a municipal policemen's or firemen's pension and relief fund or the trustee of an issue of pension funding

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revenue bonds issued by the building commission of a municipality, as the case may be, to receive the allocable portion of moneys from the Municipal Pensions Security Fund created in § 8-22-18b of this code, the governing body of the municipality shall levy annually and in the manner provided by law for other municipal levies and include within the maximum levy or levies permitted by law and, if necessary, in excess of any charter provision, a tax at such rate as will, after crediting: (A) The amount of the contributions received during the year from the members of the respective paid police department or paid fire department; and (B) the allocable portion of the funds from the Municipal Pensions Security Fund created in §8-22-18b of this code payable to such municipality's municipal policemen's and firemen's pension and relief funds, provide funds equal to the amount necessary to meet the minimum standards for actuarial soundness as provided in § 8-22-20 of this code. The amount deposited in a municipal policemen's or firemen's pension and relief fund shall be irrevocably contributed, accumulated, and invested as fund assets as described in §8-22-22 and §8-22-22a of this code. The amount deposited with the trustee of an issue of pension funding revenue bonds shall be used for the purpose of paying debt service on such bonds. One 12th of each municipality's annual contributions shall be deposited with the municipality's pension trust funds as fund assets on at least a monthly basis and any revenues received from any source by a municipality which are specifically collected for the purpose of allocation for deposit into the policemen's pension and relief fund or firemen's pension and relief fund shall be so deposited within five days of receipt by the municipality. A municipality may prepay its monthly required contributions in increments greater than 1/12. Heretofore surplus reserves accumulated before the effective date of this section shall be irrevocably contributed, aggregated, and invested as fund assets described in §8-22-22 and §8-22-22a of this code. Any actuarial deficiency arising under this section and §8-22-20 of this code shall not be the obligation of the State of West Virginia.

(2) The levies authorized under the provisions of this section, or any part of them, may by the governing body be laid in addition to all other municipal levies and, to that extent, beyond the limit of

levy imposed by the charter of the municipality; and the levies shall supersede and if necessary exclude levies for other purposes, where other purposes have not already attained priority, and within the limitations on taxes or tax levies imposed by the constitution and laws.

(b) The public corporations are authorized to take by gift, grant, devise, or bequest any money or real or personal property on such terms as to the investment and expenditures thereof as may be fixed by the grantor or determined by the trustees.

(c) In addition to all other sums provided for pensions in this section, it is the duty of every municipality in which any fund or funds have been or shall be established to assess and collect from each member of the paid police department or paid fire department or both each month, the sum of seven percent of the actual salary or compensation of such member; and the amount so collected shall become a regular part of the policemen's pension and relief fund, if collected from a policeman, and of the firemen's pension and relief fund, if collected from a fireman: *Provided*, That for members of the funds who are police officers or firefighters newly hired on or after January 1, 2010, the municipality shall assess and collect nine and one-half percent of the actual salary or compensation. Only those funds for which the board of trustees has collected and paid the contributions as herein provided and meeting minimum standards for actuarial soundness shall be eligible to receive moneys from the additional fire and casualty insurance premium tax as provided in §33-3-14d of this code: *Provided, however*, That the board of trustees for each pension and relief fund may assess and collect from each member of the paid police department or paid fire department or both each month not more than an additional two and one-half percent of the actual salary or compensation of each member, but not to exceed nine and one-half percent total contribution: *Provided further*, That if any board of trustees decides to assess and collect any additional amount pursuant to this subdivision above the member contribution required by this section, then that board of trustees may not reduce the additional amount until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further*, That

if any board of trustees decides to assess and collect any additional amount, any board of trustees decision and any additional amount is not the liability of the State of West Virginia. Member contributions shall be deposited in the pension and relief fund within five days of being collected. In the event that a municipality's building commission has issued pension funding revenue bonds, then the trustee for such bonds shall only be eligible to receive money from the additional fire and casualty insurance premium tax in §33-3-14d of this code if the board of trustees for the policemen's and firemen's pension and relief funds for which such bonds have been issued has collected and paid the contributions as herein provided and is meeting minimum standards for actuarial soundness.

(d)(1) For the fiscal year beginning on July 1, 2010, and subject to provisions of §8-22-18b and §33-3-14d of this code and for each fiscal year thereafter, the Municipal Pensions Oversight Board shall receive and retain the moneys allocated to the Municipal Pensions Security Fund until such time as the treasurer of the municipality applies for the allocable portion and certifies in writing to Municipal Pensions Oversight Board that:

(A) The municipality has irrevocably contributed the amount required under this section and §8-22-20 of this code to the pension and relief fund for the required period; and, as applicable, the trustee for the pension funding revenue bonds has filed with the governing body of the municipality and the oversight board a report showing all debt service payments have been made with previously received proceeds from the municipality and the allocable portion of the premium tax allocation received from the Municipal Pensions Security Fund for the preceding twelve months: and

(B) The board of trustees of the pension and relief fund has made a report to the governing body of the municipality and to the oversight board on the condition of its fund with respect to the fiscal year.

(2) When the aforementioned application and certification are made, the allocable portion of moneys from the Municipal Pensions Security Fund shall be paid to the corresponding

policemen's or firemen's pension and relief fund or, if pension funding revenue bonds have been issued by such municipality's building commission and remain outstanding, to the trustee for such pension funding revenue bonds. Payment to a municipal pension and relief fund or to the trustee for pension funding revenue bonds, as applicable, shall be made by electronic funds transfer.

(e) The State Auditor and the oversight board have the power, and the duty as each considers necessary, to perform or review audits on the pension and relief funds or to employ an independent consulting actuary or accountant to determine the compliance of the aforementioned certification with the requirements of this section and §8-22-20 of this code. The expense of the audit or determination shall be paid from the Municipal Pensions Security Fund pursuant to provisions of §8-22-18b of this code. If the allocable portion of the Municipal Pensions Security Fund is not paid to the pension and relief fund or to the trustee for pension funding revenue bonds, as applicable, within 18 months, the portion is forfeited by the pension and relief fund and is allocable to other eligible municipal policemen's and firemen's pension and relief funds in accordance with §33-3-14d of this code.

§8-22-20. Actuary; actuarial valuation report; minimum standards for annual municipality contributions to the fund; definitions; actuarial review and audit.

(a) The West Virginia Municipal Pensions Oversight Board shall contract with or employ a qualified actuary to annually prepare an actuarial valuation report on each pension and relief fund. The selection of contract vendors to provide actuarial services, including the reviewing actuary as provided in subsection (c) of this section, shall be by competitive bid process but is specifically exempt from the purchasing provisions of §5A-3-1 *et seq.* of this code. The expense of the actuarial report shall be paid from moneys in the Municipal Pensions Security Fund. Uses of the actuarial valuations from the qualified actuary shall include, but not be limited to, determining a municipal policemen's or firemen's pension and relief fund's eligibility to receive state money and to provide supplemental benefits.

(b) The actuarial valuation report provided pursuant to subsection (a) of this section shall consist of, but is not limited to, the following disclosures: (1) The financial objective of the fund and how the objective is to be attained; (2) the progress being made toward realization of the financial objective; (3) recent changes in the nature of the fund, benefits provided or actuarial assumptions or methods; (4) the frequency of actuarial valuation reports and the date of the most recent actuarial valuation report; (5) the method used to value fund assets; (6) the extent to which the qualified actuary relies on the data provided and whether the data was certified by the fund's auditor or examined by the qualified actuary for reasonableness; (7) a description and explanation of the actuarial assumptions and methods; (8) an evaluation of each plan using the alternative funding method, to assess advantages of changing to other funding methods as provided in this article; and (9) any other information required in §8-22-20a of this code or that the qualified actuary feels is necessary or would be useful in fully and fairly disclosing the actuarial condition of the fund.

(c)(1) Except as provided in subsections (e) and (f) of this section, beginning June 30, 1991, and thereafter, the financial objective of each municipality shall not be less than to contribute to the fund annually an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of this code or a municipality's allocation from the Municipal Pensions Security Fund created in §8-22-18b of this code and other income sources as authorized by law will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than forty years beginning from July 1, 1991: *Provided*, That in the fiscal year ending June 30, 1991, the municipality may elect to make its annual contribution to the fund using an alternative contribution in an amount not less than: (i) One hundred seven percent of the amount contributed for the fiscal year ending June 30, 1990; or (ii) an amount equal to the average of the contribution payments made in the five highest fiscal years beginning with the fiscal year ending

1984, whichever is greater: *Provided, however*, That contribution payments in subsequent fiscal years under this alternative contribution method may not be less than 107 percent of the amount contributed in the prior fiscal year: *Provided further*, That in order to avoid penalizing municipalities and to provide flexibility when making contributions, municipalities using the alternative contribution method may exclude a one-time additional contribution made in any one year in excess of the minimum required by this section: *And provided further*, That the governing body of any municipality may elect to provide an employer continuing contribution of one percent more than the municipality's required minimum under the alternative contribution plan authorized in this subsection: *And provided further*, That if any municipality decides to contribute an additional one percent, then that municipality may not reduce the additional contribution until the respective pension and relief fund no longer has any actuarial deficiency: *And provided further*, That any decision and any contribution payment by the municipality is not the liability of the State of West Virginia: *And provided further*, That if any municipality or any pension fund board of trustees makes a voluntary election and thereafter fails to contribute the voluntarily increase as provided in this section and in §8-22-19(c) of this code, then the board of trustees is not eligible to receive funds allocated under §33-3-14d of this code: *And provided further*, That prior to using this alternative contribution method the actuary of the fund shall certify in writing that the fund is projected to be solvent under the alternative contribution method for the next consecutive 15-year period. For purposes of determining this minimum financial objective: (i) The value of the fund's assets shall be determined on the basis of any reasonable actuarial method of valuation which takes into account fair market value; and (ii) all costs, deficiencies, rate of interest and other factors under the fund shall be determined on the basis of actuarial assumptions and methods which, in aggregate, are reasonable (taking into account the experience of the fund and reasonable expectations) and which, in combination, offer the qualified actuary's best estimate of anticipated experience under the fund: *And provided further*, That any municipality which elected the alternative funding method under this section and which has an

unfunded actuarial liability of not more than 25 percent of fund assets, may, beginning September 1, 2003, elect to revert to the standard funding method, which is to contribute to the fund annually an amount which is not less than an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions and Protection Fund for municipal pension and relief funds established under §33-3-14d of this code and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years, beginning from July 1, 1991.

(2) No municipality may anticipate or use in any manner any state funds accruing to the police or fireman's pension fund to offset the minimum required funding amount for any fiscal year.

(3) Notwithstanding any other provision of this section or article to the contrary, each municipality shall contribute annually to its policemen's pension and relief fund and its firemen's pension and relief fund an amount which may not be less than the normal cost, as determined by the annual actuarial valuation report required by this section: *Provided*, That in any fiscal year in which the actuarial valuation report determines that a municipality's policemen's pension and relief fund or firemen's pension and relief fund is funded at 125 percent or higher and the Municipal Pensions Oversight Board's actuary provides an actuarial recommendation that the normal cost does not need to be paid by the employer for that fiscal year, that municipality may elect to make no contribution for that fiscal year. A municipality's election not to contribute the normal cost in any year does not affect the payments required by §8-22-19 of this code by members to a pension and relief fund and these payments are to continue as required by that section.

(4) The actuarial process, which includes the selection of methods and assumptions, shall be reviewed by the qualified actuary no less than once every five years. Furthermore, the qualified actuary shall provide a report to the oversight board with recommendations on any changes to the actuarial process.

(5) The oversight board shall hire an independent reviewing actuary to perform an actuarial audit of the work performed by the qualified actuary no less than once every seven years.

(d) For purposes of this section, the term “qualified actuary” means only an actuary who is a member of the Society of Actuaries or the American Academy of Actuaries. The qualified actuary shall be designated a fiduciary and shall discharge his or her duties with respect to a fund solely in the interest of the members and members’ beneficiaries of that fund. In order for the standards of this section to be met, the qualified actuary shall certify that the actuarial valuation report is complete and accurate and that in his or her opinion the technique and assumptions used are reasonable and meet the requirements of this section.

(e)(1) Beginning January 1, 2010, municipalities may choose the optional method of financing municipal policemen’s or firemen’s pension and relief funds as outlined in this subsection in lieu of the standard or alternative methods as provided in subdivision (1), subsection (c) of this section.

(2) For those municipalities choosing the optional method of finance, the minimum standard for annual municipality contributions to each policemen’s or firemen’s pension and relief fund shall be an amount which, together with the contributions from the members and, if no pension funding revenue bonds of a building commission of such municipality are outstanding, the allocable portion of the Municipal Pensions Security Fund created in §8-22-18b of this code, and other income sources as authorized by law, will be sufficient to meet the normal cost of the fund and amortize any actuarial deficiency over a period of not more than 40 years beginning January 1, 2010: *Provided*, That those municipalities using the standard method of financing in 2009 shall continue to amortize their actuarial deficiencies over a period of not more than 40 years beginning July 1, 1991. The required contribution shall be determined each plan year as described above by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic and investment experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

(3) A municipality choosing the optional method of financing a policemen's or firemen's pension and relief fund as provided in this subsection shall close the fund to police officers or fire fighters newly hired on or after January 1, 2010, and provide for those employees to be members of the Municipal Police Officers and Firefighters Retirement System as established in §8-22A-1 et seq., of this code.

(f)(1) Beginning April 1, 2011, any municipality using the alternative method of financing may choose a conservation method of financing its municipal policemen's and firemen's pension and relief funds as outlined in this subsection, in lieu of the alternative method as provided in subdivision (1), subsection (c), or the optional method as provided in subsection (e) of this section.

(2) For those municipalities choosing the conservation method of finance, until a plan is funded at 100 percent a part of each plan member's employee contribution to the fund equal to one and one-half percent of the employee's compensation, shall be deposited into and remain in the trust and accumulate investment return. In addition, until a plan is funded at 100 percent and all pension funding revenue bonds issued by a municipality's building commission are paid in full, an actuarially determined portion of the premium tax allocation to each fund provided in accordance with §33-3-14d and §33-12C-7 of this code shall also be deposited into and remain in the trust and accumulate investment return. This variable percentage of premium tax allocation to be retained in each fund shall be determined annually by the qualified actuary provided pursuant to subsection (a) of this section to be an amount required, along with other assets of the fund as necessary to reach a funded level of 100 percent in 35 years from the time of adoption of the conservation financing method. The variable percentage shall be calculated using a prospective four-year rolling average.

(3) Upon adoption of the conservation method of finance, the municipality shall close its pension and relief funds to new members and shall place police officers and firefighters newly hired after adoption of the conservation method into the Municipal Police Officers and Firefighters Retirement System created in §8-22A-1 et seq., of this code.

(4) Upon adoption of the conservation method of financing, the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with member contributions and premium tax proceeds not required to be retained in the trust pursuant to this subsection, and if no pension funding revenue bonds of a building commission of such municipality are outstanding, and other income sources as authorized by law, is sufficient to meet the annual benefit and administrative expense payments from the funds on a pay-as-you-go basis: *Provided*, That at the time the actuarial report required by this section indicates no actuarial deficiency in the municipal policemen's or firemen's pension and relief fund, the minimum annual required contribution of the municipality may not be less than an amount which together with all member contributions and other income authorized by law, is sufficient to pay normal cost.

(5) If a municipality using the conservation method fully funds its pension and relief fund or funds by a pension funding program authorized by §8-33-4a, then the trustees of the policemen's or firemen's pension and relief fund are to pay pension obligations out of the pension and relief fund; and the minimum standard for annual municipality contributions to each policemen's or firemen's pension and relief fund shall be an amount which, together with member contributions and other income sources as authorized by law, is sufficient to meet the normal cost of the fund.

(g) Beginning with the July 1, 2020, actuarial valuation, the existing actuarial deficiency, prior to reflecting any new gains or losses as of July 1, 2020, such as those due to investment experience, differences between actual and expected contributions, demographic experience, and changes to actuarial assumptions, shall continue to be amortized as required by subsections (c) and (e) of this section: *Provided*, That on July 1, 2020, and each successive annual valuation date thereafter, the annual impacts on the funding deficiency due to: (i) New gains or losses on assets and liabilities; and (ii) changes in actuarial assumptions, shall each be amortized over a closed period of 15 years, thereby creating layers of amortization bases rather than amortizing the entire actuarial

deficiency over the same single and decreasing period: *Provided, however,* That impacts on the funding deficiency due to plan changes shall be amortized over closed five year periods. The management of these amortization bases by the actuary should entail the consideration, at least every five years, of whether to implement strategies, such as the synchronization of certain amortization layers, to help avoid volatility to the sum of the amortization payments generally resulting from the expiration of charge and credit layers at different times. The required contribution shall be determined each plan year as described above by the actuary retained by the oversight board, based on an actuarial valuation reflecting actual demographic and investment experience and consistent with the Actuarial Standards of Practice published by the Actuarial Standards Board.

(h) Notwithstanding the foregoing until any pension funding revenue bonds issued by a municipality's building commission are paid in full, the allocable portion of money from the Municipal Pension Security Fund from the premium tax allocation for such municipality's policemen's and firemen's pension and relief funds, as applicable, shall be deposited pursuant to §8-22-19(d)(2) with the trustee for the pension funding revenue bonds and shall not be deposited into the applicable policemen's or firemen's pension and relief funds of such municipality.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 33 INTERGOVERNMENTAL RELATIONS – BUILDING COMMISSIONS.

§8-33-4. Powers.

Each commission shall have plenary power and authority to:

- (a) Sue and be sued;
- (b) Contract and be contracted with;
- (c) Adopt, use and alter a common seal;

(d) Make and adopt all necessary, appropriate and lawful bylaws and rules and regulations pertaining to its affairs;

(e) Elect such officers, appoint such committees and agents and employ and fix the compensation of such employees and contractors as may be necessary for the conduct of the affairs and operations of the commission;

(f) (1) Acquire, purchase, own and hold any property, real or personal, and (2) acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities, of any type or types for which the governmental body or bodies creating such commission are permitted by law to expend public funds (all hereinafter in this article referred to as facilities);

(g) Apply for, receive and use grants-in-aid, donations and contributions from any source or sources, including, but not limited to, the United States of America, or any department or agency thereof, and accept and use bequests, devises, gifts and donations from any source whatsoever;

(h) Sell, encumber or dispose of any property, real or personal;

(i) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor, including security interests in any real property owned or leased by the commission regardless of whether such real property is being improved with the proceeds of such indebtedness, which it may deem necessary or advisable in connection with exercising powers as provided herein;

(j) Raise funds by the issuance and sale of revenue bonds in the manner provided by the applicable provisions of §8-16-7, §8-16-10, §8-16-12 and §8-16-16 of this code, without regard to the extent provided in §8-33-5 of this code, to the limitations specified in §8-16-12 of this code, it being hereby expressly provided that for the purpose of the issuance and sale of revenue bonds, each commission is a “governing body” as that term is used in §8-16-1 *et seq.* of this code only;

(k) Subject to such reasonable limitations and conditions as the governmental body or all of the governmental bodies creating and establishing such building commission may prescribe by ordinance or by order, exercise the power of eminent domain in the manner provided in §54-1-1 *et seq.* of this code for business corporations, for the purposes set forth in subdivision (f) of this section, which purposes are hereby declared public purposes for which private property may be taken or damaged;

(l) Lease its property or any part thereof, for public purposes, to such persons and upon such terms as the commission deems proper, but when any municipality or county commission is a lessee under any such lease, such lease must contain a provision granting to such municipality or county commission the option to terminate such lease during any fiscal year covered thereby;

(m) Use the proceeds from the sale of pension funding revenue bonds issued pursuant to §8-33-4a of this code to pay the costs of a pension funding program as described in §8-33-4a(c) of this code;

(n) Use the proceeds of rentals for the use of real property owned or leased by the commission and any amounts received pursuant to §8-22-19(d)(2) of this code by the trustee for outstanding pension funding revenue bonds to, among other things, pay the principal, interest, any reserve requirement obligations and administrative expenses of any pension funding revenue bonds issued in connection with any lease by the commission to the municipality which created the commission; any amount received pursuant to §8-22-19(d)(2) of this code shall be used only to pay principal and interest of outstanding pension obligation bonds; and

(o) Do all things reasonable and necessary to carry out the foregoing powers.

§8-33-4a. Issuance of pension funding revenue bonds to fund a pension funding program.

(a) In addition to the powers set forth in §8-33-4 of this code and subject to the requirements set forth in this section and in §8-33-4b of this code, a commission formed by a Class I, Class II or

Class III municipality may issue pension funding revenue bonds to raise funds for the funding of a pension funding program in the manner provided by this section. A “pension funding program” means a program established by a municipality for reducing the unfunded actuarial accrued liability of a policemen’s or firemen’s pension and relief fund of the municipality with the proceeds of pension funding revenue bonds issued pursuant to this section.

(b) Before any commission shall fund any pension funding program through the issuance of pension funding revenue bonds, the commission shall enact an ordinance or ordinances, which shall (1) set forth a brief and general description of the pension funding program; (2) set forth the estimated cost thereof; (3) order the funding of the pension funding program; (4) direct that pension funding revenue bonds be issued pursuant to this section, in such amount as may be found necessary to pay the cost of the pension funding program; (5) contain such provisions as the commission determines are necessary or desirable with regard to the establishment and setting aside of a debt service reserve fund if deemed beneficial to the commission and for the administration and disposition of the debt service reserve fund; (6) contain provisions establishing and setting aside a debt service contingency reserve fund with the municipality in an amount at least equal to 10 percent of the original principal amount of the pension funding revenue bonds from cash contributed by the municipality or from the proceeds of the pension funding revenue bonds, providing for the replenishment of any amounts drawn from the debt service contingency reserve fund in a reasonable time period, and for the administration and disposition of the debt service contingency reserve fund; and (7) contain such other provisions as may be necessary or proper in the premises. Before any such ordinance shall become effective, an abstract of the ordinance, determined by the commission to contain sufficient information as to give notice of the contents of such ordinance, together with the following described notice, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the municipality which formed the commission. The notice to be published with the abstract of the ordinance shall specify a date,

time and place for a public hearing, the date being not less than 10 days after the first publication of the abstract and notice and not prior to the last publication of the abstract and notice, at which time and place all parties and interests may appear before the commission and may be heard as to whether or not said ordinance shall be put into effect, and said notice shall also identify the office in which a certified copy of such ordinance shall be on file for review by interested persons during the office hours of the office. At the public hearing all objections and suggestions shall be heard, and the commission shall take such action as it deems proper in the premises.

(c) (1) The cost of a pension funding program shall include the cost of providing funding of all of the unfunded liability of a policemen's or firemen's pension plan; the costs of issuance of pension funding revenue bonds issued to fund a pension funding program, the amount of any debt service reserve and debt service contingency reserve funds funded from the proceeds of pension funding revenue bonds; actuarial, financial advisory and legal expenses associated with the pension funding program and the issuance of the pension funding revenue bonds; expenses for estimates of cost and of revenues; expenses for actuarial studies; and such other expenses as may be necessary or incidental to the financing authorized pursuant to this section, the pension funding program and the performance of the actions required or permitted in connection with any thereof.

(2) Actuarial studies must be performed by a contracted actuary of the Municipal Pension Oversight Board as required by §8-22-20 of this code.

(d) Pension funding revenue bonds shall be in an amount at least equal to the applicable policemen's and/or firemen's pension and relief funds then unfunded liability based upon the most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board as required by §8-22-20 of this code for the applicable funds with appropriate adjustments for timing, experience and other factors. The pension funding revenue bonds shall bear interest at not more than 12 percent per annum, payable semiannually, or at shorter intervals, and the bonds

allocable to a specific policemen's or firemen's relief fund shall mature over a period of time not exceeding the then estimated amortization period for the municipality's unfunded actuarial accrued liability as set forth in the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to the applicable funds with appropriate adjustments for timing, experience and other factors, as may be determined by the ordinance or ordinances authorizing the issuance of such bonds. The annual principal and interest payments on pension funding revenue bonds shall, to the extent possible, provide for level debt service and be proportionate to the funding requirements for the applicable policemen's or firemen's pension and relief funds as shown on the municipality's most recent actuarial valuation report for the policemen's or firemen's pension and relief funds prepared by an actuary contracted with or employed by the oversight board with appropriate adjustments for timing, experience and other factors, as applicable. The bonds may be made redeemable before maturity, at the option of the commission issuing the bonds, to be exercised by the commission, at not more than the par value thereof, and at a premium of not more than five percent, under terms and conditions as may be fixed by the ordinance or ordinances authorizing the issuance of the bonds. The principal and interest of the bonds may be made payable in any lawful medium. The ordinance or ordinances shall determine the form of the bonds, shall set forth any registration or conversion privileges, and shall fix the denomination or denominations of such bonds, and the place or places of the payment of the principal and interest thereof, which may be at any banking institution or trust company within or without the state and which is a vendor of the state. All such bonds shall be, shall have and are hereby declared to have all the qualities and incidents of negotiable instruments, under the Uniform Commercial Code of this state. The bonds shall be executed in the manner the commission may direct. The bonds shall be sold by the commission in a manner as may be determined to be in the best interest of the municipality which created the commission. Any surplus of the bond proceeds over and above the cost of the pension funding program shall be paid into the sinking fund established for the payment of such bonds.

(e) The bonds shall be secured by a trust indenture by and between the commission and a corporate trustee, which may be a trust company or banking institution having powers of a trust company within or without the state and which is a vendor of the state. The ordinance or ordinances authorizing the issuance of the pension funding revenue bonds, and fixing the details thereof, may provide that the trust indenture may contain provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, including security interests in any real property owned or leased by the commission regardless of whether such real property is being improved with the proceeds of such indebtedness, not in violation of law. The indenture may set forth the rights and remedies of the bondholders or the trustee, or both. The commission may provide by ordinance or ordinances or in the trust indenture for the payment of the proceeds of the sale of the bonds and the revenues received by the commission with respect to the pension funding program to a depository, as the commission may determine for the custody thereof, and for the method of distribution thereof, with such safeguards and restrictions as the commission may determine. The trust indenture shall provide for a subaccount of the debt service fund into which all premium tax allocations received by the trustee shall, upon receipt, be deposited into for use solely in paying principal and interest on any outstanding pension funding revenue bonds. All interest earnings on the subaccount shall be credited to the subaccount and used solely for the payment of principal and interest on any outstanding pension funding revenue bonds.

(f) Upon the payment in full of an issue of pension funding revenue bonds (other than with the proceeds of refunding bonds) and any final costs related thereto, any amounts remaining in any debt service reserve or contingency reserve funds shall be paid by the trustee of the bonds to the municipality which formed the commission. Any excess moneys held in the subaccount of the debt service fund into which premium tax allocations have been deposited shall be paid to the Municipal Pension Oversight Board. Any other excess moneys held by the trustee at that time shall be paid to the municipality.

§8-33-4b. Approval of municipal pension oversight board of certain pension funding revenue bonds.

(a) In addition to the requirements otherwise provided in this article, any issuance of pension funding revenue bonds by a building commission (1) for a Class III municipality or (2) for a Class I or Class II municipality with either a policemen's or firemen's pension and relief fund if the municipality only has one such pension and relief fund, or with both policemen's and firemen's pension and relief funds that are not funded at a funding ratio of 40 percent or greater based on the most recent actuarial valuation reports prepared by an actuary contracted with or employed by the municipal pensions oversight board for such funds, with appropriate adjustments for timing, experience and other factors, as applicable, shall, prior to such issuance, be approved by the municipal pension oversight board and provided to the Joint Committee on Government and Finance for prior review.

(b) The applicable building commission shall, at least 90 days prior to the proposed issuance date of the pension funding revenue bonds, provide the following to the municipal pension oversight board:

(1) A report setting forth a detailed summary of the then projected terms of the proposed bond issuance and projected impact on the unfunded pension liability of the applicable fund or funds; and

(2) A copy of the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to its policemen's and firemen's pension and relief funds.

(c) The municipal pension oversight board shall meet, review the information provided pursuant to subsection (b) of this section and provide its approval or rejection of the proposed issuance of pension funding revenue bonds within 60 days of receipt of the reports required in subsection (b) of this section. The municipal

pension oversight board shall issue a written decision within 30 days of the meeting.

(d) Should the municipal pension oversight board approve the issuance of pension funding revenue bonds by a building commission, then it shall promptly provide a copy of its decision and the supporting documents, including a copy of the municipality's most recent actuarial valuation reports prepared by an actuary contracted with or employed by the oversight board relating to its policemen's and firemen's pension and relief funds, to the Joint Committee on Government and Finance.

CHAPTER 33. INSURANCE.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14d. Additional fire and casualty insurance premium tax; allocation of proceeds; effective date.

(a)(1) For the purpose of providing additional revenue for municipal policemen's and firemen's pension and relief funds and the Teachers Retirement System Reserve Fund and for volunteer and part-volunteer fire companies and departments, there is hereby levied and imposed an additional premium tax equal to one percent of taxable premiums for fire insurance and casualty insurance policies. For purposes of this section, casualty insurance does not include insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction or insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy.

(2) All moneys collected from this additional tax shall be received by the commissioner and paid by him or her into a special account in the State Treasury, designated the Municipal Pensions and Protection Fund: *Provided*, That on or after January 1, 2010, the commissioner shall pay 10 percent of the amount collected to the Teachers Retirement System Reserve Fund created in §18-7A-18 of this code, 25 percent of the amount collected to the Fire

Protection Fund created in §33-3-33 of this code for allocation by the Treasurer to volunteer and part-volunteer fire companies and departments and 65 percent of the amount collected to the Municipal Pensions and Protection Fund: *Provided, however,* That upon notification by the Municipal Pensions Oversight Board pursuant to the provisions of §8-22-18b this code, on or after January 1, 2010, or as soon thereafter as the Municipal Pensions Oversight Board is prepared to receive the funds, 65 percent of the amount collected by the commissioner shall be deposited in the Municipal Pensions Security Fund created in §8-22-18b of this code. The net proceeds of this tax after appropriation thereof by the Legislature is distributed in accordance with the provisions of this section, except for distribution from proceeds pursuant to §8-22-18a(d) of this code.

(b)(1) Before August 1 of each year, the treasurer of each municipality in which a municipal policemen's or firemen's pension and relief fund is established shall report to the State Treasurer the average monthly number of members who worked at least one hundred hours per month and the average monthly number of retired members of municipal policemen's or firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System during the preceding fiscal year: *Provided,* That beginning in the year 2010 and continuing thereafter, the report shall be made to the oversight board created in §8-22-18a of this code. These reports received by the oversight board shall be provided annually to the State Treasurer by September 1.

(2) Before September 1 of each calendar year, the State Treasurer, or the Municipal Pensions Oversight Board, once in operation, shall allocate and authorize for distribution the revenues in the Municipal Pensions and Protection Fund which were collected during the preceding calendar year for the purposes set forth in this section. Before September 1 of each calendar year and after the Municipal Pensions Oversight Board has notified the Treasurer and commissioner pursuant to §8-22-18b of this code, the Municipal Pensions Oversight Board shall allocate and authorize for distribution the revenues in the Municipal Pensions

Security Fund which were collected during the preceding calendar year for the purposes set forth in this section. In any year the actuarial report required by §8-22-20 of this code indicates that no actuarial deficiency exists in the municipal policemen's or firemen's pension and relief fund and that no pension funding revenue bonds of the building commission of such municipality remain outstanding, no revenues may be allocated from the Municipal Pensions and Protection Fund or the Municipal Pensions Security Fund to that fund. The revenues from the Municipal Pensions and Protection Fund shall then be allocated to all other pension and relief funds which have an actuarial deficiency. Pension funding revenue bonds include bonds of a municipality's building commission the net proceeds of which were used to fund either or both of a municipality's policemen's or firemen's pension and relief fund or bonds issued to refinance such bonds.

(3) The Municipal Pensions Oversight Board shall annually review the investment performance of each municipal policemen's or firemen's pension and relief fund. If the municipal pension and relief fund's board fails for three consecutive years to comply with the investment provisions established §8-22-22a of this code, the oversight board may require the municipal policemen's or firemen's pension and relief fund to invest with the Investment Management Board to continue to receive its allocation of funds from the premium tax. If the municipal pension and relief fund fails to move its investments to the Investment Management Fund within the 18-month drawdown period, provided in §8-22-19(e) of this code, the revenues shall be reallocated to all other municipal policemen's or firemen's pension and relief funds that have drawn down one hundred percent of their allocations.

(4) The moneys, and the interest earned thereon, in the Municipal Pensions and Protection Fund allocated to volunteer and part-volunteer fire companies and departments shall be allocated and distributed quarterly to the volunteer fire companies and departments. Before each distribution date, the State Fire Marshal shall report to the State Treasurer the names and addresses of all volunteer and part-volunteer fire companies and departments

within the state which meet the eligibility requirements established in §8-15-8A of this code.

(c)(1) Each municipal pension and relief fund shall have allocated and authorized for distribution a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average monthly number of police officers and firefighters who worked at least one hundred hours per month during the preceding fiscal year. On and after July 1, 1997, from the growth in any moneys collected pursuant to the tax imposed by this section and interest thereon there shall be allocated and authorized for distribution to each municipal pension and relief fund, a pro rata share of the revenues allocated to municipal policemen's and firemen's pension and relief funds based on the corresponding municipality's average number of police officers and firefighters who worked at least 100 hours per month and average monthly number of retired police officers and firefighters. For the purposes of this subsection, the growth in moneys collected from the tax collected pursuant to this section is determined by subtracting the amount of the tax collected during the fiscal year ending June 30, 1996, from the tax collected during the fiscal year for which the allocation is being made and interest thereon. All moneys received by municipal pension and relief funds under this section may be expended only for those purposes described in sections 16 through 28a, inclusive, article 22, chapter eight of this code. Notwithstanding the foregoing provision of this subdivision, if a municipality has outstanding pension funding revenue bonds and continues to pay the normal cost of its policemen's and firemen's pension and relief funds, then the allocable share of revenues to be allocated which would otherwise have been allocated to a municipal policemen's or firemen's pension and relief fund shall instead be allocated to the trustee of any outstanding pension funding revenue bonds.

(2) Each volunteer fire company or department shall receive an equal share of the revenues allocated for volunteer and part-volunteer fire companies and departments.

(3) In addition to the share allocated and distributed in accordance with subdivision (1) of this subsection, each municipal

fire department composed of full-time paid members and volunteers and part-volunteer fire companies and departments shall receive a share equal to the share distributed to volunteer fire companies under subdivision (2) of this subsection reduced by an amount equal to the share multiplied by the ratio of the number of full-time paid fire department members who are also members of a municipal firemen's pension and relief fund or the Municipal Police Officers and Firefighters Retirement System to the total number of members of the fire department. If a municipality has outstanding pension funding revenue bonds and continues to pay the normal cost of its policemen's and firemen's pension and relief funds, then the share that would otherwise be payable to the municipality's firemen's pension and relief fund pursuant to this subsection shall be paid to the trustee of such outstanding pension funding revenue bonds.

(d) The allocation and distribution of revenues provided in this section are subject to the provisions of §8-22-20 of this code and §8-15-8a and §8-15-8b of this code.

(e) Based upon the findings of an audit by the Treasurer, the Legislature hereby finds and declares that during the period of 1982 through April 27, 2012, allocations from the Municipal Pensions and Protection Fund were miscalculated and errors were made in amounts transferred, resulting in overpayments and underpayments to the relief and pension funds and to the Teachers Retirement System, and that the relief and pension funds and the Teachers Retirement System were not at fault for any of the overpayments and underpayments. The Legislature hereby further finds and declares that any attempt by the Municipal Pension Oversight Board or other entity to recover any of the overpayments would be unjust and create economic hardship for the entities that received overpayments. No entity, including, without limitation, the Municipal Pension Oversight Board, may seek to recover from a relief or pension fund, the Teachers Retirement System or the state any overpayments received from the Municipal Pensions and Protection Fund and the overpayments are not subject to recovery, offset or litigation. Pursuant to the audit by the Treasurer, the amount of \$3,631,846.55 is determined owed to specific relief and

pension funds through the period of April 27, 2012. The Treasurer is hereby authorized to transfer the amount of \$3,631,846.55 from the Unclaimed Property Trust Fund to the Municipal Pensions and Protection Fund, which is hereby reopened for the sole purpose of the transfer and remittances pursuant to this subsection, and to use the amount transferred to remit the amounts due to the pension and relief funds. The payment of \$3,631,846.55 to the pension and relief funds is complete satisfaction of any amounts due and no entity, including, without limitation, the Municipal Pension Oversight Board and any pension or relief fund, may seek to recover any further amounts.

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CHAPTER 74

(S. B. 244 - By Senators Trump and Woelfel)

[Passed February 1, 2022; in effect from passage.]

[Approved by the Governor on February 9, 2022.]

AN ACT to amend and reenact §51-11-6 of the Code of West Virginia, 1931, as amended, relating to the intermediate court of appeals, correcting a typographical error regarding the process for appointing the initial Judges of the Intermediate Court of Appeals; and making this change retrospective to December 27, 2021.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.

§51-11-6. Election of judges; initial appointment and election; vacancies; length and conditions of judicial terms.

(a) The three judges of the Intermediate Court of Appeals shall be elected on a nonpartisan basis to serve 10-year terms, subject to the exceptions for initial appointments and elections contained in subsection (b) and subsection (c) of this section.

(b) *Nomination and election to fill initial vacancies.* — The judges shall be nominated and appointed according to the following procedure:

(1) (A) On or before January 1, 2022, the Judicial Vacancy Advisory Commission, established pursuant to §3-10-3a of this code, shall publish notice of the judicial vacancies for the Intermediate Court of Appeals and begin accepting applications from qualified individuals for the position of judge of the

Intermediate Court of Appeals. The commission is responsible for reviewing and evaluating candidates for possible appointment to the Intermediate Court of Appeals by the Governor. In reviewing candidates, the commission may accept applications from any attorney who believes he or she to be qualified for the judgeships. The commission may accept comments from and request information from any person or source.

(B) The commission shall recommend three qualified nominees for each position for Intermediate Court of Appeals judge: *Provided*, That each person on the list must meet the requirements of §51-11-3(d) of this code at the time such person will begin his or her term on the court.

(2) The Governor shall review the list certified by the Judicial Vacancy Advisory Commission and nominate three qualified candidates to serve as judge. The Governor shall make his or her nominations without regard to political partisanship or affiliation. If the Governor does not select a nominee for the position of judge from the names provided by the commission, he or she shall notify the committee of that circumstance and the commission shall provide additional names for consideration by the Governor.

(3) The initial appointment term for each of the judges, at the discretion of the Governor, shall be as follows: one judge shall be selected to serve a two and one-half year term set to expire on December 31, 2024, one judge shall be selected to serve a four and one-half year term set to expire on December 31, 2026, and one judge shall be selected to serve a six and one-half year term set to expire on December 31, 2028.

(4) Upon confirmation by the West Virginia Senate, an individual appointed to serve as a judge of the Intermediate Court of Appeals pursuant to this subsection shall take an oath of office and commence his or her duties on or before July 1, 2022, but no earlier than May 1, 2022.

(c) After the initial appointment, the judges of the Intermediate Court of Appeals shall be elected on a nonpartisan basis by division during the primary election in every year during which a sitting

judge's term will expire for a 10-year term of office, and the judge's term shall commence on January 1 of the year following, as set forth in §3-5-1 *et seq.* of this code.

(d) If a vacancy occurs in the office of Intermediate Court judge, the Governor shall fill the vacancy by appointment as provided in §3-10-3 and §3-10-3a of this code.

(e) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court of Appeals has authority to temporarily assign judges to the Intermediate Court of Appeals pursuant to section eight, article VIII of the Constitution of West Virginia, in the event that a judge is temporarily unable to serve on the court.

(f) The amendments to §51-11-6(b)(3) of this code enacted by the regular session of the Legislature, 2022, shall be applied retrospectively to December 27, 2021.



CHAPTER 75

(Com. Sub. for H. B. 2910 - By Delegates Foster, Kimble, Haynes, Wamsley, Kessinger, Espinosa, Kimes, Hardy and Crouse)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §50-1-2, 50-1-2a, and 50-1-13 of the Code of West Virginia, 1931, as amended, all relating to the allocation of magistrates serving in each county; requiring the Supreme Court of Appeals to conduct or arrange for a caseload study of the state's magistrate courts; requiring the court to enter an administrative order by January 5, 2023, containing its recommendations which allocate no more than 170 magistrates state-wide; directing that any allocation by the supreme Court not reduce the number of magistrates below the allotted number as of the effective date of the 2022 amendments to § 50-1-2 of the West Virginia code; requiring attested copies of the order be provided to the Legislature; authorizing the Legislature to reject the recommended allocation and allocate the magistrates through legislation; providing that the court's administrative order be the certification to the ballot commissioners for each county if the Legislature does not reject the allocation; requiring process be repeated every four years; increasing the number of magistrates in Berkeley County by one, effective July 1, 2022; authorizing Chief Justice of the Supreme Court of Appeals to order a magistrate to serve outside the county where elected or appointed on a temporary basis; providing for reimbursement of reasonable expenses; requesting the court to develop a rule for assignment of magistrates to serve after hours or in an emergency on a circuit-wide or other regional basis for certain proceedings; providing for magistrates authority when

presiding in these proceedings and clarifying that proceedings may be held remotely if determined appropriate by the Court.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. COURTS AND OFFICERS.

§50-1-2. Number of magistrates.

(a) The number of magistrates to be elected in each county of this state shall be determined in accordance with the provisions of this section.

(b) The Supreme Court of Appeals shall conduct or otherwise arrange for a caseload study of the magistrate courts of this state for the purpose of determining how many magistrates are needed in each county. Based upon the results of this study and upon consideration of county population data from the most recent decennial census, the Supreme Court of Appeals shall enter an administrative order on or before January 5, 2023, containing the Supreme Court's recommendations as to the number of magistrates who are needed in each of the state's 55 counties for the four-year terms of office to be filled by election in the year 2024. The administrative order shall allocate no more than 170 magistrates for the entire State of West Virginia, nor shall the allocation reduce the number of magistrates in any county below that in effect on the effective date of the amendments to this section enacted during the 2022 regular session of the Legislature. Attested copies of the administrative order shall be provided to the President of the West Virginia Senate, the Clerk of the Senate, the Clerk and the Speaker of the West Virginia House of Delegates, and the West Virginia Secretary of State.

(c) The West Virginia Legislature may, in the regular session of the Legislature, 2023, reject the allocation of magistrates recommended by the Supreme Court and allocate magistrates for the four-year terms commencing in January of 2025 and serving through December of 2028, as the Legislature may choose by enactment of a bill containing such an allocation.

(d) If the Legislature does not enact a different allocation of the magistrates to be elected in 2024 pursuant to subsection (c) of this section, then the administrative order of the Supreme Court of Appeals required by subsection (b) of this section shall become the certification to the ballot commissioners of each county in this state of the number of magistrates to be elected in each county of this state at the judicial elections to be held concurrently with the primary election in 2024.

(e) The process set forth in this section shall be repeated every four years in the first and second years immediately preceding the quadrennial election of magistrates.

§50-1-2a. Addition of magistrate in Berkeley County.

(a) The Legislature hereby finds that, according to the statistics compiled by the administrative office of the Supreme Court of Appeals of West Virginia, the caseload in the magistrate court of Berkeley County in the year 2020 was as follows:

Civil cases:	4,139
Criminal cases:	7,782
Total:	11,921

With five elected magistrates in Berkeley County, each magistrate had a caseload of 2,384 cases in 2020. This caseload per magistrate is substantially higher than the statewide average total caseload of 957 cases per magistrate and is higher than the caseload per magistrate in any other county in West Virginia in 2020.

(b) Notwithstanding any other provisions of this article to the contrary, the allowable number of magistrates serving in the county of Berkeley as of March 1, 2022, shall be increased by one, effective July 1, 2022. The initial appointment for the position shall be made in accordance with the provisions of §50-1-6 of this code.

§50-1-3. Salaries of magistrates.

Notwithstanding any provisions of this code to the contrary, beginning July 1, 2021, the annual salary of a magistrate shall be

\$60,375, and beginning July 1, 2022, the annual salary of a magistrate shall be \$63,250.

§50-1-13. Temporary service within or outside of county.

(a) The Chief Justice of the Supreme Court of Appeals or judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may order a magistrate to serve temporarily at locations within the county other than at the regular office or offices of the magistrate.

(b) The Chief Justice of the Supreme Court of Appeals may by order direct a magistrate to serve on a temporary basis outside the county of his or her election or appointment while giving due consideration to travel time and geographic circumstance. A judge of the circuit court of the county in which a magistrate is elected, or the chief judge thereof if there is more than one judge of the circuit court, may by order direct a magistrate to serve temporarily in any other county within the judicial circuit for any purposes directed by the judge. The magistrate's authority, to the extent ordered by the chief justice or judge, shall be equal to the jurisdiction and authority of a magistrate elected in the county to which the magistrate is ordered to serve. The temporary assignment may not exceed 60 days in length in any given calendar year, except with the consent of the transferred magistrate.

(c) A magistrate serving outside the county in which he or she is elected or appointed shall be reimbursed for reasonable expenses incurred in service outside of the county, as provided by rule of the Supreme Court of Appeals.

(d) The Supreme Court of Appeals is requested to develop a rule creating a system in which magistrates shall, on a periodic alternating basis, be assigned to preside over initial appearances, petitions for domestic violence, emergency protective orders, emergency mental health petitions, emergency juvenile delinquency petitions, and applications for the issuance of search warrants arising outside normal court hours or in an emergency on a circuit-wide or other regional basis as determined by the Supreme

Court of Appeals. The authority of the after-hours or emergency magistrate shall be equal to the jurisdiction and authority of a magistrate elected or appointed in any county in which he or she is directed to preside.

(e) Nothing in this section may be construed to prohibit proceedings authorized by subsection (d) of this section being held remotely as determined appropriate by the Supreme Court of Appeals.

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CHAPTER 76

(Com. Sub. for H. B. 4712 - By Delegates D. Kelly and Fast)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §8-10-2b of the Code of West Virginia, 1931, as amended; to amend and reenact §50-3-2 and §50-3-2a of said code; to amend and reenact §59-1-10 of said code; and to amend and reenact §62-4-17 of said code, all relating generally to costs, fines, forfeiture, restitution and penalties; requiring a person, unless incarcerated, to pay all costs, fines, forfeiture, restitution and penalties upon entry of the order assessing them in municipal court, magistrate court, and circuit court; reducing the time period allowed for enrollment for incarcerated persons in municipal court, magistrate court, and circuit court payment plans and limiting the maximum length of payment plans: voiding driver's license suspensions entered prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties; increasing fees to the Courthouse Facilities Improvement Authority; imposing a \$10 processing fee for criminal bail bonds, other than personal recognizance bonds, to be deposited in the fund; imposing a \$25 fee for the processing of bail pieces, to be deposited in the fund; and increasing the fee for a deed of conveyance with the increase dedicated to the fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 10. POWERS AND DUTIES OF CERTAIN OFFICERS.

§8-10-2b. Payment plan; failure to pay will result in late fee and judgment lien; suspension of licenses for failure to pay fines and costs or failure to appear in court.

(a) Upon request and subject to the following requirements, the municipal court clerk or, upon a judgment rendered on appeal, the clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court for a motor vehicle violation as defined in §17B-3-3a of this code, a criminal offense as defined in §17B-3-3c of this code, or other applicable municipal ordinances, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A \$25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 30 calendar days after release.

(b) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of a payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of municipal clerks, and municipal clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the

person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment; and

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual net income divided by 12, or \$10, whichever is greater: *Provided*, That if this calculation results in a payment plan lasting more than three years, the monthly payments shall be set by dividing the total amount owed by 36.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d)(1) The clerk may assess a \$10 late fee each month if a person fails to comply with the terms of a payment plan and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division,

or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 90 days of a judgment a person fails to enroll in a payment plan and fails to pay their costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

(A) That he or she is 90 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a \$10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided*,

however, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county in which the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a motor vehicle violation as defined in §17B-3-3a of this code or criminal offense fails to appear or otherwise respond in court, the municipal court clerk shall notify the Division of Motor Vehicles of the failure to appear: *Provided*, That notwithstanding any other provision of this code to the contrary, for residents of this state, the municipal court clerk shall wait at least 90 days from the date of the person's failure to appear or otherwise respond before notifying the Division of Motor Vehicles thereof. Upon notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES, AND RECORDS.

§50-3-2. Costs in criminal proceedings.

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there is imposed, in addition to other costs, fines, forfeitures, or penalties allowed by law:

(1) Costs in the amount of \$60, of which \$5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code;

(2) an amount equal to the one-day per diem provided for in §15A-3-16(g) of this code; and

(3) costs in the amount of \$30 to be deposited in the Regional Jail Operations Partial Reimbursement Fund created by §15A-3-16 of this code. A magistrate may not collect costs in advance. Notwithstanding any other provision of this code, a person liable

for fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison and not participating in a work-release program shall not be held liable for the fines and court costs until 180 days after completion of the term in jail or prison. A magistrate court shall deposit \$5 from each of the criminal proceedings fees collected pursuant to this section in the Court Security Fund created in §51-3-14 of this code. A magistrate court shall, on or before the 10th day of the month following the month in which the fees imposed in this section were collected, remit an amount equal to the one-day per diem provided for in §15A-3-16(g) of this code from each of the criminal proceedings in which the fees specified in this section were collected to the magistrate court clerk, or if there is no magistrate court clerk to the clerk of the circuit, together with information required by the rules of the Supreme Court of Appeals and the rules of the Office of Chief Inspector. These moneys are paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of §7-5-15 of this code. Amendments made to this section during the 2001 regular session of the Legislature are effective after June 30, 2001.

(b) A magistrate shall assess costs in the amount of \$2.50 for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.

(c) In each criminal case which must be tried by the circuit court in which a magistrate renders some service, costs in the amount of \$10 shall be imposed by the magistrate court and shall be certified to the clerk of the circuit court in accordance with the provisions of §62-5-6 of this code.

(d) The clerk of a magistrate court shall charge and collect a fee of \$10 for services rendered by the clerk for processing criminal bonds and the fees which shall be assessed as costs of the proceeding due only upon conviction.

(e) All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code. Nothing in this subsection may be construed to impose a fee for the processing of a personal recognizance bond.

(f) The clerk of a magistrate court shall charge and collect a fee of \$25 for services rendered by the clerk for processing a bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code.

§50-3-2a. Payment by electronic payments, credit card payments, cash, money orders, or certified checks; payment plan; failure to pay fines results in a late fee and judgment lien.

(a) A magistrate court may accept electronic payments, credit cards, cash, money order, or certified check for payment of all costs, fines, fees, forfeitures, restitution, or penalties in accordance with rules promulgated by the Supreme Court of Appeals. Any charges made by the credit company shall be paid by the person responsible for paying the cost, fine, forfeiture, restitution, or penalty.

(b) Upon request and subject to the following requirements, the magistrate clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk, an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A \$25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 30 calendar days after release.

(c) The West Virginia Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of magistrate clerks, and magistrate clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(d)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which the payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the person may receive a late fee, have a judgment lien recorded against him or her, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual income divided by 12, or \$10, whichever is greater: *Provided*, That if this calculation results in a payment plan lasting more than three years, the monthly payments shall be set by dividing the total amount owed by 36.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(e)(1) The clerk may assess a \$10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the State Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to § 14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(f)(1) If after 180 days of a judgment, a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a \$10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (g) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however*, That the collection fee may not exceed 25 percent of the delinquent payment amount.

(g) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(h) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines,

forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(i)(1) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a hunting violation described in chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

(2) If any costs, fines, fees, forfeitures, restitution, or penalties imposed or ordered by the magistrate court for a fishing violation described in Chapter 20 of this code are not paid within 180 days from the date of judgment and the expiration of any stay of execution, the magistrate court clerk or, upon a judgment rendered on appeal, the circuit clerk shall notify the Director of the Division of Natural Resources of the failure to pay. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the

person by the Division of Natural Resources, until all the costs, fines, fees, forfeitures, restitution, or penalties are paid in full.

(j)(1) If a person charged with any criminal violation of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Commissioner of the Division of Motor Vehicles thereof within 90 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Division of Motor Vehicles shall suspend any privilege the person failing to appear or otherwise respond may have to operate a motor vehicle in this state, including any driver's license issued to the person by the Division of Motor Vehicles, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full. The suspension shall be imposed in accordance with the provisions of §17B-3-6 of this code.

(2) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any hunting violation described in Chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate. Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to hunt in this state, including any hunting license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(3) In addition to the provisions of subdivision (1) of this subsection, if a person charged with any fishing violation described in Chapter 20 of this code fails to appear or otherwise respond in court, the magistrate court shall notify the Director of the Division of Natural Resources of the failure thereof within 15 days of the scheduled date to appear unless the person sooner appears or otherwise responds in court to the satisfaction of the magistrate.

Upon notice, the Director of the Division of Natural Resources shall suspend any privilege the person failing to appear or otherwise respond may have to fish in this state, including any fishing license issued to the person by the Division of Natural Resources, until final judgment in the case and, if a judgment of guilty, until all costs, fines, fees, forfeitures, restitution, or penalties imposed are paid in full.

(k) In every criminal case which involves a misdemeanor violation, a magistrate may order restitution where appropriate when rendering judgment.

(l) Notwithstanding any provision of this code to the contrary, except as authorized by this section, payments of all costs, fines, fees, forfeitures, restitution, or penalties imposed by the magistrate court in civil or criminal matters shall be made in full. Partial payments of costs, fines, fees, forfeitures, restitution, or penalties made pursuant to this section shall be credited to amounts due in the following order:

- (1) Regional Jail Fund;
- (2) Worthless check payee;
- (3) Restitution;
- (4) Magistrate Court Fund;
- (5) Worthless Check Fund;
- (6) Per diem regional jail fee;
- (7) Community Corrections Fund;
- (8) Regional Jail Operational Fund;
- (9) Law-Enforcement Training Fund;
- (10) Crime Victims Compensation Fund;
- (11) Court Security Fund;

- (12) Courthouse Improvement Fund;
- (13) Litter Control Fund;
- (14) Sheriff arrest fee;
- (15) Teen Court Fund;
- (16) Other costs, if any; and
- (17) Fine.

CHAPTER 59. FEES, ALLOWANCES, AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-10. Fees to be charged by clerk of county commission.

For the purpose of this section, the word “page” is defined as being a paper or electronic writing of not more than legal size, 8 1/2” x 14”.

(a) When a writing is admitted to the record, for receiving proof of acknowledgment of the writing, entering an order in connection with the writing, endorsing clerk’s certificate of recordation on the writing and indexing in a proper index, the clerk of the county commission shall charge and collect the following fees:

(1) Thirty dollars for a deed of conveyance (with or without a plat), trust deed, fixture filing, or security agreement concerning real estate lease.

(2) Forty dollars for a trustee’s report of sale for any property for which additional information and filing requirements are required by §38-1-8a of this code. Twenty dollars of each recording fee received pursuant to this subdivision shall be deposited into the county’s general revenue fund and \$20 paid quarterly by the clerk of the county commission to the West Virginia Housing Development Fund established in §31-18-1 *et seq.* of this code.

(3) Ten dollars for a financing, continuation, termination, or other statement or writing permitted to be filed under chapter 46 of this code.

(4) Ten dollars for a plat or map (with no deed of conveyance).

(5) No charge for a service discharge record.

(6) Ten dollars for any document or writing other than those referenced in subdivisions (1), (2), (3), (4) and (5) of this subsection.

(7) One dollar for each additional page for documents or writings containing more than five pages.

For any of the documents admitted to record pursuant to this subsection, if the clerk of the county commission has the technology available to receive these documents in electronic form or other media, the clerk shall set a reasonable fee to record these writings not to exceed the cost for filing paper documents.

(8) Of the fees collected pursuant to subdivision (1), subsection (a) of this section, \$10 shall be deposited in the county general revenue fund in accordance with §59-1-28 of this code, \$5 shall be deposited in the county reappraisal fund and dedicated to the operation of the assessor's office mapping division, \$8 shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code, \$1 to the county 9-1-1 center and \$2 shall be deposited in the county general fund and dedicated to the operation of the county clerk's office. Four dollars of the fees collected pursuant to subdivision (1), subsection (a) of this section and \$5 of the fees collected pursuant to subdivision (6), subsection (a) of this section shall be paid by the county clerk into the State Treasury and deposited in equal amounts into the Farmland Protection Fund created in §8A-12-1 *et seq.* of this code for the benefit of the West Virginia Agricultural Land Protection Authority and into the Outdoor Heritage Conservation Fund created §5B-2G-7(f) of this code. The funds deposited in the State Treasury pursuant to this subdivision may only be used for costs,

excluding personnel costs, associated with purpose of land conservation, as defined in §5B-2G-7(f) of this code.

(b) Five dollars for administering any oath other than oaths by officers and employees of the state, political subdivisions of the state, a public or quasi-public entity of the state, or a political subdivision of the state, taken in his or her official capacity.

(c) Fifty-five dollars for issuance of marriage license and other duties pertaining to the marriage license (including preparation of the application, administering the oath, registering and recording the license, mailing acknowledgment of minister's return to one of the licensees, and notification to a licensee after 60 days of the nonreceipt of the minister's return). This fee is reduced to \$35 if the applicants present a premarital education course completion certificate issued pursuant to §48-2-701 of this code and dated within one year of the application for a marriage license.

(1) One dollar of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury as a state registration fee in the same manner that license taxes are paid into the Treasury under §11-12-1 *et seq.* of this code;

(2) Fifteen dollars of the marriage license fee received pursuant to this subsection shall be paid by the county clerk into the State Treasury for the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under §11-12-1 *et seq.* of this code;

(3) Ten dollars of the marriage license fee received pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code; and

(4) If a premarital education course completion certificate is not presented, the county clerk shall, on or before the 10th day of each month, transmit \$20 of the marriage license fee received pursuant to this subsection to the State Treasurer for deposit in the State Treasury as follows:

(A) Five dollars to the credit of the Family Protection Shelter Support Act in the same manner that license taxes are paid into the Treasury under §11-12-1 *et seq.* of this code.

(B) Five dollars to the credit of the special revenue account, hereby created, designated the Fund for Civil Legal Services for Low Income Persons, which shall consist of all gifts, grants, bequests, transfers, appropriations, or other donations or payments which may be received and administered by the Division of Justice and Community Services from any governmental entity or unit or any person, firm, foundation, or corporation for the purposes of this section, and all interest or other return earned from investment of the fund. Expenditures from the fund shall be made by the Director of the Division of Justice and Community Services and shall be limited to grants to nonprofit agencies which provide civil legal services to low income persons made at his or her discretion. Any balance in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

(C) Ten dollars to the credit of the Marriage Education Fund created pursuant to §48-2-702 of this code.

(d) (1) One dollar and 50 cents for a copy of any writing or document, if it is not otherwise provided for.

(2) One dollar for each additional page if the writing or documents contains more than two pages.

(3) One dollar for annexing the seal of the commission or clerk to any paper.

(4) Five dollars for a certified copy of a birth certificate, death certificate, or marriage license.

(e) For copies of any record in electronic form or a medium other than paper, a reasonable fee set by the clerk of the county commission not to exceed the costs associated with document search and duplication.

CHAPTER 62. CRIMINAL PROCEDURE.**ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.****§62-4-17. Suspension of licenses for failure to appear in court; payment plan; failure to pay fines will result in late fee and judgment lien.**

(a) Upon request and subject to the following requirements, the circuit clerk shall establish a payment plan for a person owing costs, fines, forfeitures, restitution, or penalties imposed by the court, so long as the person signs and files with the clerk an affidavit stating that he or she is financially unable to pay the costs, fines, forfeitures, restitution, or penalties imposed:

(1) A \$25 administrative processing fee shall be paid at the time the payment form is filed or, in the alternative, the fee may be paid in no more than five equal monthly payments;

(2) Unless incarcerated, a person must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan upon the entry of the order assessing the costs, fines, forfeitures, restitution, or penalties; and

(3) If the person is incarcerated, he or she must pay in full the costs, fines, forfeitures, restitution, or penalties or enroll in a payment plan within 90 calendar days after release.

(b) The Supreme Court of Appeals shall develop a uniform payment plan form and financial affidavit for requests for the establishment of payment plan pursuant to subsection (a) of this section. The forms shall be made available for distribution to the offices of circuit clerks and circuit clerks shall use the payment plan form and affidavit form developed by the Supreme Court of Appeals when establishing payment plans.

(c)(1) The payment plan shall specify: (A) The number of payments to be made; (B) the dates on which such payments are due; (C) the amount due for each payment; (D) all acceptable payment methods; and (E) the circumstances under which the

person may receive a late fee, have a judgment lien recorded against them, or have the debt sent to collections for nonpayment.

(2) The monthly payment under the payment plan shall be calculated based upon all costs, fines, forfeitures, restitution, or penalties owed within the court, and shall be two percent of the person's annual income divided by 12, or \$10, whichever is greater: *Provided*, That if this calculation results in a payment plan lasting more than five years, the monthly payments shall be set by dividing the total amount owed by 60.

(3) The court may review the reasonableness of the payment plan, and may on its own motion or by petition, waive, modify, or convert the outstanding costs, fines, forfeitures, restitution, or penalties to community service if the court determines that the individual has had a change in circumstances and is unable to comply with the terms of the payment plan.

(d)(1) The clerk may assess a \$10 late fee each month if a person fails to comply with the terms of a payment plan, and if any payment due is not received within 30 days after the due date, and the person:

(A) Is not incarcerated;

(B) Has not brought the account current;

(C) Has not made alternative payment arrangements with the court; or

(D) Has not entered into a revised payment plan with the clerk before the due date.

(2) If, after 90 days, a payment has not been received, the clerk may do one or both of the following: (A) Record a judgment lien as described in subsection (f) of this section; or (B) consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided*, That the entire amount of all delinquent

payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount. The clerk may send notices, electronically or by U.S. mail, to remind the person of an upcoming or missed payment.

(e)(1) If after 180 days of a judgment a person fails to enroll in a payment plan and fails to pay his or her costs, fines, forfeitures, restitution, or penalties, the clerk may assess a \$10 late fee and shall notify the person of the following:

(A) That he or she is 180 days past due in the payment of costs, fines, forfeitures, restitution, or penalties imposed pursuant to a judgment of the court;

(B) That he or she has failed to enroll in a payment plan;

(C) Whether a \$10 late fee has been assessed; and

(D) That he or she may be the subject of a judgment lien or have his or her debt sent to a collection agency if the overdue payment of costs, fines, forfeitures, restitution, or penalties is not resolved within 30 days of the date of the notice issued pursuant to this subsection.

(2) If after 30 days from the issuance of a notice pursuant to subdivision (1) of this subsection, a payment has not been received, the clerk may do one or both of the following:

(A) Record a judgment lien as described in subsection (f) of this section; or

(B) Consign the delinquent costs, fines, forfeitures, restitution, or penalties to a debt collection agency contained on the Tax Commissioner's list of eligible debt collection agencies established and maintained pursuant to §14-1-18c of this code, an internal collection division, or both: *Provided,* That the entire amount of all delinquent payments collected shall be remitted to the court and may not be reduced by any collection costs or fees: *Provided, however,* That the collection fee may not exceed 25 percent of the delinquent payment amount.

(f) To record a judgment lien, the clerk shall notify the prosecuting attorney of the county of nonpayment and shall provide the prosecuting attorney with an abstract of judgment. The prosecuting attorney shall file the abstract of judgment in the office of the clerk of the county commission in the county where the defendant was convicted and in any county wherein the defendant resides or owns property. The clerk of the county commission shall record and index these abstracts of judgment without charge or fee to the prosecuting attorney, and when recorded, the amount stated to be owed in the abstract constitutes a lien against all property of the defendant: *Provided*, That when all the costs, fines, fees, forfeitures, restitution, or penalties for which an abstract of judgment has been recorded are paid in full, the clerk of the municipal court shall notify the prosecuting attorney of the county of payment and provide the prosecuting attorney with a release of judgment, prepared in accordance with the provisions of §38-12-1 of this code, for filing and recordation pursuant to the provisions of this subdivision. Upon receipt from the clerk, the prosecuting attorney shall file the release of judgment in the office of the clerk of the county commission in each county where an abstract of the judgment was recorded. The clerk of the county commission shall record and index the release of judgment without charge or fee to the prosecuting attorney.

(g) Any driver's license suspension entered by the Division of Motor Vehicles prior to July 1, 2016, for the failure to appear or otherwise respond in court or for nonpayment of costs, fines, forfeitures, restitution, or penalties is null and void. A person whose driver's license was suspended on or after July 1, 2016, but prior to July 1, 2020, solely for the nonpayment of costs, fines, forfeitures, restitution, or penalties, if otherwise eligible, shall have his or her license reinstated:

(1) Upon payment in full of all outstanding costs, fines, forfeitures, restitution, or penalties and a \$25 reinstatement fee paid to the Division of Motor Vehicles; or

(2) Upon establishing a payment plan pursuant to subsection (a) of this section and the payment of a \$25 administrative fee. The clerk shall notify the Division of Motor Vehicles that a payment

plan is in effect, and upon receipt of the notification, the division shall waive the reinstatement fee.

(h) If a person charged with a criminal offense fails to appear or otherwise respond in court after having received notice to do so, the court shall notify the Division of Motor Vehicles thereof within 15 days of the scheduled date to appear unless such person sooner appears or otherwise responds in court to the satisfaction of the court. Upon such notice, the Division of Motor Vehicles shall suspend the person's driver's license or privilege to operate a motor vehicle in this state until such time that the person appears as required.

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CHAPTER 77

(H. B. 4307 - By Delegates Capito, Garcia, Pinson, Pushkin and Lovejoy)

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §14-2A-3 of the Code of West Virginia, 1931, as amended, relating to increasing and expanding certain benefits payable from the Crime Victims' Compensation Fund; increasing the limit on the allowable benefit for mental health counseling for secondary victims; increasing the limits on allowable benefits for certain travel and relocation expenses; and expanding the definition of "work loss" to compensate claimants, victims, and parent and legal guardians of minor victims for work missed to attend certain court proceedings.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

As used in this article, the term:

(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim, except the term "victim" does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse, or minor child of a deceased victim or, if the deceased victim is a minor, the parents, legal guardians, and siblings of the victim;

(3) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim or a victim's dependent when the obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent, or a third person who is not a collateral source including, but not limited to, assignees, persons holding power of attorney or others who hold authority to make or submit claims in place of or on behalf of a victim, a dependent, or third person who is not a collateral source and if the victim, dependent, or third person who is not a collateral source is a minor or other legally incompetent person, their duly qualified fiduciary; and

(5) A person who is a secondary victim in need of mental health counseling due to the person's exposure to the crime committed whose award may not exceed \$5,000.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to him or her from any of the following sources:

(1) The offender, including restitution received from the offender pursuant to an order by a court sentencing the offender or placing him or her on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or its agencies, a state or its political subdivisions, or an instrumentality of two or more states;

(3) Social Security, Medicare, and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance or other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of an employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds \$25,000.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state, or in any state not having a victim compensation program, which poses a substantial threat of personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct" also includes criminally injurious conduct committed outside of the United States against a resident of this state. "Criminally injurious conduct" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the person engaging in the conduct intended to cause personal injury or death or committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, leaving the scene of the accident, or reckless driving.

(d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of making this determination there shall be taken into account the amount of support received from the victim as compared to the entire amount of support the individual received from all sources including self-support. The term support includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term dependent includes a child of the victim born after his or her death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependents economic loss and a dependents replacement

services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term economic loss includes a lost scholarship as defined in this section.

(f) “Allowable expense” includes the following:

(1) Reasonable charges incurred or to be incurred for reasonably needed medical care, including products, services, and accommodations related to medical and psychological care, prosthetic devices, eye glasses, dentures, rehabilitation, and other remedial treatment and care but does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or other institution engaged in providing nursing care and related services which is in excess of a reasonable and customary charge for semiprivate accommodations unless accommodations other than semiprivate accommodations are medically required;

(2) A total charge not in excess of \$10,000 for expenses in any way related to funerals, cremations and burials;

(3) Victim relocation costs not to exceed \$4,500;

(4) Reasonable travel expenses not to exceed \$5,000 for a claimant to attend court proceedings conducted for the prosecution of the offender;

(5) Reasonable travel expenses for a claimant to return a person who is a minor or incapacitated adult who has been unlawfully removed from this state to another state or country if the removal constitutes a crime under the laws of this state which may not exceed \$2,000 for expenses to another state or \$3,000 to another country; and

(6) Reasonable travel expenses for the transportation of a victim to and from a medical facility.

(g) “Work loss” means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have

performed for income. “Work loss” is reduced by income from substitute work actually performed or to be performed by him or her or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. “Work loss” includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim. “Work loss” also includes loss of income from work by the claimant, the victim, or the parent or legal guardian of a minor victim who must miss work to attend court proceedings conducted for the prosecution of the offender.

(h) “Replacement services loss” means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed for the benefit of himself or herself or his or her family if he or she had not been injured. “Replacement services loss” does not include services an injured person would have performed to generate income.

(i) “Dependents’ economic loss” means loss after a victim’s death of contributions or things of economic value to his or her dependents but does not include services they would have received from the victim if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided by the dependent due to the victim’s death.

(j) “Dependents’ replacement service loss” means loss reasonably incurred or to be incurred by dependents after a victim’s death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their benefit if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided due to the victim’s death, but which are not already subtracted in calculating a dependent’s economic loss.

(k) “Victim” means the following:

A person who suffers personal injury or death as a result of any one of the following:

(A) Criminally injurious conduct;

(B) The good faith effort of the person to prevent criminally injurious conduct; or

(C) The good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) “Contributory misconduct” means any conduct of the claimant or of the victim through whom the claimant claims an award that is unlawful or intentionally tortious and that, without regard to the conduct’s proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim and includes the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance, when the intoxication has a causal connection or relationship to the injury sustained.

(m) “Lost scholarship” means a scholarship, academic award, stipend, student loan, or other monetary scholastic assistance which had been awarded, conferred upon, or obtained by a victim in conjunction with a post-secondary school educational program and which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.



CHAPTER 78

(H. B. 4308 - By Delegates Capito, Zukoff, Fluharty, Garcia, Kimble, Lovejoy and Pushkin)

[Passed February 21, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2A-11a; to amend and reenact §14-2A-14 of said code; and to amend and reenact §49-5-101 of said code, all relating generally to confidentiality of juvenile records and exceptions thereto; declaring that records in the possession of the Crime Victim Compensation Fund regarding juveniles who are the subject of an abuse or neglect petition are confidential; expanding the class of persons who may apply to the Crime Victim's Fund on behalf of a child who is the subject of a civil abuse and neglect petition; specifying that official records relating to a child or juvenile may be disclosed for evaluation of a Crime Victims' Compensation Fund application; including the Juvenile Justice Commission and its designees acting in the courses of their official duties to the list of persons and entities granted access to confidential juvenile records; granting the West Virginia Crime Victims Compensation Fund and its designees access to certain information related to child abuse or neglect proceedings; granting a current or former employee of the Division of Corrections and Rehabilitation access to relevant juvenile records for purposes of pursuing a grievance; permitting the release of such records only after a hearing to determine relevance, held before the Public Employees Grievance Board; providing for the sealing of such relevant records from public view and the redaction of any identifying information related to the juvenile; placing certain limitations on the grieving party's use of such records; permitting a grieving party's attorney or representative access to such

records; requiring records be returned following conclusion of grievance procedure; requiring a court order for any further use of such records outside of the grievance proceeding; requiring that such court orders limit disclosure to the purposes of the proceeding; and clarifying that nothing in the section may be construed to abrogate the Freedom of Information Act.

Be it enacted by the Legislature of West Virginia:

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-11a. Application when the victim is the subject of a civil abuse or neglect petition; confidentiality of records.

(a) An application for benefits on behalf of a minor child who is the subject of a civil abuse and neglect petition may be filed by a foster parent, legal guardian of the minor child, court appointed guardian ad litem, or any person or entity having legal custody of the minor child, including the agency which filed the civil abuse and neglect petition.

(b) All crime victims' compensation fund records and proceedings related to a claim filed on behalf of a minor child who is the subject of a civil abuse and neglect petition are confidential and may not be disclosed to any person who is not a necessary participant in the proceedings. Information, details, and identities of parties in the claim shall not be published, except in the form of statistical reporting, identified only by claim number, as necessary to satisfy the requirements of federal and state law.

§14-2A-14. Grounds for denial of claim or reduction of awards; maximum award.

(a) Except as provided in §14-2A-10(b) of this code, the commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of

the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the victim did not undergo a forensic medical examination, within 96 hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: *Provided*, That reporting to a law-enforcement officer or agency or a forensic medical examination is not required if the victim is a juvenile in order for a commissioner to approve an award of compensation: *Provided, however*, That the filing of a civil abuse and neglect petition in a circuit court satisfies the reporting requirement, thereby allowing the minor child who is the subject of the petition to file an application for benefits, with the claims process to proceed in accordance with this code.

(c) The commissioner may not approve an award of compensation to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or his or her accomplice.

(d) A commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation, or reconsider a claim already approved.

(e) A commissioner may not approve an award of compensation if the injury occurred while the victim was confined in any state, county, or regional jail, prison, private prison, or correctional facility.

(f) After reaching a decision to approve an award of compensation, but prior to announcing the approval, the commissioner shall require the claimant to submit current information as to collateral sources on forms prescribed by the Clerk of the West Virginia Legislative Claims Commission. The commissioner shall reduce an award of compensation or deny a

claim for an award of compensation that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is or will be recouped from other persons, including collateral sources, or if the reduction or denial is determined to be reasonable because of the contributory misconduct of the claimant or of a victim through whom he or she claims. If an award is reduced or a claim is denied because of the expected recoupment of all or part of the economic loss of the claimant from a collateral source, the amount of the award or the denial of the claim shall be conditioned upon the claimant's economic loss being recouped by the collateral source: *Provided*, That if it is thereafter determined that the claimant will not receive all or part of the expected recoupment, the claim shall be reopened and an award shall be approved in an amount equal to the amount of expected recoupment that it is determined the claimant will not receive from the collateral source, subject to the limitation set forth in subsection (g) of this section.

(g)(1) Except in the case of death, or as provided in subdivision (2) of this subsection, compensation payable to a victim and to all other claimants sustaining economic loss because of injury to that victim may not exceed \$35,000 in the aggregate. Compensation payable to all claimants because of the death of the victim may not exceed \$50,000 in the aggregate.

(2) In the event the victim's personal injuries are so severe as to leave the victim with a disability, as defined in Section 223 of the Social Security Act, as amended, as codified in 42 U. S. C. §423, the commission may award an additional amount, not to exceed \$100,000, for special needs attributable to the injury.

(h) If an award of compensation of \$5,000 or more is made to a minor, a guardian shall be appointed pursuant to the provisions of §44-10-1 *et seq.* of this code to manage the minor's estate.

ARTICLE 5. RECORD KEEPING AND DATABASE.

§49-5-101. Confidentiality of records; non-release of records; exceptions; penalties.

(a) Except as otherwise provided in this chapter or by order of the court, all records and information concerning a child or juvenile

which are maintained by the Division of Corrections and Rehabilitation, the Department of Health and Human Resources, a child agency or facility, or court or law-enforcement agency, are confidential and may not be released or disclosed to anyone, including any federal or state agency.

(b) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning a child or juvenile, except adoption records and records disclosing the identity of a person making a complaint of child abuse or neglect, may be made available:

(1) Where otherwise authorized by this chapter;

(2) To:

(A) The child;

(B) A parent whose parental rights have not been terminated;

(C) The attorney of the child or parent; and

(D) The Juvenile Justice Commission and its' designees acting in the course of their official duties;

(3) With the written consent of the child or of someone authorized to act on the child's behalf; and

(4) Pursuant to an order of a court of record: *Provided*, That the court shall review the record or records for relevancy and materiality to the issues in the proceeding and safety, and may issue an order to limit the examination and use of the records or any part thereof.

(c) In addition to those persons or entities to whom information may be disclosed under subsection (b) of this section, information related to child abuse or neglect proceedings, except information relating to the identity of the person reporting or making a complaint of child abuse or neglect, shall be made available, upon request, to:

(1) Federal, state, or local government entities, or any agent of those entities, including law-enforcement agencies and prosecuting attorneys, having a need for that information in order to carry out its responsibilities under law to protect children from abuse and neglect;

(2) The child fatality review team;

(3) Child abuse citizen review panels;

(4) Multidisciplinary investigative and treatment teams; or

(5) A grand jury, circuit court, or family court, upon a finding that information in the records is necessary for the determination of an issue before the grand jury, circuit court, or family court; and

(6) The West Virginia Crime Victims Compensation Fund and its designees acting in the course of their official duties.

(d) If there is a child fatality or near fatality due to child abuse and neglect, information relating to a fatality or near fatality shall be made public by the Department of Health and Human Resources and provided to the entities described in subsection (c) of this section, all under the circumstances described in that subsection: *Provided*, That information released by the Department of Health and Human Resources pursuant to this subsection may not include the identity of a person reporting or making a complaint of child abuse or neglect. For purposes of this subsection, “near fatality” means any medical condition of the child which is certified by the attending physician to be life threatening.

(e) Except in juvenile proceedings which are transferred to criminal proceedings, law-enforcement records and files concerning a child or juvenile shall be kept separate from the records and files of adults and not included within the court files. Law-enforcement records and files concerning a child or juvenile shall only be open to inspection pursuant to §49-5-103 of this code.

(f) Any person who willfully violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more

than six months, or both fined and confined. A person convicted of violating this section is also liable for damages in the amount of \$300, or actual damages, whichever is greater.

(g) Notwithstanding the provisions of this section, or any other provision of this code to the contrary, the name and identity of any juvenile adjudicated or convicted of a violent or felonious crime shall be made available to the public;

(h)(1) Notwithstanding the provisions of this section or any other provision of this code to the contrary, the Division of Corrections and Rehabilitation may provide access to, and the confidential use of, a treatment plan, court records, or other records of a juvenile to an agency in another state which:

(A) Performs the same functions in that state that are performed by the Division of Corrections and Rehabilitation in this state;

(B) Has a reciprocal agreement with this state; and

(C) Has legal custody of the juvenile.

(2) A record which is shared under this subsection may only provide information which is relevant to the supervision, care, custody, and treatment of the juvenile.

(3) The Division of Corrections and Rehabilitation may enter into reciprocal agreements with other states and propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this subsection; and

(4) Other than the authorization explicitly given in this subsection, this subsection may not be construed to enlarge or restrict access to juvenile records as provided elsewhere in this code.

(i) The records subject to disclosure pursuant to subsection (b) of this section may not include a recorded/videotaped interview, as defined in §62-6B-2(6) of this code, the disclosure of which is exclusively subject to §62-6B-6 of this code.

(j) Notwithstanding the provisions of subsection (a) of this section, records in the possession of the Division of Corrections and Rehabilitation declared to be confidential by the provisions of subsection (a) of this section may be published and disclosed for use in an employee grievance if the disclosure is done in compliance with subsections (k), (l), and (m) of this section.

(k) Records or information declared confidential by the provisions of this section may not be released for use in a grievance proceeding except:

(1) Upon written motion of a party; and

(2) Upon an order of the Public Employee's Grievance Board entered after an in-camera hearing as to the relevance of the record or information.

(l) If production of confidential records or information is disclosed to a grievant, his or her counsel or representative, pursuant to subsection (k) of this section:

(1) The division shall ensure that written records or information is redacted of all identifying information of any juvenile which is not relevant to the resolution of the grievance;

(2) Relevant video and audio records may be disclosed without redaction; and

(3) Records or other information released to a grievant or his or her counsel or representative pursuant to subsection (k) of this section may only be used for purposes of his or her grievance proceeding and may not be disclosed, published, copied, or distributed for any other purpose, and upon the conclusion of the grievance procedure, returned to the Division of Corrections and Rehabilitation.

(m) If a grievant or the Division of Corrections and Rehabilitation seek judicial review of a decision of the Public Employee's Grievance Board, the relevant confidential records disclosed and used in the grievance proceeding may be used in the appeal proceeding upon entry of an order by the circuit court, the

order shall contain a provision limiting disclosure or publication of the records or information to purposes necessary to the proceeding and prohibiting unauthorized use and reproduction.

(n) Nothing in this section may be construed to abrogate the provisions of §29B-1-1 *et seq.* of this code.

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CHAPTER 79

(Com. Sub. for S. B. 232 - By Senator Trump)

[Passed March 11, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §61-11-18 of the Code of West Virginia, 1931, as amended, relating to punishment for third offense felony; clarifying that release from incarceration includes federal incarceration; requiring that for what would otherwise be a qualifying offense not to be such at least 20 years of unincarcerated, unsupervised time must have elapsed between the most recent felony offense and the previous offense; and relating to punishment for third offense felony.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. Punishment for second or third offense of felony.

(a) For purposes of this section, “qualifying offense” means any offenses or an attempt or conspiracy to commit any of the offenses in the following provisions of this code:

- (1) §60A-4-401(i) and §60A-4-401(ii);
- (2) §60A-4-406;
- (3) §60A-4-409(b)(1), §60A-4-409(2), and §60A-4-409(3);
- (4) §60A-4-411;
- (5) §60A-4-414;

- (6) §60A-4-415;
- (7) §60A-4-416(a);
- (8) §61-2-1;
- (9) §61-2-4;
- (10) §61-2-7;
- (11) §61-2-9(a);
- (12) §61-2-9a(d) and §61-2-9a(e);
- (13) §61-2-9b;
- (14) §61-2-9d;
- (15) §61-2-10;
- (16) §61-2-10b(b) and §61-2-10b(c);
- (17) Felony provisions of §61-2-10b(d);
- (18) §61-2-12;
- (19) Felony provisions of §61-2-13;
- (20) §61-2-14;
- (21) §61-2-14a(a) and §61-2-14a(d);
- (22) §61-2-14c;
- (23) §61-2-14d(a) and §61-2-14d(b);
- (24) §61-2-14f;
- (25) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);
- (26) §61-2-16a(a) and §61-2-16a(b);
- (27) Felony provisions of §61-2-16a(c);

- (28) §61-2-28(d);
- (29) §61-2-29(d) and §61-2-29(e);
- (30) §61-2-29a;
- (31) §61-3-1;
- (32) §61-3-2;
- (33) §61-3-3;
- (34) §61-3-4;
- (35) §61-3-5;
- (36) §61-3-6;
- (37) §61-3-7;
- (38) §61-3-11;
- (39) §61-3-13(a);
- (40) §61-3-27;
- (41) §61-3C-14b;
- (42) §61-3E-5;
- (43) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);
- (44) §61-5-27;
- (45) §61-6-24;
- (46) Felony provisions of §61-7-7;
- (47) §61-7-12;
- (48) §61-7-15;
- (49) §61-7-15a;

- (50) §61-8-12;
- (51) §61-8-19(b);
- (52) §61-8B-3;
- (53) §61-8B-4;
- (54) §61-8B-5;
- (55) §61-8B-7;
- (56) §61-8B-10;
- (57) §61-8C-2;
- (58) §61-8C-3;
- (59) §61-8C-3a;
- (60) §61-8D-2;
- (61) §61-8D-2a;
- (62) §61-8D-3;
- (63) §61-8D-3a;
- (64) §61-8D-4;
- (65) §61-8D-4a;
- (66) §61-8D-5;
- (67) §61-8D-6;
- (68) §61-10-31;
- (69) §61-11-8;
- (70) §61-11-8a;
- (71) §61-14-2; and
- (72) §17C-5-2(b), driving under the influence causing death.

(b) Except as provided by subsection (c) of this section, when any person is convicted of a qualifying offense and is subject to imprisonment in a state correctional facility therefor, and it is determined, as provided in §61-11-19 of this code, that such person had been before convicted in the United States of a crime punishable by imprisonment in state or federal correctional facility, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in such case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under such sentence.

(c) Notwithstanding any provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in §61-11-19 of this code, that such person had been before convicted in this state of first degree murder, second degree murder, or a violation of §61-8B-3 of this code, or has been so convicted under any law of the United States or any other state for an offense which has the same or substantially similar elements as any offense described in this subsection, such person shall be punished by imprisonment in a state correctional facility for life and is not eligible for parole.

(d) When it is determined, as provided in §61-11-19 of this code, that such person shall have been twice before convicted in the United States of a crime punishable by imprisonment in a state or federal correctional facility which has the same or substantially similar elements as a qualifying offense, the person shall be sentenced to imprisonment in a state correctional facility for life: *Provided*, That prior convictions arising from the same transaction or series of transactions shall be considered a single offense for purposes of this section: *Provided, however*, That the most recent previous qualifying offense which would otherwise constitute a qualifying offense for purposes of this subsection may not be considered if more than 20 years have elapsed between: (1) The release of the person from his or her term of imprisonment or period of supervision resulting from the most recent qualifying offense or the expiration of a period of supervised release resulting from such offense; and (2) the conduct underlying the current charge.

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CHAPTER 80

**(Com. Sub. for S. B. 520 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 4, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §61-3C-8 of the Code of West Virginia, 1931, as amended, relating to creating the felony offense of disrupting or degrading, causing the disruption or degradation, or threatening the disruption or degradation of computer services of another with the intent to obtain money or any other thing of value; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-8. Disruption of computer services.

(a) Any person who knowingly, willfully, and without authorization, directly or indirectly, disrupts or degrades, or causes the disruption or degradation of computer services, or denies or causes the denial of computer services to an authorized recipient or user of such computer services, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$200 nor more than \$1,000, or confined in the county jail not more than one year, or both.

(b) Any person who knowingly and willfully:

(1) Disrupts or degrades;

(2) Causes the disruption or degradation; or

(3) Threatens to disrupt or degrade the computer services of an authorized recipient, user or, provider of such services with the intent to obtain money or any other thing of value, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$1,000,000 or imprisoned in a state correctional facility not more than 20 years, or both fined and imprisoned.

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CHAPTER 81

(Com. Sub. for S. B. 575 - By Senators Trump, Woelfel, and Grady)

[Passed March 8, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §61-8B-10 of the Code of West Virginia, 1931, as amended, relating to the felony offense of imposition of sexual acts by any employee or volunteer on persons incarcerated, detained, or under supervision by the Division of Corrections and Rehabilitation, or the West Virginia Supreme Court of Appeals, or by any person acting pursuant to or under the authority of any sheriff, county commission, municipality, or court to ensure compliance with the provisions of §62-11B-1 *et seq.* of this code; clarifying that the felony offense applies to a person working at a juvenile facility or working for a municipal home incarceration alternative sentencing program; providing that the felony offense applies to sexual imposition on persons detained at or committed to a facility; establishing criminal penalties; and clarifying the definition of “incarcerated or detained in this state” to include adult and juvenile offenders sentenced, detained, committed, or serving a period of supervision pursuant to §62-11B-1 *et seq.* of this code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-10. Imposition of sexual acts on persons incarcerated, detained, or under supervision; penalties.

(a) Any person employed by the Division of Corrections and Rehabilitation, any person working at a correctional or juvenile

facility managed by the Commissioner of Corrections and Rehabilitation pursuant to contract or as an employee of a state agency or as a volunteer or any person employed by, or acting pursuant to, the authority of any sheriff, county commission, municipality, or court to ensure compliance with the provisions of §62-11B-1 *et seq.* of this code who engages in sexual intercourse, sexual intrusion, or sexual contact with a person who is incarcerated or detained in this state is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Any person employed by the Division of Corrections and Rehabilitation as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer, who engages in sexual intercourse, sexual intrusion, or sexual contact with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(c) Any person working or volunteering in an alternative sentence program authorized by the provisions of §62-11C-1 *et seq.* of this code who, as part of his or her employment or volunteer duties, supervises program participants, and engages in sexual intercourse, sexual intrusion, or sexual contact with a program participant is guilty of a felony, and upon conviction thereof, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(d) The term “incarcerated or detained in this state” for purposes of this section includes, in addition to its usual meaning, adult offenders serving a sentence or a period of supervision under the provisions of §62-11B-1 *et seq.* of this code, and juvenile offenders detained, committed, or serving a period of supervision under the provisions of §62-11B-1 *et seq.* of this code.

(e) An authorized pat-down, strip search, or other security-related task does not constitute sexual contact pursuant to this section.



CHAPTER 82

**(Com. Sub. for H. B. 4600 - By Delegates Mazzocchi,
Ellington, Kimble, Bridges, Maynor, Kessinger, Toney,
Ferrell, Longanacre, Holstein, and Capito)**

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 25, 2022.]

AN ACT to repeal §61-8D-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §61-8F-1, §61-8F-2, § 61-8F-3, §61-8F-4, §61-8F-5, §61-8F-6, and §61-8F-7, all relating to maltreatment of disabled children by persons in a position of trust to them; defining terms; creating misdemeanor and felony offenses and penalties for certain non-physical and physical acts against disabled children; creating criminal penalty for persons in a position of trust in relation to a disabled child failing to report abuse as a mandatory reporter; creating criminal offenses for obstructing or discriminating against a mandatory reporter of abuse; directing the Secretary of the Department of Health and Human Resources and the West Virginia Department of Education to create a mandatory program for people working with disabled children and to study the viability and implementation of putting in place a system that allows parents and guardians the ability to view their children remotely; directing educational programs specific to crimes against disabled children for prosecutors and law enforcement; establishing dates for compliance; requiring the state department of education to establish a database of persons under active investigation for child abuse required to be reported to by county boards of education; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 8D. CHILD ABUSE.****§61-8D-5a. Verbal abuse of noncommunicative child; penalties.**

[Repealed.]

ARTICLE 8F. SPECIAL PROTECTIONS FOR DISABLED CHILDREN ACT OF 2022.

This article shall be known as Trenton, Andrew, Adri, Owen and Emma's law

§61-8F-1. Findings.

The Legislature finds that disabled persons and particularly disabled children are often more vulnerable and in greater need of protection than the nondisabled. Concomitant with greater vulnerability is the enhanced risk of injury and intimidation, particularly when the child is noncommunicative.

Based upon these facts, the Legislature has determined that it is appropriate that enhanced protections be put in place statutorily to provide a framework of protections to improve disabled children's education and, quality of life as well as ease the concerns of their loved-ones and caregivers.

§61-8F-2. Definitions.

As used in this article:

(1) "Disabled child" means a child with any physical, intellectual, developmental, communication, or psychological disability or impairment. A disability includes , but is not limited to one that:

(A) Limits the child's ability to recognize abuse, unlawful activity, or his or her rights to safety and protection, or that makes the child rely on others to recognize that he or she is being abused;

(B) Limits the child's ability to recognize unlawful sexual abuse or misconduct;

(C) Causes the child to be dependent on others to assist with any activity of daily living or personal care;

(D) Limits the child's ability to formulate or execute a response to abuse, to verbally or physically defend himself or herself, or to physically escape from an abusive environment; or

(E) Limits the child's ability to disclose abuse.

(2) "Noncommunicative child" means a child who, due to physical or developmental disabilities, is unable to functionally articulate verbally, in writing, or through a recognized sign language,

(3) "Person in a position of trust in relation to a disabled child" means any adult who is acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a disabled child or someone with supervisory responsibility for a disabled child's welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of a disabled child,

(4) "Repeatedly" means on two or more occasions,

(5) "Supervisory responsibility" means any situation where an adult has direct supervisory decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities regarding the child. Supervisory responsibility may occur in a residence, in or out of a school setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

§61-8F-3. Maltreatment of a disabled child; penalties.

(a) Any person in a position of trust in relation to a disabled child, who has supervisory responsibility over a disabled child, and who repeatedly engages in conduct, verbal or otherwise toward the child in an insulting, demeaning, or threatening manner, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not

less than \$500, nor more than \$2,500, or confined in jail not more than one year, or both fined and confined.

(b) The conduct prohibited by this section includes, but is not limited to, behavior of any type intended to humiliate, intimidate, shame, degrade, or cause emotional distress.

(c) Each instance of the conduct prohibited by subsection (a) of this section shall constitute a separate and distinct offense whether directed at one disabled child or multiple disabled children.

§61-8F-4. Battery and assault of a disabled child.

(a) Any person in a position of trust to a disabled child, with supervisory responsibility over the child who unlawfully and intentionally makes physical contact of an insulting and provoking nature to the person of the disabled child or unlawfully causes physical harm to the disabled child is guilty of a felony, and upon conviction thereof, shall be fined not more than \$1,000 and imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Any person in a position of trust in relation to a disabled child, with supervisory responsibility over the child who unlawfully attempts to commit a violent injury to the person of the disabled child or unlawfully commits an act that places the disabled child in reasonable apprehension of immediately receiving a violent injury is guilty of a felony and upon conviction thereof shall be fined not more than \$500 or imprisoned not less than one nor more than three years, or both fined and imprisoned.

§61-8F-5. Failure to report; obstruction; retaliation; penalties.

(a) Any person in a position of trust in relation to a disabled child who is subject to the mandatory reporting requirements in §49-2-803 of this code who fails to make a required report regarding a disabled child is guilty of a misdemeanor, and upon conviction shall be confined in jail for not more than one year.

(b) Any person who willfully impedes or obstructs or attempts to impede or obstruct a person in a position of trust in regard to a disabled child from making a report required by §49-2-803 of this code regarding a disabled child is guilty of a felony, and upon conviction thereof be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

(c) Any person who discriminates or retaliates against a person in a position of trust in relation to a disabled child for making a report pursuant to § 49-2-803 of this code regarding a disabled child is guilty of a felony and, upon conviction, shall be fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one year nor more than three years or both fined and imprisoned or both fined and imprisoned.

§61-8F-6. Specific directives to enhance the safety of disabled children.

(a) The West Virginia Department of Education in collaboration with the Secretary of Health and Human Resources shall:

(1) On or before January 1, 2023, develop, produce, and disseminate an eight-hour education program for people employed in or to be employed in the care, housing, and education of disabled children as well as their supervisory personnel and administrators. The program shall include, but not be limited to, the legal duties of persons so employed, the behavioral characteristics associated with different disabling conditions, symptoms of disabling conditions and appropriate interventions necessary to support a child in a particular setting. Successful completion of the program shall be mandatory for state, county, and municipal employees engaged in the care, housing, and education of disabled children as well as their supervisory personnel and administrators on and after July 1, 2023; and

(2) On or before January 1, 2023, investigate the availability and implementation cost of a program for public schools and government operated programs for disabled children which allows parents, guardians, and custodians to remotely view classrooms and other areas where disabled children are taught, housed, or cared

for and provide copies of the findings and proposals to the President of the Senate and the Speaker of the House of Delegates prior to the first day of the 2023 Regular Session of the Legislature.

(3) To the extent practicable the program shall consider and include input from family members and caregiving of disabled children.

(b) On or before January 1, 2023, the West Virginia Prosecuting Attorney's Institute in collaboration with the Law Enforcement Professional Standards subcommittee on the Governor's Committee on Crime Delinquency and Correction shall develop a three-hour mandatory educational program for prosecuting attorneys and law enforcement officers that offers education:

(1) As to the provisions of this article; and

(2) In the investigation and prosecution of crimes against disabled children.

(3) To the extent practicable the program shall consider and include input from family members and caregiving of disabled children.

(c) The State Board of Education shall create a database which identifies school employees who are under active investigation for misconduct towards children into which county boards of education shall report and review when considering employing a person with previous experience in the education system.

§61-8F-7. Effective dates.

(a) This section and the provisions of §61-8F-1, §61-8F-2, and §61-8F-6 of this article shall be effective from passage.

(b) The provisions of §61-8F-3, §61-8F-4, and §61-8F-5 shall be effective July 1, 2022.

CHAPTER 83

(H. B. 4642 - By Delegate Steele)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to pecuniary interest of county employees in contracts where the employee has a voice, influence, or control; making an exception to criminal violation to have a pecuniary interest in a contract where certain criteria are met.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.

(a) It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: *Provided*, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the

employment by any joint county and circuit clerk of his or her spouse.

(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor, or superintendent so convicted shall, upon conviction thereof, be immediately revoked: *Provided*, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500 and the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director, or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or Board of Education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission of this state.

(h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of this code for an exemption from subsection (a) of this section.

(i) The provisions of this section do not apply to publications in newspapers required by law to be made.

(j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f),(g) or (h) of this section.

(k) The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider at government-owned hospitals or other government agencies who provide health care services: *Provided*, That the member of a county commission whose spouse is employed or to be employed may not:

(1) Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;

(2) Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed; or

(3) Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.

(l) The provisions of subsection (a) of this section do not make unlawful the employment of a spouse of any elected county official by that county official: *Provided*, That the elected county official may not:

(1) Directly supervise the spouse employee; or

(2) Set the salary of the spouse employee: *Provided*, That the provisions of this subsection shall only apply to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.

(m) The provisions of subsection (a) of this section do not prohibit reimbursement of a member of a development authority established under §7-12-1 *et seq.* of this code for:

(1) His or her necessary expenditures in connection with the performance of his or her general duties as such member, as permitted by §7-12-5(a) of this code; or

(2) His or her reasonable and necessary expenses, including but not limited to compensation, in connection with his or her performance of other duties as assigned by the authority in connection with the June 2016 flooding event in West Virginia, if such duties and such reimbursement is first approved by a vote of the authority, with the member to be reimbursed being recused from voting upon the question, as permitted by §7-12-5(a) of this code.

(n) It is not a violation of subsection (a) of this section for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal, or teacher of public schools or any member of any other county or district board or any county or district officer to have a pecuniary interest in a contract where he or she may have any voice, influence, or control in the award or letting of the contract if:

(1) It is not a contract for services;

(2) The contract has been put out for competitive bid, and the contract is awarded based on lowest cost;

(3) If the party to the contract is in a voting or other decision-making position as to the contract, he or she recuses himself or herself from voting or decision-making; and

(4) The party to the contract has previously obtained a written advisory opinion from the West Virginia Ethics Commission permitting the employee to have a pecuniary interest in the contract.

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CHAPTER 84

**(Com. Sub. for S. B. 437 - By Senators Trump, Lindsay,
Stollings, Clements, and Romano)**

[Passed February 7, 2022; in effect from passage.]
[Approved by the Governor on February 16, 2022.]

AN ACT to amend and reenact §62-12-18 of the Code of West Virginia, 1931, as amended, relating to granting early discharge to parolees after a minimum of one-year on parole; authorizing the Commissioner of the Division of Corrections and Rehabilitation or his or her designee to request early discharge of a parolee; and providing that the chairperson of the parole board grant early discharge from parole for a parolee upon review of the request for early discharge rather than the decision being made by a panel of the parole board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-18. Period of parole; discharge.

The period of parole shall be the maximum of any sentence, less deductions for good conduct and work as provided by law, for which the paroled inmate, at the time of release, was subject to imprisonment under his or her definite or indeterminate sentence, as the case may be: *Provided*, That at any time after a parolee has been on parole for a minimum of one-year from the date of his or her release, the Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, may submit a request to the chairperson of the parole board for a parolee's early discharge from parole along with appropriate documentation as to the parolee's good conduct while on parole. The chairperson may, after a review of the request and submission from the commissioner, or his or her

designee, when in his or her judgment, the ends of parole have been attained and the best interests of the state and the parolee will be served by the early discharge, release the parolee from further supervision and discharge him or her from parole: *Provided, however,* That an inmate sentenced to serve a life term of imprisonment and released on parole may not be discharged from supervision and parole in a period less than five years from the date of his or her release on parole.

A parolee who has violated the terms of his or her release on parole by confession to, or being convicted of, in any state of the United States, the District of Columbia, or the territorial possessions of the United States, the crime of treason, murder, aggravated robbery, first degree sexual assault, second degree sexual assault, a sexual offense against a minor, incest, or offenses with the same essential elements if known by other terms in other jurisdictions may not be discharged from parole. A parolee serving a sentence in any correctional facility of another state or the United States may, unless incarcerated for one of the above enumerated crimes, be discharged from parole while serving his or her sentence in a correctional facility or be continued on parole or returned to West Virginia as a parole violator, in the discretion of the parole board.

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CHAPTER 85

(Com. Sub. for S. B. 449 - By Senators Trump and Woelfel)

[Passed February 7, 2022; in effect from passage.]
[Approved by the Governor on February 16, 2022.]

AN ACT to amend and reenact §62-12-13c of the Code of West Virginia, 1931, as amended, relating to clarifying that the Nonviolent Offense Parole Program is not available to offenders who are serving a sentence aggregated either consecutively or concurrently with an offense that is a crime of violence against a person or animal, as well as a felony controlled substance offense, a felony firearm offense, nor a felony where the victim was a minor child; and making the provisions of this section unavailable to those previously released under the terms of this section from the same sentence.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13c. Authority of commissioner to establish a nonviolent offense parole program.

(a) The commissioner may establish a nonviolent offense parole program for any inmate of a state correctional facility in which an inmate may be paroled without action of the Parole Board based upon objective standards as set forth in this section, to commence on July 1, 2021.

(b) Notwithstanding any provision of this code to the contrary, any inmate of a state correctional facility is eligible for parole under the nonviolent offense parole program if:

(1) He or she has served at least the minimum term of his or her sentence and is eligible for parole as determined by the parole board; and

(2) He or she qualifies for the nonviolent offense parole program as authorized by this section.

(c) To qualify for the nonviolent offense parole program, the commissioner must determine that the inmate:

(1) Is not serving a sentence for a crime of violence against the person, crime of violence against an animal, or felony for a controlled substance offense which involves actual or threatened violence to a person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child: *Provided*, That an inmate is ineligible to participate in the nonviolent offense parole program if the sentence from which parole is being considered is aggregated, concurrently or consecutively, with an offense determined disqualifying under this subdivision.

(2) Has successfully completed an individualized rehabilitation treatment program as determined by the division;

(3) Has not previously been released on parole pursuant to this section from the same sentence; and

(4) Has otherwise satisfied the requirements for parole eligibility set forth in §62-12-13 of this code.

(d) Any person released under the nonviolent offense parole program is subject to all conditions of release and sanctions for violations applicable to persons released on parole by the Parole Board, and all parole revocations of persons granted parole pursuant to this section shall be heard in accordance with the provisions of §62-12-19 of this code.

(e) The nonviolent offense parole program authorized by subsection (a) of this section requires no action by the Parole Board as to the release decision if the inmate qualifies for the program

and has successfully completed his or her rehabilitation treatment program as determined by the commissioner.

(f) The commissioner shall develop a policy directive setting forth the processes and procedures to determine successful completion of the rehabilitation treatment program and to provide notice to the inmate. If the inmate fails to successfully complete his or her rehabilitation treatment program, his or her parole shall be determined in accordance with the provisions of §62-12-13 of this code. An inmate who has been denied parole pursuant to the provisions of §62-12-13 of this code and who thereafter successfully completes his or her rehabilitation treatment program prior to his or her next parole review is eligible for release under the nonviolent offense parole program within a reasonable time after he or she has successfully completed the program as determined by the commissioner, provided the inmate remains qualified for release under the nonviolent offense parole program.

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CHAPTER 86

(Com. Sub. for S. B. 616 - By Senator Weld)

[Passed March 9, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8B-19, relating to the confidentiality of certain court files and law-enforcement records regarding victim identity in enumerated offenses; providing mechanisms for release of otherwise confidential information; permitting the examination or copying of certain files by court order; and obtaining certain files by the issuance of a subpoena duces tecum.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-19. Court files and law-enforcement records; confidentiality.

(a) *Records confidential.*— All records and information maintained by the courts of this state or any law enforcement agency of this state or any of its political subdivisions, which contain identifying information of a victim in an arrest, investigation, or complaint for the offenses enumerated in §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-14-1 *et seq.* of this code, or for the offenses included in §61-8D-3a, §61-8D-5, and §61-8DB-6 of this code, shall be kept confidential and withheld from inspection, except: (1) When required by law; (2) when necessary for law-enforcement purposes or preparation for court proceedings; or (3) pursuant to an order of a court issued in accordance with subsection (c) of this section.

(b) *Orders permitting examination or copying of file contents.*— Upon written motion filed in the circuit court of the county where the criminal action is pending or has been prosecuted, a circuit court, for good cause shown, may enter an order allowing a person who is precluded access to a court file or law-enforcement record pursuant to subsection (a) of this section the authority to examine and copy documents in a file. The order shall set forth specific findings which demonstrate why the interests of justice necessitate the examination, specify the particular documents to be examined or copied, or both examined and copied and the circumstances under which such action or actions shall take place.

(c) *Obtaining confidential records.*— Absent a waiver of confidentiality by the subject of the confidential records, the records are only subject to subpoena pursuant to subsection (d) of this section.

(d) *Subpoena Duces Tecum.*— Any court file or law-enforcement record in the offenses included in subsection (a) of this section may be supplied to any person presenting a valid subpoena duces tecum issued by a state or federal court in any criminal action. Any file or record obtained under this subsection shall be used only in the context of the case in which the subpoena was issued and not for any other purpose.

(e) *Victim request.*— Upon a written request of a victim, decisions of the West Virginia Intermediate Court of Appeals and the West Virginia Supreme Court of Appeals issued on or after July 1, 2022, involving the offenses enumerated in subsection (a) of this section shall not contain the first and last names of the victim.

(f) *Supreme Court authorization.*— The Supreme Court of Appeals is requested to promulgate rules prior to July 1, 2022, to the extent necessary to comply with the provisions of this article that become effective on that date.

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CHAPTER 87

**(S. B. 726 - By Senators Azinger, Caputo, Grady, Karnes,
Lindsay, Maynard, Phillips, Romano, Rucker, Smith, Stover,
Takubo, Weld, Woelfel, and Trump)**

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §61-11-22 and §61-11-22a of the Code of West Virginia, 1931, as amended, all relating generally to pretrial diversion agreements and deferred prosecution agreements; listing offenses for which pretrial diversion prohibited; listing offenses where defendant is authorized under certain circumstances and with certain limitations; and setting out procedures for deferred prosecutions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-22. Pretrial diversion agreements; conditions; drug court programs.

(a) A prosecuting attorney of any county of this state or a person acting as a special prosecutor may enter into a pretrial diversion agreement with a person charged with an offense against the State of West Virginia, when he or she considers it to be in the interests of justice. The agreement is to be in writing and is to be executed in the presence of the person's attorney, unless the person has executed a waiver of counsel.

(b) Any agreement entered into pursuant to the provisions of subsection (a) of this section may not exceed 24 months in

duration. The duration of the agreement must be specified in the agreement. The terms of any agreement entered into pursuant to the provisions of this section may include conditions similar to those set forth in §62-12-9 of this code relating to conditions of probation. The agreement may require supervision by a probation officer of the circuit court, with the consent of the court. An agreement entered into pursuant to this section must include a provision that the applicable statute of limitations be tolled for the period of the agreement.

(c) A person who has entered into an agreement for pretrial diversion with a prosecuting attorney and who has successfully complied with the terms of the agreement is not subject to prosecution for the offense or offenses described in the agreement or for the underlying conduct or transaction constituting the offense or offenses described in the agreement, unless the agreement includes a provision that upon compliance the person agrees to plead guilty or nolo contendere to a specific related offense, with or without a specific sentencing recommendation by the prosecuting attorney.

(d) No person charged with a violation of the provisions of §17C-5-2 of this code may participate in a pretrial diversion program: *Provided*, That a court may defer proceedings in accordance with §17C-5-2b of this code.

(e) No person is eligible for pretrial diversion programs if charged with:

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in §48-27-203 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of § 61-2-28 of this code; or

(6) A violation of §61-2-9 of this code where the alleged victim is a family or household member as defined in §48-27-203 of this code.

§61-11-22a. Deferred adjudication.

(a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate court of this state entered in compliance with the provisions of Rule 11 of the West Virginia Rules of Criminal Procedure or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the guilty plea and defer further adjudication thereon and release the defendant upon such terms and conditions as the court deems just and necessary. Terms and conditions may include, but are not limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in programs offered under §62-11A-1 *et seq.*, §62-11B-1 *et seq.*, and §62-11C-1 *et seq.* of this code.

(b) If the offense to which the plea of guilty is entered is a felony, the circuit court may defer adjudication for a period not to exceed three years. If the offense to which the plea of guilty is entered is a misdemeanor, the court may defer adjudication for a period not to exceed two years.

(c) Unless otherwise specified by this section, a person is ineligible for a deferred adjudication program if he or she is charged with;

(1) A felony crime of violence against the person where the alleged victim is a family or household member as defined in §48-27-203 of this code;

(2) A violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code;

(3) A violation of §61-2-9a(a) of this code;

(4) A violation of §61-2-9d of this code;

(5) A violation of §61-2-28 prosecuted under the provisions of subsections (c) or (d) of that section; or

(6) A violation of §61-2-9(a) of this code, or a violation of §61-2-9(b) or §61-2-9(c) of this code prosecuted under the provisions of subsection (d) of that section, where the alleged victim is a family or household member as defined in §48-27-203 of this code.

(7) A violation of §61-2-9(b) or §61-2-9(c) of this code or §61-2-28(a) or §61-2-28(b) of this code where a weapon was used in the commission of the crime, the defendant has a prior conviction of any of the offenses listed in subsection (c) of this section, the defendant has a prior felony conviction, or the defendant has previously entered into a prior pretrial diversion or deferred adjudication of crimes where the alleged victim is a family or household member as defined in §48-27-203 of this code.

(d) A person charged under §61-2-9a, §61-2-9d, or §61-2-9(a) of this code who has not previously been convicted of any of the offenses set forth in subsection (c) of this section, who has no prior felony conviction, and who has not previously entered into a prior pretrial diversion or deferred adjudication of crimes where the alleged victim is a family or household member as defined in §48-27-203 of this code, is eligible to participate in a deferred adjudication program: *Provided*, That the person is not eligible for dismissal upon successful completion of the deferred period.

(e)(1) A person charged with a first offense violation of §61-2-28(a) or §61-2-28(b) of this code or a violation of §61-2-9(b) or §61-2-9(c) of this code where the alleged victim is a family or household member as defined in §48-27-203 is eligible for deferred adjudication if agreed to by the state and the defendant: *Provided*, That, for purposes of this section, “first offense violation” means the person would not, due to any prior charges or convictions, be subject to the enhancement provisions set forth in §61-2-9(d) or §61-2-28(c) or §61-2-28(d);

(2) In addition to terms and conditions authorized in subsection (a) of this section, a person participating in a deferred adjudication program pursuant to this subsection may be required to participate in compliance hearings and batterer intervention programs licensed under §48-26-402 of this code;

(3) Notwithstanding the provisions of subsection (b) of this section, a deferral under this subsection shall be for a period of not less than 18 months nor more than three years; and

(4) A person may not participate in more than one deferred adjudication pursuant to this subsection.

(f) If the defendant complies with the court-imposed terms and conditions he or she shall be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

(g) In the event the defendant is alleged to have violated the terms and conditions imposed upon him or her by the court during the period of deferral the prosecuting attorney may file a motion to accept the defendant's plea of guilty and, following notice, a hearing shall be held on the matter.

(h) In the event the court determines that there is reasonable cause to believe that the defendant violated the terms and conditions imposed at the time the plea was entered, the court may accept the defendant's plea to the original offense and impose a sentence in the court's discretion in accordance with the statutory penalty of the offense to which the plea of guilty was entered or impose such other terms and conditions as the court deems appropriate.

(i) The procedures set forth in this section are separate and distinct from that set forth in Rule 11(a)(2) of the West Virginia Rules of Criminal Procedure.



CHAPTER 88

(Com. Sub. for S. B. 463 - By Senators Smith, Rucker, Grady, Sypolt, Maynard, Azinger, Phillips, Takubo, Woodrum, Tarr, and Roberts)

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §48-9-102 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §48-9-102a; and to amend and reenact §48-9-203, §48-9-204, §48-9-205, §48-9-206, §48-9-207, §48-9-208, §48-9-209, §48-9-401, §48-9-402, §48-9-602, and §48-9-603 of said code, all relating generally to domestic relations matters; modifying allocation of legal custody and parenting time in domestic relations matters; establishing collaborative parenting as a goal in allocation of custodial responsibility and decisionmaking; creating a rebuttable presumption that equal custodial allocation is in a child's best interest; requiring specific findings and legal conclusions by the court if equal parenting is not granted; establishing criteria for diverging from equal custodial allocation when it is sought; authorizing interlocutory appeals to the Intermediate Court of Appeals if the family court refuses all physical custody to a parent or denies equal custody when sought; precluding the family court from entering a stay during an interlocutory appeal; requiring consideration of certain factors in developing a temporary parenting plan; ensuring that permanent parenting plans include provisions for financial support of children; requiring court not to consider temporary allocation of physical custody in final order unless parties agreed on temporary terms; removing provisions requiring consideration of terms in temporary orders when drafting final orders; requiring consideration of parents' ability or inability

to work together in allocating significant decision-making responsibilities; clarifying considerations for courts in developing or approving parenting plans; setting forth optional considerations for a court in allocating physical custody of a child; authorizing family court to designate which parent is entitled to tax deductions and exemptions equitably on a year to year basis when equal custody is ordered; clarifying that amendments made during regular session of the Legislature, 2022, are prospective; and declaring custodial orders entered prior to the effective date of the amendments to chapter 48 during the regular session of the Legislature, 2022, remain in full force and effect until judicially modified.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-102. Objectives; best interests of the child.

(a) The primary objective of this article is to serve the child's best interests by facilitating:

(1) Stability of the child;

(2) Collaborative parental planning and agreement about the child's custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;

(4) Meaningful contact between a child and each parent, and which is rebuttably presumed to be equal (50-50) custodial allocation of the child;

(5) Caretaking and parenting relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

(6) Security from exposure to physical or emotional harm;

(7) Expeditious, predictable decisionmaking and avoidance of prolonged uncertainty respecting arrangements for the child's care and control; and

(8) Meaningful contact between a child and his or her siblings, including half-siblings.

(b) A secondary objective of this article is to achieve fairness between the parents consistent with the rebuttable presumption of equal (50-50) custodial allocation.

§48-9-102a Presumption in favor of equal (50-50) custodial allocation.

There shall be a presumption, rebuttable by a preponderance of the evidence, that equal (50-50) custodial allocation is in the best interest of the child. If the presumption is rebutted, the court shall, absent an agreement between the parents as to all matters related to custodial allocation, construct a parenting time schedule which maximizes the time each parent has with the child and is consistent with ensuring the child's welfare.

§48-9-203. Proposed temporary parenting plan; temporary order; amendment.

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:

(1) The name, address, and length of residence with the person or persons with whom the child has lived for the preceding 12 months;

(2) The performance by each parent during the last 12 months of the parenting functions relating to the daily needs of the child;

(3) The parents' current work and child-care schedules; and

(4) Any of the criteria set forth in §48-9-209 of this code that are likely to pose a serious risk to the child or that otherwise warrant limitation on the award to a parent of temporary residence or time with the child pending entry of a permanent parenting plan.

(b) At the hearing, the court shall enter a temporary parenting order incorporating a temporary parenting plan which includes:

(1) A schedule for the child's time with each parent when appropriate;

(2) Designation of a temporary residence or residences for the child;

(3) Allocation of decision-making authority, if any. Absent allocation of decision-making authority consistent with §48-9-207 of this code, neither party shall make any decision for the child other than those relating to day-to-day or emergency care of the child, which shall be made by the party who is present with the child;

(4) Provisions for temporary support for the child; and

(5) Restraining orders, if applicable.

(c) If the parents have not agreed upon the allocation of physical custody of the child, then the allocation shall be made by the court upon the evidence presented at the hearing unless the parties have agreed to proceed by proffer.

(d) Upon request of either parent for an equal (50-50) allocation of physical custody, the presumption provided in §48-9-102a of this code applies.

(e) If the temporary allocation of physical custody is not on an equal (50-50) basis, it must contain specific findings of fact by the court, based upon evidence presented at a hearing, as to the reasons

under §48-9-209 of this code that the court ordered the custodial allocation, along with the court's legal conclusions supporting its decision.

(f) A parent who has sought and been denied equal (50-50) physical custody, or who has been denied any physical custody, may file an interlocutory appeal with the West Virginia Intermediate Court of Appeals as to the temporary custodial allocation of the child or children, and the Intermediate Court of Appeals shall provide an expedited review of the order: *Provided*, That no stay shall be granted pending resolution of the appeal, and the filing of an interlocutory appeal shall not be the basis of a continuance of any subsequent or final hearing.

(g) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of and considerations required by §48-9-209 of this code and is in the best interest of the child. The court's order modifying the plan shall be in writing and contain specific findings of fact upon which the court bases its determinations.

§48-9-204. Criteria for temporary parenting plan.

(a) After considering the proposed temporary parenting plan filed pursuant to §48-9-203 of this code and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child, which shall be in writing and contain specific findings of fact upon which the court bases its determinations. In making this determination, the court shall give particular consideration to:

(1) Which parent has taken greater responsibility during the last 12 months for performing parenting functions relating to the daily needs of the child; and

(2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

(b) The court shall also consider the factors used to determine residential provisions in the permanent parenting plan.

(c) Upon credible evidence of one or more of the circumstances set forth in §48-9-209(a) of this code, the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts. The temporary order shall be in writing and include specific findings of fact supporting the court's determination.

(d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting plan.

(e) In establishing a temporary parenting plan, there shall be a presumption in favor of equal (50-50) physical custody which is rebuttable by a preponderance of the evidence, to be evaluated and considered in accordance with the criteria set forth in §48-9-209 of this code.

§48-9-205. Permanent parenting plan.

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably discoverable by the filing party or parties:

(1) The name, address, and length of residence of any adults with whom the child has lived for one year or more, or in the case of a child less than one year of age, any adults with whom the child has lived since the child's birth;

(2) The name and address of each of the child's parents and any other individuals with standing to participate in the action under §48-9-103 of this code;

(3) A description of the allocation of caretaking and other parenting responsibilities performed by each person named in §48-9-205(a)(1) and §48-9-205(a)(2) of this code;

(4) A description of the work and child-care schedules of any person seeking an allocation of custodial responsibility and any expected changes to these schedules in the near future;

(5) A description of the child's school and extracurricular activities;

(6) A description of any of the criteria described in §48-9-209 of this code that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

(8) A description of the known areas of agreement and disagreement with any other parenting plan submitted in the case.

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse, and disclosure of the information would increase that fear.

(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect as defined in §49-1-201 of this code or domestic violence as defined in §48-27-202 of this code has occurred. The process shall include assistance for possible victims of domestic abuse in complying with §48-9-205(a)(6) of this code and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-202(b) of this code.

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of §48-9-206 through §48-9-209 of this code, containing:

(1) A provision for the child's living arrangements and each parent's custodial responsibility, which shall include either:

(A) A custodial schedule that designates in which parent's home each minor child will reside on given days of the year; or

(B) A formula or method for determining a schedule in sufficient detail that, if necessary, the schedule can be enforced in subsequent proceedings by the court;

(2) An allocation of decision-making responsibility as to significant matters reasonably likely to arise with respect to the child;

(3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise under the plan and remedies for violations of the plan;

(4) Provisions for the financial support of the child or children; and

(5) A plan for the custody of the child if one or both of the parents as a member of the National Guard, a reserve component, or an active duty component are mobilized, deployed, or called to active duty.

(d) A parenting plan may, at the court's discretion, contain provisions that address matters that are expected to arise in the event of a party's relocation, or provide for future modifications in the parenting plan if specified contingencies occur.

§48-9-206. Allocation of custodial responsibility at final hearing.

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so that, except to the extent required under §48-9-209 of this code, the custodial time the child spends with each parent shall be equal (50-50).

(b) The court shall apply the principles set forth in §48-9-403 of this code if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section.

(c) The court may consider the allocation of custodial responsibility arising from temporary agreements made by the parties after separation if the court finds, by a preponderance of the evidence, that such agreements were consensual. The court shall afford those temporary consensual agreements the weight the court believes the agreements are entitled to receive, based upon the evidence. The court may not consider the temporary allocation of custodial responsibility imposed by a court order on the parties unless both parties agreed to the allocation provided for in the temporary order.

(d) In the absence of an agreement of the parents, the court's determination of allocation of custodial responsibility under this section shall be made pursuant to a final hearing, which shall be conducted by the presentation of evidence. The court's order determining allocation of custodial responsibility shall be in writing, and include specific findings of fact and conclusions of law supporting the determination.

§48-9-207. Allocation of significant decision-making responsibility at temporary or final hearing.

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to both parents jointly, in accordance with the child's best interest, in light of the ability or inability of the parents, based upon the evidence before the court, to work collaboratively and in cooperation with each other in decisionmaking on behalf of the child, and the existence of any criteria as set forth in §48-9-209 of this code.

(1) The level of each parent's participation in past decision making on behalf of the child;

(2) The wishes of the parents; and

(3) The level of ability and cooperation the parents have demonstrated in decisionmaking on behalf of the child.

(b) If each of the child's parents has been exercising a reasonable share of the parenting functions for the child, there shall be a rebuttable presumption that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption may be rebutted by a showing that joint allocation of decision-making responsibility is not in the child's best interest upon proof by a preponderance of the evidence of relevant factors under §48-9-209 of this code. The court's determination shall be in writing and include specific findings of fact supporting any determination that joint allocation of decision-making responsibility is not in the child's best interest.

(c) Unless otherwise agreed to by the parents or ordered by the court, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent's care and control, including emergency decisions affecting the health and safety of the child.

§48-9-208. Parental dispute resolution.

(a) If provisions for resolving parental disputes are not ordered by the court pursuant to a parenting agreement in §48-9-201 of this code, the court shall order a method of resolving disputes that serves the child's best interest in light of:

(1) The parents' wishes and the stability of the child;

(2) Circumstances, including, but not limited to, financial circumstances, that may affect the parents' ability to participate in a prescribed dispute resolution process; and

(3) The existence of any factor set forth in §48-9-209 of this code.

(b) The court may order a non-judicial process of dispute resolution by designating with particularity the person or agency to conduct the process or the method for selecting a person or agency. The disposition of a dispute through a non-judicial method of dispute resolution that has been ordered by the court without prior parental agreement is subject to de novo judicial review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their dispute by non-judicial means, a decision by such means is binding upon the parents and must be enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the scope of the parents' agreement, or the result of fraud, misconduct, corruption, or other serious irregularity.

(c) This section is subject to the limitations imposed by §48-9-202 of this code.

§48-9-209. Parenting plan; considerations.

When entering an order approving or implementing a temporary or permanent parenting plan order, including custodial allocation, the court shall consider whether a parent:

(1) Has abused, neglected, or abandoned a child, as defined by state law;

(2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

(3) Has committed domestic violence, as defined in §48-27-202 of this code;

(4) Has overtly or covertly, persistently violated, interfered with, impaired, or impeded the rights of a parent or a child with respect to the exercise of shared authority, residence, visitation, or other contact with the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering

parent or another family member, pending adjudication of the facts underlying that belief; or

(5) Has made one or more fraudulent reports of domestic violence or child abuse: *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child support shall not alone be sufficient to consider that report fraudulent.

(b) If a parent or another person regularly in the household of the parent is found to have engaged in any activity specified by subsection (a) of this section, the court shall impose limits that are reasonably calculated to protect the child or child's parent from harm. The limitations that the court shall consider include, but are not limited to:

(1) An adjustment of the custodial responsibility of the parents, including but not limited to:

(A) Increased parenting time with the child to make up for any parenting time the other parent lost as a result of the proscribed activity;

(B) An additional allocation of parenting time in order to repair any adverse effect upon the relationship between the child and the other parent resulting from the proscribed activity; or

(C) The allocation of exclusive custodial responsibility to one of the parents;

(2) Supervision of the custodial time between a parent and the child;

(3) Exchange of the child between parents through an intermediary, or in a protected setting;

(4) Restraints on the parent from communication with, or proximity to, the other parent or the child;

(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising

custodial responsibility and in the 24-hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

(7) Restrictions on the presence of specific persons while the parent is with the child;

(8) A requirement that the parent post a bond to secure return of the child following a period in which the parent is exercising custodial responsibility or to secure other performance required by the court;

(9) A requirement that the parent complete a program of intervention for perpetrators of domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

(10) Any other constraints or conditions that the court determines to be necessary to provide for the safety of the child, a child's parent, or any person whose safety immediately affects the child's welfare.

(c) If a parent or a person regularly in the home of the parent is found to have engaged in any activity specified in subsection (a) of this section, the court may not allocate custodial responsibility or decision-making responsibility to that parent without making special written findings that the child and other parent can be adequately protected from harm by such limits as it may impose under subsection (b) of this section. The parent found to have engaged in the behavior specified in subsection (a) of this section has the burden of proving that an allocation of custodial responsibility or decision-making responsibility to that parent will not endanger the child or the other parent.

(d) If the court determines, based on the investigation described in part III of this article or other evidence presented to it, that an accusation of child abuse or neglect, or domestic violence made during a child custody proceeding is false and the parent making the accusation knew it to be false at the time the accusation was made, the court may order reimbursement to be paid by the person making the accusations of costs resulting from defending against

the accusations. The reimbursement may not exceed the actual reasonable costs incurred by the accused party as a result of defending against the accusation and reasonable attorney's fees incurred.

(e) (1) A parent who believes he or she is the subject of activities by the other parent described in subdivision (5), subsection (a) of this section may move the court pursuant to §49-5-101(b)(4) of this code for the Department of Health and Human Resources to disclose whether the other parent was the source of the allegation and, if so, whether the department found the report to be:

- (A) Substantiated;
- (B) Unsubstantiated;
- (C) Inconclusive; or
- (D) Still under investigation.

(2) If the court grants a motion pursuant to this subsection, disclosure by the Department of Health and Human Resources shall be *in camera*. The court may disclose to the parties information received from the department only if it has reason to believe a parent knowingly made a false report.

(f) In determining whether the presumption for an equal (50-50) allocation of physical custody has been rebutted, a court shall consider all relevant factors including any of the following:

- (1) The factors set forth in subsection (a) of this section;
- (2) Whether the child:

(A) Was conceived as a result of sexual assault or sexual abuse by a parent as set forth in §48-9-209a of this code;

(B) Has special needs, a chronic illness, or other serious medical condition and would receive more appropriate care under another custodial allocation;

(C) Is a nursing child less than six months of age, or less than one year of age if the child receives substantial nutrition through nursing: *Provided*, That the child reaching one year of age shall qualify as a substantial change in circumstances per §48-9-401 of this code; or

(D) Will be separated from his or her siblings or the arrangement would otherwise disrupt the child's opportunities to bond with his or her siblings;

(3) Whether a parent:

(A) Is willfully noncompliant with a previous order of the court regarding payment of child support payments for a child or children of the parties;

(B) Is unwilling to seek necessary medical intervention for the child who has a serious medical condition;

(C) Has a chronic illness or other condition that renders him or her unable to provide proper care for the child;

(D) Has intentionally avoided or refused involvement or not been significantly involved in the child's life prior to the hearing, except when the lack of involvement is the result of actions on the part of the other parent which were, without good cause, designed to deprive the parent of contact and involvement with his or her child or children without good cause;

(E) Repeatedly causes the child or children to be in the care of a third party rather than the other parent when he or she is available;

(F) Does not have a stable housing situation: *Provided*, That a parent's temporary residence with a child in a domestic violence shelter shall not constitute an unsafe housing situation; or

(G) Is unwilling or unable to perform caretaking functions for the child as required by §48-1-210 of this code;

(4) Whether a parent, partner, or other person living, or regularly in that parent's household:

(A) Has been adjudicated in an abuse and neglect proceeding to have abused or neglected a child, or has a pending abuse and neglect case;

(B) Has been judicially determined to have committed domestic violence or has a pending domestic violence case;

(C) Has a felony criminal record;

(D) Is addicted to a controlled substance or alcohol;

(E) Has threatened or has actually detained the child with the intent to retain or conceal the child from the other parent or from a third person who has legal custody: *Provided*, That a parent's temporary residence with the child in a domestic violence shelter shall not be construed as evidence of the parent's intent to retain or conceal the child from the other parent; or

(F) Has been involuntarily committed to a mental health facility, or suffers from a serious mental illness;

(5) Whether an equal (50-50) physical allocation is:

(A) Impractical because of the physical distance between the parents' residences;

(B) Impractical due to the cost and difficulty of transporting the child;

(C) Impractical due to each parent's and the child's daily schedules;

(D) Would disrupt the education of the child; or

(E) Contrary to the firm and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;

(6) Whether the parents cannot work cooperatively and collaboratively in the best interest of the child; or

(7) Whether a parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities.

§48-9-401. Modification upon showing of changed circumstances or harm.

(a) Except as provided in §48-9-402 or §48-9-403 of this code, a court shall modify a parenting plan order if it finds, on the basis of facts that were not known or have arisen since the entry of the prior order and were not anticipated in the prior order, that a substantial change has occurred in the circumstances of the child or of one or both parents and a modification is necessary to serve the best interests of the child.

(b) In exceptional circumstances, a court may modify a parenting plan if it finds that the plan is not working as contemplated and in some specific way is manifestly harmful to the child, even if a substantial change of circumstances has not occurred.

(c) Unless the parents have agreed otherwise, the following circumstances do not justify a significant modification of a parenting plan except where harm to the child is shown:

(1) Circumstances resulting in an involuntary loss of income, by loss of employment or otherwise, affecting the parent's economic status;

(2) A parent's remarriage or cohabitation, except under the circumstances set forth in §48-9-209(f) of this code; and

(3) Choice of reasonable caretaking arrangements for the child by a legal parent, including the child's placement in day care.

(d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting factor, as defined in §48-9-209(a) of this code, after a parenting plan has been ordered by the court constitutes a substantial change of circumstances and

measures shall be ordered pursuant to §48-9-209 of this code to protect the child or the child's parent.

§48-9-402. Modification without showing of changed circumstances.

(a) The court shall modify a parenting plan in accordance with a parenting agreement, unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the child.

(b) The court may modify any provisions of the parenting plan without the showing of the changed circumstances required by §48-9-401(a) of this code if the modification is in the child's best interests, and the modification:

(1) Reflects the de facto arrangements under which the child has been receiving care from the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding six months before the petition for modification is filed, provided the arrangement is not the result of a parent's acquiescence resulting from the other parent's domestic abuse;

(2) Constitutes a minor modification in the plan;

(3) Is necessary to accommodate the reasonable and firm preferences of a child who, has attained the age of 14; or

(4) Is necessary to accommodate the reasonable and firm preferences of a child who is under the age of 14 and, in the discretion of the court, is sufficiently matured that he or she can intelligently express a voluntary preference;

(c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse is admissible in a domestic relations action between the involved parties when the allocation of custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered by the court in making the allocation of custodial responsibilities.

§48-9-602. Designation of custody for the purpose of other state and federal statutes.

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside the majority of the time as the custodian of the child. However, this designation shall not affect either parent's rights and responsibilities under a parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time is considered to be the custodian of the child for the purposes of such federal and state statutes. When a court orders that custodial allocation shall be on an equal (50-50) basis, the court shall also specify in its order which parent may claim state and federal income tax deductions and exemptions for the child or children: *Provided*, That such claims to state and federal income tax deductions and exemptions for the child or children may be divided equitably between the parents, year to year.

§48-9-603. Effect of enactment; operative dates.

(a) The amendments to this chapter enacted during the 2022 regular session of the Legislature shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction.

(b) The amendments to this chapter enacted during the 2022 regular legislative session do not constitute a change in circumstances or other basis for modification under §48-9-401 or §48-9-402 of this code.

(c) The amendments to this chapter enacted during the 2022 regular legislative session shall become applicable upon the effective date of those amendments. Any order entered prior to the effective date of those amendments remains in full force and effect until modified by a court of competent jurisdiction.

(d) The amendments to this chapter enacted during the 2022 regular legislative session shall be known as the 2022 Best Interest of the Child Act.

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CHAPTER 89

**(Com. Sub. for S. B. 584 - By Senators Jeffries, Lindsay,
Baldwin, Stollings, Grady, and Hamilton)**

[Passed March 11, 2022; in effect from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §31-15A-10 and §31-15A-17c of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Infrastructure and Jobs Development Council; modifying when available funds may be converted to grants; removing congressional district limitations; increasing the cap on annual spending for assistance with the pre-application process to project sponsors; increasing the amount that may be transferred annually to the critical needs and failing systems sub account; and increasing the cap relating to providing extensions to a water or wastewater facility from \$1 million to \$2 million provided overages not to exceed 10 percent of the total project cost are paid by certain persons.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-10. Recommendations by council for expenditures of funds by loan, grant, or for engineering assistance.

(a) To further accomplish the purpose and intent of this article, the Water Development Authority shall use the moneys in the Infrastructure Fund created pursuant to §31-15A-9 of this code, upon receipt of one or more recommendations from the council pursuant to §31-15A-5 of this code, to make loans, with or without interest, loan guarantees, or grants, and to provide other assistance,

financial, technical, or otherwise, to finance all or part of the costs of infrastructure projects or projects to be undertaken by a project sponsor: *Provided*, That any moneys disbursed from the Infrastructure Fund in the form of grants shall not exceed 25 percent of the total funds available for the funding of projects: *Provided, however*, That if on the first day of each month, the amount available for grants is below \$1,000,000 the council may convert up to 30 percent of the funds available for loans to be used for grants, if and when needed to make an award. No loan, loan guarantee, grant, or other assistance shall be made or provided except upon a determination by the council that the loan, loan guarantee, grant, or other assistance and the manner in which it will be provided are necessary or appropriate to accomplish the purposes and intent of this article, based upon an application submitted to the council: *Provided further*, That no grant shall be made to a project sponsor that is not a governmental agency or a not-for-profit corporation under the provisions of Section 501(c) of the Internal Revenue Code of 1986, as amended. Applications for loans, loan guarantees, grants, or other assistance may be submitted by a project sponsor for one or more infrastructure projects on preliminary application forms prepared by the council pursuant to §31-15A-4 of this code. Any recommendation of the council approving a loan, loan guarantee, grant, or other assistance shall include a finding and determination by the council that the requirements of this section have been met. The council shall base any decisions to loan money for projects to project sponsors pursuant to this article solely on the need of the project sponsors.

(b) The council has the authority in its sole discretion to make grants to project sponsors if it finds that: (1) The level of rates for the users would otherwise be an unreasonable burden given the users' likely ability to pay; or (2) the absence of a sufficient number of users prevents funding of the project except through grants: *Provided*, That no project sponsor shall receive infrastructure grant money in an amount in excess of 50 percent of the total cost of the project. Therefore, the council may consider the economic or financial conditions of the area to be served. As a condition for receipt of a grant under this subsection, the council may require, in addition to any other conditions, that the applicant pursue other

state or federal grant or loan programs. Upon a recommendation by the council, the Water Development Authority shall provide the grant in accordance with the recommendation. The council shall develop criteria to be considered in making grants to project sponsors which shall require consideration of the economic or financial conditions of the area to be served and the availability of other funding sources. The council shall adopt procedural rules regarding the manner in which grants will be awarded in conformity with this section. The procedural rules shall be adopted pursuant to §29A-3-1 *et seq.* of this code.

(c) Notwithstanding any other provision of this article to the contrary, the council shall apply a mandatory minimum end user utility rate that must be met by the project sponsor before funding assistance may be awarded. The mandatory minimum end utility rate shall be based upon a uniform statewide percentage of the median household income in a particular geographic area and said rate shall not exceed six-tenths of one percent. Effective June 15, 2022, funding assistance shall be made from the Infrastructure Fund for loans and grants to projects, after transfers required to make the state match for the water and wastewater revolving loan programs pursuant to §22C-2-1 *et seq.* and §16-13C-1 *et seq.* of this code. When determining median household income of a geographic area of the project to be served, the council shall consider any surveys of the income of the households that will be served by the project.

(d) No loan or grant funds may be made available for a project if the project to be funded will provide subsidized services to certain users in the service area of the project.

(e) Notwithstanding any other provision of this article to the contrary, engineering studies and requirements imposed by the council for preliminary applications shall not exceed those engineering studies and requirements which are necessary for the council to determine the economic feasibility of the project. If the council determines that the engineering studies and requirements for the preapplication would impose an undue hardship on any project sponsor, the council may provide funding assistance to project sponsors to defray the expenses of the preapplication

process from moneys available in the Infrastructure Fund for making loans: *Provided*, That the council may only provide funding assistance in an amount equal to \$5,000 or 50 percent of the total preapplication cost of the project, whichever amount is greater. If the project is ultimately approved for a loan by the council, the amount of funding assistance provided to the project sponsor for the preapplication process shall be included in the total amount of the loan to be repaid by the project sponsor. If the project is not ultimately approved by the council, then the amount of funding assistance provided to the project sponsor will be considered a grant by the council and the total amount of the assistance shall be forgiven. In no event may the amount of funding assistance to defray the expenses of the preapplication process provided to all project sponsors exceed, in the aggregate, \$1,300,000 annually.

(f) The council shall report to the Governor, the Speaker of the House of Delegates, and the President of the Senate during each regular and interim session of the Legislature, on its activities and decisions relating to distribution or planned distribution of grants and loans under the criteria to be developed pursuant to this article.

§31-15A-17c. Critical Needs and Failing Systems Sub Account.

Notwithstanding any provision of this article to the contrary:

(a) The Water Development Authority shall establish a separate and segregated sub account in the Infrastructure Fund designated the Critical Needs and Failing Systems Sub Account into which the council may instruct the Water Development Authority to transfer from the uncommitted loan balances on June 30 each year, up to \$12 million.

(b) The council shall direct the Water Development Authority to make loans or grants from the Critical Needs and Failing Systems Sub Account when the council determines that a project will address a critical immediate need by:

(1) The continuation of water or wastewater services;

(2) Addressing water facility or wastewater facility failure due to the age of the facility or facilities; or

(3) Providing extensions to a water facility or wastewater facility that will add customers with a total project cost of less than \$2 million: *Provided*, That a person or governmental agency, as those terms are defined in §31-15A-2 of this code, shall pay any overage not to exceed 10 percent of the total project cost.

(c) Grant limitations and allocations contained in §31-15A-10(b) and §31-15A-10(c) of this code do not apply to grants made from the Critical Needs and Failing Systems Sub Account.

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CHAPTER 90

(Com. Sub. for S. B. 662 - By Senator Hamilton)

[Passed March 11, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §7-25-3, §7-25-5, §7-25-6, §7-25-10, and §7-25-15 of the Code of West Virginia, 1931, as amended, all relating to resort area districts; updating definitions and petition procedures; clarifying board nominee qualifications; permitting board members to receive reasonable compensation for service; detailing procedures for expansion of Resort Area District; providing for local election; and authorizing districts to collect service assessments from property owners for services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-3. Definitions.

For purposes of this article:

(a) “Assessment” means the fee, including interest, paid by an owner of real property located within a resort area district to pay for the cost of a project or projects constructed upon, or benefitting, or protecting such property and administrative expenses thereto, and to pay for the cost of service, which fees are in addition to all taxes and other fees levied on the property.

(b) “Assessment bonds” means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of assessments.

(c) “Board” means a resort area board created pursuant to this article.

(d) “Code” means the Code of West Virginia, 1931, as amended by the Legislature.

(e) “Commercial business property owner” means a person owning nonresidential, real property in the district used for business or commerce.

(f) “Cost” means the cost of any or all of the following:

(1) Providing services within a resort area district;

(2) Construction, reconstruction, renovation, and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or to be acquired by a resort area district;

(3) All machinery and equipment, including machinery and equipment needed to provide, expand, or enhance services to a resort area district;

(4) Financing charges and interest prior to and during construction and, if deemed advisable by a resort area district, for a limited period after completion of construction;

(5) Interest and reserves for principal and interest, including costs of bond insurance and any other type of financial guarantee;

(6) Costs of issuance in connection with the issuance of assessment bonds or resort service fee bonds;

(7) The design of extensions, enlargements, additions, and improvements to the facilities of a resort area district;

(8) Architectural, engineering, financial, and legal services;

(9) Plans, specifications, studies, surveys, and estimates of costs and revenues;

(10) Administrative expenses necessary or incident to any project or service; and

(11) Other expenses as may be necessary or incident to the provision of services or the construction, acquisition, and financing of a project.

(g) “Governing body” means the county commission of a county.

(h) “Governmental agency” means the state government or any agency, department, division, or unit thereof; counties; municipalities; any watershed enhancement districts; soil conservation districts; sanitary districts; public service districts; drainage districts; school districts; urban renewal authorities; or regional governmental authorities established pursuant to this code.

(i) “Landowner” or “owner of real property” means the person or persons holding an interest in the record fee title to one or more parcels of real property, including residential, improved real property, and unimproved, developable real property, or of units within a multiunit property, including condominiums and townhouses, within a resort area district or a proposed resort area district: *Provided*, That the holder or holders of a deed of trust shall not be considered a landowner or owner of real property.

(j) “Parcel” shall mean:

(1) A lot or parcel of real property as set forth on a plat covering such real property, or in the event no plat exists, as set forth on the tax maps of a county; or

(2) A unit within a multiunit property as defined in §36B-1-103 of this code.

(k) “Person” means an individual, firm, partnership, corporation, limited liability company, voluntary association, or any other type of entity.

(l) “Primary resort operator” means any person owning and operating the primary outdoor recreational facility in a resort area that generates the greatest amount of revenue annually, and offering outdoor recreational services such as skiing, golfing, or boating to the general public.

(m) “Project” means the design, construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, equipping, maintenance, repair (including replacements), and start-up operation of public buildings, culverts, streets, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters, and other facilities deemed necessary, appropriate, useful, convenient, or incidental to the regulation, control, and parking of motor vehicles), public transportation, public recreation centers, public recreation parks, bicycle paths and trails, hiking paths and trails, landscaping, swimming pools, tennis courts, golf courses, skating rinks, equine facilities, motor vehicle competition and recreational facilities, flood protection or relief projects, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening, lighting, or otherwise improving any street, avenue, road, highway, alley, or way, or the building or renewing of sidewalks and flood protection; and the term shall mean and include any project as a whole, and all integral parts thereof, including all necessary, appropriate, useful, convenient, or incidental appurtenances and equipment in connection with any one or more of the above: *Provided*, That a project shall not include a facility or service that benefits only the resort operator, or which the resort operator charges a fee or obtains revenue, or that constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope.

(n) “Purchase price” means the measure subject to the resort service fee authorized to be imposed by this article and has the same meaning as sales price. For purposes of this article, the purchase price of a good or service shall not include the taxes levied under §11-15-1 *et seq.* or §11-15A-1 *et seq.* of this code or any other provision of law.

(o) “Ranger” means a resort area ranger.

(p) “Resort area” means an area that:

(1) Is an unincorporated area with a contiguous geographic boundary within one county that has been defined by the process set forth in this article;

(2) Has a permanent population of less than 2,000 people, according to the most recent federal census;

(3) Derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area;

(4) Is a destination location containing each of the following:

(i) Residential, improved real property;

(ii) One or more resort operators;

(iii) Commercial business properties such as retail stores, restaurants, and hotels or other lodging accommodations; and

(iv) Unimproved real property which remains developable;

(5) Does not include real property primarily used for manufacturing, milling, converting, producing, processing or fabricating materials, generating electricity, or the extraction or processing of minerals.

(q) “Resort area district” or “district” means a resort area district created pursuant to this article.

(r) “Resort operator” means any person owning and operating the primary outdoor recreational facilities in a resort area and offering outdoor recreational services such as skiing, golfing or boating to the general public.

(s) “Resort service fee” means the fee imposed on the purchase price of goods and services sold within a resort area district by any of the following establishments:

(1) Hotels, motels, campgrounds, lodges, and other lodging or camping facilities;

(2) Restaurants, fast-food stores, and other food service establishments selling prepared foods;

(3) Taverns, bars, nightclubs, lounges, and other public establishments that serve beer, wine, liquor, or other alcoholic beverages by the drink;

(4) Retail establishments;

(5) Entertainment facilities, including, but not limited to, theaters, amphitheaters, halls, and stadiums; and

(6) Recreational facilities and activities, including, but not limited to, ski resorts, golf courses, water sports, rafting, canoeing, kayaking, rock climbing, and zip lines.

(t) “Resort service fee bonds” means special obligation bonds or notes issued by a resort area district which are payable from the proceeds of resort service fees.

(u) “Service” includes, but is not limited to, snow removal; operation and maintenance of public transportation; maintenance, upgrade, and beautification of public common areas; maintenance and repair of roads and sidewalks; providing for the collection and disposal of garbage and other refuse matter; recycling; operation, upgrade, and maintenance of any projects or improvements; and any other public service authorized by this article, including fire protection and public safety. For purposes of this article, a common area shall not include any facility that benefits only the resort operator, or for which the resort operator charges a fee or obtains revenue, or which constitutes part of any facility or service provided by the resort operator, such as a ski lift or ski slope, golf course, or tennis facility.

(v) “Service assessment” means the fee imposed on owners of real property for the cost of service.

(w) “Sheriff” means the sheriff of the county in which a resort area district is located.

§7-25-5. Petition for creation or expansion of resort area district; petition requirements.

(a) The owners of at least 61 percent of the real property, determined by acreage, located within the boundaries of the resort area described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition a governing body to create or expand a resort area district.

(b) The petition for the creation of a resort area district shall include, where applicable, the following:

(1) The proposed name and proposed boundaries of such district and a list of the names and addresses of all owners of real property within the proposed district;

(2) A description of proposed projects and services to be provided within the district;

(3) A map showing the proposed resort area to be included in the resort area district;

(4) A list of estimated project and service costs;

(5) A feasibility or consultant study concerning the formation of the proposed district and the funds to be generated by the implementation of a resort service fee and indicating that the proposed resort service fee will provide sufficient revenue for proposed services and projects;

(6) The proposed rate or rates, not to exceed five percent of the purchase price, of the resort service fee and the proposed classes of goods and services to which each rate shall apply;

(7) The proposed effective date of the resort service fee;

(8) A certification from the Tax Commissioner of the amount of consumers sales and service taxes collected from businesses located in the proposed district during the most recent 12 calendar

month period for which such data is available that precedes the calendar quarter during which the petition will be submitted to the governing body;

(9) A development schedule; and

(10) A statement of the benefits that can be expected from the creation of the district.

(c) Within 60 days of the submission of a petition for the creation of a resort area district, the governing body shall by order determine the completeness of the petition. If the governing body determines that the petition is complete, it shall set a date for the public meeting required under §7-25-6 of this code and shall cause the petition to be filed with the clerk of the governing body and be made available for inspection by interested persons before the meeting. If the governing body determines that such petition is not complete, the petition shall be returned to the petitioners with a statement of additional information required for such petition to be complete.

(d) The owners of at least 61 percent of the real property, determined by acreage, located within the boundaries of an area with at least one common boundary with the resort area, as described in the petition, by metes and bounds or otherwise in a manner sufficient to describe the area, may petition the resort area board to expand a resort area district.

(e) The petition for the expansion of a resort area district shall include, where applicable, the following:

(1) A list of the names and addresses of all owners of real property within the proposed expansion of the resort area district;

(2) A map showing the proposed resort area to be included in the resort area district;

(3) A statement of the benefits that can be expected from the expansion of the district; and

(4) Verification that the owners of at least 61 percent of the real property owners in the proposed expansion area approve becoming part of the existing district.

(f) The resort area board will receive the petition and determine if the petition is complete and verified. When the petition is complete and verified, the resort area board shall adopt a resolution calling for a vote of the qualified voters of the resort area district to be taken upon the proposed expansion on a date and at a time and place to be stated in the resolution. Concurrently, the resort area board shall call for a vote of all the qualified voters of the proposed expansion area to be taken on the same date, time, and place.

§7-25-6. Notice to property owners before creation or expansion of resort area district; form of notice; affidavit of publication; election.

(a) Before the adoption of an order creating a resort area district, the governing body shall cause notice to be given to the owners of real property located within the proposed resort area district that the order will be considered for adoption at a public meeting of the governing body at a date, time, and place named in the notice and that all persons at that meeting, or any adjournment of the meeting, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the order. At or after the meeting the governing body may amend, revise, or otherwise modify the information in the petition for formation or expansion of a resort area district as it may consider appropriate after considering any comments received at the meeting.

(b) A resort area district may not be created by a governing body if, at the public meeting required by this section, written protest is filed by at least 25 percent of the owners of real property proposed to be included within the district. In the event of a protest, the petition for the creation of the resort area district may not be resubmitted to the governing body for a period of at least one year from the date of the original submission.

(c) At least 60 days prior to the date of the meeting, the notice required by this section shall, using reasonable efforts, be mailed

to each owner of real property to be included in the proposed resort area district as provided in subsection (g) of this section, posted in multiple, conspicuous, public locations within the proposed district and published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the county in which the proposed resort area district is located. The notice shall be in the form of, or substantially in the form of, the following notice:

“NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN _____ (here describe the boundaries of the proposed resort area district) IN THE COUNTY OF _____ (name of county):

A petition has been presented to the county commission of the County of _____ (name of county) requesting establishment of a resort area district and authorization of a resort service fee under §7-25-1 *et seq.* of the code of West Virginia, 1931, as amended, to _____ (describe potential projects and/or services to be provided) in the county of _____ (name of county) as the county commission may deem proper. A copy of the petition is available in the office of the clerk of the county commission of the County of _____ (name of county) for review by the public during regular office hours.

The petition to create a resort area district will be considered by the county commission at a public meeting to be held on the ___ day of ____, ____, at __.m. at _____. Any owner of real property whose property may be affected by the creation of the above-described resort area district, and any owner of real property whose property is not located within said resort area district but wishes his or her property to be included, will be given an opportunity, under oath, to protest or be heard at said meeting or any adjournment thereof:

_____ (name of clerk)

(d) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the minutes

of the governing body and spread on its records of the meeting described in the notice. The service of the notice upon all persons owning any interest in any real property located within the proposed resort area district shall conclusively be determined to have been given upon completion of mailing as provided in subsection (g) of this section and the newspaper publication.

(e) The petitioners shall bear the expense of publication of the notice, the meeting, and the mailing of the proposed order, as requested by subsection (f) of this section.

(f) After the public meeting and before the governing body may adopt an order creating a resort area district, the governing body shall, using reasonable efforts, mail a true copy of the proposed order creating the resort area district to the owners of real property in the proposed district as provided in subsection (g) of this section and shall post copies of the proposed order in multiple, conspicuous, public locations within the proposed district. Unless waived in writing, any petitioning owner of real property has 30 days from mailing of the proposed order in which to withdraw his or her signature from the petition in writing prior to the vote of the governing body on the order. If any signatures on the petition are withdrawn, the governing body may adopt the proposed order only upon certification by the petitioners that the petition otherwise continues to meet the requirements of this article. If all petitioning owners of real property waive the right to withdraw their signatures from the petition, then the governing body may immediately adopt the order.

(g) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail the notice to all owners of real property proposed to be included within the resort area district using the real property tax records and land books of the county in which the proposed district is located and any lists maintained by a resort operator or homeowners association within the proposed district. The notice shall be also mailed to each president of a homeowners association, if any, located within a proposed district which has registered with a resort operator to receive the information. Immaterial defects in the mailing of the notices shall not affect the validity of the notices:

Provided, That in the case of any resort area district to be voted upon after the effective date of this amendment adopted during the 2015 regular session of the Legislature, any notice shall be mailed to the property owner's primary place of abode by certified mail, return receipt requested.

(h) Upon verification of a petition to expand the district, the resort area board shall set a date, time, and place for a vote of the qualified voters of the resort area district to be taken upon the proposed expansion.

(1) At least 60 days prior to the vote, the notice required by this section shall, using reasonable efforts, be mailed to each owner of real property in the resort area district and to each owner in the proposed resort area district expansion, posted in multiple, conspicuous, public locations within the proposed district, and published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the county in which the resort area district is located. For the purpose of notice of proposed expansion, "reasonable efforts" means mailing to the owner or owners of real property in the resort area district, using the address of record at the resort area district office, as of 90 days prior to notice. The notice shall be in the form of, or substantially in the form of, the following notice:

"NOTICE TO ALL PERSONS OWNING PROPERTY LOCATED WITHIN _____ (here describe the boundaries of the existing resort area district) IN THE COUNTY OF _____ (name of county) and TO THE OWNERS OF PROPERTY IN THE PROPOSED EXPANSION AREA (here describe the boundaries of the proposed expansion to the existing resort area district) IN THE COUNTY OF _____ (name of county):

A verified petition has been presented to the resort area district (name of county) requesting expansion of a resort area district to _____ (describe boundaries of expansion area) in the county of _____ (name of county). A copy of the petition is available in the office of the resort area district of the County of _____ (name of county) for review by the public during regular office hours.

The vote to approve or disapprove the expansion of the resort area district will be held on the following date (insert date), at the following time (insert time) and at the following location (insert location).

_____ (name of resort area board chairperson)”

(2) All owners of real property in the existing resort area district and proposed expansion shall be eligible to vote.

(3) The owners of each parcel or unit of real property are entitled to one vote, irrespective of the number of owners of the parcel or unit.

(4) The ballots shall have written or printed on them the words:

“// For Expansion

// Against Expansion”

(5) Electronic submission of ballots is permitted in accordance with procedures in the bylaws of the resort area district. If electronic submission is used, the notice will include the electronic information for transmission.

(6) A simple majority of all legal votes cast in favor of expansion will result in expansion of the resort area district.

(7) A copy of the boundaries of the resort area district as expanded shall be published on the resort area district’s website and provided upon request.

§7-25-10. Resort area boards.

(a) The powers of each resort area district shall be vested in and exercised by a resort area board which shall be composed of seven members, the composition of which shall be as set forth in subsection (b) of this section. Board members need not be residents of the district or landowners, except where specifically required otherwise. For purposes of this section, “residential, improved real property” includes, but is not limited to, condominium units, townhouses, and single-family residences.

(b) The composition of a resort area board shall be as follows:

(1) Three board members at the time of nomination and as of the day of their election shall be owners of or representatives of owners of residential, improved real property located within the resort area district;

(2) Two board members shall be representatives of the primary resort operator located within the resort area district;

(3) One board member at the time of nomination and as of the day of their election shall be an owner or a representative of commercial business property owners located within the resort area district; however, for purposes of this subdivision, owners of residential, improved real property who rent their property are excluded; and

(4) One board member at the time of nomination and as of the day of their election shall be an owner or a representative of owners of unimproved, developable real property located within the resort area district.

(c) For purposes of this section, if a parcel of real property is owned by one or more entities (such as a corporation, limited liability companies, or other entity), then the following are also eligible to serve on the board as an owner with respect to such parcel: (1) Any person having an ultimate beneficial interest in the parcel, whether directly or indirectly, and regardless of the number of intermediate ownership entities; and (2) any person designated at the outset of the election as authorized, by an owning entity, to serve on the board as an owner for that particular parcel. Nothing in this provision, however, creates any additional voting rights to the owners of a single parcel of real property, and each parcel of real property shall be entitled to only one vote, regardless of the number of owners participating in ownership of the parcel. Furthermore, nothing in this provision authorizes the owners of real property of one type (such as the primary resort operator, owners of residential improved real estate, or owners of unimproved, developable real estate) to vote regarding a board position reserved to another ownership category.

(d) The board members shall be elected for terms of four years each and thereafter until their respective successors have been elected and have been qualified, except, that of the board members elected at the initial election meeting, two shall serve for a term of two years, two shall serve for a term of three years, and three shall serve for a term of four years. At the first meeting of the board, the board members shall determine by lot which of them shall serve the terms less than four years. Each succeeding term is four years. Board members may be reelected for any number of terms. In the event a board member who is required to own real property within the district to be eligible for such board position no longer owns real property within the district, such member may serve out the remainder of his or her term.

(e) Only owners of real property, including commercial business property owners, located within the district shall be eligible to vote in elections for board members.

(f) Elections for board members shall be held in accordance with bylaws adopted by the board, but the provisions of §7-25-11 of this code shall govern the initial election of board members. Voting shall be in person, by mailed ballot, by proxy, or by electronic means. The voting restrictions set forth in §7-25-11(d) and §7-25-11(e) of this code shall apply to all board elections and may not be altered.

(g) Before entering upon the performance of his or her duties, each member shall take and subscribe to the oath required by section five, article IV of the West Virginia Constitution.

(h) In the event that a board vacancy arises before the scheduled end of a board member's term, vacancies on the board shall be filled for the remainder of the unexpired term of the member whose office shall be vacant and such appointment, pursuant to the procedures set forth in subsection (r) of this section. Any board member may be removed by the board in case of incompetency, neglect of duty, gross immorality, or malfeasance in office, upon a unanimous vote of the remaining six board members. A vote of four board members is sufficient to schedule and conduct an election to fill an unexpired board member's term.

Any other action of the board taken while one or more board positions are vacant must be unanimously approved by a board which is comprised of at least five active serving board members.

(i) The board shall organize within 30 days following the first election of board members and annually thereafter at its first meeting after January 1 of each year by selecting one of its members to serve as chairman, one to serve as treasurer, and one to serve as secretary. The secretary, or his or her designee, shall keep a record of all proceedings of the board which shall be available for inspection as other public records and the treasurer, or his or her designee, shall maintain records of all financial matters relating to the resort area district, which shall also be made available for inspection as other public records. The secretary and treasurer shall perform such other duties pertaining to the affairs of the resort area district as shall be prescribed by the board.

(j) The initial board shall adopt bylaws for the district: *Provided*, That the adoption of such bylaws and any subsequent amendments thereto shall require approval by six-sevenths of the board.

(k) The members of the board, and the chairman, secretary, and treasurer thereof, shall make available, at all reasonable times and upon reasonable notice, all its books and records pertaining to the resort area district's operation, finances, and affairs for inspection and audit. The board shall meet at least semiannually.

(l) A majority of the members of the board constitutes a quorum and meetings shall be held at the call of the chairman. Board members may vote either in person, by telephone, or by electronic means.

(m) Staff, office facilities, and costs of operation of the board may be provided by the county which created the resort area district or by contract, and said costs of operations shall be funded from resort service fees collected within the district or any other source.

(n) The chairman shall preside at all meetings of the board and shall vote as any other members of the board, but if he or she should

be absent from any meeting, the remaining members may select a temporary chairman, and if the member selected as chairman resigns as chairman or ceases for any reason to be a member of the board, the board shall select one of its members to serve as chairman until the next annual organizational meeting.

(o) The board shall, by resolution, determine its own rules of procedure, fix the time and place of its meetings, and the manner in which special meeting may be called. The members of the board shall not be personally liable or responsible for any obligations of the resort area district or the board but are answerable only for willful misconduct in the performance of their duties.

(p) The members of the board may serve with reasonable compensation as the board of directors may fix, except where prohibited by law, and shall receive reimbursement for actual and necessary expenses incurred in connection with the performance of their duties.

(q) Every board member who handles public funds or property, and every other officer or employee of a resort area district of whom it shall be required, shall, unless otherwise provided by law, give bond, with good security, to be approved by the board, and in such penalty as such board, conditioned upon the faithful discharge of the duties of his or her office or employment and the faithful accounting for and paying over, as required by law, of any funds or property coming into his or her possession.

(r) Vacancies on the board shall be filled by a special election within 120 days of the vacancy unless the vacancy occurs within the last 365 days of the board member's term. The special election shall be on a date specified by the board, which shall not be less than 45 days sooner than publication of notice of the election. If the vacancy occurs within the last 365 days of the board member's term, the board shall appoint a replacement who meets the qualifications for the vacant seat. Recommendations for the replacement shall be made by the type of ownership category for the seat vacated. The new board member shall serve out the remainder of the unexpired term and may stand for subsequent election as long as he or she is eligible for the seat. The publication

process for an election to fill a vacancy shall be the same as set forth in §7-25-11(c), §7-25-11(d), and §7-25-11(e) of this code, and only those owners eligible to vote for the board member whose departure from office caused the vacancy shall be eligible to vote to replace the member. Without limiting the foregoing, and by way of example, only owners of improved residential property may vote to fill a vacancy created by the departure from office of a board member elected by that class of owner. Notwithstanding the provisions of this subsection, a vacancy in the office of the board as to a board member elected or appointed as a resort primary operator representative, may be filled by direct appointment of the primary resort operator, rather than by election.

§7-25-15. Authorization to implement assessments for projects or services; procedures for implementing assessments; by-laws to provide additional procedures for implementation of assessments; notice to property owners before implementation of assessments for projects or services; voting on assessments; affidavit of publication.

(a) An assessment for a project within a resort area district shall be authorized by the adoption of a resolution by the board. The annual aggregate limit of assessments that may be levied against a parcel of real property within the district is five percent of the appraised value of the real property, including improvements, as shown in the property tax records and land books of the county in which the property is located. A resolution authorizing an assessment shall only be adopted after following the procedures set forth in this section.

(b) A service assessment within a resort area district shall be authorized by the adoption of a resolution by the board.

(c) The bylaws of a district shall provide the procedures not addressed in this section for the implementation of an assessment to pay the costs of a project or service: *Provided*, That the procedures must be consistent with constitutional standards and all other laws and rules of this state.

(d) Fifty-one percent or more of the owners of real property to be benefitted by a project or service may petition the board to implement an assessment to pay the costs of the project or service. A board may on its own initiative propose an assessment to pay the costs of a project or service upon approval by six sevenths of the board.

(e) Upon following the procedures provided in this section and a resort area district's bylaws for the implementation of an assessment to pay the costs of a project or service, the board may, after giving notice to all real property owners, holding a public meeting and a vote on the project or service if required by this section, adopt a resolution authorizing the assessment to pay the costs of a project or service upon approval by six sevenths of the board.

(f) Before the adoption of a resolution authorizing an assessment to pay the costs of a project or service, the board shall cause notice to be given to the owners of real property located within the resort area district that the resolution will be considered for adoption at a public meeting of the board at a date, time, and place named in the notice and that all persons at that meeting, or any adjournment thereof, shall be given an opportunity to protest or be heard concerning the adoption or rejection of the resolution. If, as provided in subsection (g) of this section, a favorable vote of the property owners is required before the board authorizes the assessment, the notice of meeting shall also contain information required to enable the owners of real property within the district that will be subject to the assessment to vote on the assessment by mail or electronic means.

(g) An assessment may not be authorized by the board if at the public meeting required by this section written protest is filed by at least 25 percent of the owners of the real property within the district to be benefitted by the proposed project or service and subject to the assessment. However, before an assessment proposed by the board on its own initiative as provided in subsection (d) of this section is authorized by the board, the proposal must also receive the favorable vote of a majority of the votes cast at the meeting for the proposal by the owners of real property in the district that will

be subject to the assessment. Voting at the meeting shall be in person or by proxy at the meeting, or by mailed ballot or electronic means received prior to the meeting. The voting rules set forth in §7-25-11(e) of this code apply to all voting on assessments. In the event of such protest, the proposed assessment in the same form may not be reconsidered by a board for a period of at least one year from the date of the public meeting.

(h) At least 30 days prior to the date of the public meeting, the notice required by this section shall, using reasonable efforts, be mailed to the owners of real property to be assessed for a proposed project as provided in subsection (l) of this section, posted in multiple, conspicuous, public locations within the district and published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for the publication is the resort area district.

(i) An affidavit of publication of the notice made by newspaper publisher, or a person authorized to do so on behalf of the publisher, and a copy of the notice shall be made part of the minutes of the board and spread on its records of the meeting described in the notice. The service of the notice upon all persons owning any interest in any real property located within the resort area district shall conclusively be determined to have been given upon completion of mailing as provided in subsection (l) of this section and the newspaper publication.

(j) After the public meeting and before the board may adopt a resolution authorizing implementation of assessments, the board shall, using reasonable efforts, mail a true copy of the proposed resolution authorizing implementation of an assessment to the owners of real property in the resort area district as provided in subsection (l) of this section.

(k) A board shall make available to the owners of real property within the district a list of all owners of real property within the district for the purposes of enabling the owners of real property to solicit support for a petition proposing or a protest against an assessment.

(1) For purposes of the mailing of each notice to owners of real property required by this section, reasonable efforts shall be made to mail the notice to all owners of real property required to receive notice under this section using the real property tax records and land books of the county in which the district is located and any lists maintained by a resort operator or homeowners association within the district. The notice shall be also mailed to each president of a homeowners association, if any, located within a district which has registered with a resort operator to receive the information. Immaterial defects in the mailing of the notices shall not affect the validity of the notices.

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CHAPTER 91

**(Com. Sub. for H. B. 4002 - By Delegates Riley, Wamsley,
Cooper, Queen, Storch, Barrett, Hamrick, Worrell, Kimes,
Smith, and Espinosa)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§5B-2-18, relating to the creation of the Certified Sites and Development Readiness Program under the Department of Economic Development; requiring the department to develop evaluation criteria and site certification levels; establishing application processes for program; establishing eligible applicants; allowing the department to select sites for the program from applications; providing for the review of sites and reporting to applicants of the site's readiness; creating two types of grants; allowing the department to choose sites to provide matching grant funds to develop sites included in the program; establishing requirements for the matching grant funding; allowing the department to choose recipients for micro-grants; providing the department the authority to set forth criteria for micro-grants; limiting the amount of funds which may be expended per site; providing for the repayment of funds from matching grants; and creating the Certified Sites and Development Readiness Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

†§5B-2-18. Certified Sites and Development Readiness Program.

(a)(1) The Certified Sites and Development Readiness Program is hereby created and is to be administered as a program within the

†NOTE: H. B. 4418 (Chapter 92), which passed prior to this act, and H. B. 4667 (Chapter 44), which passed subsequent to this act, also created a new Section 18. Therefore, this has been redesignated as Section 19 for the code.

Department of Economic Development with appropriate rules as necessary. The program shall establish evaluation criteria and site certification levels based upon developmental readiness of an applicant's site. In developing the program, the department shall consider utilizing all available resources and technical support, both public and private.

(2) The department shall establish an application process and forms through which an applicant may begin to participate in the program and identify and describe potential sites for economic development and investment. The application process and forms should include site specific information such as property ownership and control, descriptions and mapping, historical and current uses, access to various forms of transportation, availability of various utility services, environmental studies, conceptual plans, marketing materials, and all other information requested by the department.

(3) Applicants may include only state, county, municipal, or regional governmental entities such as, without limitation, economic development authorities, economic development corporations, economic development alliances, or economic development partnerships.

(4) The department shall select applicant's sites to participate in the program from the application materials. The department will select sites to participate in the program, evaluate the selected sites, and certify each site based upon its readiness to be developed from the established criteria. After evaluation, the department shall provide a report to the applicant detailing the results of the site evaluation, identifying site deficiencies and strengths, and suggesting a prioritized list of site improvements which may be made to improve the site's readiness to develop. The department may thereafter reevaluate and recertify a site as improvements are made to a site and deficiencies cured.

(5) The department may provide to applicants funding assistance up to a 50 percent match through a matching grant program which may be spent only for directly improving the developmental readiness of sites which have been selected to

participate in the program. The department shall establish criteria and an application process for awarding matching grants to improve an applicant's site readiness: *Provided*, That no single site may receive any amount greater than a maximum amount established by the department through this grant matching program. Applications for this grant matching program must include details which specifically identify what deficiency or deficiencies will be cured and through what means and all other information required by the department. Grant matching funds must be spent, contracted to be spent, or returned to the department within 12 months of the date of receipt of the grant matching funds. Grant matching funds shall be paid back to the department when a participating site is sold or leased for development. The department shall take prudent steps to receive a security interest in a participating site in the amount of the grant matching funds award including, but not limited to, placing of record in the county where the participating site is located, an appropriate lien against the title. All funds repaid under this section shall remain within the program for use on participating sites. The department shall monitor, and request appropriate evidence documenting the cured deficiencies and thereafter reevaluate and recertify a participating site as part of this grant matching program.

(6) The department may provide funding assistance to applicants through a micro grant program which may be spent only for directly improving the developmental readiness of sites which have been selected to participate in the program. The department shall establish criteria and an application process for awarding the micro grants to improve an applicant's site readiness: *Provided*, That no single site may receive any amount greater than \$25,000 through this micro grant program. Applications for this micro grant program must include details which specifically identify what deficiency or deficiencies will be cured and through what means and all other information required by the department. Micro grant funds must be spent, contracted to be spent, or returned to the department within 12 months of the date of receipt of the micro grant funds. All funds returned under this section shall remain within the program for use on participating sites. The department shall monitor and request appropriate evidence documenting the

cured deficiency and thereafter reevaluate and recertify a participating site as part of this micro grant program.

(b) (1) The Certified Sites and Development Readiness Fund is hereby created. The fund shall be administered by the Department of Economic Development and shall consist of all moneys made available for the purposes from

(A) Appropriations provided by the Legislature;

(B) Any moneys available from external sources; and

(C) All interest and other income earned from investment of moneys in the fund.

(2) The Department of Economic Development shall use moneys in the fund to support The Certified Sites and Development Readiness Program.

(3) Any balance, including accrued interest and any other returns, in the fund at the end of each fiscal year may not expire to the General Revenue Fund but shall remain in the fund and be expended for the purposes provided by this section.

(4) Fund balances may be invested under §12-6C-6 of this code. Earnings on the investments shall be used solely for the purposes defined in this section.

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CHAPTER 92

**(Com. Sub. for H. B. 4418 - By Delegates Linville, Steele,
Rohrbach, Lovejoy, Hornbuckle, Booth, Worrell, Griffith,
and Mandt)**

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-18, relating to the Small Business Supplier Certification Assistance Program; establishing a pilot program for the verification and certification of small business enterprises participating in the government contracting and procurement process; authorizing the Department of Economic Development to collaborate with Marshall University for purposes of establishing the pilot program; requiring a master plan for the pilot program; and establishing a deadline and reporting requirements for the pilot program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

§5B-2-18. Small Business Supplier Certification Assistance Program.

(a) The Legislature finds that there is currently no standardized certification process for small business enterprises in West Virginia. As a result, there is no uniform method for verifying or certifying small business contractors or suppliers seeking to participate in government contracting and procurement processes. The Legislature further finds that it is important to develop such a certification program to promote more in-state businesses and to strengthen regional supply chains within the institutions of the state

or its political subdivisions. Therefore, it is the purpose of this section to establish the Small Business Supplier Certification Assistance Pilot Program, to develop and implement a certification process for the benefit of small business enterprises seeking to further engage in the government contracting and bidding processes.

(b) The Department of Economic Development is hereby authorized to work in collaboration with Marshall University to establish a Small Business Supplier Certification Assistance Pilot Program to be implemented for purposes of developing a certification process for small business enterprises.

(c) Prior to implementation of the pilot program, Marshall University shall coordinate with the Department to develop a master plan for the pilot program, the focus of which should include, but not be limited to, the following:

(1) A mission statement and small business participation plan for the program aimed at creating a competitive business environment by promoting the growth and success of small businesses through meaningful participation in the procurement process. The small business participation plan shall include:

(A) A study to determine any inequities that exist in public procurement and contracting that adversely affect small business vendors;

(B) An outreach program to identify and provide education to small business vendors;

(C) Initial and continuing education opportunities for the small business vendor community through both virtual and in-person workshops;

(D) A small business vendor notification process for bidding opportunities; and

(E) A method of assessing overall program results and establishing recommendations for future goals and participation.

(2) Development of an application and certification process for small business enterprises, including guidelines for certification, based upon existing federal Small Business Administration guidelines;

(3) Education and outreach proposals relating to program certifications and the benefits of small business participation;

(4) Technical training to be provided on state and government contracting and the public bidding process;

(5) Notification of current bidding opportunities for small business providers;

(6) Opportunities for collaboration with other public and private sector entities; and

(7) Methods of implementation of the pilot program, which shall include:

(A) Defined program goals;

(B) Program research to be conducted;

(C) Scheduling milestones, assignment of tasks, and allocation of resources; and

(D) Reporting of program certifications, successes, and benefits to the economy and small business opportunities.

(d) The pilot program shall continue in duration through December 31, 2023, and unless continued by the legislature, the program will terminate at midnight on January 1, 2024. Prior to the conclusion of the program, the Department, in coordination with Marshall University, shall report to the Legislature's Joint Commission on Economic Development on the following:

(1) Progress towards and methods of implementation of the pilot program, including the required certifications and training for small business enterprises;

(2) An analysis of the overall program results based on the metrics created in the master plan of the pilot program;

(3) Recommendations as to whether the pilot program should continue beyond its current duration; and

(4) Any proposed plan or legislation necessary to accomplish the purpose of making the program permanent.

(e) For purposes of the pilot program, any information provided by a small business enterprise for purposes of the certification process shall be considered private and confidential and exempt from the provisions of the Freedom of Information Act, as provided in §29B-1-1, *et seq.* of this code. Neither the Department nor Marshall University may share any information provided by a small business enterprise with any other state or federal agencies unless required by law.



CHAPTER 93

(Com. Sub. for H. B. 4502 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2L-1, §5B-2L-2, §5B-2L-3, §5B-2L-4, §5B-2L-5, §5B-2L-6, §5B-2L-7, §5B-2L-8, §5B-2L-9, §5B-2L-10, §5B-2L-11, §5B-2L-12, §5B-2L-13, §5B-2L-14, §5B-2L-15, §5B-2L-16, and §5B-2L-17, all relating to establishing the BUILD WV Act; providing legislative findings and purpose; authorizing rule-making authority; providing for the application of the West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act; providing effective and expiration dates; required annual reporting to the Joint Committee on Government and Finance; setting out elements to be included in the annual report; exempting the construction contractors of certified BUILD WV projects from the consumers sales and service tax and use tax; authorizing municipalities to provide exemptions to business and occupation taxes; establishing a property value adjustment tax credit; providing for the determination of amount and application of the property value adjustment tax credit; providing that the property value adjustment tax credit entitlement is retained by eligible taxpayers that have developed project property; providing for credit recapture, interest, penalties, additions to tax, and statute of limitations; providing for certified BUILD WV districts and the procedure for designation; granting authority to the Department of Economic Development to administer BUILD WV; providing for the application and procedures for BUILD

WV projects; and requiring agreements between the Department of Economic Development and BUILD WV project participants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2L. BUILD WV ACT.

PART I. GENERAL

§5B-2L-1. Short title.

This article shall be known as the BUILD WV Act.

§5B-2L-2. Legislative findings and purpose.

(a) The Legislature hereby finds that reasonably priced residential housing for graduate, post-graduate and professional job holders, technical workers, and entrepreneurs for targeted businesses in key geographical regions of this state is an essential component of West Virginia's comprehensive economic development. Highly meritorious measures have been undertaken under both federal law and state law for the construction of low-income housing, direct loan support, rent assistance, supportive housing for elderly citizens and citizens with disabilities, public housing programs, business location incentives and incentives for capital formation, and entrepreneurial innovation in economically depressed areas. The Legislature finds that key geographic areas of this state are on the verge of a burgeoning expansion for economic development, accompanied by unprecedented technical innovation, creation of expansive new businesses in unexplored commercial and industrial markets, with individual opportunities for employment, entrepreneurship, personal success, and personal development for the people of West Virginia.

(b) The Legislature finds that a significant constraint upon this expansion is the lack of housing for graduate, post-graduate, professional, and technical personnel whose participation is vital to the economic success of West Virginia, and to the economic, cultural, and social betterment of West Virginia. Support for low-income housing and the other assistance, enumerated above, has

the firm support of the Legislature. However, support for middle income housing and middle market housing needs in these key geographic areas is lacking. Such support is crucial for expansion of technical, industrial, and commercial markets expected for West Virginia.

(c) Therefore, the Legislature hereby establishes the BUILD WV Act, with the intent to remove this constraint and provide the stimuli and incentives necessary for these developments to go forward.

§5B-2L-3. Definitions.

(a) General. — When used in this article, or in the administration of this article, terms defined in this section have the meanings ascribed to them by this section unless a different meaning is clearly required by the context in which the term is used.

(b) Terms defined. — As used in this article, unless the context clearly indicates otherwise:

(1) “Agreement” means a BUILD WV project agreement entered into pursuant to this article, between the Department of Economic Development and an approved company or group of multiple party project participants with respect to a project.

(2) “Approved company” means any eligible company approved by the Department of Economic Development pursuant to this article seeking to undertake a project. The Department of Economic Development may certify multiple party projects comprised of more than one approved company, as provided in this article. “Approved company” means and includes an approved multiple party project participant.

(3) “Approved costs” means costs included, as stated herein, and not excluded pursuant to the provisions of this definition, or this article, or any other provision of this code.

(A) Included costs:

(i) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, delivery persons, and material persons in connection with the acquisition, construction, equipping, or installation of a project;

(ii) The costs of acquiring real property or rights in real property and any costs incidental thereto;

(iii) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition, construction, equipping, or installation of a project which is not paid by the vendor, supplier, delivery person, contractor, or otherwise provided;

(iv) All costs of architectural and engineering services, including, but not limited to: estimates, plans and specifications, preliminary investigations and supervision of construction, installation, as well as for the performance of all the duties required by or consequent to the acquisition, construction, equipping, or installation of a project;

(v) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, or installation of a project;

(vi) All costs required for the installation of utilities, including, but not limited to: water, sewer, sewer treatment, gas, electricity, communications, and off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located, all of which are to be used to improve the economic situation of the approved company or group of multiple party project participants in a manner that allows the approved company or group of multiple party project participants to attract persons; and

(vii) All other costs comparable with those described in this subdivision.

(B) Excluded costs. — The term “approved costs” does not include:

(i) Any portion of the cost required to be paid for the acquisition, construction, equipping, or installation of a project that is financed with governmental incentives, grants or bonds, other than the exemptions and tax credits allowable under this article. “Approved costs” does not include any portion of the cost or for which the approved company or group of multiple party project participants elects to qualify for other economic development incentive tax credits authorized under West Virginia law. The exclusion of certain costs of a project under this paragraph does not automatically disqualify the remainder of the costs of the project;

(ii) Any portion of the cost of property or space that is covered by a rehabilitated building tax credit under the provisions of §11-21-8a, §11-21-8b, §11-21-8c, §11-21-8d, §11-21-8e, §11-21-8f, or §11-21-8g of this code or §11-24-23a, §11-24-23b, §11-24-23c, §11-24-23d, §11-24-23e, §11-24-23f, or §11-24-23g of this code;

(iii) Any portion of the cost of property or space that is used, in whole or in part, as a residential timeshare, commercial timeshare, or as part of any similar arrangement; or

(iv) Any portion of the cost of property or space that is excluded from certification by the Department of Economic Development by rule or administrative notice.

(4) “Certified BUILD WV district” or “certified district” means a geographic district designated pursuant to this article as an area in which a proposed BUILD WV residential housing project may be approved for certification.

(5) “Certified BUILD WV project” or “project” means BUILD WV project that has received the certification of the Department of Economic Development in accordance with this article, and for which certification remains current and in effect. A BUILD WV project shall be for the construction of residential housing, including new construction or the rehabilitation of existing unoccupied structures.

(6) “Common areas” means, but is not limited to, lawns, roads, streets, alleys, sidewalks, parks, waterways, driveways, stairways,

hallways, lobbies, corridors, sidewalks, parking lots, parking garages, community swimming pools, community laundry facilities, elevators, roofs, maintenance buildings, maintenance facilities, stairways, lobbies, corridors, and other property available for common use by all tenants and groups of tenants and their invitees. Common areas of a certified BUILD WV project are included as certified project property.

(7) “Corporation” or “C corporation” means a corporation that is taxed separately from its owners for federal income tax purposes under subchapter C of the Internal Revenue Code and includes a limited liability company, partnership, or other entity that is treated as a corporation for federal income tax purposes.

(8) “Department of Economic Development” means the West Virginia Department of Economic Development established under the provisions of §5B-2-1 *et seq.* of this code.

(9) “Eligible company” means any corporation, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture, or any other entity operating or intending to operate a certified project, whether owned or leased, within the state that meets the standards required by the Department of Economic Development for certification under this article. An eligible company may operate, or intend to operate, directly or indirectly through a lessee. The Department of Economic Development may certify multiple party projects comprised of more than one eligible company, as provided in this article.

(10) “Eligible taxpayer” —

(A) For purposes of the property value adjustment tax credit, “eligible taxpayer” means any approved company:

(i) That has made qualified investment in certified BUILD WV project property or any group of multiple party project participants that has made qualified investment in certified BUILD WV project property; or

(ii) That is subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, or the owners, interest holders, partners, S Corporation shareholders, or other owners of an approved company, that receive flow-through income from the approved company, that are subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(B) “Eligible taxpayer” also means and includes those members of an affiliated group of taxpayers engaged in a unitary business with an approved company or group of multiple party project participants, in which one or more members of the affiliated group is a person subject to the tax imposed under §11-24-1 *et seq.* of this code: *Provided*, That application of the property value adjustment tax credit against the tax imposed under §11-24-1 *et seq.* of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Credit may apply solely against that single entity’s proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group.

(11) “Final approval” or “certification” means the action taken by the Secretary of the Department of Economic Development to certify a BUILD WV project.

(12) “Flow-through entity,” “conduit entity,” or “pass through entity” means an S corporation, partnership, limited partnership, limited liability partnership, or limited liability company. The term “Flow-through entity,” “conduit entity,” or “pass through entity” includes a publicly traded partnership as that term is defined in section 7704 of the Internal Revenue Code that has equity securities registered with the securities and exchange commission under section 12 of title I of the securities exchange act of 1934, 15 USC 78l: *Provided*, That, a partnership, limited liability company, or other entity or organization that is treated as a C corporation for federal income tax purposes shall be subject to income allocation, apportionment, and taxation under §5B-24-1 *et seq.* of this code.

(13) “Infrastructure” means, and is limited to, the real and tangible personal property located in a project that is directly used in, and necessary for, providing broadband internet access, electricity, water, natural gas, sewer service, sewage treatment service, rubbish disposal, and other utility services for residential units within a certified BUILD WV project. An electrical charging facility for charging electrical motor vehicles, or electrical hybrid motor vehicles of certified BUILD WV project residents may be treated as an infrastructure component of a certified BUILD WV project: *Provided*, That in no case shall any property or space that is used, in whole or in part, as a gasoline filling station or other motor vehicle fueling station constitute certified project property, or any part thereof.

(14) “Natural person” or “individual” means a human being.

(15) “Partner” includes a partner in a partnership, and a member in a syndicate, group, pool, joint venture, or organization.

(16) “Partnership” means and includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation, or a sole proprietorship.

(17) “Person” means and includes any natural person, corporation, limited liability company, flow-through entity, or partnership.

(18) “Taxpayer” means any person subject to the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code.

(19) “Tax year” or “taxable year” means the tax year of the taxpayer for federal income tax purposes.

(20) “Timeshare” means an agreement or arrangement in which two or more parties share the ownership of, or right to use, property (e.g. an apartment or condominium) that authorizes occupation by each party, typically for periods of less than a year. “Timeshare” includes a deeded contract providing such an arrangement and a fractional ownership agreement or arrangement.

“Timeshare” means and includes property that the subject of any such agreement or arrangement.

(21) “Unitary business” means a unitary business as defined in §11-24-3a of this code.

§5B-2L-4. Rule-making.

(a) In order to effectuate the purposes of this article, the Tax Commissioner may promulgate procedural rules, interpretive rules and legislative rules, including emergency rules, or any combination thereof in accordance with §29A-3-1 *et seq.* of this code.

(b) In order to effectuate the purposes of this article, the Department of Economic Development or any agency, division, or subdivision thereof, may promulgate procedural rules, interpretive rules, and legislative rules, including emergency rules, or any combination thereof in accordance with §29A-3-1 *et seq.* of this code.

§5B-2L-5. Application of the West Virginia Tax Procedure and Administration Act and West Virginia Tax Crimes and Penalties Act.

The provisions of this article are subject to the West Virginia Tax Procedure and Administration Act, set forth in §11-10-1 *et seq.* of this code, and the West Virginia Tax Crimes and Penalties Act, set forth in §11-9-1 *et seq.* of this code, as if the provisions thereof were set forth *in extenso* in this article.

§5B-2L-6. Effective date, expiration date and required reporting.

(a) Effective July 1, 2024, and annually thereafter, the Department of Economic Development shall submit a report to the Joint Committee on Government and Finance. The report shall provide:

(1) The number and location of all projects approved pursuant to this article;

- (2) The geographic distribution of the projects approved;
- (3) The total number of new housing units approved over the preceding year;
- (4) The total number of housing units completed over the preceding year;
- (5) The total amount of exemptions granted pursuant to §5B-2L-7 of this article;
- (6) The total amount of property value adjustment tax credits allowed pursuant to §5B-2L-10 of this article; and
- (7) Any other information requested by the Joint Committee on Government and Finance.

(b) Any property value adjustment tax credit authorized by this article shall be effective for corporate net income tax years and personal income tax years beginning on and after January 1, 2023.

(c) Effective January 1, 2028, the provisions of this article shall expire and have no further force or effect: *Provided*, That any tax exemption or property value adjustment tax credit authorized pursuant to this article prior to January 1, 2028, shall continue to be valid and eligible for redemption pursuant to procedures provided herein.

PART II. SALES AND USE TAX EXEMPTION FOR
PURCHASES OF TANGIBLE PERSONAL PROPERTY AND
SERVICES DIRECTLY USED IN CONSTRUCTION, REPAIR,
MAINTENANCE AND REFURBISHMENT OF CERTIFIED
BUILD WV HOUSING.

§5B-2L-7. Consumers sales and service tax and use tax exemption for construction contractors.

(a) Notwithstanding the provisions of §11-15-1 *et seq.*, §11-15A-1 *et seq.*, and §11-15-8d of this code or any other provision of this code, purchases of building materials, tangible personal property, and services by a construction contractor or construction subcontractor directly used in construction of a certified BUILD WV project property certified pursuant to the provisions of this

article are exempt from the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code.

(b) Purchases of services, materials, and tangible personal property for repairs, maintenance, and refurbishment of certified BUILD WV project property are exempt from the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code.

(c) The exemptions authorized under this section also apply to exempt purchases enumerated herein from the municipal consumers sales and service tax and use tax and special district excise tax: *Provided*, That exemptions authorized under this section do not apply to purchases subject to a special district excise tax that was imposed and effective under §7-22-12 or §8-38-12 of this code, as applicable, prior to the effective date of this section.

(d) The exemptions authorized under this section are limited to purchases of building materials and tangible personal property directly incorporated into certified project residential buildings and structures, common areas, and infrastructure during construction, repair, maintenance, and refurbishment of certified BUILD WV project property; including common areas, infrastructure, and services directly used in construction, repair, maintenance, and refurbishment of certified BUILD WV project property: *Provided*, That the following purchases are not exempt under the provisions of this section:

(1) Purchases of gasoline and special fuel or any other fuel or means of power for a motor vehicle or any other machine, apparatus, or engine; or

(2) Purchases subject to the consumers sales and service tax and use tax under the provisions of §11-15-3c of this code.

PART III. AUTHORIZATION FOR MUNICIPAL BUSINESS AND OCCUPATION TAX EXEMPTION

§5B-2L-8. Municipal authority to exempt business and occupation tax.

Notwithstanding any other provision of this code, a municipality that imposes the municipal business and occupation

tax pursuant to the provisions of §8-13-5 of this code, may authorize by ordinance, a municipal business and occupation tax exemption for gross income from rents, royalties, fees, or other remuneration derived by a lessor or landlord from the furnishing, leasing, or renting of any certified BUILD WV project property to a lessee or occupant.

PART IV. BUILD WV PROPERTY VALUE ADJUSTMENT CREDIT.

§5B-2L-9. Eligibility for property value adjustment tax credit.

There shall be allowed to every eligible taxpayer a property value adjustment tax credit against the taxes imposed under §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, as determined under this article.

§5B-2L-10. Amount of property value adjustment tax credit allowed.

(a) Amount of credit.

(1) The amount of total property value adjustment tax credit allowed to an eligible taxpayer is the final product of the mathematical steps specified in paragraphs (A), (B) and (C) of this subdivision.

(A) Approved costs, as certified by the Department of Economic Development multiplied by 60 percent.

(B) The product of the multiplication set forth in paragraph (A) of this subdivision, multiplied by the statewide average class III property tax rate of this state for the tax year in which construction of project property is completed, as certified by the Department of Economic Development.

(C) The product of the multiplication set forth in paragraph (B) of this subdivision, multiplied by 10.

(b) *Annual credit* — The property value adjustment tax credit shall be applied annually as specified in this article in the amount of one-tenth thereof per year for a period of 10 consecutive years

beginning in the tax year in which construction of project property is completed, as certified by the Department of Economic Development. The property value adjustment tax credit shall not be carried back to any preceding tax year, nor carried forward to any succeeding tax year. However, the refundable property value adjustment tax credit may be applied in accordance with the provisions of this article. The property value adjustment tax credit shall not be transferable. Any amount of annual property value adjustment tax credit not used during the personal income tax or corporation net income tax taxable year, as applicable, (1) as a direct offset of income tax, plus (2) any refundable credit applied, as allowed under this article, is forfeited.

§5B-2L-11. Application of annual credit allowance.

(a) *Application of annual property value adjustment tax credit against personal income tax or corporate net income tax.* — The amount of the property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 *et seq.* or §11-24-1 *et seq.* of this code, as applicable, to offset tax liabilities imposed on net income for each taxable year, beginning in the eligible taxpayer's tax year in which construction of project property is completed, as certified by the Department of Economic Development, and ending at the end of the eligible taxpayer's 10th taxable year subsequent to the tax year in which construction of project property is completed, as certified by the Department of Economic Development.

(1) *Personal income tax.* — The amount of the annual property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-21-1 *et seq.* of this code.

(2) *Corporation net income tax.* — The amount of the annual property value adjustment tax credit shall be taken against the tax liabilities of the eligible taxpayer for the current taxable year imposed by §11-24-1 *et seq.* of this code. Application of the property value adjustment tax credit against the tax imposed under §11-24-1 *et seq.* of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the

single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group.

(3) *Refundable portion of annual property value adjustment tax credit.* –

(A) If annual property value adjustment tax credit allowed under this article exceeds the amount of personal income tax or corporation net income tax, as applicable, subject to offset under this article in any taxable year, the eligible taxpayer may claim, for that taxable year, the excess amount as a refundable tax credit, not to exceed \$100,000 per project.

(B) The \$100,000 property value adjustment tax credit refundable credit limitation applies on a per project basis, so that:

(i) If there is a single eligible taxpayer that has developed property comprising a certified BUILD WV project that is entitled to a refundable portion of the tax credit, then the \$100,000 refundable credit limitation applies to that single taxpayer; or

(ii) If there are multiple eligible taxpayers that have developed of property comprising a certified BUILD WV project that are entitled to a refundable portion of the tax credit, then the \$100,000 refundable credit limitation applies to, and is shared among, those multiple eligible taxpayers in such proportion as the Department of Economic Development may approve, and in no case shall the aggregate amount of refundable tax credit taken by all such multiple eligible taxpayers in total exceed \$100,000 for the tax year.

(C) Application of the property value adjustment tax credit, as a refundable credit against the tax imposed under §11-24-1 *et seq.* of this code is subject to the provisions of §11-24-13a(g) and §11-24-13c(b)(2) of this code, and is limited to the single entity, from among the affiliated group of taxpayers, that earned entitlement to the credit. Only that single entity shall be entitled to claim excess

credit for the taxable year, if applicable, as refundable credit. Credit may apply solely against that single entity's proportionate share of taxable income. No tax credit earned by one member of the affiliated group, may be used, in whole or in part, by any other member of the affiliated group. Any property value adjustment tax credit remaining after application of this subdivision for the taxable year is forfeited.

(b) *Pass-through entities.* –

(1) The annual property value adjustment tax credit allowed under this article for the year shall flow through to the equity owners of the pass-through entity in the same manner as distributive share of income flows through to the equity owners.

(2) *Personal income tax* — application of annual property value adjustment tax credit against personal income tax on income from pass-through entities. – The property value adjustment tax credit authorized by this article may be applied against the tax imposed under §11-21-1 *et seq.* of this code, on flow-through income of an individual partner, owner, interest holder or S Corporation shareholder, which is directly and solely derived from and limited to the net income of the flow-through entity that is an eligible taxpayer that has developed certified project property. If annual property value adjustment tax credit allowed under this article exceeds the amount of personal income tax of a particular owner, interest holder, partner or S Corporation shareholder or other owner of a flow-through entity that is an approved company, subject to offset by the property value adjustment tax credit under this article in any taxable year, the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit. The \$100,000 limitation is determined at the flow-through entity level and applies as the total aggregate limit on all refundable credit available to all partners, owners, interest holders, or S Corporation shareholders that receive a distributive share of flow through income from the flow-through entity. The refundable credit amount shall be divided and distributed among the individual partners, owners, interest holders, or S Corporation shareholders, in the same manner and in the same proportions as

the distributive share of income flows through to the equity owners: *Provided*, That in the case of multiple approved companies that have developed project property, the \$100,000 limitation applies on a per project basis, as specified herein.

(3) *Corporation net income tax* — application of annual property value adjustment tax credit against corporation net income tax on income from pass-through entities. – The property value adjustment tax credit authorized by this article may be applied against the tax imposed under §11-24-1 *et seq.* of this code, on flow-through income of a C corporation that is a partner, owner, interest holder, or S Corporation shareholder, which is directly and solely derived from and limited to the net income of the flow-through entity that is the eligible taxpayer that developed certified project property. If annual property value adjustment tax credit allowed under this article exceeds the amount of corporation net income tax of a particular owner, interest holder, partner, S Corporation shareholder, or other owner of a flow-through entity that is an approved company, subject to offset by the property value adjustment tax credit under this article in any taxable year, the particular owner, interest holder, partner, S Corporation shareholder, or other owner of the flow-through entity may claim, for that taxable year, the excess amount as a refundable tax credit. The \$100,000 limitation is determined at the flow-through entity level and applies as the total aggregate limit on all refundable credit available to all partners, owners, interest holders or S Corporation shareholders that receive a distributive share of flow-through income from the flow-through entity. The refundable credit amount shall be divided and distributed among the partners, owners, interest holders or S Corporation shareholders, in the same manner and in the same proportions as the distributive share of income flows through to the equity owners: *Provided*, That in the case of multiple eligible taxpayers that have developed project property, the \$100,000 limitation applies on a per project basis, as specified herein.

(c) The property value adjustment tax credit shall not apply against the *ad valorem* property tax. The property value adjustment

tax credit shall not apply against any withholding tax or payroll tax of any taxpayer or employer.

(d) *Annual schedule.* – For purposes of asserting the property value adjustment tax credit allowed under this article against tax, the taxpayer must prepare and file an annual schedule showing the amount of tax paid for the taxable year and the amount of credit allowed under this article, and such other information as the Tax Commissioner may require. The annual schedule shall set forth the information and be in the form prescribed by the Tax Commissioner.

§5B-2L-12. Property value adjustment tax credit entitlement is retained by eligible taxpayers that have developed project property, transfer of credit to transferees of project property is prohibited.

(a) *Transfer or sale of assets.* –

(1) Where there has been a sale or transfer of the certified BUILD WV project assets from an eligible taxpayer to any other person or entity, the eligible taxpayer retains entitlement to the property value adjustment tax credit. Credit entitlement shall not be transferred to the transferee of project property.

(b) *Stock purchases.* – Where a corporation which is an eligible taxpayer entitled to the property value adjustment tax credit under this article is purchased through a stock purchase by a new owner, where such corporation remains a legal entity so as to retain its corporate identity, the entitlement of that corporation to the property value adjustment tax credit allowed under this article will not be affected by the ownership change: *Provided*, That the corporation otherwise remains in compliance with the requirements of this article for entitlement to the property value adjustment tax credit.

(c) *Mergers.* –

(1) Where a corporation or other entity that is an eligible taxpayer entitled to the property value adjustment tax credit under this article is merged with another corporation or entity, the

surviving corporation or entity is entitled to the property value adjustment tax credit to which the predecessor eligible taxpayer was originally entitled: *Provided*, That the surviving corporation or entity otherwise complies with the provisions of this article.

(2) The amount of property value adjustment tax credit available in any taxable year during which a merger occurs shall be apportioned between the predecessor eligible taxpayer and the successor eligible taxpayer based on the number of days during the taxable year that each owned the transferred certified BUILD WV project business assets.

(d) No provision of this section or of this article may be construed to allow sales, assignment, or other transfers of the property value adjustment tax credit allowed under this article. The property value adjustment tax credit allowed under this article can be redesignated as useable by a taxpayer or entity other than the original entity entitled to the credit, only in circumstances where there is a valid successorship as described under this section.

§5B-2L-13. Credit recapture; interest; penalties; additions to tax; statute of limitations.

(a) If it appears upon audit or otherwise that any person or entity has taken the property value adjustment tax credit against tax and was not entitled to take the credit, then the credit improperly taken shall be recaptured. Amended returns shall be filed for any tax year for which the credit was improperly taken. Any additional taxes due under §11-21-1 *et seq.* or §11-24-1 *et seq.*, or any other provision of this code shall be remitted with the amended return or returns filed with the Tax Commissioner, along with interest, as provided in §11-10-1 *et seq.* of this code and such other penalties and additions to tax as may be applicable pursuant to the provisions of §11-10-1 *et seq.* of this code.

(b) Notwithstanding the provisions of §11-10-1 *et seq.* of this code to the contrary, penalties and additions to tax imposed under that article may be waived at the discretion of the Tax Commissioner: *Provided*, That interest is not subject to waiver.

(c) Notwithstanding the provisions of §11-10-1 *et seq.* of this code to the contrary, the statute of limitations for the issuance of an assessment of tax by the Tax Commissioner is five years from the date of filing of any tax return on which the property value adjustment tax credit was taken or five years from the date of payment of any tax liability calculated pursuant to the assertion of the property value adjustment tax credit allowed under this article, or five years from the date of payment of any refundable tax credit calculated pursuant to the assertion of the property value adjustment tax credit allowed under this article, whichever is later.

PART V. BUILD WV PROJECT AND DISTRICT CERTIFICATION.

§5B-2L-14. Designation of a certified district.

(a) A certified BUILD WV district may be designated upon the agreement, in writing, of the following officials: the Secretary of the Department of Economic Development, the Secretary of the Department of Tourism, and the Secretary of the Department of Commerce.

(b) A certified district shall be designated by the identification of a municipality, attraction, landmark, or other point of interest. The certified district may extend, as determined by the designation, up to 20 square miles from that municipality, attraction, landmark, or other point of interest.

(c) The following criteria shall be considered when determining whether to designate a certified district:

(1) The housing and employment needs within the certified district;

(2) Whether the certified district will have a significant and positive economic impact on the state;

(3) Whether there is substantial and credible evidence that designating the certified district will result in one or more certified projects likely to be started and completed in a timely fashion;

(4) Whether the certified district will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;

(5) Whether the certified district will, directly or indirectly, assist in the creation of additional employment opportunities in the area or assist in the filling of currently available jobs;

(6) Whether the certified district helps to diversify the local economy;

(7) Whether the certified district is consistent with the goals of this article; and

(8) Any other relevant and reasonable criteria determined by the designating officials.

(d) In no case may more than 3 BUILD WV districts exist at any one time in this state.

(e) A certified district may be decertified at any time upon agreement, in writing, of the designated officials provided for in subsection (a). In no case may any BUILD WV district be certified for any time period longer than 10 calendar years, unless redesignated in the same manner as provided for designation.

(f) In no case may a proposed BUILD WV project be certified in any geographic area that is not a certified BUILD WV district.

(g) The designation made pursuant to this section as to the designation of a certified district, refusal to designate a certified district, decertification, or revocation of certification of a BUILD WV district is final.

§5B-2L-15. Project administration and certification.

(a) The Department of Economic Development has the following powers and duties necessary to carry out the purposes of this article, including, but not limited to:

(1) To issue approval of and certify all applications for projects and enter into agreements pertaining to certified BUILD WV projects with approved companies;

(2) To employ fiscal consultants, attorneys, appraisers, and other agents as the Secretary of the Department of Economic Development finds necessary or convenient for the preparation and administration of agreements and documents necessary or incidental to any project;

(3) To impose and collect fees and charges in connection with any transaction;

(4) To impose and collect from the applicant a nonrefundable application fee in the amount of \$5,000 to be paid to the Department of Economic Development when the application is filed;

(5) To issue approval of and certify all certified BUILD WV project residential housing units; and

(6) To decertify, refuse to certify or revoke certification of any proposed or certified BUILD WV project, upon a finding that any person or entity involved therein, or any approved company, or any eligible taxpayer, has failed to comply with the requirements of this article, or upon a finding that residential housing units, common areas or infrastructure of a certified BUILD WV project have been constructed with shoddy workmanship or materials, or that the approved company or eligible taxpayer has failed to maintain or repair certified BUILD WV project property in a manner consistent with accepted standards or standards prescribed by the Department of Economic Development, or that any aspect of the undertaking has been the result of, or involved, fraud, malfeasance, bribery, embezzlement, corruption, intimidation or gross misconduct. Upon revocation, all tax credit authorized under this article shall be null and void and of no further force, or effect. No company, entity, or person shall apply or use any tax credit to offset tax on or after the date of revocation. The Tax Commissioner may apply credit recapture, and tax assessment and collection actions as may be appropriate under the West Virginia Tax Procedure and

Administration Act and may seek criminal sanctions, as appropriate, under West Virginia Tax Crimes and Penalties Act.

§5B-2L-16. Project application; evaluation standards; approval of projects.

(a) Each eligible company or group of multiple party project participants that seeks certification of a proposed project as a certified BUILD WV project must file a written application for approval and certification of the project with the Department of Economic Development.

(b) With respect to each eligible company or group of multiple party project participants making an application to the Department of Economic Development seeking certification of a proposed project as a certified BUILD WV project the Department of Economic Development shall make inquiries and request documentation, including a completed application, from the applicant that shall include the following:

(1) A description and location of the proposed project;

(2) Capital and other anticipated expenditures for the project and the sources of funding therefor;

(3) The anticipated employment, revenues and expenses generated by the project; and

(4) Anything else determined necessary by the Department of Economic Development.

(c) The aggregate sum of approved costs for all projects for any fiscal year shall not exceed \$40 million. Any project application submitted for certification in the fiscal year after the sum of \$40 million has been reached shall not be approved or certified. Notwithstanding any other provision of this code, for any fiscal year, the Secretary of the Department of Economic Development may not approve any single proposed project as a certified BUILD WV project for the fiscal year unless the proposed project has an aggregate sum of approved costs that is at least \$3 million or the proposed project includes at least six residential units or houses.

(d) The Secretary of the Department of Economic Development, within 60 days following receipt of an application or receipt of any additional information requested by the Department of Economic Development respecting the application, whichever is later, shall act to grant or not to grant certification of the project, based on the following criteria:

(1) The project will have approved costs of at least \$3 million or includes at least six residential units or houses;

(2) The project will have a significant and positive economic impact on the state;

(3) The quality of the proposed project and how it addresses economic problems in the area in which the project will be located;

(4) Whether there is substantial and credible evidence that the project is likely to be started and completed in a timely fashion;

(5) Whether the project will, directly or indirectly, improve the opportunities in the area where the project will be located for the successful establishment or expansion of other commercial businesses;

(6) Whether the project will, directly or indirectly, assist in the creation of additional employment opportunities in the area where the project will be located;

(7) Whether the project helps to diversify the local economy;

(8) Whether the project is consistent with the goals of this article;

(9) Whether the project is economically and fiscally sound using recognized business standards of finance and accounting;

(10) Whether the proposed project demonstrates that the project will meet the immediate future needs of the area; and

(11) The ability of the eligible company or group of multiple party project participants to carry out the project.

(e) *Exclusions.*

(1) In no case shall any property or space that is used, in whole or in part, as a residential timeshare, commercial timeshare, or as part of any similar arrangement, constitute certified project property, or any part thereof.

(2) In no case shall any property or space that is used in whole or in part as an industrial or manufacturing operation, constitute certified project property, or any part thereof.

(3) In no case shall any property or space that is used in whole or in part as a warehouse, distribution center, telephone call center, or telemarketing operation, constitute certified project property, or any part thereof.

(4) In no case shall any property or space that is used, in whole or in part, as an airport constitute certified project property, or any part thereof.

(5) In no case shall any property or space that is used primarily for business activity, business, or other operation or activity excluded from certification by the Department of Economic Development by rule or administrative notice, constitute certified project property, or any part thereof.

(f) The Department of Economic Development may establish additional criteria for consideration when evaluating and approving applications for certified BUILD WV housing projects.

(g) The decision by the Secretary of the Department of Economic Development as to certification of a proposed project, refusal to certify a proposed project, decertification, or revocation of certification of a project is final.

§5B-2L-17. Agreement between Department of Economic Development and approved company or approved group of multiple party project participants.

(a) The Department of Economic Development, upon final approval of an application by the Secretary, may enter into an

agreement with any approved company or group of multiple party project participants with respect to a project.

(b) The Department of Economic Development may, at the discretion of the Secretary of the Department of Economic Development, approve an application for project certification constituting a single company application or a multiple party project application. The Secretary of the Department of Economic Development may certify a multiple party project, and may enter into an agreement with the principals thereof. For purposes of this article, a multiple party project participant must be an eligible company as defined in this article. The terms and provisions of each agreement shall include, but not be limited to:

(1) Total projected approved costs.

(2) Within three months of the completion date, the approved company or group of multiple party project participants shall document:

(A) The actual cost of the project through a certification of the costs to the Department of Economic Development by an independent certified public accountant acceptable to the Department of Economic Development; and

(B) A date certain by which the approved company or group of multiple party project participants shall have completed and opened the certified project for occupancy.

(3) Any approved company or group of multiple party project participants, having received final approval may request, and the Department of Economic Development may grant, an extension of time or change to the expected timeline. However, in no event shall the extension exceed three years from the date of certification to the completion date specified in the agreement with the approved company or group of multiple party project participants.

(c) Although adjacent properties may be developed and expanded upon by approved companies or others, and certified BUILD WV project property may itself be developed and expanded upon, in such cases, the certified BUILD WV project

designation and the tax incentives and benefits of this article shall not apply with relation to such noncertified developments or expansions, except upon the issuance of a subsequent certification by the Department of Economic Development for such development or expansion. In no case may a certified project be augmented, enlarged, extended or expanded, except pursuant to issuance of an additional and separate certification of a new and distinct project. Any augmentation, enlargement, extension or expansion may only be approved and certified pursuant to the submission of a new request for project approval, with full payment of all associated fees, and submission of full documentation as required under this article for a new project.

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CHAPTER 94

**(Com. Sub. for S. B. 246 - By Senators Grady, Lindsay,
Roberts, Phillips, Woodrum, and Martin)**

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-9G-1, §18-9G-2, and §18-9G-3, all relating to imposing water bottle filling station requirements for newly constructed public school buildings and existing public school buildings undergoing a major improvement; purpose; defining terms; requiring State Board of Education rules; setting forth requirements for any water bottle filling station installed in a public school building; and requiring county boards to adopt policies to permit students in schools with water bottle filling stations to carry water bottles.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9G. WATER BOTTLE FILLING STATIONS.

§18-9G-1. Purpose.

The purpose of this bill is to support maintaining a child's overall health, such as regulating temperature, transporting nutrients, and preventing disease. Drinking sufficient amounts of water can have many health benefits, such as reduced dental cavities and maintaining a healthy body weight. Studies show when water bottle filling stations are installed in schools, students nearly triple the amount of how much water they drink at lunch time and the likelihood of students in those same schools being at an unhealthy weight is greatly reduced. Additionally, studies have shown that there are more germs found on an average classroom

water fountain spigot than a toilet seat or an animal cage. Accordingly, promoting the use of a water bottle filling station reduces the spread of germs and disease.

§18-9G-2. Definitions.

As used in this section these words have the following meaning:

(1) “Construction project” means a project in the furtherance of a facilities plan with a cost of greater than \$1,000,000 for the new construction, expansion, or major renovation of the facilities, buildings, and structures for school purposes, including:

(A) The acquisition of land for current or future use in connection with the construction project;

(B) New or substantial upgrading of existing equipment, machinery, or furnishings; and

(C) Installation of utilities and other similar items related to making the construction project operational.

(D*) “Construction project” does not include such items as books, computers, or equipment used for instructional purposes; fuel supplies; routine utility service fees and routine maintenance costs; ordinary course of business improvements; and other items which are customarily considered to result in a current or ordinary course of business operating charge or a major improvement project.

(2) “Major improvement” means a project meeting one or more of the following:

(A) Increasing the square footage of a school by more than 5,000 square feet; or

(B) Any renovations or upgrades to a school with a cost greater than \$500,000 where plumbing work constitutes more than 20 percent of the project’s construction cost.

*NOTE: An amendment had stricken the paragraph designation “(D)” but this is printed as it was in the enrolled bill.

(3) “Public school” means any school under the general supervision of the West Virginia Board of Education pursuant to section two, article XIII of the Constitution of West Virginia and includes any charter school pursuant to §18-5G-1 *et seq.* of this code.

(4) “Water bottle filling station” means a station to which the following apply:

- (A) The station is designed to fill a bottle with water;
- (B) The station dispenses filtered drinking water;
- (C) The station may be integrated into a drinking fountain; and
- (D) The station shall be touchless for sanitary reasons.

§18-9G-3. Plans for new construction and major improvements of public school buildings required to provide sufficient water bottle filling stations.

(a) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code on or before November 1, 2022, to require newly constructed public school buildings to include the following:

(1) A minimum of one water bottle filling station on each floor and wing of each public school building;

(2) At least one water bottle filling station in all school food service areas;

(3) At least one water bottle filling station near gymnasiums and outdoor learning and activity areas, including playgrounds and athletic facilities; and

(4) A minimum of at least one water bottle filling station per 200 building occupants projected upon completion of the projected construction.

(b) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code on or before November 1, 2022, to require existing public school buildings undergoing a major improvement

to include a minimum of half of the facility's existing water coolers being retrofitted or replaced to provide water bottle filling capability and be made ADA compliant. Pending the availability of a water supply line and sanitary plumbing, the preferred placement of these stations shall be in the following areas:

(1) School food service areas;

(2) Near gymnasiums and outdoor learning and activity areas, including playgrounds and athletic facilities; and

(3) Grouped toilet areas.

(c) Any water bottle filling station installed in a public school building shall:

(1) Dispense filtered, clean drinking water;

(2) Be touchless for sanitary reasons;

(3) Be regularly cleaned to maintain sanitary conditions; and

(4) Be regularly maintained to ensure proper functioning.

(d) County boards shall adopt a policy to permit students in schools with one or more water bottle filling stations to carry water bottles.



CHAPTER 95

**(Com. Sub. for S. B. 261 - By Senators Nelson, Phillips,
Rucker, Roberts, Lindsay, Jeffries, and Grady)**

[Passed March 12, 2022; in effect from passage.]

[Approved by the Governor on March 25, 2022.]

AN ACT to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended, relating to requiring video cameras in certain special education classrooms; allowing school principal to designate another school administrator to be the custodian of the video camera, all recordings of the camera, and access to those recordings; modifying provisions pertaining to the amount of time a video is required to be retained; removing requirement to delete or otherwise make unretrievable after a certain time period; clarifying that the principal or other designated school administration is not required to view the video recording absent an authorized request or suspicion of an incident except as otherwise provided; removing prohibition against allowing regular, continuous, or continual monitoring of video recording; allowing the school principal, other school administration designee, or in certain instances, a county designee to view a video recording; requiring no less than 15 minutes of the video of each self-contained classroom to be viewed at no less than every 90 days; modifying provisions pertaining to the viewing of a video recording by a law-enforcement officer or the Department of Health and Human Resources; requiring a public school or school district to allow a judge, counsel, or other legal entity to view a video recording in certain instances; requiring certain incidents to be reported pursuant to code section mandating reporting of suspected child abuse and neglect; and providing that cameras in special education

classrooms section only applies to cameras installed pursuant to that section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-11. Video cameras required in certain special education classrooms.

(a) A county board of education shall ensure placement of video cameras in self-contained classrooms as defined in state board policy.

(b) As used in this section:

(1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a child, of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

(A) An employee of a public school or school district; or

(B) Another student;

(2) "Self-contained classroom" means a classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy; and

(3) "Special education" means the same as defined in §18-20-1 *et seq.* of this code.

(c) A county board of education shall provide a video camera to a public school for each self-contained classroom that is a part of that school which shall be used in every self-contained classroom. The principal of the school or other school administrator whom the principal assigns as a designee shall be the custodian of the video camera, all recordings generated by the video camera, and access to those recordings pursuant to this section.

(d)(1) Every public school that receives a video camera under this section shall operate and maintain the video camera in every self-contained classroom that is part of that school.

(2) If there is an interruption in the operation of the video camera for any reason, a written explanation should be submitted to the school principal and the county board explaining the reason and length for which there was no recording. The explanation shall be maintained at the county board office for at least one year.

(e)(1) A video camera placed in a self-contained classroom shall be capable of:

(A) Monitoring all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes; and

(B) Recording audio from all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes.

(2) A video camera placed in a self-contained classroom shall not monitor a restroom or any other area in the self-contained classroom where a student changes his or her clothes except, for incidental monitoring of a minor portion of a restroom or other area where a student changes his or her clothes because of the layout of the self-contained classroom.

(3) A video camera placed in a self-contained classroom is not required to be in operation during the time in which students are not present in the self-contained classroom.

(f) Before a public school initially places a video camera in a self-contained classroom pursuant to this section, the public school shall provide written notice of the placement to:

(1) The parent or legal guardian of a student who is assigned to the self-contained classroom;

(2) The county board; and

(3) The school employee(s) who is assigned to work with one or more students in the self-contained classroom.

(g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain video recorded from a camera placed under this section for at least three months after the date the video was recorded, subject to the following:

(A) If the minimum three-month period overlaps the summer break occurring between the last day of one instructional term and the first day of the next instructional term, the minimum three-month period shall be extended by the number of days occurring between the two instructional terms;

(B) For any school-based camera system that is installed or replaced after April 1, 2022, the public school shall retain video recorded from a camera for at least 365 days after the date the video was recorded and no extension of this time period during the summer break is required.

(2) If a person requests to view a recording under subsection (k) or subsection (l) of this section, the public school shall retain the recording from the date of the request until:

(A) The earlier of the person viewing the recording or 60 days after the person who requested the video was notified by the public school that the video is ready to be viewed; and

(B) Any investigation and any administrative or legal proceedings that result from the recording have been completed, including, without limitation, the exhaustion of all appeals.

(3) In no event may the recording be deleted or otherwise made unretrievable before the time period set forth in subdivision (1) of this subsection elapses.

(h) This section does not:

(1) Waive any immunity from liability of a public school district or employee of a public school district;

(2) Create any liability for a cause of action against a public school or school district or employee of a public school or school district; or

(3) Require the principal or other designated school administrator to view the video recording absent an authorized request pursuant to this code section or suspicion of an incident except as otherwise provided in subsection (j) of this section.

(i) A public school or school district shall not use video recorded under this section for:

(1) Teacher evaluations; or

(2) Any purpose other than the promotion and protection of the health, wellbeing, and safety of students receiving special education and related services in a self-contained classroom.

(j) Except as provided under subsections (k) and (l) of this section, a video recording made under this section is confidential and shall not be released or viewed by anyone except the school principal, other school administration designee, or county designee if the school principal or other school administration designee is unable to view the video pursuant to this subsection. The school principal, other school administration designee, or county designee shall view no less than 15 minutes of the video of each self-contained classroom at the school no less than every 90 days. The state board shall include in its rule authorized by this section requirements for documentation of compliance with the video viewing requirements of this subsection.

(k) Within seven days of receiving a request, a public school or school district shall allow viewing of a video recording by:

(1) A public school or school district employee who is involved in an alleged incident that is documented by the video recording and has been reported to the public school or school district;

(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the video recording and has been reported to the public school or school district; or

(3) An employee of a public school or school district as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the public school or school district.

(1) Within seven days of receiving a request, a public school or school district shall allow viewing of a video recording by and comply with all subsequent requests for viewing or release of the video recording by:

(1) A law-enforcement officer or employee of the Department of Health and Human Resources, as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the agency: *Provided*, That if a release of the video recording is requested pursuant to this subdivision, the agency receiving a copy of the video recording shall maintain strict confidentiality of the video and not further release the video without authorization from the public school district through its superintendent; or

(2) A judge, counsel, or other legal entity that is charged with deciding or representing either the school board, students, or employees in any matters related to legal issues arising from an incident: *Provided*, That the video may only be released pursuant to an appropriate protective order or under seal.

(m) If an incident is discovered while initially viewing camera footage that requires a report to be made under §49-2-803 of this code, that report shall be made by the viewer pursuant to that section within 24 hours of viewing the incident.

(n) When a video is under review as part of the investigation of an alleged incident, and the video reveals a student violating a disciplinary code or rule of the school, which violation is not related to the alleged incident for which the review is occurring, and which violation is not already the subject of a disciplinary

action against the student, the student is not subject to disciplinary action by the school for such unrelated violation unless it reveals a separate incident as described in §18-20-11(b)(1) of this code.

(o) It is not a violation of subsection (j) of this section if a contractor or other employee of a public school or school district incidentally views a video recording under this section if the contractor or employee of a public school or school district is performing job duties related to the:

(1) Installation, operation, or maintenance of video equipment;
or

(2) Retention of video recordings.

(p) This section applies solely to cameras installed pursuant to this code section and does not limit the access of a student's parent or legal guardian to a video recording viewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(q) A public school or school district shall:

(1) Take necessary precautions to conceal the identity of a student who appears in a video recording but is not involved in the alleged incident documented by the video recording for which the public school allows viewing under subsection (j) of this section, including, without limitation, blurring the face of the uninvolved student; and

(2) Provide procedures to protect the confidentiality of student records contained in a video recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(r) (1) Any aggrieved person may appeal to the State Board of Education an action by a public school or school district that the person believes to be in violation of this section.

(2) The state board shall grant a hearing on an appeal under this subsection within 45 days of receiving the appeal.

(s) (1) A public school or school district may use funds distributed from the Safe Schools Fund created in §18-5-48 of this code or any other available funds to meet the requirements of this section.

(2) A public school or school district may accept gifts, grants, or donations to meet the requirements of this section.

(t) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify the requirements of this section and address any unforeseen issues that might arise relating to the implementation of the requirements of this section.



CHAPTER 96

(Com. Sub. for S. B. 268 - By Senators Grady, Rucker, Smith, and Roberts)

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended, relating to creating a new exemption from compulsory school attendance for a child who participates in a learning pod or microschool; defining learning pod and microschool; requiring parent or custodian to present to the county superintendent or county board a notice of intent to participate in the learning pod or microschool; establishing qualifications for person or persons providing instruction; requiring annual academic assessment of the child in one of four specified ways; requiring the results of the annual academic assessment of the child to be submitted to the county superintendent; allowing the results of the annual academic assessment to be submitted as composite results; requiring the county board upon request to notify the parents or legal guardian of the services available to assist in the assessment of the child's eligibility for special education services; requiring the county superintendent to offer such assistance as may assist the person or persons providing instruction; allowing any child participating in a learning pod or microschool to attend any class offered by the county board under certain conditions; providing that no learning pod or microschool is subject to any other provision of law relating to education other than the law pertaining to placement of video cameras in certain special education classrooms; and clarifying that learning pods and microschools are not the same as homeschooling.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**§18-8-1. Compulsory school attendance; exemptions.**

(a) Exemption from the requirements of compulsory public school attendance established in §18-8-1a of this code shall be made on behalf of any child for the causes or conditions set forth in this section. Each cause or condition set forth in this section is subject to confirmation by the attendance authority of the county. A child who is exempt from compulsory school attendance under this section is not subject to prosecution under §18-8-2 of this code, nor is such a child a status offender as defined by §49-1-202 of this code.

(b) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to instruction in a private, parochial, or other approved school, are met. The instruction shall be in a school approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code. In all private, parochial, or other schools approved pursuant to this subsection, it is the duty of the principal or other person in control, upon the request of the county superintendent, to furnish to the county board such information and records as may be required with respect to attendance, instruction, and progress of students enrolled.

(c) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of either subdivision (1) or subdivision (2) of this subsection, both relating to home instruction, are met.

(1) The instruction shall be in the home of the child or children or at some other place approved by the county board and for a time equal to the instructional term set forth in §18-5-45 of this code. If the request for home instruction is denied by the county board, good and reasonable justification for the denial shall be furnished in writing to the applicant by the county board. The instruction shall be conducted by a person or persons who, in the judgment of the county superintendent and county board, are qualified to give instruction in subjects required to be taught in public elementary

schools in the state. The person or persons providing the instruction, upon request of the county superintendent, shall furnish to the county board information and records as may be required periodically with respect to attendance, instruction, and progress of students receiving the instruction. The state board shall develop guidelines for the home schooling of special education students including alternative assessment measures to assure that satisfactory academic progress is achieved.

(2) The child meets the requirements set forth in this subdivision: *Provided*, That the county superintendent may, after a showing of probable cause, seek from the circuit court of the county an order denying home instruction of the child. The order may be granted upon a showing of clear and convincing evidence that the child will suffer neglect in his or her education or that there are other compelling reasons to deny home instruction.

(A) Upon commencing home instruction under this section the parent of a child receiving home instruction shall present to the county superintendent or county board a notice of intent to provide home instruction that includes the name, address, and age of any child of compulsory school age to be instructed and assurance that the child shall receive instruction in reading, language, mathematics, science, and social studies, and that the child shall be assessed annually in accordance with this subdivision. The person providing home instruction shall notify the county superintendent upon termination of home instruction for a child who is of compulsory attendance age. Upon establishing residence in a new county, the person providing home instruction shall notify the previous county superintendent and submit a new notice of intent to the superintendent of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to provide home instruction shall be given on or before the date home instruction is to begin.

(B) The person or persons providing home instruction shall submit satisfactory evidence of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally accredited institution, or from an institution of higher education that has been authorized to confer a post-secondary

degree or certificate in West Virginia by the West Virginia Council for Community and Technical College Education or by the West Virginia Higher Education Policy Commission.

(C) Annually, the person or persons providing home instruction shall obtain an academic assessment of the child for the previous school year in one of the following ways:

(i) The child receiving home instruction takes a nationally normed standardized achievement test published or normed not more than 10 years from the date of administration and administered under the conditions as set forth by the published instructions of the selected test and by a person qualified in accordance with the test's published guidelines in the subjects of reading, language, mathematics, science, and social studies. The child is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows improvement from the previous year's results;

(ii) The child participates in the testing program currently in use in the state's public schools. The test shall be administered to the child at a public school in the county of residence. Determination of acceptable progress shall be based on current guidelines of the state testing program;

(iii) A portfolio of samples of the child's work is reviewed by a certified teacher who determines whether the child's academic progress for the year is in accordance with the child's abilities. The teacher shall provide a written narrative about the child's progress in the areas of reading, language, mathematics, science, and social studies and shall note any areas which, in the professional opinion of the reviewer, show need for improvement or remediation. If the narrative indicates that the child's academic progress for the year is in accordance with the child's abilities, the child is considered to have made acceptable progress; or

(iv) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent.

(D) A parent or legal guardian shall maintain copies of each student's Academic Assessment for three years. When the annual assessment fails to show acceptable progress, the person or persons providing home instruction shall initiate a remedial program to foster acceptable progress. The county board upon request shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services. Identification of a disability does not preclude the continuation of home schooling. In the event that the child does not achieve acceptable progress for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided.

(E) The parent or legal guardian shall submit to the county superintendent the results of the academic assessment of the child at grade levels three, five, eight, and 11, as applicable, by June 30 of the year in which the assessment was administered.

(3) This subdivision applies to both home instruction exemptions set forth in subdivisions (1) and (2) of this subsection. The county superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, all subject to availability, as may assist the person or persons providing home instruction. Any child receiving home instruction may upon approval of the county board exercise the option to attend any class offered by the county board as the person or persons providing home instruction may consider appropriate subject to normal registration and attendance requirements.

(d) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to physical or mental incapacity, are met. Physical or mental incapacity consists of incapacity for school attendance and the performance of school work. In all cases of prolonged absence from school due to incapacity of the child to

attend, the written statement of a licensed physician or authorized school nurse is required. Incapacity shall be narrowly defined and in any case the provisions of this article may not allow for the exclusion of the mentally, physically, emotionally, or behaviorally handicapped child otherwise entitled to a free appropriate education.

(e) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if conditions rendering school attendance impossible or hazardous to the life, health, or safety of the child exist.

(f) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code upon regular graduation from a standard senior high school or alternate secondary program completion as determined by the state board.

(g) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the child is granted a work permit pursuant to the subsection. After due investigation the county superintendent may grant work permits to youths under the termination age designated in §18-8-1a of this code, subject to state and federal labor laws and regulations. A work permit may not be granted on behalf of any youth who has not completed the eighth grade of school.

(h) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if a serious illness or death in the immediate family of the child has occurred. It is expected that the county attendance director will ascertain the facts in all cases of such absences about which information is inadequate and report the facts to the county superintendent.

(i) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to destitution in the home, are met. Exemption based on a condition of extreme destitution in the home may be granted only upon the written recommendation of the county attendance director to the county superintendent following careful investigation of the case. A copy of the report confirming

the condition and school exemption shall be placed with the county director of public assistance. This enactment contemplates every reasonable effort that may properly be taken on the part of both school and public assistance authorities for the relief of home conditions officially recognized as being so destitute as to deprive children of the privilege of school attendance. Exemption for this cause is not allowed when the destitution is relieved through public or private means.

(j) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to church ordinances and observances of regular church ordinances, are met. The county board may approve exemption for religious instruction upon written request of the person having legal or actual charge of a child or children. This exemption is subject to the rules prescribed by the county superintendent and approved by the county board.

(k) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the requirements of this subsection, relating to alternative private, parochial, church, or religious school instruction, are met. Exemption shall be made for any child attending any private school, parochial school, church school, school operated by a religious order, or other nonpublic school which elects to comply with the provisions of §18-28-1 *et seq.* of this code.

(l) Completion of the eighth grade does not exempt any child under the termination age designated in §18-8-1a of this code from the compulsory attendance provision of this article.

(m) A child is exempt from the compulsory school attendance requirements set forth in §18-8-1a of this code if the child is an eligible recipient participating in the Hope Scholarship Program, as provided for in §18-31-1 *et seq.* of this code and provides a notice of intent to participate in the Hope Scholarship Program to the county superintendent. The county superintendent shall enter the following into the West Virginia Education Information System (WVEIS):

(1) The filing of the notice of intent pursuant to this subsection;

(2) In the case of a Hope Scholarship recipient who chooses an individualized instructional program, annually, the child's test results or determination that a student is making academic progress commensurate with his or her age and ability, as applicable, pursuant to §18-31-8(a)(4) of this code; and

(3) In the case of an eligible recipient enrolling in a participating school, annually, the filing of a notice of enrollment pursuant to §18-31-11(a)(6) of this code.

(n) A child is exempt from the compulsory school attendance requirement set forth in §18-8-1a of this code if the child participates in a learning pod or microschool pursuant to this subsection.

(1) For the purposes of this subsection:

(A) "Learning pod" means a voluntary association of parents choosing to group their children together to participate in their elementary or secondary academic studies as an alternative to enrolling in a public school, private school, homeschool, or microschool, including participation in an activity or service provided to the children in exchange for payment; and

(B) "Microschool" means a school initiated by one or more teachers or an entity created to operate a school that charges tuition for the students who enroll and is an alternative to enrolling in a public school, private school, homeschool, or learning pod.

(2) Upon beginning participation in a learning pod or microschool pursuant to this subsection, the parent or legal guardian of the child participating shall present to the county superintendent or county board a notice of intent to participate in a learning pod or microschool that includes the name, address, and age of any child of compulsory school age participating and assurance that the child shall receive instruction in reading, language, mathematics, science, and social studies, and that the child shall be assessed annually in accordance with this subsection. The person providing instruction shall notify the county

superintendent upon termination of participation in a learning pod or microschoo for a child who is of compulsory attendance age. Upon establishing residence in a new county, the person providing instruction shall notify the previous county superintendent and submit a new notice of intent to the superintendent of the new county of residence: *Provided*, That if a child is enrolled in a public school, notice of intent to participate in a learning pod or microschoo shall be given on or before the date participation is to begin.

(3) The person or persons providing instruction shall submit satisfactory evidence of a high school diploma or equivalent, or a post-secondary degree or certificate from a regionally accredited institution, or from an institution of higher education that has been authorized to confer a post-secondary degree or certificate in West Virginia by the West Virginia Council for Community and Technical College Education or by the West Virginia Higher Education Policy Commission.

(4) Annually, the person or persons providing instruction shall obtain an academic assessment of the child for the previous school year in one of the following ways:

(A) The child participating in a learning pod or microschoo takes a nationally normed standardized achievement test published or normed not more than 10 years from the date of administration and administered under the conditions as set forth by the published instructions of the selected test and by a person qualified in accordance with the test's published guidelines in the subjects of reading, language, mathematics, science, and social studies. The child is considered to have made acceptable progress when the mean of the child's test results in the required subject areas for any single year is within or above the fourth stanine or, if below the fourth stanine, shows improvement from the previous year's results;

(B) The child participates in the testing program currently in use in the state's public schools. The test shall be administered to the child at a public school in the county of residence.

Determination of acceptable progress shall be based on current guidelines of the state testing program;

(C) A portfolio of samples of the child's work is reviewed by a certified teacher who determines whether the child's academic progress for the year is in accordance with the child's abilities. The teacher shall provide a written narrative about the child's progress in the areas of reading, language, mathematics, science, and social studies and shall note any areas which, in the professional opinion of the reviewer, show need for improvement or remediation. If the narrative indicates that the child's academic progress for the year is in accordance with the child's abilities, the child is considered to have made acceptable progress; or

(D) The child completes an alternative academic assessment of proficiency that is mutually agreed upon by the parent or legal guardian and the county superintendent.

(5) A parent or legal guardian shall maintain copies of each student's Academic Assessment for three years. When the annual assessment fails to show acceptable progress, the person or persons providing instruction shall initiate a remedial program to foster acceptable progress. The county board upon request shall notify the parents or legal guardian of the child, in writing, of the services available to assist in the assessment of the child's eligibility for special education services. Identification of a disability does not preclude the continuation of participation in a learning pod or microschoool. In the event that the child does not achieve acceptable progress for a second consecutive year, the person or persons providing instruction shall submit to the county superintendent additional evidence that appropriate instruction is being provided.

(6) The parent, legal guardian, learning pod, or microschoool shall submit to the county superintendent the results of the academic assessment of the child with the same frequency prescribed in §18-8-1(c)(2)(E) of this code: *Provided*, That instead of the academic assessment results being submitted individually, the learning pod or microschoool may submit the school composite results.

(7) The county superintendent or a designee shall offer such assistance, including textbooks, other teaching materials and available resources, all subject to availability, as may assist the person or persons providing instruction. Any child participating in a learning pod or microschool may upon approval of the county board exercise the option to attend any class offered by the county board as the person or persons providing instruction may consider appropriate subject to normal registration and attendance requirements.

(8) No learning pod or microschool which meets the requirements of this subsection is subject to any other provision of law relating to education: *Provided*, That any learning pod or microschool which has a student requiring special education instruction must comply with the provisions of §18-20-11 of this code, including, but not limited to, placement of video cameras for the protection of that exceptional student.

(9) Making learning pods and microschools subject to the home instruction provisions and requirements does not make learning pods and microschools the same as homeschooling.

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CHAPTER 97

(S. B. 499 - By Senators Rucker, Plymale, and Stollings)

[Passed March 3, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18-9D-21 of the Code of West Virginia, 1931, as amended, relating to authorizing legislative rules for the School Building Authority regarding Funding School Building Authority Projects.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-21. Authorizing rules of School Building Authority.

(a) The legislative rule filed in the State Register on September 27, 2007, relating to the School Building Authority (School Building Authority requirements for Comprehensive Educational Facility Plan rule), is repealed and enrolled as a procedural rule.

(b) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (funding School Building Authority projects rule), is authorized.

(c) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Building Authority school planning and design criteria rule), is authorized.

(d) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Building Authority project administration and review rule), is authorized.

(e) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Building Authority contract and agreements rule), is authorized.

(f) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Building Authority reporting procedures rule), is repealed.

(g) The legislative rule filed in the State Register on June 26, 2018, relating to the School Building Authority (School Access Safety Act rule), is authorized.

(h) The legislative rule filed in the State Register on December 16, 2019, relating to the School Building Authority (School Building Authority Contracts and Agreements; Post-Project Evaluation; Suspension of Right to Bid rule), is authorized.

(i) The legislative rule filed in the State Register on December 15, 2021, relating to the School Building Authority (Funding School Building Authority Projects), is authorized.

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CHAPTER 98

(S. B. 529 - By Senators Blair (Mr. President) and Baldwin)

[By Request of the Executive]

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18-2-12 of the Code of West Virginia, 1931, as amended, relating to computer science education in West Virginia schools; recognizing a need to provide coursework on computational thinking, block-based programming, text-based programming, network communication, computer architecture, coding, application development, digital literacy, and cyber security; requiring the board to update and build upon prior computer science education plans and policy to include additional subject matter; and removing obsolete language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-12. Computer science courses of instruction; learning standards; state board plan development.

(a) Legislative findings:

(1) Computer technology increasingly is pervasive in nearly every function of society from consumer products to transportation, communications, electrical infrastructure, logistics, agriculture, medical treatments, research, security, and financial transactions;

(2) The U. S. Bureau of Labor Statistics predicts that by 2024, there will be more than 800,000 new jobs in the STEM fields and

more than two thirds of these directly will be in computing occupations;

(3) Studying computer science prepares students to enter many career areas, both within and outside of computing, teaching them logical reasoning, algorithmic thinking, design, and structured problem-solving skills applicable in many contexts from science and engineering to the humanities and business;

(4) Computer science is an established discipline at the collegiate and post-graduate levels but, unfortunately, computer science concepts and courses have not kept pace in the K-12 curriculum, to the point that the nation faces a serious shortage of computer scientists at all levels that is likely to continue for the foreseeable future; and

(5) Organizations such as the Computer Science Teachers Association, the International Society for Technology in Education, and technology industry leaders have developed recommendations for standards, curriculum, and instructional resources for computer technology learning in K-12 schools.

(6) Foundational age-appropriate instruction in the computer science field for all students beginning in elementary school with required and optional advanced computer science instruction for middle school and high school students has become an important component of a well-developed education. Computer science standards should align to relevant aspects of the field such as computational thinking, block-based programming, text-based programming, network communication, computer architecture, coding, application development, and cyber security. Computer science education standards should be established to ensure students have the fundamentals to be successful in a digital-driven world and the advanced knowledge to prepare them for careers in or linked to computer science.

(b) Prior to the 2023 regular legislative session, the state board shall submit a plan to the Legislative Oversight Commission on Education Accountability, that builds upon certain plans which may have been developed and submitted in previous years, to

implement and update computer science instruction and learning standards in the public schools. The plan shall include at least the following:

(1) Recommendations for a core set of learning standards designed to provide the foundation for a complete computer science curriculum and its implementation at the K-12 level including, but not limited to:

(A) Providing relevant course work in the areas of computational thinking, block-based programming, text-based programming, network communication, computer architecture, coding, application development, digital literacy, and cyber security; and

(B) Encouraging schools to integrate base level computer science skills into each student's required course work, and make available, in grades six through 12, additional secondary level computer science courses that will allow interested students to study facets of computer science in more depth and prepare them for entry into the workforce or college; and

(C) Increasing the availability of rigorous computer science for all students.

(2) Recommendations for teaching standards and secondary certificate endorsements if necessary for teachers to deliver curriculum appropriate to meet the standards;

(3) Recommendations for units of instruction or courses in academic and vocational technical settings to include computer programming, network communication, computer architecture, coding, application development, and cyber security, that complement any existing K-12 computer science and IT curricula where they are already established, especially the advanced placement computer science curricula and professional IT certifications; and

(4) Proposals for implementation of the recommendations over a period not to exceed four years and estimates of any associated additional costs.

(c) Nothing in this section requires adoption or implementation of any specific recommendation or any level of appropriation by the Legislature.

(d) Recognizing the importance of computer science instruction and how computer science instruction will assist students in their transition to post-secondary opportunities, the state board shall adopt a policy detailing the appropriate level of computer science instruction that shall be available to students at each programmatic level.

(e) The West Virginia Department of Education shall develop and offer professional development opportunities to ensure educators are equipped with the requisite knowledge and skill to deliver computer science instruction as outlined in this section. The department may partner with high-quality computer science professional learning providers in developing and offering the professional development opportunities.

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CHAPTER 99

**(Com. Sub. for S. B. 704 - By Senators Grady, Rucker,
Karnes, Sypolt, Tarr, Roberts, Smith, Maroney, and Martin)**

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-27, relating to requiring each classroom teacher to comply with any request by a parent, custodian, or guardian to inspect any instructional materials and books in the classroom that are available for students to read; requiring, as part of the inspection and upon request of the parent, custodian, or guardian, that the classroom teacher demonstrate how the instructional material relates to the content standards adopted by the State Board of Education; requiring the classroom teacher to include any book or books students will be required to read on a class syllabus; requiring the syllabus to be made available to the parent, custodian, or guardian upon request; allowing any parent, custodian, or guardian to file a complaint with the county superintendent if the classroom teacher fails to comply with this new section, and then with the state superintendent if the complaint is not resolved by the county superintendent within seven days; requiring reports on the number of complaints filed; and defining terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-27. Parental right to inspect instructional materials; listing books on syllabus; right to file complaint.

(a) Each classroom teacher shall comply with the request of any parent, custodian, or guardian to inspect instructional materials

adopted by the county board pursuant to §18-2A-10 of this code, supplementary instructional materials that were not adopted by the county board pursuant to §18-2A-10 of this code, and books in the classroom that are available for students to read, subject to the following:

(1) Only the parent, custodian, or guardian of a child enrolled in the class may make a request pursuant to this section;

(2) The classroom teacher may require that the parent, custodian, or guardian schedule an appointment in order to inspect the instructional materials. If the classroom teacher requires an appointment pursuant to this subdivision, the teacher shall schedule the appointment within 10 business days of the request of the parent, custodian, or guardian; and

(3) As part of the inspection and upon request of the parent, custodian, or guardian, the classroom teacher shall demonstrate how the instructional material relates to the content standards adopted by the state board.

(b) For any class in which reading a book or books will be required, the classroom teacher shall include the book or books on a class syllabus. The classroom teacher shall make the syllabus available to any parent, custodian, or guardian of a child enrolled in the class upon request.

(c) Any parent, custodian, or guardian may file a complaint with the county superintendent, on a form developed and provided by the county superintendent, if the classroom teacher fails to comply with any provision of this section. If the complaint is not resolved by the county superintendent within seven business days, the parent, custodian, or guardian may file a complaint with the state superintendent or his or her designee. The state superintendent shall make a form available for parents to file a complaint pursuant to this subsection.

(d) By September 1 of each year, each county superintendent shall report to the state superintendent the number of complaints filed with him or her the previous school year. The state

superintendent, annually by October 1, shall report to the Legislative Oversight Commission on Education Accountability the number of complaints filed during the previous school year. The report shall include the number of complaints filed statewide and by county.

(e) For purposes of this section, “parent” means a parent who has some allocation of physical custody of the child or who has some share of joint decision-making authority for the child. For purposes of this section, “custodian” means a person who has some allocation of physical custody of the child or who has provided to the school written permission of a parent to have access to the information contemplated by this section. For purposes of this section, “guardian” means a person other than a parent or custodian who, pursuant to a court order, acts in loco parentis for the child.



CHAPTER 100

**(H. B. 3073 - By Delegates Worrell, Lovejoy, Rowan,
Rohrbach, Rowe, Hansen, Brown, Young, Wamsley, Hanna
and Kessinger)**

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5D-6, relating to establishing the West Virginia Emergency School Food Act; providing findings; allowing an annual countywide survey of public school students to determine certain eating patterns and the availability of nutritious food to certain students when schools are closed; allowing the collection and compilation of information regarding the availability of food resources in the county on certain days including a plan that includes virtual school students and distribute the information to all students; allowing a county board to investigate and implement any program that may facilitate this initiative; allowing a county board to provide an annual county wide or a coordinated regional training opportunity for an entity that potentially qualifies as a summer feeding site; allowing a county board to provide its survey, a summary of its activities, and any findings or recommendations the county board has thereto, to the West Virginia Office of Child Nutrition; allowing a public school to include in its crisis response plan an assessment and plan to feed students during certain remote learning days and to public virtual school students; and allowing the West Virginia Office of Child Nutrition to monitor certain activities and share between counties information about innovative and successful program initiatives.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5D. WEST VIRGINIA FEED TO ACHIEVE ACT.**§18-5D-6. West Virginia Emergency School Food Act.**

(a) The Legislature finds and declares that:

(1) The Feed to Achieve initiative has successfully improved the availability and awareness for the need to provide nutritious food to state students and the Shared Table Initiative has facilitated a spirit of innovation and consciousness in our counties to find alternative ways to feed children in need;

(2) A periodic assessment of the needs for county students and availability of county resources would be helpful in determining what type of resources are available and needed to reduce food insecurity for students when they are not in school;

(3) That expansion of the Shared Table Initiative to include a program to encourage county schools to locate, participate in, and initiate programs to provide meals during summers and non-school-day times when some children may not have access to healthy meals could assist in reducing food insecurity for thousands of children in this state, and therefore, creating a mechanism that is not a directive from the Legislature upon county school boards, but rather an authorization to use school resources to find innovative ways, within the means of the county school systems, to assist the communities they serve, will provide a public benefit.

(b) Any county public school system may conduct an annual countywide survey of public-school students to determine their noninstructional or nontraditional remote learning and virtual school day eating patterns and the availability of nutritious food to them when schools are closed. The West Virginia Office of Child Nutrition may assist and facilitate with this survey to determine the needs for supplemental food services in every county.

(c) Any county board may collect and compile information regarding the availability of food resources in the county during noninstructional or nontraditional remote learning days as well as include a plan that includes virtual school students and distribute

this information to all students. These resources may include any public, private, religious group, or charity that will provide food to children with food insecurity.

(d) Any county school board may investigate and implement any program that may facilitate this initiative including, but not limited to, entrepreneurship programs to foster innovation in providing assistance, utilizing participation in programs as a positive discipline option, and creating mentorship programs or other opportunities to participate in the feeding program.

(e) Any county school board may provide an annual countywide or a coordinated regional training opportunity, with assistance from the West Virginia Office of Child Nutrition, that ensures that any entity that potentially qualifies as a summer feeding site according to the county survey, is afforded the opportunity to receive training on operation of a feeding site.

(f) Any county board may provide its survey, a summary of its activities, and any findings or recommendations the county school board has related thereto, to the West Virginia Office of Child Nutrition at a date determined each year by that office.

(g) Each West Virginia public school may include in its crisis response plan, created pursuant to §18-9F-9, an assessment and plan to feed students during noninstructional or nontraditional remote learning days and public virtual school students that includes emergency situations that may require innovative ways to deliver food to student homes. Community support and resources should be utilized when creating this plan.

(h) The West Virginia Office of Child Nutrition may monitor these activities and share between counties information about innovative and successful program initiatives around the state to promote and facilitate the West Virginia Emergency School Food Act.

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CHAPTER 101

(H. B. 4019 - By Delegates Ellington, Clark, and Longanacre)

[Passed March 8, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5G-16, relating to deadlines for public charter school contract execution and student enrollment application, lottery and enrollment for schools intending to open in school year beginning July 1, 2022, only; and delaying deadlines.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-16. Charter contract and enrollment application deadlines for schools opening in 2022, only.

Notwithstanding any provision of law to the contrary, for public charter schools intending to open in the school year beginning July 1, 2022, only, the last day for the school's governing board and its authorizer to enter into a charter contract is May 15, 2022. If the charter contract is not executed by May 15, 2022, the approved public charter school may not open until the following school year.

Notwithstanding any provision of law to the contrary, for public charter schools intending to open in the school year beginning July 1, 2022, only, the primary round of public charter school student enrollment applications, lottery and enrollment shall conclude on May 15, 2022.

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CHAPTER 102

**(Com. Sub. for H. B. 4065 - By Delegates Booth, Smith,
Phillips, Barnhart, Wamsley, Worrell, Howell, Dean, Bridges,
Summers, and Paynter)**

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §18-2-8a of the Code of West Virginia, 1931, as amended, relating to a hunter safety orientation program in public schools; requiring program to be established and implemented; establishing parameters for scheduling; directing the State Board of Education to promulgate a rule for program requirements and implementation; and providing minimum program requirements including parameters for when the program is required to be offered.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-8a. Hunter safety orientation program.

(a) The Legislature finds that:

(1) Firearms and hunting are important parts of West Virginia's history, culture, and economy;

(2) Unfortunately, the use of firearms while hunting or at any other time can be dangerous when the firearms are not handled in a careful and safe manner; and

(3) Therefore, the opportunity of participating in a hunter safety orientation program should be offered to students in certain grades.

(b) The State Board of Education shall establish and implement a program of instruction of hunter safety orientation with appropriate classes and hands-on training. The hunter safety orientation program may be scheduled for the regular hours of the school day, so as to work in conjunction with the regular course schedule, or may be scheduled outside of the regular hours of instruction for the school day, if the resources and student interest allow. To the extent possible, the hunter safety orientation program shall be conducted at school facilities and scheduled so that students attending the program class may also make use of regularly provided student transportation.

(c) The State Board of Education shall, with the advice of the state Superintendent of Schools and the Director of the Division of Natural Resources, promulgate a rule in accordance with the provisions of §29A-3B-1 *et seq.* of this code for the implementation of a hunter safety orientation program for use in the public schools of this state. The rule shall, at a minimum, include the following provisions:

(1) The hunter safety orientation program shall be offered at least once every spring semester in every middle school of the state. At the option of each county board of education, the hunter safety orientation program may also be offered during the fall semester in any middle school in the state or may be offered in any high school in the state: *Provided*, That the demand to take the hunter safety orientation program is sufficient and that certified instructors are available. If there is an insufficient number of students at a middle school requesting or registering for the class in a given semester, the school shall not be required to conduct the class that semester. The county board of education shall have the discretion to establish the minimum number of students requesting the safety orientation program class in a semester necessary to provide the class that semester.

(2) The hunter safety orientation program is voluntary to students;

(3) The hunter safety orientation program shall include instruction relating to:

(A) The protection of lives and property against loss or damage as a result of the improper use of firearms; and

(B) The proper use of firearms in hunting, sport competition, and the care and safety of firearms in the home;

(4) The hunter safety orientation program may use materials prepared by any national nonprofit membership organization which has as one of its purposes the training of people in marksmanship and the safe handling and use of firearms; and

(5) The hunter safety orientation program shall be conducted by an instructor employed or certified by the Division of Natural Resources or who has other training necessary to conduct the program as determined by the state board.

(d) The Division of Natural Resources shall issue a certificate of training, required by §20-2-30a of this code, to any student who completes the hunter safety orientation program.

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CHAPTER 103

**(Com. Sub. for H. B. 4074 - By Delegates Clark, Hanna,
Householder, Thompson, Espinosa, Keaton, Haynes, Mandt,
Hardy, Crouse, and Pinson)**

[Passed February 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on February 21, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-40a, all relating to providing education on and prevention of self-harm behavior and eating disorders in public schools; naming the section “Meghan’s Law”; requiring the state board to promulgate a legislative rule to establish training requirements for certain county board employees and volunteers on students’ self-harm behaviors and eating disorders; setting forth criteria for said rule; requiring middle school and high school students at least once per academic school year receive information regarding self-harm and eating disorders signs, prevention and treatment; specifying allowable sources of the information; and allowing the promulgation of state board rules to facilitate student education process and develop resources.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-40a. Education on and prevention of self-harm behavior and eating disorders.

(a) This section shall be known and cited as “Meghan’s Law”.

(b) Training of public school employees and volunteers – The state board shall promulgate, by September 1, 2022, a legislative rule pursuant to §29A-3B-1 *et seq.* of this code, and if necessary may promulgate an emergency rule in accordance with said article,

to establish training requirements for all county board employees who might come into contact with a student, including full-time, part-time, and contract employees, as well as any volunteers of a school or school district that might come into contact with a student as such employees and volunteers may be further defined in the rule. The training shall be focused on developing skills, knowledge, and capabilities related to preventing, recognizing, and responding to students' self-harm behaviors and eating disorders. The rule shall provide for at least the following:

(1) The required training shall include instruction and information to better equip schools and their employees, including how to:

(A) Recognize warning signs of self-harm behaviors and eating disorders that can lead to serious health issues and death;

(B) Support the healthy development of students by learning how to appropriately respond to or refer a student who exhibits warning signs of self-harm or eating disorders; and

(C) Provide consistent and standard protocols for responding to disclosures or discovery of self-harm or an eating disorder;

(2) The rule shall contain provisions to ensure that public school employees complete the required training every three years; and

(3) The rule may provide for this training to be administered virtually or through self-review of materials and resources provided by the state board.

(c) Education of middle school and high school students – Beginning September 1, 2022, children in grades 5-12 shall receive information regarding self-harm and eating disorder signs, prevention, and treatment.

(1) This education shall occur at least once per academic school year.

(2) The information may be obtained from the Bureau for Behavioral Health and Health Facilities, a licensed healthcare provider, or from commercially developed awareness and prevention training programs for the awareness, treatment resources, and prevention of self-harm behavior and eating disorders approved by the state board in consultation with the bureau to assure the accuracy and appropriateness of the information.

(3) To facilitate this process and develop resources, the state board may promulgate a legislative rule pursuant to §29A-3B-1 *et seq.* of this code.

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CHAPTER 104

**(H. B. 4110 - By Delegates Toney, Hanshaw (Mr. Speaker),
Paynter, Dean, Ferrell, Statler, Cooper, Ellington and Booth)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18-9A-4 of the Code of West Virginia, 1931, as amended, relating to public school support, foundation allowance for professional educators; and providing that a county board of education serving as the fiscal agent for a multi-county vocational center may not be penalized if the county's failure to meet the applicable minimum ratio is due to the staffing levels at the multi-county vocational center.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-4. Foundation allowance for professional educators.

(a) The basic foundation allowance to the county for professional educators is the amount of money required to pay the state minimum salaries, in accordance with §18A-4-1 *et seq.* of this code, subject to the following:

(1) In making this computation a county shall receive an allowance for state aid eligible professional educator positions to each one thousand students in net enrollment as follows:

(A) For each high-density county, seventy-two and three tenths professional educators per each one thousand students in net enrollment;

(B) For each medium-density county, seventy-two and forty-five one hundredths professional educators per each one thousand students in net enrollment;

(C) For each low-density county, seventy-two and six tenths professional educators per each one thousand students in net enrollment;

(D) For each sparse-density county, seventy-two and seventy-five one hundredths professional educators per each one thousand students in net enrollment; and

(E) For any professional educator positions, or fraction thereof, determined for a county pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of professional educators for the county;

(2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(b) Each county board shall establish and maintain a minimum ratio of professional instructional personnel per state aid funded professional educators as follows:

(1) For each high-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and twenty-nine one hundredths percent;

(2) For each medium-density county, the minimum ratio of professional instructional personnel per state aid funded

professional educators, or the number employed, whichever is less, is ninety-one and twenty-four one hundredths percent;

(3) For each low-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and eighteen one hundredths percent;

(4) For each sparse-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and seven one hundredths percent; and

(5) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional instructional personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(c) Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for professional educators under this section: *Provided*, That a county may not be penalized if it has increases in enrollment during that school year: *Provided, however*, That a county board of education serving as the fiscal agent for a multi-county vocational center may not be penalized if the county's failure to meet the applicable minimum ratio is due to the staffing levels at the multi-county vocational center.

(d) A county may not increase the number of administrative personnel employed as either professional educators or pay grade "H" service personnel above the number which were employed, or for which positions were posted, on June 30, 1990, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.

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CHAPTER 105

**(Com. Sub. for H. B. 4380 - By Delegates Barrett, Ellington,
Statler, Kessinger, Reynolds, Dean, Maynor, Clark, and
Espinosa)**

[Passed March 9, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §18-5-13 of the Code of West Virginia, 1931, as amended, relating to the transportation of students and passengers; allowing service employees to be certified to drive certain county board-owned vehicles that professional employees currently can be certified to drive to transport students for school-sponsored activities; requiring the vehicles to be insured; providing that 10 passenger limit of the vehicles includes the driver; increasing the number of these vehicles which may be used for any school-sponsored activity; allowing students to be transported to a school-sponsored activity in a county-owned or leased vehicle that does not meet school bus or public transit ratings if the seating capacity of the vehicle is less than 10 passengers including the driver; allowing a guardian or other adult approved in writing by the parent or guardian to transport students in a privately owned vehicle; removing limit on the number of students that can be transported in a privately owned vehicle by a parent, guardian, or other adult approved in writing by the parent or guardian; and clarifying that busses shall be used to transport nineteen or more passengers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-13. Authority of boards generally.

Subject to the provisions of this chapter and the rules of the state board, each county board may:

(a) Control and manage all of the schools and school interests for all school activities and upon all school property owned or leased by the county, including:

(1) Requiring schools to keep records regarding funds connected with the school or school interests, including all receipts and disbursements of all funds collected or received by:

(A) Any principal, teacher, student or other person in connection with the schools and school interests;

(B) Any program, activity or other endeavor of any nature operated or conducted by or in the name of the school; and

(C) Any organization or body directly connected with the school;

(2) Allowing schools to expend funds for student, parent, teacher and community recognition programs. A school may use only funds it generates through a fund-raising or donation-soliciting activity. Prior to commencing the activity, the school shall:

(A) Publicize the activity as intended for this purpose; and

(B) Designate for this purpose the funds generated;

(3) Auditing the records and conserving the funds, including securing surety bonds by expending board moneys. The funds described in this subsection are quasipublic funds, which means the moneys were received for the benefit of the school system as a result of curricular or noncurricular activities;

(b) Establish:

(1) Schools, from preschool through high school;

(2) Vocational schools; and

(3) Schools and programs for post-high school instruction, subject to approval of the state board;

(c) Close any school:

(1) Which is unnecessary and assign the students to other schools. The closing shall occur pursuant to official action of the county board. Except in emergency situations when the timing and manner of notification are subject to approval by the state superintendent, the county board shall notify the affected teachers and service personnel of the county board action not later than the first Monday in April. The board shall provide notice in the same manner as set forth in section four of this article; or

(2) Pursuant to subsection (e) of this section;

(d) Consolidate schools;

(e) Close any elementary school whose average daily attendance falls below twenty students for two consecutive months. The county board may assign the students to other schools in the district or to schools in adjoining districts. If the teachers in the closed school are not transferred or reassigned to other schools, they shall receive one month's salary;

(f) Provide transportation according to rules established by the county board, as follows:

(1) To provide at public expense adequate means of transportation:

(A) For all children of school age who live more than two-miles distance from school by the nearest available road;

(B) For school children participating in county board-approved curricular and extracurricular activities;

(C) Across county lines for students transferred from one district to another by mutual agreement of both county boards. The agreement shall be recorded in the meeting minutes of each participating county board and is subject to subsection (h) of this section; and

(D) Within available revenues, for students within two-miles distance of the school; and

(2) To provide transportation for participants in projects operated, financed, sponsored or approved by the Bureau of Senior Services. This transportation shall be provided at no cost to the county board. All costs and expenses incident in any way to this transportation shall be borne by the bureau or the local or county affiliate of the bureau;

(3) Any school bus owned by the county board may be operated only by a bus operator regularly employed by the county board, except as provided in subsection (g) of this section;

(4) Notwithstanding any other provision of this code to the contrary and pursuant to rules established by the state board, the county board may provide for professional or service employees to be certified to drive county board-owned and insured vehicles that have a seating capacity of fewer than ten passengers including the driver. These employees may use the vehicles to transport students for school-sponsored activities, but may not use the vehicles to transport students between school and home. Not more than two of these vehicles may be used for any school-sponsored activity;

(5) Notwithstanding any other provision of this code to the contrary, students may be transported to a school-sponsored activity in a county-owned or leased vehicle that does not meet school bus or public transit ratings if the seating capacity of the vehicle is less than 10 passengers including the driver. This section does not prohibit a parent, guardian, or other adult approved in writing by the parent or guardian from transporting students in a privately-owned vehicle;

(6) Students may be transported to a school-sponsored activity in a vehicle that has a seating capacity of sixteen or more passengers which is not owned and operated by the county board only as follows:

(A) The state board shall promulgate a rule to establish requirements for:

- (i) Automobile insurance coverage;
- (ii) Vehicle safety specifications;
- (iii) School bus or public transit ratings; and
- (iv) Driver training, certification and criminal history record check; and

(B) The vehicle owner shall provide to the county board proof that the vehicle and driver satisfy the requirements of the state board rule; and

(7) Buses shall be used to transport nineteen or more passengers for extracurricular activities as provided in this section only when the insurance coverage required by this section is in effect;

(g) Lease school buses pursuant to rules established by the county board.

(1) Leased buses may be operated only by bus operators regularly employed by the county board, except that these buses may be operated by bus operators regularly employed by another county board in this state if bus operators from the owning county are unavailable.

(2) The lessee shall bear all costs and expenses incurred by, or incidental to the use of, the bus.

(3) The county board may lease buses to:

(A) Public and private nonprofit organizations and private corporations to transport school-age children for camps or educational activities;

(B) Any college, university or officially recognized campus organization for transporting students, faculty and staff to and from the college or university. Only college and university students, faculty and staff may be transported pursuant to this paragraph. The lease shall include provisions for:

(i) Compensation for bus operators;

(ii) Consideration for insurance coverage, repairs and other costs of service; and

(iii) Any rules concerning student behavior;

(C) Public and private nonprofit organizations, including education employee organizations, for transportation associated with fairs, festivals and other educational and cultural events. The county board may charge fees in addition to those charges otherwise required by this subsection;

(h) To provide at public expense for insurance coverage against negligence of the drivers of school buses, trucks or other vehicles operated by the county board. Any contractual agreement for transportation of students shall require the vehicle owner to maintain insurance coverage against negligence in an amount specified by the county board;

(i) Provide for the full cost or any portion thereof for group plan insurance benefits not provided or available under the West Virginia Public Employees Insurance Act. Any of these benefits shall be provided:

(1) Solely from county board funds; and

(2) For all regular full-time employees of the county board;

(j) Employ teacher aides; to provide in-service training for the aides pursuant to rules established by the state board; and, prior to assignment, to provide a four-clock-hour program of training for a service person assigned duties as a teacher aide in an exceptional children program. The four-clock-hour program shall consist of training in areas specifically related to the education of exceptional children;

(k) Establish and operate a self-supporting dormitory for:

(1) Students attending a high school or participating in a post high school program; and

(2) Persons employed to teach in the high school or post high school program;

(l) At the county board's discretion, employ, contract with or otherwise engage legal counsel in lieu of using the services of the prosecuting attorney to advise, attend to, bring, prosecute or defend, as the case may be, any matters, actions, suits and proceedings in which the county board is interested;

(m) Provide appropriate uniforms for school service personnel;

(n) Provide at public expense for payment of traveling expenses incurred by any person invited to appear to be interviewed concerning possible employment by the county board, subject to rules established by the county board;

(o) Allow designated employees to use publicly provided carriage to travel from their residences to their workplace and return. The use:

(1) Is subject to the supervision of the county board; and

(2) Shall be directly connected with, required by and essential to the performance of the employee's duties and responsibilities;

(p) Provide at public expense adequate public liability insurance, including professional liability insurance, for county board employees;

(q) (1) Enter into cooperative agreements with one or more county boards or educational services cooperative to provide improvements to the instructional needs of each district. The cooperative agreements may be used to employ specialists in a field of academic study or for support functions or services for the field.

(2) Enter into cooperative agreements with one or more county boards to facilitate coordination and cooperation in areas of service to reduce administrative and/or operational costs, including the consolidation of administrative, coordinating, and other county level functions into shared functions to promote the efficient

administration and operation of the public school systems including, but not limited to:

(A) Purchasing;

(B) Operation of specialized programs for exceptional children;

(C) Employment of any school personnel as defined in section one, article one, chapter eighteen-a of this code;

(D) Professional development;

(E) Technology including, but not limited to WVEIS; and

(F) Billing for school-based Medicaid services in schools throughout the state.

Each such cooperative agreement shall be in writing and agreed to by each county board participating in the cooperative agreement. Each cooperative agreement that is an employment agreement may be entered into on a case-by-case basis. Notwithstanding the geographic quadrants as provided in section thirteen-b of this article, school systems may enter into cooperative agreements with any school system in the state.

(3) Enter into a cooperative agreement with other county boards to establish educational services cooperatives as provided in section thirteen-c of this article.

(r) Provide information about vocational and higher education opportunities to exceptional students. The county board shall provide in writing to the students and their parents or guardians information relating to programs of vocational education and to programs available at state institutions of higher education. The information may include sources of available funding, including grants, mentorships and loans for students who wish to attend classes at institutions of higher education;

(s) Enter into agreements with other county boards for the transfer and receipt of any funds determined to be fair when

students are permitted or required to attend school in a district other than the district of their residence. These agreements are subject to the approval of the state board; and

(t) Enter into job-sharing arrangements, as defined in section one, article one, chapter eighteen-a of this code, with its employees, subject to the following provisions:

(1) A job-sharing arrangement shall meet all the requirements relating to posting, qualifications and seniority, as provided in article four, chapter eighteen-a of this code;

(2) Notwithstanding any contrary provision of this code or legislative rule and specifically article sixteen, chapter five of this code, a county board that enters into a job-sharing arrangement:

(A) Shall provide insurance coverage to the one employee mutually agreed upon by the employees participating in that arrangement; and

(B) May not provide insurance benefits of any type to more than one of the job-sharing employees, including any group plan available under the State Public Employees Insurance Act;

(3) Each job-sharing agreement shall be in writing on a form prescribed and furnished by the county board. The agreement shall designate specifically one employee only who is entitled to the insurance coverage. Any employee who is not designated is not eligible for state public employees insurance coverage regardless of the number of hours he or she works;

(4) All employees involved in the job-sharing agreement shall meet the requirements of subdivision (3), section two, article sixteen, chapter five of this code; and

(5) When entering into a job-sharing agreement, the county board and the participating employees shall consider issues such as retirement benefits, termination of the job-sharing agreement and any other issue the parties consider appropriate. Any provision in the agreement relating to retirement benefits may not cause any cost to be incurred by the retirement system that is more than the

cost that would be incurred if a single employee were filling the position; and

(u) Under rules it establishes for each child, expend an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

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CHAPTER 106

**(Com. Sub. for H. B. 4466 - By Delegates Barnhart, Martin,
Ferrell, G. Ward, Wamsley, Statler, J. Kelly, Anderson,
Ellington, Smith, and Clark)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to seeking contribution of School Building Authority funds to support a local capital improvement bond finance plan; providing for application to the School Building Authority; requiring initial approval prior to conducting bond levy election; requiring conditional language in materials referencing School Building Authority; limiting use of financial assistance provided; establishing time limit for project completion; allowing extension to the time limit in extenuating circumstances; exempting new provisions from applying to any proposed capital improvement bond levy scheduled to be submitted to the voters on or before December 31, 2022; and deleting obsolete provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation; local bond levies.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to

administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than 10 percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to §18-9D-6 of this code and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, may be allocated and may be expended by the authority for projects authorized in accordance with §18-9D-16 of this code that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to §18-2B-1 *et seq.* of this code, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with §18-9D-16 of this code proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive

high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation, subject to the following:

(A) Any project funded by the authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the authority. The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a 10-year facilities plan; and

(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with §18-9D-16 of this code. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council, or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: *Provided*, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with §18-9D-16 of this code.

(f) If a county board proposes to finance a project that is authorized in accordance with §18-9D-16 of this code through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: *Provided*, That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor, subject to the following:

(A) If county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the lease annually until performance of the

investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board;

(B) If a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises;

(C) The failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement;

(D) Upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board; and

(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the

allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: *Provided*, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the School Construction Fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to §18-9D-6 of this code shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with §18-9D-16 of this code, subject to the following:

(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project for a period of two years; and

(3) Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. Therefore, as a prerequisite for eligibility to receive an allocation

of school major improvement funds from the authority, a county board shall provide annual school facility maintenance expenditure data to the authority which shall be jointly reviewed by the authority and the state Department of Education Office of School Facilities and Transportation to assist the authority in its determination of the most meritorious projects to be funded through the School Major Improvement Fund. The state board shall promulgate rules relating to county boards' school facility maintenance budgets, including items which shall be included in these budgets.

(j)(1) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy, or other sources.

(2) A county board may apply to the authority for funding under this article as a part of the county's bond finance plan for a proposed capital improvement bond levy to be submitted to the voters of that county. The county board shall first submit a request for the funding to the executive director of the authority prior to the county board's proposed bond levy election. After initial consultation with the executive director, the county board shall prepare a written outline of the bond finance plan, the capital improvements to be made with levy funds, and the amount and timing of funding requested from the authority. The county board shall then present its request at a meeting of the members of the authority.

Grants of financial assistance that have received initial approval under this section are contingent upon passage of the bond levy and final approval by the School Building Authority of the county's bond finance plan. Any materials produced by the county or its county board that refer to the authority shall include a statement of this contingency and terms. Notwithstanding any other provision of this subsection, financial assistance to be provided by the authority may only be used to pay costs of capital improvements and may not be pledged as security for or repayment of any bonds issued by the county board.

Upon passage of bond levy, the county board shall have four years to finalize the project: *Provided*, That the authority may grant an extension to the four years in extenuating circumstances.

The provisions of this subsection do not apply to any proposed capital improvement bond levy that is scheduled to be submitted to the voters on or before December 31, 2022.

(3) Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(k) Funds in the School Construction Fund shall first be transferred and expended as follows:

(1) Any funds deposited in the School Construction Fund shall be expended first in accordance with an appropriation by the Legislature.

(2) To the extent that funds are available in the School Construction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with §18-9D-16 of this code.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students, or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the School Building Authority for review and approval prior to preparation of final bid documents. A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f

of this code may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than 50 percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed \$500,000, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within 18 months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

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CHAPTER 107

**(H. B. 4571 - By Delegates Hamrick, Hanshaw (Mr. Speaker),
Toney, Ellington, Statler, Pack, Smith and Maynor)**

[Passed March 12, 2022; in effect July 1, 2022.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §18-9A-7 of the Code of West Virginia, 1931, as amended, relating to increasing the foundation allowance for transportation cost for the portion of the county's school bus system that is fully powered by electricity that is stored in an onboard rechargeable battery or other storage device and for the portion of its school bus system that is manufactured within the state of West Virginia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-7. Foundation allowance for transportation cost.

(a) The allowance in the foundation school program for each county for transportation is the sum of the following computations:

(1) A percentage of the transportation costs incurred by the county for maintenance, operation and related costs exclusive of all salaries, including the costs incurred for contracted transportation services and public utility transportation, as follows:

- (A) For each high-density county, 87.5 percent;
- (B) For each medium-density county, 90 percent;
- (C) For each low-density county, 92.5 percent;
- (D) For each sparse-density county, 95 percent;

(E) For any county for the transportation cost for maintenance, operation and related costs, exclusive of all salaries, for transporting students to and from classes at a multicounty vocational center, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional 10 percent; and

(F) For any county for that portion of its school bus system that uses as an alternative fuel compressed natural gas, propane, or is fully powered by electricity that is stored in an onboard rechargeable battery or other storage device, the percentage provided in paragraphs (A) through (D) of this subdivision as applicable for the county plus an additional 10 percent, as well as an additional 5% for the portion of its school bus system that is manufactured within the state of West Virginia: *Provided*, That any county using an alternative fuel and qualifying for the additional allowance under this subdivision shall submit a plan regarding the intended future use of alternatively fueled school buses;

(2) The total cost, within each county, of insurance premiums on buses, buildings and equipment used in transportation;

(3) An amount equal to 8.33 percent of the current replacement value of the bus fleet within each county as determined by the state board. The amount shall only be used for the replacement of buses except as provided in subdivision (4) of this subsection. Buses purchased after July 1, 1999, that are driven 180,000 miles, regardless of year model, are subject to the replacement value of 8.33 percent as determined by the state board. In addition, in any school year in which its net enrollment increases when compared to the net enrollment the year immediately preceding, a school district may apply to the state superintendent for funding for an additional bus or buses. The state superintendent shall make a decision regarding each application based upon an analysis of the individual school district's net enrollment history and transportation needs: *Provided*, That the superintendent may not consider any application which fails to document that the county has applied for federal funding for additional buses. If the state superintendent finds that a need exists, a request for funding shall

be included in the budget request submitted by the state board for the upcoming fiscal year;

(4) Notwithstanding the restriction on the use of funds for the replacement of buses pursuant to subdivision (3) of this subsection, up to \$200,000 of these funds in any school year may be used by a county for school facility and equipment repair, maintenance and improvement or replacement or other current expense priorities if a request by the county superintendent listing the amount, the intended use of the funds and the serviceability of the bus fleet is approved by the state superintendent. Before approving the request, the state superintendent shall verify the serviceability of the county's bus fleet based upon the state school bus inspection defect rate of the county over the two prior years; and

(5) Aid in lieu of transportation equal to the state average amount per pupil for each pupil receiving the aid within each county.

(b) The total state share for this purpose is the sum of the county shares: *Provided*, That a county may not receive an allowance which is greater than one-third above the computed state average allowance per transportation mile multiplied by the total transportation mileage in the county exclusive of the allowance for the purchase of additional buses.

(c) One half of one percent of the transportation allowance distributed to each county is for the purpose of trips related to academic classroom curriculum and not related to any extracurricular activity. Any remaining funds credited to a county for the purpose of trips related to academic classroom curriculum during the fiscal year shall be carried over for use in the same manner the next fiscal year and shall be separate and apart from, and in addition to, the appropriation for the next fiscal year. The state board may request a county to document the use of funds for trips related to academic classroom curriculum if the board determines that it is necessary.

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CHAPTER 108

(S. B. 191 - By Senators Stover, Lindsay, Baldwin, Jeffries, and Phillips)

[Passed January 25, 2022; in effect from passage.]

[Approved by the Governor on February 2, 2022.]

AN ACT to amend and reenact §3-1-30 and §3-1-44 of the Code of West Virginia, 1931, as amended, all relating to authorizing poll clerks to work and be compensated for both full and half days worked during an election.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

***§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.**

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

***NOTE:** This section was also amended by H. B. 4353 (Chapter 117), which passed subsequent to this act.

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates. However, no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct's standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*, That no more than three precincts within the same building or facility may share board members in this manner.

(k) On election day, if an appointed election official or a poll clerk working a full day fails to appear at the polling place by 5:45 a.m. or, for a poll clerk working a half day, a later time designated by the clerk of the county commission, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

(m) Nothing in this section shall be construed to require any county executive committee or county commission to offer half day shifts for poll clerks during any election.

§3-1-44. Compensation of election officials; expenses.

(a) Each ballot commissioner is to be paid a sum, to be fixed by the county commission, for each day he or she serves as ballot commissioner, but in no case may a ballot commissioner receive allowance for more than 10 days' services for any one primary, general, or special election.

(b) Each commissioner of election and poll clerk is to be paid a sum, to be fixed by the county commission, for one day's services for attending the school of instruction for election officials if the commissioner provides one day's service, or the poll clerk provides at least one half day's service during an election and a sum for his or her services at any one election: *Provided*, That each commissioner of election and poll clerk is to be paid a sum for his

or her services at any of the three special elections described in §3-1-44(g) of this code.

(c) Each alternate commissioner of election and poll clerk may be paid a sum, to be fixed by the county commission, for one day's services for attending the school of instruction for election officials: *Provided*, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day.

(d) The commissioners of election or poll clerks obtaining and delivering the election supplies, as provided in §3-1-24 of this code, and returning them, as provided in §3-5-1 *et seq.* and §3-6-1 *et seq.* of this code, are to be paid an additional sum, fixed by the county commission, for his or her services pursuant to this subsection at any one election. In addition, he or she is to be paid mileage up to the rate of reimbursement authorized by the travel management rule of the Department of Administration for each mile necessarily traveled in the performance of his or her services.

(e) The compensation of election officers, cost of printing ballots and all other expenses incurred in holding and making the return of elections, other than the three special elections described in §3-1-44(f) of this code, are to be audited by the county commission and paid out of the county treasury.

(f) All persons within a class of election officials, as classified in this section, shall be paid the same amount within the county.

(g) The compensation of election officers, cost of printing ballots, and all other reasonable and necessary expenses in holding and making the return of a special election for the purpose of taking the sense of the voters on the question of calling a constitutional convention, of a special election to elect members of a constitutional convention, and of a special election to ratify or reject the proposals, acts, and ordinances of a constitutional convention are obligations of the state incurred by the ballot commissioners, clerks of the circuit courts, clerks of the county

commissions, and county commissions of the various counties as agents of the state. All expenses of these special elections are to be audited by the Secretary of State. The Secretary of State shall prepare and transmit to the county commissions forms on which the county commissions shall certify all expenses of these special elections to the Secretary of State. If satisfied that the expenses as certified by the county commissions are reasonable and were necessarily incurred, the Secretary of State shall requisition the necessary warrants from the Auditor of the state to be drawn on the state Treasurer and shall mail the warrants directly to the vendors of the special election services, supplies, and facilities.

(h) Notwithstanding the authority granted to county commissions to set compensation for election officials in this section, the Secretary of State may set maximum rates of compensation of the election officials identified in this section at any election for which the obligations incurred by the ballot commissioners, clerks of the county commissions, and county commissions of the various counties are determined to be obligations of the state.

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CHAPTER 109

**(S. B. 253 - By Senators Trump, Jeffries, Baldwin, Woodrum,
Stollings, Hamilton, and Phillips)**

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §3-1-5 of the Code of West Virginia, 1931, as amended, relating to voting precincts and redistricting; relating generally to voting precincts and redistricting; requiring county commissions to submit precinct boundary modifications to the Secretary of State; designating the Secretary of State as the Legislature's agent to the U.S. Census Bureau, county commissions, and clerks of county commissions during certain phases of the U.S. Census Bureau's Redistricting Data Program; authorizing the Secretary of State to delegate technical responsibilities to staff; requiring county commissions to submit certain information to the Secretary of State on ongoing basis; requiring the Secretary of State to coordinate with counties; requiring the Secretary of State to compile, submit, and verify certain information to the U.S. Census Bureau in compliance with certain deadlines; requiring the Secretary of State to provide copies to Legislative leadership; requiring the Legislature to provide certain maps and files to the Secretary of State at conclusion of federal congressional or state legislative redistricting; requiring the Secretary of State to provide updated maps and files to the U.S. Census Bureau; requiring the Secretary of State to make certain maps and files publicly available in physical office and on website; requiring the Secretary of State to maintain certain maps and files in its records; requiring county commissions to include magisterial districts in publicly available maps; and requiring county commissions to submit certain maps and files to Secretary of State.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

(a) The precinct is the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine, and establish the boundaries thereof and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one voting precinct and each precinct shall have but one voting place therein.

Each precinct within any urban center shall contain not less than 300, nor more than 1,500 registered voters. Each precinct in a rural or less thickly settled area shall contain not less than 200, nor more than 700 registered voters. A county commission may permit the establishment or retention of a precinct less than the minimum numbers allowed in this subsection upon making a written finding that to do otherwise would cause undue hardship to the voters. If, at any time the number of registered voters exceeds the maximum number specified, the county commission shall rearrange the precincts within the political division so that the new precincts each contain a number of registered voters within the designated limits: *Provided*, That any precincts with polling places that are within a one-mile radius of each other on or after July 1, 2014, may be consolidated, at the discretion of the county clerk and county commission into one or more new precincts that contain not more than 3,000 registered voters in any urban center, nor more than 1,500 registered voters in a rural or less thickly settled area: *Provided, however*, That no precincts may be consolidated pursuant to this section if the consolidation would create a geographical barrier or path of travel between voters in a precinct and their proposed new polling place that would create an undue hardship to voters of any current precinct.

If a county commission fails to rearrange the precincts as required, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty: *Provided*, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than 700 registered voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county commission shall designate alphabetically the voters who are eligible to vote in each precinct so created. Each precinct shall be operated separately and independently with separate voting booths, ballot boxes, election commissioners and clerks, and whenever possible, in separate rooms. No two precincts may use the same standard receiving board, except as permitted by the provisions of §3-1-30(j) of this code.

(b) In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other geographical districts of the municipality, except in instances where found by the county commission to be wholly impracticable so to do. Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.

(c) To facilitate the federal and state redistricting process, precinct boundaries shall be comprised of intersecting geographic physical features or municipal boundaries recognized by the U. S. Census Bureau. For purposes of this subsection, geographic physical features include streets, roads, streams, creeks, rivers, railroad tracks, and mountain ridge lines. The county commission of every county shall modify precinct boundaries to follow geographic physical features or municipal boundaries recognized by the U.S. Census Bureau and submit changes to the Secretary of State in accordance with this section.

(d) To facilitate the state's receipt of decennial census data from the U.S. Census Bureau which will include tabulation geography that supports the needs of the Legislature during the federal congressional and state legislative redistricting process, and the needs of county commissions during the magisterial district and precinct redistricting process:

(1) The Secretary of State shall serve as the Legislature's agent to the U.S. Census Bureau, the county commissions, and the clerks of the county commissions for purposes of Block Boundary Suggestion Project (Phase I), Voting District Project (Phase II), and Collection of Census Redistricting Plans (Phase IV), or their equivalents, of the U.S. Census Bureau's Redistricting Data Program for the federal decennial census. The Secretary of State may designate and utilize staff within his or her office to perform the technical responsibilities of this role.

(2) Each county commission shall submit on an ongoing basis to the Secretary of State its updated precincts and such other information as is sufficient to participate in the Block Boundary Suggestion Project (Phase I) and Voting District Project (Phase II), or their equivalents, of the Redistricting Data Program, including any verification phases. The Secretary of State shall coordinate with all counties for the submission and verification of such information. The Secretary of State shall compile the information submitted by the counties and shall submit and verify such information to the U.S. Census Bureau in compliance with the deadlines established by the U.S. Census Bureau for the Redistricting Data Program. The Secretary of State shall provide copies of such submission to the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Delegates, and the Minority Leader of the House of Delegates.

(3) Upon the conclusion of any federal congressional or state legislative redistricting process, the Legislature shall provide updated maps and accompanying technical files to the Secretary of State. The Secretary of State shall submit such maps and accompanying technical files to the U.S. Census Bureau during its Collection of Census Redistricting Plans (Phase IV) of the Redistricting Data Program. The Secretary of State shall keep

available at all times on its website, and during business hours in its office at the Capitol at a place convenient for public inspection, all current maps and accompanying technical files submitted by the Legislature. The Secretary of State shall maintain previous maps and technical files submitted by the Legislature in its records.

(e) Each county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts and magisterial districts. Each county commission shall submit current maps and accompanying technical files to the Secretary of State upon updating its precincts and magisterial districts. The Secretary of State shall keep available at all times on its website, and during business hours in its office at the Capitol at a place convenient for public inspection, all current maps and accompanying technical files submitted by the counties. The Secretary of State shall maintain previous maps and accompanying technical files submitted by the counties in its records.

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CHAPTER 110

(S. B. 591 - By Senator Trump)

[Passed March 9, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §3-10-5 of the Code of West Virginia, 1931, as amended, relating to the process for filling vacancies in the state Legislature; clarifying the process for filling a vacancy if the member was elected to a multi-county senatorial or delegate district; and authorizing the county executive committee of single-county senatorial or delegate district to fill vacancies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

§3-10-5. Vacancies in state Legislature.

(a) Any vacancy in the office of state senator or member of the House of Delegates shall be filled by appointment by the Governor, from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint within five days thereafter a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred.

(b) In the case of a member of the House of Delegates, if the member was elected to a multi-county delegate district the list shall be submitted by the party executive committee of the delegate district in which the vacating member resided at the time of his or her election or appointment. If the member was elected to a delegate district situated entirely within a single county, the list shall be submitted by the county executive committee in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the House of Delegates is for the unexpired term.

(c) In the case of a state senator, if the member was elected to a multi-county senatorial district the list shall be submitted by the party executive committee of the state senatorial district in which the vacating senator resided at the time of his or her election or appointment. If the member was elected to a senatorial district situated entirely within a single county, the list shall be submitted by the county executive committee in which the vacating member resided at the time of his or her election or appointment. The appointment to fill a vacancy in the state Senate is for the unexpired term, unless §3-10-1 of this code requires a subsequent election to fill the remainder of the term, which shall follow the procedure set forth in said section.

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CHAPTER 111

(S. B. 693 - By Senators Tarr and Woodrum)

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §3-1-9 of the Code of West Virginia, 1931, as amended, relating to manner of voting by a political party executive committee; and eliminating requirement that all official actions of a political party executive committee shall be made by voice vote.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-9. Political party committees; how composed; organization.

(a) Every fourth year at the primary election, the voters of each political party in each state senatorial district shall elect four members consisting of two male members and two female members of the state executive committee of the party. In state senatorial districts containing two or more counties, not more than two elected committee members shall be residents of the same county: *Provided*, That at each election the votes shall be tallied from highest to lowest without regard to gender or county of residence. The two candidates with the highest votes shall be elected first and the other candidates shall be qualified based on vote tallies, gender, and county of residence. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each state executive committee and certificates of announcement, if any, to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to such committee and the

vacancies, if any. The committee, when convened and organized as herein provided, shall appoint three additional members of the committee from the state at large which shall constitute the entire voting membership of the state executive committee: *Provided, however,* That if it chooses to do so, the committee may, by motion or resolution and in accordance with party rules, expand the voting membership of the committee. When senatorial districts are realigned following a decennial census, members of the state executive committee previously elected or appointed shall continue in office until the expiration of their terms. Appointments made to fill vacancies on the committee until the next election of executive committee members shall be selected from the previously established districts. At the first election of executive committee members following the realignment of senatorial districts, members shall be elected from the newly established districts.

(b) At the primary election, the voters of each political party in each county shall elect one male and one female member of the party's executive committee of the congressional district, of the state senatorial district and of the delegate district in which the county is situated, if the county is situated in a multicounty state senatorial or delegate district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of each congressional district, state senatorial district and delegate district executive committee of each party to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to each congressional district, state senatorial district and delegate district executive committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section. When districts are realigned following a decennial census, members of an executive committee previously elected in a county to represent that county in a congressional or multicounty senatorial or delegate district executive committee shall continue to represent that county in the appropriate newly constituted multicounty district until the expiration of their terms: *Provided,* That the county executive

committee of the political party shall determine which previously elected members will represent the county if the number of multicounty state senatorial or delegate districts in the county is decreased; and shall appoint members to complete the remainder of the term if the number of districts is increased.

(c) At the same time the voters of the county in each magisterial district or executive committee district, as the case may be, shall elect one male and one female member of the party's county executive committee except that in counties having three executive committee districts, there shall be elected two male and two female members of the party's executive committee from each magisterial or executive committee district. Upon completion of the canvass, the clerk of the county commission from each county shall send the results of the election of members of the county executive committee of each party along with the certificates of announcement to the Secretary of State. Upon certification of the election results, the Secretary of State shall make known to each state executive committee the members elected to the county committee and the vacancies, if any. Upon receipt, the state executive committee shall make known any vacancies to the applicable county executive committee for the purpose of filling said vacancies as provided in subsection (f) of this section.

(d) For the purpose of complying with the provisions of this section, the county commission shall create the executive committee districts. The districts shall not be fewer than the number of magisterial districts in the county, nor shall they exceed in number the following: Forty for counties having a population of 100,000 persons or more; 30 for counties having a population of 50,000 to 100,000; 20 for counties having a population of 20,000 to 50,000; and the districts in counties having a population of less than 20,000 persons shall be coextensive with the magisterial districts.

(e) The executive committee districts shall be as nearly equal in population as practicable and shall each be composed of compact, contiguous territory. The county commissions shall change the territorial boundaries of the districts as required by the increase or decrease in the population of the districts as determined

by a decennial census. The changes must be made within two years following the census.

(f) All members of executive committees, selected for each political division as herein provided, shall reside within the county or district from which chosen. The term of office of all members of executive committees elected at the primary election in the year 2010 will begin on July 1, following the primary election and continue for four years thereafter, except as provided in subsection (g) of this section. Vacancies in the state executive committee shall be filled by the members of the committee for the unexpired term. Vacancies in the party's executive committee of a congressional district, state senatorial district, delegate district or county shall be filled by the party's executive committee of the county in which the vacancy exists for the unexpired term.

(g) As soon as possible after the certification of the election of the new executive committees, as herein provided, the newly elected executive committee shall convene an organizational meeting within their respective political divisions, on the call of the chair of the corresponding outgoing executive committee or by any member of the new executive committee in the event there is no corresponding outgoing executive committee. During the first meeting the new executive committee shall select a chair, a treasurer and a secretary and other officers as they may desire. Each of the officers shall, for their respective committees, perform the duties that usually appertain to his or her office. The organizational meeting may be conducted prior to July 1, but must occur after the certification of the election of the new executive committees. If the organizational meeting is conducted prior to July 1, the new committee shall serve out the remainder of the outgoing committee's term and is authorized to conduct official business. A current listing of all executive committees' members shall be filed with the Secretary of State by the end of July of each year. Vacancies in any executive committee shall be filled by the appropriate executive committee as provided in subsection (f) of this section no later than 60 days after the vacancy occurs. The chair of each executive committee shall submit an updated committee list to the Secretary of State within 10 days of a change

occurring. Executive committee membership lists shall include at least the member's name, full address, employer, telephone number and term information. An appointment to fill a vacancy does not take effect if the executive committee does not submit the updated list to the Secretary of State within the allotted time period. If the executive committee fails to submit the updated list within the allotted time period, it must make another appointment pursuant to the provisions of this section and resubmit the updated list in a timely manner. If a vacancy on an executive committee is not filled within the 60-day period prescribed by this section, the chair of the appropriate executive committee, as provided in subsection (f) of this section, shall name someone to fill the vacancy. If the chair of a county executive committee fails to fill a vacancy in a congressional district, state senatorial district or delegate district executive committee, and the failure to fill such vacancy prohibits said committee from conducting official business, the chair of the party's state executive committee shall fill such vacancy.

(h) Any meeting of any political party executive committee shall be held only after public notice and notice to each member is given according to party rules and shall be open to all members affiliated with the party. Meetings shall be conducted according to party rule and minutes shall be maintained and shall be open to inspection by members affiliated with the party.

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CHAPTER 112

(H. B. 3303 - By Delegates D. Kelly, Boggs, Capito, Fast, Westfall and Pack)

[Passed February 25, 2022; in effect from passage.]

[Approved by the Governor on March 2, 2022.]

AN ACT to amend and reenact §3-5-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-5-19 of said code, all relating to clarifying the process of filling vacancies on ballots; authorizing the county executive committee or chair of an intra-county delegate or senatorial district to fill vacancy on primary election ballot; prohibiting Secretary of State from refusing certification of candidates appointed to an intra-county delegate or senatorial district by the county executive committee for that district by certain deadline for placement on 2022 primary election ballot; authorizing the county executive committee or chair of an intra-county delegate senatorial district to fill vacancy on general election ballot; providing that no appointment to an unfilled vacancy may be made after a primary election, save in the case of the subsequent death, withdrawal, incapacity, or disqualification of a candidate; and making amendments retrospective to January 30, 2022.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-11. Withdrawals; filling vacancies in candidacy; publication.

(a) A candidate who has filed a certificate of announcement and wishes to withdraw and decline to stand as a candidate for the

office shall file a signed and notarized statement of withdrawal on a form provided by the Secretary of State with the same officer with whom the certificate of announcement was filed. If the notarized statement of withdrawal is received by the proper officer by the deadlines set forth in subsection (b) of this section, the candidate's withdrawal is final and his or her name shall not be certified as a candidate nor printed on any ballot. If a candidate files a notarized statement of withdrawal after the deadlines set forth in subsection (b) of this section, the candidate shall not be withdrawn and the candidate's name shall remain on the ballot.

(b) Deadlines for withdrawing as a candidate:

(1) *For primary or special primary elections or nonpartisan elections held in conjunction with a primary election:* The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than the third Tuesday following the close of the candidate filing period.

(2) *For general or special general elections or nonpartisan elections held in conjunction with a general election:* The notarized statement of withdrawal must be received by the same officer with whom the certificate of announcement was filed by the close of business of that officer not later than eighty-four days before the general election.

(c) Upon request of the candidate's family, the board of ballot commissioners may remove the name of a candidate who dies before the ballots are printed. If a candidate dies after the ballots are printed but before the election, the clerk of the county commission shall give a written notice which shall be posted with the sample ballot at each precinct with the county to the following effect: "To the voter: (name) of (residence), a candidate for (office) is deceased."

(d) If after the time is closed for announcing as a candidate there is a vacancy on the ballot caused by failure of any person of a party to file for each available seat of each available office, the executive committee of the party for the political division within

which such candidate was to be voted for, or its chair if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer: *Provided*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer. Certification of the appointment by the executive committee or its chair, the candidate's certificate of announcement, and the filing fee must be received by the appropriate filing officer as follows: For an appointment by an executive committee, no later than the second Friday following the close of filing, for an appointment by its chair, no later than the third Tuesday following the close of filing: *Provided, however*, That any candidate appointed to an intra-county delegate or senatorial district by a county executive committee for that district pursuant to the process and by the deadline provided in this subsection shall not be refused certification for placement on the 2022 primary election ballot for that reason. A candidate appointed to fill a vacancy on the ballot under this subsection shall have his or her name printed on the primary ballot for that party. No vacancy shall be filled after the date of the primary election, except as provided in §3-5-19 of this code.

(e) The amendments to this section enacted by the Legislature during the 2022 Regular Session shall be retrospective to January 30, 2022.

§3-5-19. Vacancies in nominations; how filled; fees.

(a) If any vacancy occurs in the party nomination of candidates for office nominated at the primary election or by appointment under the provisions of section eleven of this article, the vacancies may be filled, subject to the following requirements and limitations:

(1) Each appointment made under this section shall be made by the executive committee of the political party for the political division in which the vacancy occurs: *Provided*, That if the executive committee holds a duly called meeting in accordance

with §3-1-9 of this code but fails to make an appointment or fails to certify the appointment of the candidate to the proper filing officer within the time required, the chairperson of the executive committee may make the appointment not later than two days following the deadline for the executive committee: *Provided however*, That for a delegate district or senatorial district situated entirely within a single county, the county executive committee, or its chairperson if the committee fails to act, may fill the vacancy and certify the candidate named to the appropriate filing officer.

(2) Each appointment made under this section is complete only upon the receipt by the proper filing officer of the certificate of appointment by the executive committee, or its chairperson, as the case may be, the certificate of announcement of the candidate as prescribed in section seven of this article and, except for appointments made under subdivision (4), (5), (6) or (7) of this subsection, the filing fee or waiver of fee as prescribed in section eight or eight-a of this article. The proper filing officer is the officer with whom the original certificate of announcement is regularly filed for that office.

(3) If a vacancy in nomination will be caused by the failure of a candidate to file for an office, or by withdrawal of a candidate no later than the third Tuesday following the close of candidate filing pursuant to the provisions of section eleven of this article, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 30 days after the last day to file a certificate of announcement pursuant to section seven of this article: *Provided*, That in no case shall any such vacancy be filled after the date of the primary election.

(4) If a vacancy in nomination is caused by the disqualification of a candidate and the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer not later than 78 days before the general election. A candidate may be determined disqualified if a written request is made by an individual with information to show a candidate's ineligibility to the State Election Commission no later than 84 days before the general election explaining grounds why a candidate is not eligible to be placed on

the general election ballot or not eligible to hold the office, if elected. The State Election Commission shall review the reasons for the request. If the commission finds the circumstances warrant the disqualification of the candidate, the commission shall authorize appointment by the executive committee to fill the vacancy. Upon receipt of the authorization, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

(5) If a vacancy in nomination is caused by the incapacity of the candidate and if the vacancy occurs not later than 84 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

(6) If a vacancy in nomination is caused by the timely filing of a notarized statement of withdrawal, according to section eleven of this article, of a candidate whose name would otherwise appear on the general election ballot, a replacement on the general election ballot may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election.

(7) If a vacancy in nomination is caused by the death of the candidate occurring no later than 25 days before the general election, a nominee may be appointed by the executive committee and certified to the proper filing officer no later than 21 days following the date of death or no later than 22 days before the general election, whichever date occurs first.

(b) Except as otherwise provided in §3-10-1 *et seq.* of this code, if any vacancy occurs in a partisan office or position other than political party executive committee, which creates an unexpired term for a position which would not otherwise appear on the ballot in the general election, and the vacancy occurs after the close of candidate filing for the primary election but not later than 84 days before the general election, a nominee of each political party may be appointed by the executive committee and certified to the proper filing officer no later than 78 days before the general election. Appointments shall be filed in the same manner as provided in

subsection (a) of this section, except that the filing fee shall be paid before the appointment is complete.

(c) When a vacancy occurs in the board of education after the close of candidate filing for the primary election but not later than 84 days before the general election, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for board of education shall file a certificate of announcement and pay the filing fee to the clerk of the county commission no earlier than the first Monday in August and no later than 77 days before the general election.

(d) The amendments to this section enacted by the Legislature during the 2022 Regular Session shall be retrospective to January 30, 2022.

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CHAPTER 113

**(H. B. 4097 - By Delegates Holstein, Steele,
Summers, Maynard, Barnhart, Wamsley, Keaton and Mandt)**

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-1A-9, relating to nonpublic funding sources for election administration and related expenses; prohibiting public officials and bodies responsible for elections in West Virginia from directly receiving or accepting money or anything of value for election administration and related expenses from private parties; creating Nonpublic Funding for Election Administration Fund for receipt of all gifts of money from private parties for election administration and related expenses; prescribing use of monies in fund; providing for balance to remain in fund; requiring investment of monies in fund; requiring Secretary of State to administer fund with approval of State Election Commission; requiring Secretary of State with approval of State Election Commission to accept, distribute, and utilize private gifts of tangible property or non-monetary things of value for election administration and related expenses; and authorizing Secretary of State to promulgate legislative rules.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 1A. STATE ELECTION COMMISSION AND
SECRETARY OF STATE.**

**§3-1A-9. Nonpublic funding sources for election
administration and related expenses.**

(a) No county commission, clerk of a county commission, municipal governing body, or other public official or body responsible for overseeing, administering, or regulating an election

held within the State of West Virginia may directly receive or accept any gift, grant, contribution, or donation of money or anything of value for election administration and related expenses from any private individual, corporation, partnership, trust, or third party, and all such gifts, grants, contributions, or donations may only be accepted, received, expended, distributed, and utilized by the Secretary of State pursuant to the requirements of this section.

(b) There is created in the State Treasury a special revenue revolving fund account known as the Nonpublic Funding for Election Administration Fund which shall be an interest-bearing account. The fund shall consist of all monetary gifts, grants, contributions, and donations from private individuals, corporations, partnerships, trusts, or any third party for election administration and related expenses; and any accrued interest or other return on the monies in the fund. The balance remaining in the fund at the end of each fiscal year shall remain in the fund and not revert to the State General Revenue Fund.

(c) The monies in the Nonpublic Funding for Election Administration Fund shall be used only in the manner and for the purposes prescribed in this section. Notwithstanding any provision of law to the contrary, monies in the Nonpublic Funding for Election Administration Fund may not be designated or transferred for any purpose other than those set forth in this section.

(d) The monies in the Nonpublic Funding for Election Administration Fund shall be invested pursuant to §12-6-1 *et seq.* of this code.

(e) The Nonpublic Funding for Election Administration Fund shall be administered by the Secretary of State, with the approval of the State Election Commission, in accordance with legislative rules promulgated by the Secretary of State in accordance with §29A-3-1 *et seq.* of this code.

(f) All gifts, grants, contributions, or donations of tangible property or any non-monetary thing of value from private individuals, corporations, partnerships, trusts, or any third party for election administration and related expenses shall be accepted,

distributed, and utilized by the Secretary of State, only with the approval of the State Election Commission, in accordance with legislative rules promulgated by the Secretary of State in accordance with §29A-3-1 *et seq.* of this code.

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CHAPTER 114

**(H. B. 4299 - By Delegates Holstein, Horst, Sypolt, Hanna,
Linville, Wamsley, Keaton, Kimble, Pack, Summers, and
Tully)**

[Passed February 24, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-9-21, relating to creating the misdemeanor criminal offense of intentionally physically interfering with a voter's travel on walkways, driveways, and parking areas of a polling place with the intent to delay, hinder, harass, interrupt, or intimidate a voter; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. OFFENSES AND PENALTIES.

§3-9-21. Improper interference with voters' travel to and from the polls; penalties.

Any person, during hours a polling place is open for any election, who intentionally physically interferes with a voter's travel on the walkways, driveways, and parking areas adjacent to a building in which a polling place is located with the intention to delay, hinder, interrupt, harass, or intimidate a voter shall be guilty of a misdemeanor and fined not more than \$1,000 or confined in jail for not more than one year or both fined and confined.

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CHAPTER 115

**(Com. Sub. for H. B. 4311 - By Delegates Holstein, Bridges,
Pritt, Kimble, Pack, Summers, Tully, Conley, G. Ward,
Barnhart, and Keaton)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §3-9-17 of the Code of West Virginia, 1931, as amended, relating to unlawfully voting generally; creating certain crimes of illegal voting and deceiving voters; prohibiting knowingly and willfully voting or attempting to vote multiple times in the same or equivalent elections as a felony offense and establishing penalties therefor; prohibiting voting or attempting to vote when not entitled to do so as a felony offense and establishing penalties therefor; prohibiting knowingly and willfully procuring or assisting in procuring the acceptance of illegal votes or rejection of legal votes as a felony offense and establishing penalties therefor; and prohibiting knowing and willfully altering ballots or defrauding voters as a felony offense and establishing penalties therefor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. CONTESTED ELECTIONS.

§3-9-17. Illegal voting; deceiving voters; penalties.

(a) Any person who knowingly and willfully votes or attempts to vote more than once at the same election held in this state; in more than one county in this state at the same or equivalent election; or, in this state and another state or territory at the same or equivalent election, irrespective of different offices, questions, or candidates on the ballot, knowing the same to be illegal, is guilty

of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than \$10,000, or both, in the discretion of the court.

(b) Any person who knowingly and willfully votes or attempts to vote when the person knows he or she is not legally entitled to do so; or procures or assists in procuring an illegal vote to be admitted, or received, at an election, knowing the same to be illegal; or causes or assists in causing a legal vote to be rejected, knowing the same to be legal, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than \$10,000, or both, in the discretion of the court.

(c) Any person who knowingly and willfully, with intent to deceive, alters the ballot of a voter by marking out the name of any person for whom such voter desires to vote; or, with like intent, writes the name of any person on such ballot other than those directed by the voter; or with like intent, makes any alteration thereof, whether such ballot be voted or not; or defrauds any voter at any election, by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than \$10,000, or both, in the discretion of the court.

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CHAPTER 116

**(H. B. 4312 - By Delegates Holstein, Hanna, Bridges, Tully,
Barnhart, Maynor, Honaker, Crouse and B. Ward)**

[Passed February 24, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 9, 2022.]

AN ACT to amend and reenact §3-3-1 and §3-3-5 of the Code of West Virginia, 1931, as amended, all relating to permitting first responders to vote by electronic absentee ballot in certain emergency circumstances; defining “qualified first responder” and providing examples; providing for submittal and acceptance of qualified first responder absentee voting applications; providing for transmittal of ballots to qualified first responders; and providing for processing of received electronic absentee ballots cast by qualified first responders.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot during the period of early voting in person.

(b) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Disability, illness, injury, or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: *Provided*, That the underlying conviction is not for a crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery in an election;

(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university, or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty, and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less;

(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible because of his or her physical disability; and

(6) Any voter who is participating in the Address Confidentiality Program as established by §48-28A-103 of this code.

(c) Registered voters and other qualified voters in the county are authorized to vote an electronic absentee ballot in the following circumstances:

(1) The voter has a physical disability, as defined in §3-3-1a of this code;

(2) The voter is absent from the county throughout the period and available hours for voting in person and is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty, and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(3) The voter is a qualified first responder called away on duty to respond to an emergency outside the voter's county of residence, which prevents the voter from participating in the election by in-person and mail-in absentee voting. For purposes of this section, "qualified first responder" means a person with specialized training who arrives and provides aid at the scene of an emergency, such as an accident, natural disaster, or act of terrorism. First responders typically include emergency medical technicians, firefighters, law-enforcement officers, neighborhood assistance officers, and paramedics.

(d) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee

ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than 30 days;

(3) Any voter who becomes confined, on or after the 7th day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason: *Provided*, That the county clerk may require a written confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse that the voter meets the criteria of this subdivision before permitting such voter to vote an emergency absentee ballot; and

(4) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

§3-3-5. Voting an absentee ballot by mail or electronically; penalties.

(a) Upon oral or written request, the official designated to supervise and conduct absentee voting shall provide to any voter of the county, in person, by mail, or electronically, the appropriate application for voting absentee as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability or if the voter is a qualified first responder as defined in §3-3-1(c)(3) of this code:

(1) The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided; or

(2) The person, if eligible to vote by electronic absentee ballot due to physical disability or is a qualified first responder as defined in §3-3-1(c)(3) of this code, may complete and verify the application by available electronic means prescribed by the Secretary of State.

(b) Completed applications for voting an absentee ballot by mail are to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail, or electronically within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of this code, relating to absent uniformed services and overseas voters, not earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application is to, upon the voter's request, be accepted as an application for the ballots for all elections in the calendar year; and

(2) For all other persons eligible to vote an absentee ballot by mail or electronically, except qualified first responders, not earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier, and not later than the sixth day preceding the election; and

(3) For qualified first responders as defined in §3-3-1(c)(3) of this code, not earlier than the 13th day preceding the election, and not later than 5:00 p.m. on the day before the election.

(c) Upon acceptance of a completed application, the official designated to supervise and conduct absentee voting shall determine whether the following requirements have been met:

(1) The application has been completed as required by law;

(2) The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;

(3) The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail or electronically;

(4) The address to which a ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-1(b)(3), or §3-3-1(b)(4) of this code;

(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is subject to one of the exceptions provided in §3-2-10 of this code; and

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

(d) (1) If the official designated to supervise and conduct absentee voting determines that the required conditions have been met for voting an absentee ballot by mail, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the official designated to supervise and conduct absentee voting determines the required conditions have not been met or has evidence that any of the information contained in the application is not true, the official shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article and shall enter that challenge.

(2) If the official designated to supervise and conduct electronic voting determines that a voter is eligible to submit an electronic ballot because the voter is an absent uniformed services voter or overseas voter or a person with a physical disability, or a qualified first responder as defined in §3-3-1(c)(3) of this code, the official designated to supervise absentee voting shall cause the absentee ballot to be transmitted electronically in the manner required for the electronic ballot marking tool or other electronic means.

(e)(1) Beginning on the 46th day prior to election day, within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall provide to the voter at the address given on the application, or by the appropriate electronic delivery method, the following items as required and as prescribed by the Secretary of State:

(A) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(B) For persons voting absentee ballot by mail, one envelope, unsealed, which may have no marks except the designation “Absent Voter’s Ballot Envelope No. 1” and printed instructions to the voter;

(C) For persons voting absentee ballot by mail, one postage paid envelope, unsealed, designated “Absent Voter’s Ballot Envelope No. 2”;

(D) Instructions for voting absentee by mail or electronically;

(E) For electronic systems or transmission, an electronic means by which eligible voters with physical disabilities may mark the absentee ballot without assistance, as prescribed by the Secretary of State; and

(F) Notice that a list of write-in candidates is available upon request.

(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or is a qualified first responder as defined in §3-3-1(c)(3) of this code the official designated to supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically, as requested by the voter. If the voter does not designate a preference for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this subdivision, the official designated to supervise and conduct absentee voting shall also transmit electronically:

(A) A waiver of privacy form, to be promulgated by the Secretary of State;

(B) Instructions for voting absentee by mail or electronically;

(C) Notice that a list of write-in candidates is available upon request; and

(D) A statement of the voter affirming the voter's current name and address and whether or not he or she received assistance in voting.

(f) The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in voting according to the provisions of §3-3-6 of this code.

(1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) Complete and sign the forms on envelope no. 2; and

(D) Return that envelope to the official designated to supervise and conduct absentee voting.

(2) If the ballot was transmitted electronically as provided in subdivisions (1) or (2), subsection (e) of this section, the voter shall return the ballot electronically, in the manner prescribed by the Secretary of State, or the voter may return the ballot by United States mail, along with a signed privacy waiver form.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if:

(1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or

(2) The ballot bears a postmark of the United States Postal Service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under §3-3-1(b)(3) of this code, relating to uniform services and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(i) Voted ballots submitted electronically are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the close of polls on election day: *Provided*, That for uniform services and overseas voters, the Secretary of State's office shall enter into an agreement with the Federal Voting Assistance Program of the United States Department of Defense to transmit the ballots to the county clerks at a time when two individuals of opposite political parties are available to process the received ballots. For persons casting absentee ballots electronically due to physical disability or by qualified first responders as defined in §3-3-1(c)(3) of this code, the county clerk shall designate two individuals of opposite political parties to process the received ballots in the manner required by the particular electronic ballot marking tool or other electronic means of returning the electronic absentee ballot.

(j) Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for 22 months following the election, after which time they are to be destroyed without being opened.

(k) Absentee ballots which are hand delivered are to be accepted if they are received by the official designated to supervise

and conduct absentee voting no later than the day preceding the election: *Provided*, That no person may hand deliver more than two absentee ballots in any election and any person hand delivering an absentee ballot is required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification violates §3-9-1 *et seq.* of this code and is subject to those provisions.

(l) Upon receipt of the sealed envelope, the official designated to supervise and conduct absentee voting shall:

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and

(4) Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.

(m) Upon receipt of a ballot submitted electronically pursuant to subdivision (2), subsection (f) of this section, the official designated to supervise and conduct absentee voting shall place the ballot in an envelope marked "Absentee by Electronic Means" with the completed waiver when appropriate: *Provided*, That no ballots are to be processed without the presence of two individuals of opposite political parties.

(n) All ballots received electronically prior to the close of the polls on election day are to be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent that those procedures are appropriate for the applicable voting system. The clerk of the county commission shall keep a record of absentee ballots sent and received electronically.

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CHAPTER 117

**(Com. Sub. for H. B. 4353 - By Delegates Smith, Summers,
Mallow, Ellington, Steele, Hardy, Phillips, Sypolt, Howell,
Fast, and Martin)**

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §18-9-1, §18-9-2, and §18-9-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-30 and §3-1-31 of said code; to amend and reenact §3-2-19 of said code; to amend and reenact §7-1-1a of said code; to amend and reenact §7-4-1 of said code; to amend and reenact §7-14B-21 of said code; to amend and reenact §7-17-12 of said code; to amend and reenact §7-20-7 and §7-20-12 of said code; to amend and reenact §8-1-2 of said code; to amend and reenact §8-2-5 of said code; to amend and reenact §8-3-6 of said code; to amend and reenact §8-4-7, §8-4-8, and §8-4-10 of said code; to amend and reenact §8-5-5 of said code; to amend and reenact §8A-7-7, §8A-7-8a, and §8A-7-13 of said code; to amend and reenact §11-8-16, and §11-8-17 of said code; to amend and reenact §13-1-7, and §13-1-11 of said code; to amend and reenact §15-2-13 of said code; to amend and reenact §16-12-1 of said code; to amend and reenact §20-5K-3 of said code; to amend and reenact §22-15A-18 of said code; to amend and reenact §22C-4A-2, and §22C-4A-3 of said code; to amend and reenact §22C-6-3 of said code; to amend and reenact §47-20-26 of said code; to amend and reenact §47-21-24 of said code; and to amend and reenact §60-5-1, §60-5-3, and §60-5-4 of said code, all relating to synchronizing certain local elections with regular statewide primary or general elections; eliminating requirement that board of education serve as the governing body responsible for appointing election officials for certain special elections; authorizing poll clerks to work and be compensated for both full and half days worked during an election; authorizing local municipal elections to be held

concurrently with a regularly scheduled statewide primary or general election; removing requirement to maintain separate municipal precinct books upon request of municipality; requiring question of reforming, altering, or modifying a county commission or council to be placed on primary or general election ballot; requiring question of civil service coverage for county correctional officers to be placed on primary or general election ballot; requiring certain questions regarding county fire service ordinances or fire fees to be placed on primary or general election ballot; requiring certain questions regarding county taxes and fees to be placed on primary or general election ballot; requiring certain questions regarding countywide service fees to be placed on primary or general election ballot; updating references to county commissions; requiring certain questions regarding incorporation of new municipality to be placed on primary or general election ballot; providing for proposed municipal charter to be placed on ballot concurrent with primary or general election; providing for division of incorporated territory into temporary precincts for purpose of holding election; providing for municipal election date established by charter to be concurrent with primary or general election; providing for municipal election date established by charter to be within 25 days of primary or general election; authorizing municipality without previously adopted municipal charter to establish municipal election day concurrent with primary or general election by ordinance and providing requirements therefor; providing for extension or reduction in terms of office; authorizing agreement between municipality and county regarding certain concurrent election matters; providing for shared administrative costs of municipality and county commission holding elections concurrently with primary or general election; requiring certain questions regarding zoning ordinances to be placed on primary or general election ballot; requiring certain questions regarding additional levies to be placed on primary or general election ballot; authorizing one-time special levy elections on certain questions regarding levy renewal; requiring certain questions regarding levy renewal to be placed on primary or general election ballot; requiring certain questions regarding issuance of certain bonds to be placed on primary or general election ballot; clarifying limitations on members of State

Police with respect to participation in elections; requiring certain questions regarding organization and establishment of proposed sanitary district to be placed on primary or general election ballot; repealing certain provisions regarding school levies and elections for same; repealing certain provisions regarding certain elections authorized for school purposes; requiring certain questions regarding commercial infectious medical waste management facility siting to be placed on primary or general election ballot; requiring certain questions regarding county comprehensive recycling programs for solid waste to be placed on primary or general election ballot; requiring certain questions regarding certain solid waste facilities to be placed on primary or general election ballot; requiring certain questions regarding certain hazardous waste facilities to be placed on primary or general election ballot; requiring certain questions regarding charitable bingo to be placed on primary or general election ballot; requiring certain questions regarding charitable raffles to be placed on primary or general election ballot; requiring certain questions regarding sale of alcoholic liquors within the county to be placed on primary or general election ballot; and authorizing certain ballot questions rejected at primary election to be again submitted to the voters at the next succeeding general election.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

***§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.**

(a) For any primary, general, or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly

*NOTE: This section was also amended by S. B. 191 (Chapter 108), which passed prior to this act.

called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners, or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general, or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general, or special election ordered by the county commission and any joint county and municipal election;

(2) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed; and

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates: *Provided*, That no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve, or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct's standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*, That no more than three precincts within the same building or facility may share board members in this manner.

(k) On election day, if an appointed election official or a poll clerk working a full day fails to appear at the polling place by 5:45 a.m. or, for a poll clerk working a half day, later than a time

designated by the clerk of the county commission, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

(m) Nothing in this section shall be construed to require any county executive committee or county commission to offer half-day shifts for poll clerks during any election.

§3-1-31. Days and hours of elections; scheduling of local elections; extension or shortening of terms of certain elected local officials.

(a) General elections shall be held in the several election precincts of the state on the Tuesday next after the first Monday in November of each even year. Primary and special elections shall be held on the days provided by law therefor: *Provided*, That beginning July 1, 2022, all local municipal elections may be held concurrently with a regularly scheduled statewide primary or general election. In exercising this right, a municipality may

negotiate an agreement with the county commission to establish the election date, election officials, registration books to be used, and other matters pertaining to changing the municipal election to be held on the same day as a regularly scheduled statewide primary or general election: *Provided, however,* That a municipality which enters into an agreement with a county commission to hold elections at the same time as a regularly scheduled statewide primary or general election day pursuant to §8-5-5 of this code shall share in the administrative costs of holding the election, but which costs shall not exceed the municipality's pro rata share of voters registered in the municipality compared with the total voters registered in the county: *Provided further,* That the municipality shall also comply with the requirements of §8-5-5 of this code regarding an agreement with the county regarding use of county election officials in municipal elections.

(b) At every primary, general, or special election the polls shall be opened in each precinct on the day of the election at 6:30 in the morning and be closed at 7:30 in the evening.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-19. Maintenance of active and inactive registration records for municipal elections.

(a) For municipal elections, the registration records of active and inactive voters shall be maintained as follows:

(1) Clerks of the county commissions shall prepare pollbooks or voter lists to be used in municipal elections when the county precinct boundaries and the municipal precinct boundaries are the same and all registrants of the precinct are entitled to vote in state, county, and municipal elections within the precinct or when the registration records of municipal voters within a county precinct are separated and maintained in a separate municipal section or book for that county precinct and can be used either alone or in combination with other pollbooks or voter lists to make up a complete set of registration records for the municipal election precinct.

(2) No registration record may be removed from a municipal registration record unless the registration is lawfully transferred or canceled pursuant to the provisions of this article in both the county and the municipal registration records.

(b) Within 30 days following the entry of any annexation order or change in street names or numbers, the governing body of an incorporated municipality shall file with the clerk of the county commission a certified current official municipal boundary map and a list of streets and ranges of street numbers within the municipality to assist the clerk in determining whether a voter's address is within the boundaries of the municipality.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-1a. Requirements for reforming, altering, or modifying a county commission; alternative forms of county government.

(a) A county government may be reformed, altered, or modified as follows:

(1) The county commission or county council of the county may pass a resolution making application to the Legislature to reform, alter, or modify an existing form of county government in accordance with the requirements of the West Virginia Constitution and this section; or

(2) Ten percent of the registered voters of the county may sign a petition requesting reformation, alteration, or modification of the existing form of county government in accordance with the requirements of the West Virginia Constitution and this section.

(b) A county commission or county council seeking to make application to reform, alter, or modify its county government pursuant to the provisions of section 13, article IX of the West Virginia Constitution shall adopt a resolution containing the following information:

(1) The reasons for the reformation, alteration, or modification of the county commission or county government;

(2) The form of the proposed county government selected from the alternatives authorized by this section;

(3) The proposed name of the county government;

(4) When the question of reformation, alteration, or modification of the county government shall be on the ballot;

(5) How and when the officers of the proposed county government shall be elected or appointed, taking into consideration the following:

(A) When the election on the question of reformation, alteration, or modification of the county government shall be held;

(B) The normal election cycles for county officials; and

(C) The time frames for early and absentee voting provided in 3-3-1 *et seq.* of this code; and

(6) When the new county government shall become effective.

(c) Prior to the adoption of a resolution seeking to reform, alter, or modify a county commission or county council, the governing body of the county shall publish by a Class II legal advertisement in one or more newspapers of general circulation throughout the county, in compliance with the provisions of §59-3-1 *et seq.* of this code, notice of the proposed changes to the current form of county government. The publication area shall be the entire county. The notice shall summarize the proposed changes to the county government and include the date, time, and place for the meeting or meetings in which the resolution shall be considered.

(d) After the publication and adoption of the resolution, the following information shall be submitted by the county to the Clerk of the Senate and to the Clerk of the House of Delegates no later than the 10th day of a regular legislative session in which the

request for reforming, altering, or modifying a county commission or county government is to be considered by the Legislature:

- (1) A certified copy of the adopted resolution;
- (2) A copy of the required public notice;
- (3) The vote on the adoption of the resolution; and
- (4) The date the resolution was adopted.

(e) Registered voters of a county seeking to reform, alter, or modify the county commission or county council pursuant to section 13, article IX of the West Virginia Constitution shall submit a petition, signed by 10 percent of the registered voters in the county, to the county commission or county council, setting forth the information required in subsection (b) of this section. Upon receipt of the petition, the county commission or county council shall verify that the signatures on the petition are: (1) Legally registered voters of the county; and (2) equal to 10 percent of the registered voters of the county.

(f) The county commission or county council shall, within 30 days of receipt of a constitutionally defective petition, return it to the petitioners with a written statement as to why the petition is defective. The petitioners may, within 90 days of receipt of the written statement from the county commission or council and after making the necessary changes, resubmit the petition to the county commission or county council.

(g) After verifying that the signatures on the petition meet the constitutional requirements, the county commission or council shall forward the petition to the Clerk of the Senate and to the Clerk of the House of Delegates no later than the 10th day of a regular legislative session in which the request for reforming, altering, or modifying a county commission or county government is to be considered by the Legislature.

(h) After receipt of a certified resolution or verified petition by the Clerk of the Senate and the Clerk of the House of Delegates, the Legislature shall determine whether all constitutional and

statutory requirements have been met. If such requirements have not been met, the certified resolution or verified petition shall be returned with a written statement of the deficiencies. A certified resolution or verified petition may be revised following the procedures set forth in this section for an original submission and then may be resubmitted to the Clerk of the Senate and the Clerk of the House of Delegates for consideration by the Legislature. The requirement that the petition be submitted prior to the 10th day of the legislative session shall not apply to resubmitted resolutions or petitions.

(i) Following passage of an act by the Legislature authorizing an election on the question of reforming, altering, or modifying a county commission or council, the question shall be placed on the ballot of the county at the next primary or general election following such passage.

(j) Following approval of the reformation, alteration, or modification of the county commission or council by a majority of the county's registered voters, nomination of the county commission or council members and, where authorized, the chief executive, shall be held in the next primary election or the primary election set forth in the resolution or petition to reform, alter, or modify the county commission or council. Election of the county commissioners or council members and, where authorized, the chief executive shall be held in the next general election or the general election set forth in the resolution or petition to change the form of the county commission.

(k) All elections required by this section shall be held in accordance with the provisions of §3-1-1 *et seq.* of this code.

(l) The following are guidelines for forms of county government:

(1) "*Chief executive - county commission plan*". — Under this plan:

(A) There shall be a chief executive elected by the registered voters of the county at large and three county commissioners that shall be elected at large;

(B) The commission shall be the governing body;

(C) The chief executive shall have the exclusive authority to supervise, direct, and control the administration of the county government. The chief executive shall carry out, execute, and enforce all ordinances, policies, rules, and regulations of the commission;

(D) The salary of the chief executive shall be set by the Legislature;

(E) Other nonelected officers and employees shall be appointed by the chief executive subject to the approval of the county commission; and

(F) The chief executive shall not be a member of the county commission nor shall he or she hold any other elective office.

(2) “*County manager - county commission plan*”. — Under this plan:

(A) There shall be a county manager appointed by the county commission and three county commissioners that may be elected at large;

(B) The commission shall be the governing body;

(C) The county manager shall have the exclusive authority to supervise, direct, and control the administration of the county government. The county manager shall carry out, execute, and enforce all ordinances, policies, rules, and regulations of the commission;

(D) The salary of the county manager shall be set by the county commission;

(E) Other nonelected officers and employees shall be appointed by the county manager subject to the approval of the commission; and

(F) The county manager shall not be a member of the county commission nor shall he or she hold any other elective office.

(3) “*County administrator - county commission plan*”. — Under this plan:

(A) There shall be a county administrator appointed by the county commission and three county commissioners that shall be elected at large;

(B) The commission shall be the governing body;

(C) The county administrator shall have the authority to direct the administration of the county government under the supervision of the county commission. The county administrator shall carry out, execute, and enforce all ordinances, policies, rules, and regulations of the commission;

(D) The salary of the county administrator shall be set by the county commission;

(E) The county administrator shall appoint or employ all subordinates and employees for whose duties or work he or she is responsible to the commission; and

(F) The county administrator shall not be a member of the county commission nor shall he or she hold any other elective office.

(4) A county council consisting of four or more members that shall be elected at large.

(5) Any form of county government adopted pursuant to section 13, article IX of the West Virginia Constitution and this section may, by the methods set forth in this section, return to the traditional county commission or change to another form of county government, as set out in this section.

(m) The purpose of this section is to establish the basic requirements for reforming, altering, or modifying a county commission or county council pursuant to section 13, article IX of the West Virginia Constitution. The structure and organization of a county government may be specified in greater detail by resolution or ordinance so long as such provisions do not conflict with the purposes and provisions set forth in this section, §7A-1-1 *et seq.* of this code, or the Constitution.

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS, AND LEGAL ADVICE.

§7-4-1. Duties of prosecuting attorney; further duties upon request of Attorney General.

(a) The prosecuting attorney shall attend to the criminal business of the state in the county in which he or she is elected and qualified and when the prosecuting attorney has information of the violation of any penal law committed within the county, the prosecuting attorney shall institute and prosecute all necessary and proper proceedings against the offender and may, in such case, issue or cause to be issued a summons for any witness the prosecuting attorney considers material. Every public officer shall give the prosecuting attorney information regarding the commission of any criminal offense committed within his or her county. The prosecuting attorney shall also attend to civil suits in the county in which the state or any department, commission, or board thereof, is interested, and to advise, attend to, bring, prosecute, or defend, as the case may be, all matters, actions, suits, and proceedings in which such county or any county board of education is interested.

(b) (1) In furtherance of a prosecuting attorney's duty to investigate and prosecute criminal offenses, a prosecuting attorney and assistant prosecuting attorneys under his or her supervision shall have the authority to arrest any person committing a violation of the criminal laws of the State of West Virginia, the United States, or a violation of Rule 42 of the West Virginia Rules of Criminal Procedure which occur within the office of the

prosecuting attorney and committed in the presence of the prosecuting attorney or assistant prosecuting attorney.

(2) For purposes of subdivision (1) of this subsection, the arrest authority of a prosecuting attorney or assistant prosecuting attorney shall be consistent with that authority vested in a deputy sheriff within the geographic limitations set forth in said subdivision.

(3) Should a prosecuting attorney desire to establish a program authorizing prosecuting attorneys and assistant prosecuting attorneys to carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U. S. C. §926B, the following criteria must be met:

(A) The prosecuting attorney's office shall have a written policy authorizing the prosecuting attorney and his or her assistant prosecuting attorneys to carry a concealed firearm for self-defense purposes;

(B) There shall be in place in the office of the prosecuting attorney a requirement that the prosecuting attorney and assistant prosecuting attorneys must regularly qualify in the use of a firearm with standards therefor which are equal to or exceed those required of sheriff's deputies in the county in which the prosecuting attorney was elected or appointed;

(C) The office of the prosecuting attorney shall issue a photographic identification and certification card which identify the prosecuting attorney or assistant prosecuting attorneys as law-enforcement employees of the prosecuting attorney's office pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall include provisions which:

- (i) Preclude or remove a person from participation in the concealed firearm program who is subject to any disciplinary or legal action which could result in the loss of the authority to participate in the program;
- (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and;
- (iii) prohibit persons from carrying a firearm pursuant to the provisions

of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(5) Any prosecuting attorney or assistant prosecuting attorney who participates in a program authorized by the provisions of this subsection shall be responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2017 regular session of the Legislature to authorize prosecuting attorney's offices wishing to do so to allow prosecuting attorneys and assistant prosecuting attorneys to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(c) The prosecuting attorney shall keep his or her office open in the charge of a responsible person during the hours when polls are open during statewide general and primary election days, and the prosecuting attorney, or the prosecuting attorney's assistant, if any, shall be available for the purpose of advising election officials. The prosecuting attorney, when requested by the Attorney General, shall perform or assist the Attorney General in performing, in the county in which the prosecuting attorney is elected, any legal duties required to be performed by the Attorney General and which are not inconsistent with the duties of the prosecuting attorney as the legal representative of the county. The prosecuting attorney, when requested by the Attorney General, shall perform or assist the Attorney General in performing, any legal duties required to be performed by the Attorney General in any county other than that in which the prosecuting attorney is elected and for the performance of these duties in any county other than that in which the prosecuting attorney is elected, the prosecuting attorney shall be paid his or her actual expenses.

Upon the request of the Attorney General, the prosecuting attorney shall make a written report of the state and condition of the several causes in which the state is a party, pending in his or her county, and upon any matters referred to the prosecuting attorney by the Attorney General as provided by law.

ARTICLE 14B. CIVIL SERVICE FOR CORRECTIONAL OFFICERS.**§7-14B-21. County commission of counties with a population of less than 25,000 may place correctional officers under civil service; protest and election with respect thereto.**

The county commission of any county having a population of less than 25,000 may by order entered of record provide that the provisions of this article providing civil service for correctional officers shall apply to such county on and after the effective date of this article. A copy of such order, together with a notice advising the qualified voters of such county of their right to protest the placing of correctional officers of such county under civil service, shall be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county.

In the event 15 percent of the qualified voters of such county protest such order, by petition duly signed by them in their own handwriting (which petition may be signed in any number of counterparts) and filed with the county clerk of such county within 60 days after publication of such copy and notice, such order shall not become effective unless and until it is ratified by a majority of the legal votes cast with respect to the question of civil service coverage for the correctional officers of such county by the qualified voters of such county at a primary or general election. Any such election shall be conducted and superintended and the results thereof ascertained as provided by law for primary or general elections, as the case may be.

Whenever the correctional officers of any county are placed under civil service pursuant to the provisions of this section, such civil service system for the correctional officers of such county shall thereupon become mandatory and all of the provisions of this article shall apply to the correctional officers of such county with like effect as if said county had a population of 25,000 or more.

ARTICLE 17. COUNTY FIRE BOARDS.**§7-17-12. County fire service fees; petition; election; dedication; and amendment.**

(a) Every county commission which provides fire protection services has plenary power and authority to provide by ordinance for the continuance or improvement of such service, to make regulations with respect thereto, and to impose by ordinance, upon the users of such services, reasonable fire service rates, fees, and charges to be collected in the manner specified in the ordinance.

(b) Any fees imposed under this article are dedicated to the county fire board for the purposes provided in this article.

(c) A county commission can impose by ordinance, upon the users of such service, a reasonable fire service fee, by one of two methods:

(1) Ten percent of the qualified voters shall present a petition duly signed by them in their own handwriting, and filed with the clerk of the county commission, directing that the county commission impose such a fee. The county commission shall not have a lien on any property as security for payments due under the ordinance. Any ordinance enacted under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county in which the county fire board is located. In the event 30 percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the clerk of the county commission within 45 days after the expiration of such publication protest against such ordinance as enacted or amended, the ordinance may not become effective until it is ratified by a majority of the legal votes cast thereon by the qualified voters of such county at any primary or general election as the county commission directs. Voting thereon may not take place until after notice of the submission has been given by publication as above provided for the publication of the ordinance after it is adopted. The powers and authority hereby granted to county commissions are in addition to and supplemental to the powers and authority otherwise granted to them by other provisions of this code; or

(2) If the county fire board determines an amendment in the fee imposed in subsection (a) of this article is necessary, it may, by resolution, request the county commission for such a change. Upon receipt of the resolution from the county fire board, the county commission shall, by ballot referendum, amend the ordinance imposing a fire fee and adopt the changes in the fee requested by the county fire board.

(A) This referendum, to determine whether it is the will of the voters of a county that an amendment to the fire fee is necessary, may be held at any regular primary or general election, or, in conjunction with any other countywide election. Any election at which the question of amending the fire fee is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The county commission shall, not less than 90 days before the election, order that the issue be placed on the ballot and referendum held at the next primary or general election to determine whether it is the will of the voters of the county that a fire fee be amended: *Provided*, That prior to issuing the order, the county commission shall publish the ordinance which must contain the anticipated allocation of any fees or charges and which would be enacted should the referendum succeed as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county in which the county fire board is located.

(B) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall the county commission be permitted to amend the fire fee in _____ County, West Virginia?

For the fee amendment.

Against the fee amendment.

(Place a cross mark in the square opposite your choice.)”

(C) If a majority of legal votes cast upon the question be for the fire fee amendment, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within 60 days of certification, establishing the fire fee amendment in the county: *Provided*, That such program shall be implemented and operational no later than 12 months following certification. If a majority of the legal votes cast upon the question be against the fire fee amendment, then the policy shall not take effect, but the question may again be submitted to a referendum at any subsequent election in the manner herein provided.

(d) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

ARTICLE 20. FEES AND EXPENDITURES FOR COUNTY DEVELOPMENT.

§7-20-7. Establishment of impact fees; levies may be used to fund existing capital improvements.

(a) Impact fees assessed against a development project to fund capital improvements and public services may not exceed the actual proportionate share of any benefit realized by such project relative to the benefit to the resident taxpayers.

Notwithstanding any other provision of this code to the contrary, those counties that meet the requirements of §7-20-6 of this code are hereby authorized to assess, levy, collect, and administer any tax or fee as has been or may be specifically authorized by the Legislature by general law to the municipalities of this state: *Provided*, That any assessment, levy, or collection shall be delayed 60 days from its regular effective date: *Provided, however*, That in the event 15 percent of the qualified voters of the county by petition duly signed by them in their own handwriting and filed with the county commission within 45 days after any impact fee or levy is imposed by the county commission pursuant to this article, the fee or levy protested may not become effective until it is ratified by a majority of the legal votes cast thereon by

the qualified voters of such county at any primary or general election as the county commission directs. Voting thereon may not take place until after notice of the subcommission of the fee a levy on the ballot has been given by publication of Class II legal advertisement and publication area shall be the county where such fee or levy is imposed: *Provided further*, That counties may not “double tax” by applying a given tax within any corporate boundary in which that municipality has implemented such tax. Any such taxes or fees collected under this law may be used to fund a proportionate share of the cost of existing capital improvements and public services where it is shown that all or a portion of existing capital improvements and public services were provided in anticipation of the needs of new development.

(b) In determining a proportionate share of capital improvements and public services costs, the following factors shall be considered:

(1) The need for new capital improvements and public services to serve new development based on an existing capital improvements plan that shows: (A) Any current deficiencies in existing capital improvements and services that serve existing development and the means by which any such deficiencies may be eliminated within a reasonable period of time by means other than impact fees or additional levies; and (B) any additional demands reasonably anticipated as the result of capital improvements and public services created by new development;

(2) The availability of other sources of revenue to fund capital improvements and public services, including user charges, existing taxes, intergovernmental transfers, in addition to any special tax or assessment alternatives that may exist;

(3) The cost of existing capital improvements and public services;

(4) The method by which the existing capital improvements and public services are financed;

(5) The extent to which any new development, required to pay impact fees, has contributed to the cost of existing capital improvements and public services in order to determine if any credit or offset may be due such development as a result thereof;

(6) The extent to which any new development, required to pay impact fees, is reasonably projected to contribute to the cost of the existing capital improvements and public services in the future through user fees, debt service payments, or other necessary payments related to funding the cost of existing capital improvements and public services;

(7) The extent to which any new development is required, as a condition of approval, to construct and dedicate capital improvements and public services which may give rise to the future accrual of any credit or offsetting contribution; and

(8) The time-price differentials inherent in reasonably determining amounts paid and benefits received at various times that may give rise to the accrual of credits or offsets due new development as a result of past payments.

(c) Each county shall assess impact fees pursuant to a standard formula so as to ensure fair and similar treatment to all affected persons or projects. A county commission may provide partial or total funding from general or other nonimpact fee funding sources for capital improvements and public services directly related to new development, when such development benefits some public purpose, such as providing affordable housing and creating or retaining employment in the community.

(d) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

§7-20-12. Countywide service fees.

(a) Notwithstanding any provision of this code to the contrary, every county shall have plenary power and authority to impose a countywide service fee upon each employee and self-employed

individual for each week or part of a calendar week the individual works within the county, subject to the following:

(1) No individual shall pay the fee more than once for the same week of employment within the county.

(2) The fee imposed pursuant to this section is in addition to all other fees imposed by the jurisdiction within which the individual is employed.

(3) The fee imposed pursuant to this section may not take effect until the first day of a calendar month, as set forth in the order of the county commission establishing the fee, that begins at least 30 days after a majority of the registered voters of the county voting on the question approve imposition of the service fee, in a primary or general election held in the county.

(4) The order of the county commission shall provide for the administration, collection, and enforcement of the service fee. Employers who have employees that work in the county imposing the service fee shall withhold the fee from compensation paid to the employee and pay it over to the county as provided in the order of the county commission. Self-employed individuals shall pay the service fee to the county commission in accordance with the order establishing the fee.

(5) The terms “employed”, “employee”, “employer” and “self-employed” have the following meaning:

(A) “Employed” shall include an employee working for an employer so as to be subject to any federal or state employment or wage withholding requirement and a self-employed individual working as a sole proprietor or member of a firm so as to be subject to self-employment tax. An employee shall be considered employed in a calendar week so long as the employee remains on the current payroll of an employer deriving compensation for such week and the employee has not been permanently assigned to an office or place of business outside the county. A self-employed individual shall be considered employed in a calendar week so long

as such individual has not permanently discontinued employment within the county.

(B) “Employee” means any individual who is employed at or physically reports to one or more locations within the county and is on the payroll of an employer, on a full-time or part-time basis or temporary basis, in exchange for salary, wages, or other compensation.

(C) “Employer” means any person, partnership, limited partnership, limited liability company, association (unincorporated or otherwise), corporation, institution, trust, governmental body, or unit or agency, or any other entity (whether its principal activity is for-profit or not-for-profit) situated, doing business, or conducting its principal activity in the county and who employs an employee, as defined in this section.

(D) “Self employed individual” means an individual who regularly maintains an office or place of business for conducting any livelihood, job, trade, profession, occupation, business, or enterprise of any kind within the county’s geographical boundaries over the course of four or more calendar weeks, which need not be consecutive, in any given calendar year.

(6) All revenues generated by the county service fee imposed pursuant to this section shall be dedicated to and shall be exclusively utilized for the purpose or purposes set forth in the referendum approved by the voters, including, but not limited to, the payment of debt service on any bonds issued pursuant to §7-20-13 of this code and any costs related to the administration, collection, and enforcement of the service fee.

(b) Any order entered by a county commission imposing a countywide service fee pursuant to this section, or increasing or decreasing a countywide service fee previously adopted pursuant to this section, shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication shall be the county. The order shall not become effective until it is ratified by a majority of the lawful votes cast thereon by the qualified voters of the county

at a primary or general election, as the county commission shall direct. Voting thereon shall not take place until after notice of the referendum shall have been given by publication as above provided for the publication of the order after it is adopted by the county commission. The notice of referendum shall at a minimum include: (1) The date of the referendum; (2) the amount of countywide service fee; (3) a general description of the capital improvement or improvements included in the special infrastructure project to be financed with the service fee; (4) whether revenue bonds shall be issued; and (5) if bonds are to be issued, the estimated term of the revenue bonds. The county commission may include additional information in the notice of referendum.

(c) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

CHAPTER 8. MUNICIPAL CORPORATIONS.

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

PART II. DEFINITIONS.

§8-1-2. Definitions of terms.

(a) For the purpose of this chapter:

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

(2) “City” is a word of art and shall mean, include, and be limited to any Class I, Class II, and Class III city, as classified in section three of this article (except in those instances where the context in which used clearly indicates that a particular class of city is intended), heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under: (i) A special legislative charter; (ii) a

home rule charter framed and adopted or revised as a whole or amended under the provisions of former §8A-1-1 *et seq.* of this code, or under the provisions of §8-3-1 or §8-4-1 of this code; (iii) general law, or (iv) any combination of the foregoing; and

(3) “Town or village” is a term of art and shall, notwithstanding the provisions of §2-2-10 of this code, mean, include, and be limited to any Class IV town or village, as classified in §8-3-1 of this code, heretofore or hereafter incorporated as a municipal corporation under the laws of this state, however created and whether operating under: (i) A special legislative charter; (ii) general law; or (iii) a combination of the foregoing.

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

(1) “Governing body” shall mean the mayor and council together, the council, the board of directors, the commission, or other board or body of any municipality, by whatever name called, as the case may be, charged with the responsibility of enacting ordinances and determining the public policy of such municipality; and in certain articles dealing with intergovernmental relations shall also mean the county commission of any county or governing board of other units of government referred to in said articles;

(2) “Councilmen” shall mean the members of a governing body, by whatever name such members may be called;

(3) “Mayor” shall mean the individual called mayor unless as to a particular municipality a commissioner (in a commission form of government) or the city manager (in a manager form of government) is designated or constituted by charter provision as the principal or chief executive officer or chief administrator thereof, in which event the term “mayor” shall mean as to such municipality such commissioner or city manager unless as to any particular power, authority, duty or function specified in this chapter to be exercised, discharged or fulfilled by the mayor it is provided by charter provision or ordinance that such particular power, authority, duty, or function shall be exercised, discharged, or fulfilled by the individual called mayor and not by a

commissioner or city manager, in which event such particular power, authority, duty, or function shall in fact be exercised, discharged, or fulfilled in and for such municipality by the individual called mayor: *Provided*, That in the exercise and discharge of the ex officio justice of the peace, conservator of the peace, and mayor's court functions specified in this chapter, the term "mayor" shall always mean the individual called mayor;

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

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

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

(7) "Charter" shall mean, except where specific reference is made to a particular type of charter, either a special legislative charter (whether or not amended under the provisions of former §8A-1-1 *et seq.* of this code, or under article four of this chapter, and although so amended, such special legislative charter shall, for the purposes of this chapter, remain a special legislative charter), or a home rule charter framed and adopted or revised as a whole or amended by a city under the provisions of former §8A-1-1 *et seq.* of this code or under the provisions of article three or article four of this chapter;

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

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

(10) “Qualified elector,” “elector,” “qualified voter,” or “legal voter” shall mean any individual who, at the time he or she offers to vote or at the time he or she participates in any event or activity (such as signing a petition) under the provisions of this chapter for which he or she must be a qualified elector, elector, qualified voter, or legal voter, is a resident within the corporate limits of the municipality or within the boundaries of a territory referred to in this chapter, as the case may be, and who: (i) Has been a resident of the state for one year and of the municipality or territory in question for at 60 sixty days next preceding such election or date pertinent to any such event or activity; and (ii) in the case of a regular municipal election, special municipal election, municipal public question election, or any such municipal event or activity, is duly registered on the municipal registration books set up in the office of the clerk of the county commission of the county in which the municipality or the major portion of the territory thereof is located under the integration of the municipal registration of voters with the “permanent registration system” of the state, or, in the event there be no such integration of the municipal registration of voters, is duly registered in the county in which he or she resides to vote in state-county elections; or (iii) in the case of a territory election, general election, or any such territory event or activity, is duly registered in the county in which he or she resides to vote in state-county elections; and any charter provision or ordinance establishing a voting residency requirement different than that in this definition provided shall be of no force and effect; and in any case where a particular percentage of the qualified electors, electors, qualified voters, or legal voters is required under the provisions of this chapter in connection with any such event or activity as aforesaid, the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters, or legal voters, as of the time of such event or activity, unless it is

impracticable to determine such percentage as of such time and it is provided by ordinance, resolution or order that the percentage shall be determined on the basis of the number of qualified electors, electors, qualified voters, or legal voters, as of the date of the last preceding election (whether a general election, regular municipal election, or special municipal election, and whether or not they voted at such election) held in such municipality or territory, as the case may be;

(11) “Public question” shall mean any issue or proposition required to be submitted to the qualified voters of a municipality or of a territory referred to in this chapter for decision at an election, as the case may be;

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

(13) “Resident” shall mean any individual who maintains a usual and bona fide place of abode within the corporate limits of a municipality or within the boundaries of a territory referred to in this chapter, as the case may be;

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

(15) “Freehold interest in real property” shall mean any fee, life, mineral, coal, or oil or gas interest in real property, whether legal or equitable, and whether as a joint tenant or a tenant in common, but shall not include a leasehold interest (other than a mineral, coal, or oil or gas leasehold interest), a dower interest, or an interest in a right-of-way or easement, and the freehold interest of a church or other unincorporated association shall be considered as one interest and not as an individual interest of each member thereof;

(16) “County commission” shall mean the governmental body created by section 22, article eight of the Constitution of this state, or any existing tribunal created in lieu of a county commission;

(17) “Code” shall mean the Code of West Virginia, 1931, as heretofore and hereafter amended; and

(18) “Person” shall mean any individual, firm, partnership, corporation, company, association, joint-stock association, or any other entity or organization of whatever character or description.

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

(d) For the purpose of this chapter, unless the context clearly indicates to the contrary, words importing the masculine gender shall include both the masculine and feminine gender, and the phrase “charter-framed and adopted or revised as a whole or amended (or words of like import) under the provisions of former chapter eight-a of this code” shall include a charter-framed and adopted or revised as a whole or amended under the provisions of former article two of former chapter eight of this code.

ARTICLE 2. CREATION OF MUNICIPALITIES.

PART II. ELECTION.

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

Upon receiving such a report from said enumerators, the county commission shall forthwith fix a date for a special incorporation election, to be held concurrently with the next regularly scheduled primary or general election if there are more than 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled primary or general election, and at which election all qualified electors of the territory shall vote upon

the question of incorporation between such hours as may be fixed by order of said commission. For the purpose of holding and conducting said election, the county commission shall divide the territory into one or more precincts, consisting of not more than 500 qualified voters in each precinct; shall arrange for and provide at its expense polling places, registration books, challenges, and other election supplies as provided for by law in general elections; shall appoint three commissioners of election and two clerks from the qualified electors of said territory for each precinct so established, dividing the election officials as nearly as possible equally between those favoring incorporation and those opposed to incorporation; and shall give notice of the date and place or places of election and hours for voting by publication of such notice as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the territory sought to be incorporated.

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

§8-3-6. Same —Time for election; notice; voting precincts; supplies; officials; certification; canvass; declaration of results; recount.

The proposed charter shall be submitted to the qualified voters of the incorporated territory for approval or rejection at a special election ordered by the county commission to be held concurrently with the next regularly scheduled primary or general election if there are more than 90 days preceding such election, and, if not, then, at the next succeeding regularly scheduled primary or general election, and at which election the officers provided for by said proposed charter and to be elected shall be voted upon in the manner provided in said proposed charter. The county commission shall cause notice of the date, hours, place, and purpose of such election to be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the incorporated territory. The first of said publications shall be made not less than 30 days prior to the

date fixed for the election. Each such notice of election shall state that upon request any qualified voter and any freeholder of the incorporated territory may obtain a copy of the proposed charter from a designated person at a designated place.

For the purpose of holding and conducting said election, the county commission shall divide the incorporated territory into one or more temporary precincts, consisting of not more than 500 qualified voters in each temporary precinct; shall arrange for and provide at its expense polling places, registration books, challenges, and other election supplies as provided for by law in general elections; and shall appoint three commissioners of election and two clerks from the qualified voters of said incorporated territory for each temporary precinct so established, subject, however, to the provisions of §8-4-11 of this code. Such election shall be held and conducted under the supervision of the commissioners and clerks of election appointed by the county commission as aforesaid and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections. The results of such election, both as to approval or rejection of the proposed charter and the election of officers, shall be certified as in general elections, and the returns shall be canvassed and the results declared by the county commission. In the event any commissioner or clerk designated to serve in said election shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the county commission that the party or parties shall pay all costs of such recount.

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

PART II. REVISING OR AMENDING A CHARTER.

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

A special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.*, §8-3-1 *et seq.*, or §8-4-1 *et seq.* of this code, as the case may be,

may be revised as a whole in like manner as a charter may be framed and adopted under the provisions of §8-4-1 *et seq.* of this code, except that the question submitted shall be “Shall the charter be revised as a whole by representatives of the people?”, but no such revision as a whole shall be made within four years of the effective date of such a charter or of the last preceding revision as a whole, whichever be later, as the case may be. A revision as a whole may also be initiated in the manner specified in §8-3-9 of this code or in the manner specified in said section nine considered in *pari materia* with the provisions of §8-3-9 of this code. If a majority of the legal votes cast on the question be in the negative or if the proposed charter revised as a whole is rejected by a majority of the legal votes cast at the election thereon, the provisions of §8-4-2 and §8-4-3 of this code relating to a negative vote on the question of framing a charter and to rejection of a proposed charter shall govern and control.

The qualified voters of a city may amend a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.* of this code, §8-3-1 *et seq.* of this code, or under §8-4-1 *et seq.* of this code, as the case may be, but no amendment shall be made within one year of the effective date of such a charter or of the last preceding revision of such charter as a whole, whichever be later, as the case may be. An amendment or amendments may be initiated in the same manner provided in this article for the framing of a charter, in the manner specified in §8-3-9 of this code, or in the manner specified in said section nine considered in *pari materia* with the provisions of §8-4-3 of this code. The governing body of a city shall provide by ordinance for a special municipal election to pass upon a proposed charter amendment or amendments if: (1) Such governing body by the affirmative vote of two-thirds of its members shall determine and specify that a special municipal election is necessary; or (2) a petition bearing the signatures, written in their own handwriting, of 15 percent of the qualified voters of the city, if a Class I or Class II city, or 10 percent of the qualified voters of the city, if a Class III city, expressly requesting that a special municipal election be called for the purpose has been filed with the governing body more than 120 days prior to the date of the next regular municipal election. In all other cases, a

proposed charter amendment or amendments shall be submitted by ordinance at the next regular municipal election. Any proposed amendment or amendments shall be set out in full in the ordinance submitting same. The date of any special municipal election for the purpose shall be fixed by the ordinance providing for same, but any such special municipal election shall be held not less than 30 nor more than 60 days after such ordinance shall have been adopted. Notice of any election at which a proposed amendment or amendments shall be voted upon shall state the date and hours thereof, and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. Such notice shall be published as in the case of a notice of an election on the question of whether a charter shall be framed, as specified in §8-4-2 of this code. A charter amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the Clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county commission for recording in the office of such clerk of the county commission. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments.

If a majority of the legal votes cast at the election thereon be against any amendment, such proposed amendment shall not be submitted again, without a petition of the qualified voters as provided for in §8-4-1(b) of this code considered in *pari materia* with the provisions of this section, for at least one year.

§8-4-8. Same — An alternate plan.

Whenever the governing body of any city shall deem it expedient to amend the charter of any such city (whether such

charter be a special legislative charter or a charter framed and adopted or revised as a whole under the provisions of former §8A-1-1 *et seq.*, of this code, under §8-3-1 *et seq.*, of this code, or §8-4-1 of this code, as the case may be), it shall, by ordinance, set out in its proper record book the proposed amendment or amendments in full. The governing body shall set a date, time, and place for a public hearing thereon, which date shall be not less than 30 days after the date of the first publication hereinafter required. The governing body shall cause the proposed amendment or amendments, together with a notice of the date, time and place fixed for the hearing thereon, to be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the city. The notice shall state that the proposed amendment or amendments shall be considered on the date and at the time and place fixed by the governing body and that any qualified voter or any freeholder of the city may appear and file objections, in writing, and also that if no objections are filed the said amendment or amendments shall become operative on and after a date fixed in the notice, which date shall be not less than 10 days after the date of the hearing. If no objections are filed, or if objections are filed and are withdrawn at the time of the hearing, or within 10 days thereafter, the governing body shall, by ordinance, adopt the amendment or amendments as an amendment or amendments to the charter, and cause a copy of the amendment or amendments, ordinance, and transcript of the proceedings to be certified to the Clerk of the House of Delegates, as keeper of the rolls, and to be recorded in the office of the clerk of the county commission. The same shall be preserved by such Clerk of the House of Delegates as an authentic public record. The amendment or amendments shall take effect on the effective date specified in the notice as aforesaid. After the effective date, all courts shall take judicial notice of such amendment or amendments.

If, on the date and at the time and place set for the hearing, objections to the amendment or amendments are filed and are not withdrawn then or within 10 days thereafter, the governing body may abandon the proposed amendment or amendments to which objections have been filed, or it may submit the proposed

amendment or amendments, either as a unit or separately, at the next regular municipal election, or at a special municipal election if such governing body by the affirmative vote of two-thirds of its members shall determine and specify that a special municipal election is necessary and if the date of such regular municipal election shall be more than six months from such date, for ratification or rejection. Notice of any election at which the proposed amendment or amendments shall be voted upon shall state the date and hours thereof and shall set out the proposed amendment or amendments at length or state that copies may be obtained by any qualified voter or any freeholder of the city from a designated person at a stated place, upon request. The governing body shall cause such notice to be published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the city. The amendment or amendments approved, or such of them as may be approved, by a majority of the legal votes cast at the election thereon shall take effect on the date that the declaration of the results showing approval by the voters has been made by the governing body and entered in the minutes of the governing body. One copy of the amendment or amendments, together with a certified copy of the declaration of results attached thereto, shall be certified forthwith by the recorder of the city to the Clerk of the House of Delegates, as keeper of the rolls, and another to the clerk of the county commission for recording in the office of such clerk of the county commission. The same shall be preserved by said Clerk of the House of Delegates as an authentic public record. After the effective date of an amendment or amendments so filed, all courts shall take judicial notice of such amendment or amendments. If a majority of the legal votes cast at the election thereon be against any proposed amendment, the same shall not be proposed again under the provisions of this section for at least one year.

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

PART III. ELECTIONS; EXPENSES.

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

The governing body of a city shall canvass the returns within relatively the same time with reference to an election held under the provisions of this article and in the same manner as county commissions are required to do with respect to general elections, and shall declare the results of any such election. This requirement shall apply to any election held under the provisions of this article, whether it be a special municipal election or voting conducted in conjunction with a general election or a regular municipal election. The canvass and declaration of results shall be entered in the minutes of the governing body on the date made. Unless otherwise provided by charter provision, any such special municipal election or voting conducted in conjunction with a general election or a regular municipal election shall be held and conducted under the supervision at each precinct of three commissioners of election and two clerks who shall be appointed by the governing body and shall be conducted as nearly as may be in accordance with the laws of this state governing general elections, subject, however, in the case of a special municipal election to the provisions of §8-4-11 of this code. For any special municipal election or voting conducted in conjunction with a general election or a regular municipal election, in accordance with the provisions of this article, the governing body shall arrange for and provide at its expense registration books, challenges and other election supplies as provided by law in general elections, and polling places in any such special municipal election or with respect to any such voting conducted in conjunction with a regular municipal election. In the event any commissioner or clerk appointed by the governing body shall fail or refuse to serve, such vacancy may be filled in like manner as such vacancies are filled in general elections under the laws of this state governing general elections, except that the governing body shall act in the place and stead of the county commission. A recount may be had, as in general elections, upon the party or parties desiring such recount providing adequate assurance to the

governing body that the party or parties shall pay all costs of such recount.

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

(a) After the first election of officers of a city, town, or village, the regular election of officers shall be held on the second Tuesday in June of the appropriate year, unless otherwise provided in the charter of the city or the special legislative charters of the towns or villages.

(b) A municipal election date established by a charter provision may fall on the same day as a regularly scheduled statewide primary or general election only when the voting precinct boundaries in the municipality coincide with the voting precinct boundaries established by the county commission or when the charter provides for separate registration books. If a municipal election falls on the same day as a regularly scheduled statewide primary or general election, the municipality and county may agree to use the county election officials in the municipal elections, if practicable, or the municipality may provide for separate election officials.

(c) A municipal election date established by charter provision may fall within 25 days of a regularly scheduled statewide primary or general election only where separate registration books are provided and maintained for the municipal election.

(d) Any municipality which establishes its election date by charter provision must comply with the provisions of this section or the election date shall be the second Tuesday of June. The language of this section may not be construed to prevent any city, town, or village from amending the provisions of its charter or special legislative charter, to provide that its municipal election be held on some day other than the second Tuesday in June.

(e) Officers of a city may be elected for a four-year term at the same election at which a proposed charter, proposed charter revision, or charter amendment providing for four-year terms is

voted upon. The ballots or ballot labels used for the election of officers must indicate that the officers shall be elected for four-year terms if the proposed charter, revision or amendment is approved. Officers of a town or village may be elected for a four-year term upon approval by a majority of the legal votes cast at a regular municipal election of a proposition calling for four-year terms. The ballots or ballot labels used for the election of officers must indicate that the officers shall be elected for four-year terms if the proposition is approved.

(f) Municipalities are authorized to stagger and/or change the terms of elected municipal officers. Prior to any changes being made to the terms of elected municipal officers, the procedure to stagger and/or change the terms shall be set by ordinance and must be approved by a majority of the voters.

(g) Beginning on July 1, 2022, any municipality that has not previously adopted a municipal charter may pass an ordinance that establishes a new municipal election day upon agreement with its county commission to hold any local elections, including the regular election of local officers, municipal bond elections, and municipal levy elections, on the same day as a regularly scheduled statewide primary or general election. The municipality shall publish notice of the public meeting during which the proposed ordinance shall be considered by the municipal governing body via Class II-0 legal advertisement in a publication area sufficient to reach a majority of the municipal residents, which notice shall include the public meeting date, time, and location, any proposed extension or reduction of terms of office pursuant to paragraph (f) of this section, and the proposed election day change.

(h) The ordinance proposed pursuant to paragraph (g) of this section may call for an extension or reduction of the terms of office for the purpose of aligning the terms to coincide with the same date as a regularly scheduled statewide primary or general election day, which question shall be resolved by majority vote of the participating voters in the county: *Provided*, That the governing body shall not propose an extension of the terms of those offices by more than 18 months: *Provided, however*, That nothing in this section modifies a municipality's authority to reduce current

elected officials' terms of office in any other manner provided by law.

(i) A municipality which enters into an agreement with the county commission to hold elections at the same time as a regularly scheduled statewide primary or general election day pursuant to this section is required to share in the administrative costs of holding the election, but which costs shall not exceed the municipality's pro rata share of voters registered in the municipality compared with the total voters registered in the county.

CHAPTER 8A. LAND USE PLANNING.

ARTICLE 7. ZONING ORDINANCE.

§8A-7-7. Election on a zoning ordinance.

(a) The governing body of a municipality or a county may submit a proposed zoning ordinance for approval or rejection at any primary election or general election, to the qualified voters residing:

(1) Within the entire jurisdiction of the governing body, if the proposed zoning ordinance is for the entire jurisdiction; or

(2) In the specific area to be zoned by the proposed zoning ordinance, if the proposed zoning ordinance only applies to part of the governing body's jurisdiction.

(b) The election laws of this state apply to any election on a proposed zoning ordinance.

(c) If a petition for an election on a zoning ordinance is filed with the clerk of a governing body within 90 days after the enactment of a zoning ordinance by a governing body without an election, then a zoning ordinance does not take effect until an election is held and a majority of the voters approves it. At least 10 percent of the total eligible voters in the area to be affected by the proposed zoning ordinance must sign, in their own handwriting, the petition for an election on a zoning ordinance.

(d) Notice for an election on a proposed zoning ordinance must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 of this code.

(e) The ballots for an election on a zoning ordinance shall have the following:

// For Zoning

// Against Zoning

(f) The zoning ordinance is adopted if it is approved by a majority of the voters and is effective on the date the results of an election are declared. If a zoning ordinance is rejected, the zoning ordinance does not take effect. The governing body may submit the zoning ordinance to the voters again at the next primary or general election.

§8A-7-8a. Requirements for adopting an amendment to the zoning ordinance.

(a) After the enactment of the zoning ordinance, the governing body of the municipality may amend the zoning ordinance in accordance with §8A-7-8 of this code, without holding an election.

(b) After the enactment of the zoning ordinance, the governing body of the county may amend the zoning ordinance in accordance with §8A-7-8 of this code, as follows:

(1) Without holding an election;

(2) Holding an election on the proposed amendment; or

(3) Holding an election on the proposed amendment pursuant to a petition.

(c) If the governing body of the county chooses to hold an election on the proposed amendment, then it must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary or general election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(d) The governing body of a county must hold an election on an amendment to a zoning ordinance if a petition, signed by at least 10 percent of the eligible voters in the area to which the zoning ordinance applies, is filed:

(1) With the governing body of the county prior to enactment of an amendment to a zoning ordinance; or

(2) After the enactment of an amendment to a zoning ordinance without an election, if the petition for an election on the amendment to a zoning ordinance is filed with the governing body of the county within 90 days.

(e) The governing body of the county holding an election on the proposed amendment pursuant to a petition must:

(1) Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code; and

(2) Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary or general election for the qualified voters residing in:

(A) The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or

(B) The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.

(f) If an election is held, then the proposed amendment to the zoning ordinance does not take effect until a majority of the voters approve it.

(g) If an election is held and the proposed amendment to the zoning ordinance is rejected, then the proposed amendment does not take effect. The governing body of the county may resubmit the proposed amendment to the zoning ordinance to the voters at another election.

(i) The election laws of this state apply to any election on a proposed amendment to a zoning ordinance.

§8A-7-13. Process to replace nontraditional zoning ordinance.

(a) A governing body that has adopted or enacted a nontraditional zoning ordinance may replace the nontraditional zoning ordinance with a zoning ordinance. A nontraditional zoning ordinance may be replaced with a zoning ordinance by:

(1) The governing body; or

(2) A petition by the voters in the affected area. If the voters petition to replace the nontraditional zoning ordinance with a zoning ordinance, then the provisions of this section and this chapter shall be followed.

(b) At least 10 percent of the total eligible voters in the affected area may petition the governing body to replace the nontraditional zoning ordinance with a zoning ordinance. The petition must include:

(1) The governing body's name to which the petition is addressed;

(2) The reason for the petition, including:

(A) Replacing the nontraditional zoning ordinance with a zoning ordinance; and

(B) That the question of replacing the nontraditional zoning ordinance with a new zoning ordinance be put to the voters of the affected area; and

(3) Signatures in ink or permanent marker.

(c) Each person signing the petition must be a registered voter in the affected area and in the governing body's jurisdiction. The petition must be delivered to the clerk of the affected governing body. There are no time constraints on the petition.

(d) Upon receipt of the petition with the required number of qualifying signatures, the governing body shall place the question on the next primary or general election ballot.

Notice for an election on replacing a zoning ordinance must be published in a local newspaper of general circulation in the area affected by the nontraditional zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code.

(e) The ballots for an election on replacing a zoning ordinance shall have the following:

“Shall _____ (name of governing body) replace _____ (name of commonly known nontraditional zoning ordinance) with a zoning ordinance?

___ Yes

___ No”

(f) Upon a majority vote of the voters voting in favor of replacing a nontraditional zoning ordinance with a zoning ordinance, the governing body shall immediately begin the process of adopting and enacting a zoning ordinance, in accordance with the provisions of this chapter. The governing body has a maximum of three years from the date of the election to adopt a zoning ordinance.

(g) The governing body may amend its nontraditional zoning ordinance during the process of adopting and enacting a zoning ordinance.

(h) If a majority of the voters reject replacing the nontraditional zoning ordinance with a zoning ordinance, the affected voters may not petition for a vote on the issue for at least two years from the date of the election.

(i) Nothing in this section shall prevent a governing body from amending its zoning ordinance in accordance with this chapter.

(j) If a governing body of a county chooses to replace a nontraditional zoning ordinance with a traditional zoning ordinance without holding an election, a petition, signed by at least 10 percent of the eligible voters who reside in the area affected by the zoning ordinance, for an election on the question of adopting a traditional zoning ordinance may be filed with the governing body of the county within 90 days after the enactment of the traditional zoning ordinance by the governing body of the county. If a petition is timely filed, then the traditional zoning ordinance does not take effect until:

(1) Notice of the election and the zoning ordinance is published in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-0 legal advertisement, in accordance with the provisions of §59-3-1 *et seq.* of this code;

(2) An election is held; and

(3) A majority of the voters approve it.

CHAPTER 11. TAXATION.

ARTICLE 8. LEVIES.

§11-8-16. What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

A local levying body may provide for an election to increase the levies by entering on its record of proceedings an order setting forth:

- (1) The purpose for which additional funds are needed;
- (2) The amount for each purpose;
- (3) The total amount needed;
- (4) The separate and aggregate assessed valuation of each class of taxable property within its jurisdiction;
- (5) The proposed additional rate of levy in cents on each class of property;
- (6) The proposed number of years, not to exceed five, to which the additional levy applies;
- (7) The fact that the local levying body shall or shall not issue bonds, as provided by this section, upon approval of the proposed increased levy.

The local levying body shall submit to the voters within their political subdivision the question of the additional levy at either a regularly scheduled primary or general election in accordance with the requirements of §3-1-31 of this code. If at least 60 percent of the voters cast their ballots in favor of the additional levy, the county commission or municipality may impose the additional levy. If at least a majority of voters cast their ballot in favor of the additional levy, the county board of education may impose the additional levy: *Provided*, That any additional levy adopted by the voters, including any additional levy adopted prior to the effective date of this section, shall be the actual number of cents per each \$100 of value set forth in the ballot provision, which number shall not exceed the maximum amounts prescribed in this section, regardless of the rate of regular levy then or currently in effect, unless such rate of additional special levy is reduced in accordance with the provisions of §11-8-6g of this code or otherwise changed in accordance with the applicable ballot provisions. For county commissions, this levy shall not exceed a rate greater than seven and fifteen hundredths cents for each \$100 of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For

municipalities, this levy shall not exceed a rate greater than six and twenty-five hundredths cents for each \$100 of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties. For county boards of education, this levy shall not exceed a rate greater than twenty-two and ninety-five hundredths cents for each \$100 of value for Class I properties, and for Class II properties a rate greater than twice the rate for Class I properties, and for Class III and IV properties a rate greater than twice the rate for Class II properties.

Levies authorized by this section shall not continue for more than five years without resubmission to the voters.

Upon approval of an increased levy as provided by this section, a local levying body may immediately issue bonds in an amount not exceeding the amount of the increased levy plus the total interest thereon, but the term of the bonds shall not extend beyond the period of the increased levy.

Insofar as they might concern the issuance of bonds as provided in this section, the provisions of §13-1-3 and §13-1-4 of this code shall not apply.

In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

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

(a) The local levying body shall publish a notice, calling the election, as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the territory in which the election is held. Such notice shall be so published within 14 consecutive days next preceding the election.

(b) All the provisions of the law concerning general elections shall apply so far as they are practicable: *Provided*, That

notwithstanding any provision of this code to the contrary, in the case of a levy which expires at a time after July 1, 2022, and which shall not be up for renewal at the next regularly scheduled primary or general election thereafter, the local levying body shall by ordinance choose to hold the election to renew that levy either at the next regularly scheduled primary or general election in accordance with §3-1-31 of this code; *Provided, however,* That notwithstanding any other provision of this code, a local levying body may enter an order authorizing a special election prior to the expiration of the existing or expiring levy for the purpose of presenting to the voters the question of synchronizing the renewal of an existing or expiring levy with a future regularly scheduled primary or general election, which question shall pass upon adoption by a majority of participating voters.

(c) The question on the special levy shall be placed on the ballot in accordance with the ballot placement order prescribed by §3-5-13a(a) of this code. The question heading shall be entitled: “Special Levy Election” and the question shall be significantly in the following form: “Special election to authorize additional levies for the year(s) _____ and for the purpose of _____ according to the order of the _____ entered on the _____ day of _____.”

The additional levy shall be on Class I property _____ cents; on Class II property _____ cents; on Class III property (if any) _____ cents; on Class IV property (if any) _____ cents.

(d) In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1. BOND ISSUES FOR ORIGINAL INDEBTEDNESS.

§13-1-7. When election to be held.

Elections for the purpose of voting upon questions of issuing bonds may be held at any general or primary election which the

fiscal body in its order submitting the same to a vote may designate, except that, when a petition is filed asking that bonds be issued, the fiscal body with which the same is filed, shall order a special election and the election shall be held concurrently at the next regularly scheduled general or primary election.

In the event that a majority of the votes cast upon a question submitted pursuant to this section at any primary election be against the question, the question may again be submitted to the voters at the next succeeding general election.

§13-1-11. General election laws to apply; recorders and secretaries to act in lieu of circuit clerks.

All the provisions of the general election laws of this state concerning general or primary elections, when not in conflict with the provisions of this article, shall apply to bond elections hereunder, insofar as practicable: *Provided*, That in bond elections for municipalities, school, or independent school districts, the recorders and secretaries, respectively, shall procure and furnish to the election commissioners at each voting precinct the ballots, pollbooks, tally sheets, and other things necessary for conducting the election, and perform all duties imposed by law upon clerks of the circuit courts in relation to general elections.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-13. Limitations upon members; exceptions.

(a) No member of the West Virginia state police may in any way interfere with the rights or property of any person except for the prevention of crime.

(b) No member of the State Police may in any way become active or take part in any political contest or at any time participate in any political party caucus, committee, assembly or convention or in any primary, general, or special election while in uniform, except to cast his or her ballot.

(c) No member of the State Police may be detailed or ordered to duty at or near any voting precinct where any election or convention is held on the day of an election or convention; nor may any member thereof remain in, about or near the voting precinct or place of convention, except to cast his or her vote. After voting he or she shall forthwith retire from the voting precinct. No member may act as an election official. If any member of the State Police is found guilty of violating any of the provisions of this section, he or she shall be dismissed by the superintendent as hereinafter provided.

(d) While out of uniform and off duty, no member of the State Police may participate in any political activity except to:

(1) Campaign for and hold office in political clubs and organizations;

(2) Actively campaign for candidates for public office in partisan and nonpartisan elections; and

(3) Contribute money to political organizations and attend political fund-raising functions.

(e) No member of the State Police may at any time:

(1) Be a candidate for public office in a nonpartisan or partisan election;

(2) Use official authority or influence to interfere with or affect the results of an election or nomination; or

(3) Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(f) No officer or member of the State Police may, in any labor trouble or dispute between employer and employee, aid or assist either party thereto, but shall in these cases see that the statutes and laws of this state are enforced in a legal way and manner.

CHAPTER 16. PUBLIC HEALTH.**ARTICLE 12. SANITARY DISTRICTS FOR SEWAGE DISPOSAL.****§16-12-1. Incorporation as sanitary district for sewage disposal; petition, notice and hearing; election; form of ballot; expenses of election.**

Whenever any area of contiguous territory shall contain one or more incorporated cities, towns, and/or villages, and shall be so situated that the construction and maintenance of a plant or plants for the purification and treatment of sewage and the maintenance of one or more outlets for the drainage thereof, after having been so treated and purified by and through such plant or plants will conduce to the preservation of the public health, comfort, and convenience, the same may be incorporated as a sanitary district under this article in the manner following, to wit:

Any 400 legal voters, residents within the limits of such proposed sanitary district, may petition the county commission of the county in which the proposed sanitary district, or the major portion thereof, is located, to cause the question to be submitted to the legal voters of such proposed sanitary district, whether such proposed territory shall be organized as a sanitary district under this article; such petition shall be addressed to the county commission and shall contain a definite description of the boundaries of the territory to be embraced in the such sanitary district, and the name of such proposed sanitary district: *Provided*, That no territory shall be included within more than one sanitary district organized under this article.

Notice shall be given by such county commission within 10 days after receiving the petition, of the time and place when a hearing on the petition for a sanitary district shall be held, by publication of such notice as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area of the sanitary district. The first publication shall be made at least 20 days prior to such hearing. The hearing on the petition for a sanitary

district shall be held not later than 30 days after the county commission receives the said petition. At such hearing the president of the county commission shall preside, and all persons resident within the limits of such proposed sanitary district shall have an opportunity to be heard upon the question of the location and boundary of such proposed sanitary district, and to make suggestions regarding the same, and the said county commission, after hearing statements, evidence, and suggestions, shall fix and determine the limits and boundaries of such proposed sanitary district as stated in the original petition unless by a vote of the majority of the legal voters resident within the limits of such proposed sanitary district, present at the said hearing, it should be decided to alter and amend such petition to change and redetermine the limits and boundaries of such proposed sanitary district.

After such determination by the county commission the same shall be incorporated in an order which shall be spread at length upon the records of the county commission. Upon the entering of such order, the county commission shall submit to the legal voters of the proposed sanitary district, the question of organization and establishment of the proposed sanitary district as determined by said county commission, at an election, to be held concurrently with the next regularly scheduled primary or general election, notice whereof shall be given by the county commission at least 20 days prior thereto by publication of such notice as a Class II-O legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area of the proposed sanitary district. Such notice shall specify briefly the purpose of such election, with the description of such proposed sanitary district, and the time and place for holding such election.

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

// For sanitary district.

// Against sanitary district.

The ballots so cast shall be issued, received, returned, and canvassed in the same manner and by the same officers as is provided by law in the case of ballots cast for county officers, except as herein modified. The county commission shall cause a statement of the result of such election to be spread on the records of the county commission. If a majority of the votes cast upon the question of the incorporation of the proposed sanitary district shall be in favor of the proposed sanitary district, such proposed sanitary district shall thenceforth be deemed an organized sanitary district under this article. All courts in this state shall take judicial notice of the existence of all sanitary districts organized under this article.

The expenses of holding said special election shall be paid by the county commission of said county, in which said proposed sanitary district, or the major portion thereof, is located, out of the general funds of said county: *Provided*, That in the event such sanitary district is established and incorporated under this article, then said sanitary district shall repay to said county the expenses incurred in holding said special election within two years from the date of incorporating said sanitary district.

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-1. School levies; when levy election necessary; special election.

[Repealed.]

§18-9-2. Elections under this chapter; procedure.

[Repealed.]

§18-9-2a. Levies.

[Repealed.]

CHAPTER 20. NATURAL RESOURCES.**ARTICLE 5K. COMMERCIAL INFECTIOUS MEDICAL WASTE FACILITY SITING APPROVAL.****§20-5K-3. Procedure for public participation.**

(a) From and after the effective date of this article, in order to obtain approval to locate a commercial infectious medical waste facility, currently not under permit to operate, an applicant shall:

(1) File a presiting notice with the county commission and local solid waste authority of the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the secretary;

(2) File a presiting notice with the secretary; and

(3) File a presiting notice with the Division of Environmental Protection.

(b) If a presiting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the commercial infectious medical waste facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, which petition shall be filed with the county commission within 60 days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than 56 days before the election, order a referendum be placed upon the ballot. Any referendum conducted pursuant to this section shall be held at the next primary or general election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial infectious medical waste

management facility be located in the county. Any election at which such question of locating a commercial infectious medical waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address, and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located within the county:

Shall a commercial infectious medical waste management facility be located within _____ County.

For the facility

Against the facility

(Place a cross mark in the square opposite your choice.)

(3) If a majority of the legal votes cast upon the question is against the facility, then the county commission shall notify the local solid waste authority, the Division of Environmental Protection, and the Secretary of the Department of Health and Human Resources of the result and the commercial infectious medical waste management facility may not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in §20-5j-1 *et seq.* of this code may proceed: *Provided*, That such vote is not binding on nor does it require the secretary to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

CHAPTER 22. ENVIRONMENTAL RESOURCES.**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.****§22-15A-18. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.**

(a) On or before October 18, 1992, each municipality described in subsection (b) of this section shall submit a proposal to the Solid Waste Management Board, consistent with the provisions of this section, describing the establishment and implementation of the mandatory recycling program. The Solid Waste Management Board shall review the submitted plans for consistency with the criteria provided in this section, the county or regional solid waste management plan, and the statewide management plan. The Solid Waste Management Board may make suggested changes to the plan and shall provide technical assistance to the municipalities in the development of the plans.

(b) On or before October 18, 1993, each municipality with a population of 10,000 or more people, as determined by the most recent decennial census by the Bureau of the Census of the United States Department of Commerce, shall establish and commence implementation of a source separation and curbside collection program for recyclable materials. Implementation shall be phased in by July 1, 1995. Such program shall include, at a minimum, the following:

(1) An ordinance adopted by the governing body of the municipality requiring that each person, partnership, corporation, or other entity in the municipality shall separate at least three recyclable materials, as deemed appropriate by the municipality, from other solid waste: *Provided*, That the list of recyclables to be separated may be adjusted according to whether the generator is residential, commercial or other type of establishment.

(2) A scheduled day, at least one per month, during which separated materials are to be placed at the curbside, or similar location, for collection.

(3) A system that collects recyclable materials from the curbside, or similar location, at least once per month: *Provided*, That to encourage full participation, the program shall, to the maximum extent possible, provide for the collection of recyclables at the same rate of frequency, and simultaneous with, the regular collection of solid waste.

(4) Provisions to ensure compliance with the ordinance, including incentives and penalties.

(5) A comprehensive public information and education program covering the importance and benefits of recycling, as well as the specific features and requirements of the recycling program. As part of the education program, each municipality shall, at a minimum, notify all persons occupying residential, commercial, institutional, or other premises within its boundaries of the requirements of the program, including how the system will operate, the dates of collection, the responsibilities of persons within the municipality and incentives and penalties.

(6) Consultation with the county or regional solid waste authority in which the municipality is located to avoid duplication, ensure coordination of solid waste programs, and maximize the market for recyclables.

(c) Notwithstanding the provisions of subsection (b) of this section, a comprehensive recycling program for solid waste may be established in any county of this state by action of a county commission in accordance with the provisions of this section. Such program shall require:

(1) That, prior to collection at its source, all solid waste shall be segregated into separate identifiable recyclable materials by each person, partnership, corporation, and governmental agency subscribing to a solid waste collection service in the county or

transporting solid waste to a commercial solid waste facility in the county;

(2) Each person engaged in the commercial collection, transportation, processing, or disposal of solid waste within the county shall accept only solid waste from which recyclable materials in accordance with the county's comprehensive recycling program have been segregated; and

(3) That the provisions of the recycling plan prepared pursuant to §22-15A-17 of this code shall, to the extent practicable, be incorporated in the county's comprehensive recycling program.

(d) For the purposes of this article, recyclable materials shall include, but not be limited to, steel and bimetallic cans, aluminum, glass, paper, and such other solid waste materials as may be specified by either the municipality or county commission with the advice of the county or regional solid waste authority.

(e) A comprehensive recycling program for solid waste may be established in any county of this state by: (1) A petition filed with the county commission bearing the signatures of registered voters of the county equal to not less than five percent of the number of votes cast within the county for Governor at the preceding gubernatorial election; and (2) approval by a majority of the voters in a subsequent referendum on the issue. A referendum to determine whether it is the will of the voters of a county that a comprehensive recycling program for solid waste be established in the county may be held at any regular primary or general election. Any election at which the question of establishing a policy of comprehensive recycling for solid waste is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, shall apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address, and date of birth of each person whose signature appears on the petition. Upon verification of the required number of signatures on the petition, the county commission shall, not less than 70 days before the election, order

that the issue be placed on the ballot and referendum held at the next primary or general election to determine whether it is the will of the voters of the county that a policy of comprehensive recycling of solid waste be established in the county: *Provided*, That the petition bearing the necessary signatures has been filed with the county commission at least 100 days prior to the election.

The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall the county commission be required to establish a comprehensive recycling program for solid waste in _____ County, West Virginia?

For Recycling

Against Recycling

(Place a cross mark in the square opposite your choice.)”

If a majority of legal votes cast upon the question be for the establishment of a policy of comprehensive recycling of solid waste, the county commission shall, after the certification of the results of the referendum, thereafter adopt an ordinance, within 180 days of certification, establishing a comprehensive recycling program for solid waste in the county: *Provided*, That such program shall be implemented and operational no later than 12 months following certification. If a majority of the legal votes cast upon the question be against the establishment of a policy of comprehensive recycling of solid waste, the policy shall not take effect, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(f) A comprehensive recycling program for solid waste established by petition and referendum may be rescinded only pursuant to the procedures set out herein to establish the program.

To rescind the program, the ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“Shall the county commission be required to terminate the comprehensive recycling program for solid waste in _____ County, West Virginia?”

Continue Recycling

End Recycling

(Place a cross mark in the square opposite your choice.)”

(g) If a majority of legal votes cast upon the question be for the termination of a policy of comprehensive recycling of solid waste previously established in the county, the county commission shall, after the certification of the results of the referendum, thereafter rescind by ordinance the comprehensive recycling program for solid waste in the county within 90 days of certification. If a majority of the legal votes cast upon the question be for the continuation of the policy of comprehensive recycling of solid waste, the ordinance shall not be rescinded, but the question may again be submitted to a vote at any subsequent election in the manner herein provided.

(h) In the case of any municipality having a population greater than 30,000 persons, as indicated by the most recent decennial census conducted by the United States, the governing body of such municipality may by ordinance establish a materials recovery facility in lieu of or in addition to the mandatory recycling program required under the provisions of this section: *Provided*, That a materials recovery facility shall be subject to approval by both the Public Service Commission and the Solid Waste Management Board upon a finding by both the Public Service Commission and the Solid Waste Management Board that the establishment of a materials recovery facility will not hinder, and will be consistent with, the purposes of this article.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS, AND
COMPACTS.**

ARTICLE 4A. LOCAL PARTICIPATION; REFERENDUM.

§22C-4A-2. Approval of new Class A facility.

(a) The purpose of the mandatory referendum for approval of new Class A facilities is to verify for the local community that the local infrastructure and environment are appropriate for a new Class A facility and to assure that the local community accepts the associated benefits and detriments of having a new Class A facility located in their county.

(b) Following receipt of a certificate of need from the Public Service Commission as required by §24-2-1c of this code, and local solid waste approval as required in §22C-4-6 of this code for a new Class A facility, the county commission shall cause a referendum to be placed on the ballot not less than 56 days before the next primary or general election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a new Class A facility be constructed. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“The West Virginia Legislature has found that the location of a Class A solid waste facility has impact upon the county in which it will be located, and further that local citizens should be given the opportunity to participate in the decision of locating a new Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month.

The _____ county commission finds the following:

I. The _____ (name of applicant) has obtained site approval for a Class A commercial facility from the _____ (name of the county or

regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills in areas of a county where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the operation of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the _____ commercial solid waste facility located within _____ County, be permitted to handle between ten and thirty thousand tons of solid waste per month?

// For the facility

// Against the facility

(Place a cross mark in the square opposite your choice.)”

(3) If a majority of the legal votes cast upon the question is against the facility, the Division of Environmental Protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and §22-15-1 *et seq.* of this code may proceed: *Provided*, That such vote is not binding on nor does it require the Division of Environmental Protection to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

§22C-4A-3. Referendum for approval of conversion of a Class B facility to a Class A facility.

(a) The purpose of the petition and referendum for approval of conversions of Class B facilities to Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment are appropriate for expansion of a Class B facility to a Class A facility, and to assure that the local community accepts the associated benefits and detriments of having a Class A facility located in their county.

(b) Within 21 following receipt of a certificate of need from the Public Service Commission as required by §24-2-1c of this code, and local solid waste authority approval as required in §22C-4-26 of this code, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class B facility be expanded to a Class A facility be placed on the ballot at the next primary or general election held not less than 100 days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the Secretary of State, and shall include the printed name, residence address, and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than 60 days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary or general election is scheduled not more than 120 days and not less than 100 days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within 30 days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters

residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, and not less than 70 days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class B facility be converted to a Class A facility. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and §22-15-1 *et seq.* of this code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

“The West Virginia Legislature finds that expansion of a Class B solid waste facility to a Class A solid waste facility has impact to the county in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. A Class A facility is authorized to receive between 10 and 30 thousand tons of solid waste per month. Fifteen percent of the registered voters in _____ county have signed a petition to cause a referendum to determine the following question:

The _____ county commission finds the following:

I. The _____ (name of applicant) has obtained site approval for a Class A commercial facility from the _____ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan

evaluates local environmental conditions and other factors and authorizes commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the operation of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the _____ solid waste facility, located within _____ County, West Virginia, be permitted to handle between 10 and 30 thousand tons of solid waste per month?

// For conversion of the facility

// Against conversion of the facility

(Place a cross mark in the square opposite your choice.)”

(3) If a majority of the legal votes cast upon the question is against the facility, then the Division of Environmental Protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and §22-15-1 *et seq.* of this code may proceed: *Provided*, That such vote is not binding on nor does it require the Division of Environmental Protection to modify the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

ARTICLE 6. HAZARDOUS WASTE FACILITY SITING APPROVAL.

§22C-6-3. Procedure for public participation.

(a) From and after June 5, 1992, in order to obtain approval to locate either a commercial hazardous waste management facility or a hazardous waste management facility which disposes of greater than 10,000 tons per annum on site in this state, an applicant shall:

(1) File a presiting notice with the county or counties in which the facility is to be located or proposed. Such notice shall be submitted on forms prescribed by the commercial hazardous waste management facility siting board;

(2) File a presiting notice with the commercial hazardous waste management facility siting board; and

(3) File a presiting notice with the Division of Environmental Protection.

(b) If a presiting notice is filed in accordance with subsection (a) of this section, the county commission shall publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, in a newspaper of general circulation in the counties wherein the hazardous waste management facility is to be located. Upon an affirmative vote of the majority of the county commissioners or upon the written petition of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, which petition shall be filed with the county commission within 60 days after the last date of publication of the notice provided in this section, the county commission shall, upon verification of the required number of signatures on the petition, and not less than 56 days before the election, order a referendum be placed upon the ballot: *Provided*, That such a referendum is not required for a hazardous waste management facility for which at least 90 percent of the capacity is designated for hazardous waste generated at the site of disposal.

Any referendum conducted pursuant to this section shall be held at the next primary or general election.

(1) Such referendum is to determine whether it is the will of the voters of the county that a commercial hazardous waste management facility be located in the county or that a hazardous waste management facility disposing of greater than 10,000 tons of hazardous waste per annum on site be located in the county. Any election at which such question of locating a hazardous waste management facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following depending upon the type of facility to be located with the county:

“Shall a commercial hazardous waste management facility be located within _____ County, West Virginia?”

// For the facility

// Against the facility

(Place a cross mark in the square opposite your choice.)” or,

“Shall a hazardous waste management facility disposing of greater than 10,000 tons per annum on site be located within _____ County, West Virginia?”

// For the facility

// Against the facility

(Place a cross mark in the square opposite your choice.)”

(3) If a majority of the legal votes cast upon the question is against the facility, then the county commission shall notify the Division of Environmental Protection and the commercial hazardous waste management facility siting board, in the case of a commercial facility, of the result and the commercial hazardous waste management facility siting board or Division of Environmental Protection, as the case may be, shall not proceed any further with the application. If a majority of the legal votes cast upon the question is for the facility, then the application process as set forth in §22-18-1 *et seq.* of this code and §22C-5-1 *et seq.* in the case of a commercial hazardous waste management facility, may proceed: *Provided*, That such vote is not binding on nor does it require the commercial hazardous waste management facility siting board to grant a certificate of site approval or the Division of Environmental Protection to issue the permit, as the case may be. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 20. CHARITABLE BINGO.

§47-20-26. County option election.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in said county: *Provided*, That no local option election may be called to disapprove the playing of bingo games at the state fair in accordance with the provisions of this article.

A petition for local option election shall be in the form specified in this section and shall be signed by qualified voters residing within said county equal to at least 10 percent of the persons qualified to vote within said county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION RESPECTING THE CONDUCT OF BINGO GAMES FOR CHARITABLE PURPOSES IN COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is a person residing in County, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at concurrent with the next primary or general election upon the following question: Shall the provisions of Article Twenty, Chapter Forty-Seven of the Code of West Virginia, 1931, as amended, continue in effect in County, West Virginia?

Name	Address	Date
.....

(Each person signing must specify either his or her post-office address or his or her street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for such publication is the county. The notice shall be so published within 14 consecutive days next preceding the election.

Each person qualified to vote in the county at any primary, general, or special election shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general, or special election shall conduct the local option election. If the local option election is to be held at the same time as a primary or general election, it shall be held in connection with and as a part of that primary or general

election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to said county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

The ballot to be used in said local option election shall have printed thereon substantially the following:

“Shall the playing of bingo to raise money for charitable or public service organizations continue in effect in County of West Virginia?

// Yes // No

(Place a cross mark in the square opposite your choice.)”

If a majority of the voters voting at any local option election vote no on the foregoing question, the provisions of §47-20-1 *et seq.* of this code, no longer continue in effect in said county.

No local option election may be called in a county to resubmit said question to the voters of that county, whether the question was approved or disapproved at the previous local option election, sooner than five years after the last local option election.

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-24. County option election.

The county commission of any county is authorized to call a local option election for the purpose of determining the will of the voters as to whether the provisions of this article shall continue in effect in such county.

A petition for a local option election shall be in the form specified in this section and shall be signed by qualified voters residing within such county equal to at least 10 percent of the

individuals qualified to vote within such county at the last general election. The petition may be in any number of counterparts and is sufficient if substantially in the following form:

PETITION ON LOCAL OPTION ELECTION RESPECTING
THE CONDUCT OF RAFFLES FOR CHARITABLE
PURPOSES IN _____ COUNTY, WEST VIRGINIA

Each of the undersigned certifies that he or she is an individual residing in _____ County, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at the next primary or general election: Shall the provisions of article twenty-one, chapter forty-seven of the Code of West Virginia, 1931, as amended, continue in effect in _____ County, West Virginia?

Name

Address

Date

(Each individual signing must specify either his or her post-office address or his or her street number.)

Upon the filing of a petition for a local option election in accordance with the provisions of this section, the county commission shall enter an order calling a local option election as specified in the petition. The county commission shall give notice of such local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county. The notice shall be so published within 14 consecutive days next preceding the election.

Each individual qualified to vote in the county at any primary, general, or special election, shall likewise be qualified to vote at the local option election. The election officers appointed and qualified to serve as such at any primary, general, or special

election shall conduct the local option election. If the local option election is to be held at the same time as a primary or general election, it shall be held in connection with and as a part of that primary or general election. The ballots in the local option election shall be counted and returns made by the election officers and the results certified by the commissioners of election to such county commission which shall canvass the ballots, all in accordance with the laws of the State of West Virginia relating to primary and general elections insofar as the same are applicable. The county commission shall, without delay, canvass the ballots cast at said local option election and certify the result thereof.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 5. LOCAL OPTION ELECTIONS.

§60-5-1. Election in county, magisterial district, or municipality.

A county or any municipality may in an election held especially for the purpose, determine whether the sale of alcoholic liquors for beverage purposes shall be permitted within that county or municipality.

A local option election shall be held at the same time as the next regularly scheduled primary or general election.

§60-5-3. Form of petition.

The petition shall be in the following form:

Petition for Local Option Election

We, the undersigned legally qualified voters, resident within the county (municipality) of _____, do hereby petition that a special election be held within the county (city, town) of _____ on the _____ at the date of the next regularly scheduled primary or general election upon the following question:

Shall the sale of alcoholic beverages under the West Virginia Alcohol Beverage Control Commissioner be (permitted) (prohibited) in _____?

Name Address Date

(Post office or street and number)

§60-5-4. Notice of election; when held; election officers.

The county commission or governing body of the municipality shall give notice of the special local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area in which the election is to be held. Such notice shall be so published within 14 consecutive days next preceding the election. The election shall be held at the same time as the next regularly scheduled primary or general election. The regular election officers of the county or municipal corporation shall open the polls and conduct the election in the same manner provided for general elections.

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CHAPTER 118

(H. B. 4419 - By Delegates Pritt, Phillips, Holstein, Keaton, Pinson, Clark, Barrett, Hanna, Reed, and Haynes)

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §3-8-5c, §3-8-9b, and §3-8-10 of the Code of West Virginia, 1931, as amended, all relating to allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees; excepting candidate committees and caucus campaign committees from making certain contributions; authorizing candidate committees and caucus campaign committees to make certain contributions up to \$75,000; eliminating coordinated expenditure limit for a state political party committee or a caucus campaign committee; eliminating limit for excess contributions to be contributed by a candidate to a state party executive committee or state party legislative caucus committee; and making amendments effective on November 9, 2022.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-5c. Contribution limitations.

(a)(1) A person, political party, or political action committee may not, in an election cycle:

(A) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a candidate seeking nomination, including by making contributions to the candidate's committee; or

(B) Contribute more than \$2,800, directly or indirectly, to a candidate's committee for a candidate seeking election, including by making contributions to the candidate's committee: *Provided*, That a candidate may receive contributions for the general election prior to nomination, however, such funds may not be expended until after the date of the nomination is declared.

(2) The contribution limits of this section apply only to elections to be held after the effective date of this section and do not apply to candidate committees that were created for elections held prior to the effective date of this section.

(b) A person, except candidate committees and caucus campaign committees, may not, directly or indirectly, make contributions to a state party executive committee, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee which, in the aggregate, exceed \$10,000 in any calendar year: *Provided*, That a person may not earmark or otherwise designate any portion of a contribution made pursuant to this subsection to be used to support or oppose the election of a particular candidate: *Provided, however*, That any such designation or earmark that accompanies a contribution made pursuant to this subsection may not be binding on the entity that receives the contribution.

(c) A person may not, directly or indirectly, make contributions to a political action committee, related to a particular election, which, in the aggregate, exceed \$5,000.

(d) Candidate committees and caucus campaign committees may make contributions to their affiliated state party executive committees, or any subsidiary, branch, or local unit thereof, or a caucus campaign committee up to \$75,000.

(e) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.

§3-8-9b. Coordinated expenditures by political party committees and political party caucuses in connection with certain statewide candidates.

(a) Notwithstanding the provisions of §3-8-9a of this code, the state committee of a political party and caucus campaign committee may make coordinated expenditures in any amount with the general election campaign of the candidate for each of the following offices: Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate, and House of Delegates.

(b) Any communication that results from a political expenditure and is made in coordination with a state committee of a political party and caucus campaign committee must contain a disclaimer that clearly identifies that the expenditure is coordinated with the candidate or candidate's committee with whom it was coordinated.

(c) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.

§3-8-10. Use of certain contributions.

(a) Notwithstanding any provision of this code to the contrary, amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be:

(1) Used by the candidate to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office; and

(2) Contributed by the candidate, after the general election, to:

(A) Any charitable organization or subsequent campaign by the same candidate, without limitation;

(B) Any national committee in accordance with federal requirements;

(C) Any state party executive committee or state party legislative caucus committee, in any amount; or

(D) Any local committee of any political party or any other candidate for public office, in accordance with the existing limitations on contributions.

(b) The State Election Commission shall promulgate emergency and legislative rules, in accordance with the provisions of §29A-1-1 *et seq.* of this code, to establish guidelines for the administration of this section.

(c) The amendments to this section enacted during the regular session of the Legislature, 2022, shall not be effective until November 9, 2022.

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CHAPTER 119

**(H. B. 4438 - By Delegates Espinosa, Holstein, Barrett, Criss,
Westfall, Clark, Householder, Summers, Hardy, Kimble and
Fast)**

[Passed March 9, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §3-4A-9 of the Code of West Virginia, 1931, as amended, relating to minimum requirements for electronic voting systems; and requiring electronic voting systems to be independent and nonnetworked with no component connected to the internet.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

§3-4A-9. Minimum requirements of electronic voting systems.

An electronic voting system of particular make and design may not be approved by the State Election Commission or be purchased, leased or used by any county commission unless it meets the following requirements:

- (1) It secures or ensures the voter absolute secrecy in the act of voting or, at the voter's election, provides for open voting;
- (2) It is constructed to ensure that, except in instances of open voting as provided in this section, the contents of a marked ballot may not be seen or known by anyone other than the voter who has voted or is voting;
- (3) It permits each voter to vote at any election for all persons and offices for whom and which he or she is lawfully entitled to vote, whether or not the name of any person appears on a ballot as

a candidate; and it permits each voter to vote for as many persons for an office as he or she is lawfully entitled to vote for; and to vote for or against any question upon which he or she is lawfully entitled to vote. The automatic tabulating equipment used in electronic voting systems is to reject choices recorded on any ballot if the number of choices exceeds the number to which a voter is entitled;

(4) It permits each voter to write in the names of persons for whom he or she desires to vote whose names do not appear upon the ballots;

(5) It permits each voter to change his or her vote for any candidate and upon any question appearing upon the ballots or ballot labels up to the time when his or her ballot is deposited in the ballot box or his or her ballot is cast by electronic means;

(6) It contains programming media containing sequentially numbered program instructions and coded or otherwise protected from tampering or substitution of the media or program instructions by unauthorized persons and capable of tabulating all votes cast in each election;

(7) It contains two standard validation test decks approved as to form and testing capabilities by the State Election Commission;

(8) It correctly records and counts accurately all votes cast for each candidate and for and against each question appearing upon the ballots;

(9) It permits a voter in a primary election to: (A) Vote only for the candidates of the party for which the voter is legally permitted to vote; (B) vote for the candidates, if any, for nonpartisan nominations or election; and (C) vote on public questions; and precludes the voter from voting for any candidate seeking nomination by any other political party unless that political party has determined that the voter may participate in its primary election;

(10) It, where applicable, is provided with means for sealing or electronically securing the vote-recording device to prevent its use and to prevent tampering with the device, both before the polls are

open or before the operation of the vote-recording device for an election is begun and immediately after the polls are closed or after the operation of the vote-recording device for an election is completed;

(11) It has the capacity to contain the names of candidates constituting the tickets of at least nine political parties and accommodates the wording of at least 15 questions;

(12) (A) Direct-recording electronic voting machines must generate a paper copy of each voter's vote that will be automatically kept within a storage container that is locked, closely attached to the direct-recording electronic voting machine and inaccessible to all but authorized voting officials, who will handle such storage containers and such paper copies contained therein in accordance with section nineteen of this article;

(B) The paper copy of the voter's vote shall be generated at the time the voter is at the voting station using the direct-recording electronic voting machine;

(C) The voter may examine the paper copy visually or through headphone readout, and may accept or reject the printed copy;

(D) The voter may not touch, handle or manipulate the printed copy manually in any way;

(E) Once the printed copy of the voter's votes is accepted by the voter as correctly reflecting the voter's intent, but not before, it will automatically be stored for recounts or random checks and the electronic vote will be cast within the computer mechanism of the direct-recording electronic voting machine;

(F) Direct-recording electronic voting machines with a mandatory paper copy shall be approved by the Secretary of State. The Secretary of State may promulgate rules and emergency rules to implement or enforce this subsection pursuant to the provisions of section five, article three, chapter twenty-nine-a of this code;

(13) Where vote-recording devices are used, they shall:

(A) Be durably constructed of material of good quality and in a workmanlike manner and in a form which makes it safely transportable;

(B) Bear a number that will identify it or distinguish it from any other machine;

(C) Be constructed to ensure that a voter may easily learn the method of operating it and may expeditiously cast his or her vote for all candidates of his or her choice and upon any public question; and

(D) Be accompanied by a mechanically or electronically operated instruction model which shows the arrangement of the ballot, party columns or rows and questions;

(14) For electronic voting systems that utilize a screen upon which votes may be recorded by means of a stylus or by means of touch, they shall:

(A) Be constructed to provide for the direct electronic recording and tabulating of votes cast in a system specifically designed and engineered for the election application;

(B) Be constructed to prevent any voter from voting for more than the allowable number of candidates for any office, to include an audible or visual signal, or both, warning any voter who attempts to vote for more than the allowable number of candidates for any office or who attempts to cast his or her ballot prior to its completion and are constructed to include a visual or audible confirmation, or both, to the voter upon completion and casting of the ballot;

(C) Be constructed to present the entire ballot to the voter, in a series of sequential pages, and to ensure that the voter sees all of the ballot options on all pages before completing his or her vote and to allow the voter to review and change all ballot choices prior to completing and casting his or her ballot;

(D) Be constructed to allow election commissioners to spoil a ballot where a voter fails to properly cast his or her ballot, has

departed the polling place and cannot be recalled by a poll clerk to complete his or her ballot;

(E) Be constructed to allow election commissioners, poll clerks or both to designate, mark or otherwise record provisional ballots;

(F) Consist of devices which are independent, nonnetworked voting systems in which each vote is recorded and retained within each device's internal nonvolatile electronic memory and contain an internal security, the absence of which prevents substitution of any other device;

(G) Store each vote in no fewer than three separate, independent, nonvolatile electronic memory components and that each device contains comprehensive diagnostics to ensure that failures do not go undetected;

(H) Contain a unique, embedded internal serial number for auditing purposes for each device used to activate, retain and record votes;

(I) Be constructed to record all pre-election, election and post-election activities, including all ballot images and system anomalies, in each device's internal electronic memory and are to be accessible in electronic or printed form;

(J) Be constructed with a battery backup system in each device to, at a minimum, prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in the device's internal electronic memory and to allow voting to continue for two hours of uninterrupted operation in case of an electrical power failure; and

(K) Be constructed to prevent the loss of any votes, as well as all pre-election, election and post-election activities, including all ballot images and system anomalies, stored in each device's internal electronic memory even in case of an electrical and battery power failure.

(15) For purposes of this section, all voting systems utilized in any election shall be independent, nonnetworked voting systems, and any component thereof, in whole or in part, shall not at any time connect to the internet.

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CHAPTER 120

**(Com. Sub. for H. B. 4785 - By Delegates Steele, Householder,
Criss, Westfall, Riley, Pinson, Keaton, Burkhammer, Foster
and Queen)**

[Passed March 9, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §3-10-3 of the Code of West Virginia, 1931, as amended, relating to procedures for filling judicial vacancies; providing that a vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment if the unexpired term is for a period of not more than three years; clarifying that the amendment shall apply to judicial vacancies existing at the date of passage; clarifying timing of election to fill judicial vacancies before the close of candidate filing for the primary election; and clarifying timing of election to fill judicial vacancies after the close of the candidate filing for the primary election through 84 days before the general election.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder

of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than three years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by §3-10-1 of this code. The amendments to this subsection enacted during the regular session of the Legislature in the year 2022 shall be applicable to any vacancy existing at the date of passage of such amendments.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code.

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals,

judge of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general election, and the affected term of office ends on December 31 following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election, and if the unexpired term be for a period of greater than three years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than 84 days before the general election, and if the unexpired term be for a period of greater than three years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election, according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than 77 days before the general election.



CHAPTER 121

(Com. Sub. for S. B. 694 - By Senators Tarr and Nelson)

[Passed March 9, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4, and §22C-9-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22C-9-7a, all relating to oil and gas conservation; expanding the membership of the Oil and Gas Conservation Commission; expanding the jurisdiction of the Oil and Gas Conservation Commission; expanding duties of the commission to include unitization of shallow and deep horizontal wells; amending and providing further declarations of public policy and legislative findings; defining terms; providing for conditions of applicability of the statute; establishing a horizontal well unit application process; requiring certain conditions be met prior to filing and approval of an application including defining percentages of interests of landowners and operators to establish unit control; requiring good-faith negotiations by operators; providing for hearings on applications; setting out factors to be considered in the hearing and documents to be filed before a hearing; providing for notice and publication at various stages of the process; defining interested parties and their involvement in the hearing processes; providing for standards of review and factors to be considered by the commission; providing for maximum unit sizes with limited exceptions; providing for an independent third-party review of certain information and reporting of the same to the commission; providing for confidentiality of certain information; setting forth time frames and time limits; providing for a horizontal well unit orders and required contents of the orders; defining order terms; providing

limitations on surface usage above non-consenting mineral owners; providing for payment terms for leased mineral interest owners without unitization clauses; providing for payment term options for non-leased mineral interest owners; providing payment term options for non-consenting operators; allowing for modifications of the horizontal well unit order under specified conditions; providing for compensation for unknown and unlocatable mineral interest owners and defining the same; establishing a process using the courts for surface owners to acquire the mineral interests and funds held by the operator of unknown or unlocatable interest owners after a specified time period, notices, and court proceedings; providing applicability of the existing and new statutory sections for deep wells based on the effective date; providing a severability clause; and establishing and modifying rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage, and promote exploration for and development, production, utilization, and conservation of oil and gas resources;

(2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(3) Encourage the maximum recovery of oil and gas;

(4) Safeguard, protect, and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her just and equitable share of production from that pool, unit or unconventional reservoir of oil or gas; and

(5) Safeguard, protect, and enforce the property rights and interests of surface owners and the owners and agricultural users of other interests in the land.

(b) The Legislature hereby determines and finds that oil and natural gas found in West Virginia in shallow sands or strata have been produced continuously for more than 100 years; that oil and gas deposits in shallow sands or strata have geological and other characteristics different than those found in deeper formations and unconventional reservoirs; and that in order to encourage the maximum recovery of oil and gas from all productive formations in this state, it is not in the public interest, with the exception of shallow wells utilized in a secondary recovery program, to enact statutory provisions relating to the exploration for or production of oil and gas from vertical shallow wells, but that it is in the public interest to enact statutory provisions establishing regulatory procedures and principles to be applied to the exploration for or production of oil and gas from deep wells, as defined in section two and oil and gas produced from horizontal wells.

§22C-9-2. Definitions.

(a) As used in this article:

(1) “Commission” means the Oil and Gas Conservation Commission and “commissioner” means the Oil and Gas Conservation Commissioner as provided for in §22C-9-4 of this code;

(2) “Correlative rights” means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his or her tract or tracts, or the equivalent thereof;

(3) “Deep well” means any well, other than a shallow well, deep horizontal well, or a coalbed methane well, drilled to a formation below the top of the uppermost member of the “Onondaga Group”;

(4) “Director” means the Secretary of the Department of Environmental Protection and “chief” means the Chief of the Office of Oil and Gas;

(5) “Drilling unit” or “unit” means the acreage on which one or more wells may be drilled;

(6) “Gas” means all natural gas and all other fluid hydrocarbons not defined as oil as that term is defined in this section;

(7) “Horizontal drilling” means a method of drilling a well for the production of oil and gas that is intended to maximize the length of wellbore that is exposed to the formation and in which the wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to be in a particular geologic formation;

(8) “Horizontal well” means an oil and gas well, other than a coalbed methane well, where the wellbore is initially drilled using a horizontal drilling method. A horizontal well may include multiple horizontal side laterals drilled into the same formation. A horizontal well may have completions into multiple formations from the same well. Multiple horizontal wells may be drilled from the same well pad. A horizontal well may be either a shallow well or a deep well so long as it is initially drilled using a horizontal drilling method;

(9) “Independent producer” means a producer of crude oil or natural gas whose allowance for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on July 1, 1997;

(10) “Just and equitable share of production” means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool, unit, or unconventional reservoir in the person’s tract or tracts within a unit.

(11) “Natural gas liquids” means the liquid hydrocarbons removed from the natural gas through the process of fractionation or condensation.

(12) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

(13) "Operator" means any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for that person or for that person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, for all sections in this article other than section 7a, the owner of the oil and gas rights therein is the "operator" to the extent of seven eighths of the oil and gas in that portion of the pool underlying the tract owned by the owner, and as "royalty owner" as to one-eighth interest in the oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool or the unit is the "operator" as to that pool or acreage included in a unit; the term operator includes owners of working interests in a lease but does not include owners whose interest is limited to working interests in a wellbore only, overriding royalties, or net profits interests;

(14) "Person" means any natural person, corporation, limited liability company, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

(15) "Pool" means an underground accumulation of petroleum or gas in a single and separate reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum or gas from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be presented in the same district or on the same geologic structure;

(16) “Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as that term is defined in this section;

(17) “Shallow well” means any well other than a shallow horizontal well or a coalbed methane well, drilled no deeper than 100 feet below the top of the Onondaga Group: *Provided*, That in no event may the Onondaga Group formation or any formation below the Onondaga Group be produced, perforated or stimulated in any manner;

(18) “Unconventional reservoir” means any geologic formation that contains or is otherwise productive of oil or natural gas that generally cannot be produced at economic flow rates or in economic volumes except by wells stimulated by multiple hydraulic fracture treatments, a horizontal wellbore, or by using multilateral wellbores or some other technique to expose more of the formation to the wellbore;

(19) “Vertical well” means an oil and gas well that does not utilize horizontal drilling methods. A vertical well may be either a shallow well or a deep well so long as it is initially drilled not using a horizontal drilling method;

(20) “Waste” means and includes:

(A) Physical waste, as that term is generally understood in the oil and gas industry;

(B) The locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or

(C) The drilling of more horizontal wells or deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool, unit, or an unconventional reservoir. Waste does not include gas vented or released from any mine areas as defined in §22A-1-2 of this code or from adjacent coal seams which are the subject of a current

permit issued under §22A-2-1 *et seq.* of this code: *Provided*, That this exclusion does not address ownership of the gas;

(21) “Well” means any shaft or hole sunk, drilled, bored, or dug into the earth or underground strata for the extraction of oil or gas;

(b) Unless the context clearly indicates otherwise, the use of the word “and” and the word “or” are interchangeable, as, for example, “oil and gas” means “oil or gas or both”.

(c) A person with an interest in oil and gas in a unit formed under this article who does not consent to the unit shall have no liability in connection with well site preparation, drilling, completion, maintenance, reclamation, plugging, and other operations with respect to wells drilled in the unit: *Provided*, That this subsection shall not apply to any operator in a horizontal well unit, including but not limited to any non-consenting party who elects to participate in the horizontal well unit on a carried basis pursuant to §22C-9-7a of this code.

§22C-9-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of §22-6-1 *et seq.* of this code.

(b) This article shall not apply to or affect:

(1) Shallow wells other than shallow horizontal wells and those utilized in secondary recovery programs as set forth in in §22C-9-8 of this code and those provided for in §22C-9-4 of this code;

(2) Any well commenced or completed prior to March 9, 1972, unless the well is, after completion (whether the completion is prior or subsequent to that date):

(A) Deepened or drilled laterally subsequent to that date to a formation at or below the top of the uppermost member of the Onondaga Group;

(B) Involved in secondary recovery operations for oil under an order of the commission entered pursuant to §22C-9-8 of this code; or

(C) Drilled laterally as a horizontal well at any depth;

(3) Gas storage operations or any well employed to inject gas into or withdraw gas from a gas storage reservoir or any well employed for storage observation;

(4) Free gas rights; or

(5) Coalbed methane wells.

(c) The provisions of this article shall not be construed to grant to the commissioner or the commission authority or power to:

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in §22C-9-7(a)(6) of this code; or

(2) Fix prices of oil or gas.

(d) Nothing contained in either this chapter or §22-1-1 *et seq.* of this code may be construed so as to require, prior to commencement of plugging operations, a lessee under a lease covering a well to give or sell the well to any person owning an interest in the well, including, but not limited to, a respective lessor, or agent of the lessor, nor shall the lessee be required to grant to a person owning an interest in the well, including, but not limited to, a respective lessor, or agent of a lessor, an opportunity to qualify under §22-6-26 of this code to continue operation of the well.

***§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.**

(a) The “oil and gas conservation commission” is composed of seven members. The director of the Department of Environmental Protection, and the Chief of the Office of Oil and Gas are members of the commission *ex officio*. The remaining five members of the commission shall be appointed by the Governor, by and with the

*NOTE: This section was also amended by H. B. 4491 (Chapter 128), which passed prior to this act.

advice and consent of the Senate, and may not be employees of the Department of Environmental Protection. Of the five members appointed by the Governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the Federal Energy Regulatory Commission. The third appointee shall possess a degree from an accredited college or university in engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and shall serve as commissioner and as chair of the commission. The fourth appointee shall be an individual who has substantial experience in the agricultural industry, who is engaged in the business of farming in this state, and who is not and never has been, either himself or herself nor through a member of his or her immediate family, engaged in the business of oil and gas other than as a royalty recipient. When this member is to be appointed, the Governor shall request from the primary organization representing the agriculture industry in this state a list of three nominees for the member to be appointed. The fifth appointee shall be a resident owner of minerals in this state who is not and never has been affiliated with an operator of oil or gas wells. The term "affiliated", as used in the immediately preceding sentence, means someone who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with an operator of oil and gas wells by virtue of the power to direct or cause the direction of the management and policies of that operator, whether through the ownership of voting shares, by contract or otherwise.

(b) The members of the commission appointed by the Governor shall be appointed for overlapping terms of six years each, except that any initial appointments shall be for terms of two, four, or six years to achieve staggered ends of terms. Each member appointed by the Governor shall serve until the members successor has been appointed and qualified. Members may be appointed by the Governor to serve any number of terms. The members of the commission appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership appointed by the Governor shall be filled by appointment by the Governor for the unexpired term of

the member whose office is vacant and the appointment shall be made by the Governor within 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance in office. A commission member's appointment is terminated as a matter of law if that member fails to attend three consecutive meetings. The Governor shall appoint a replacement within 30 days of the termination.

(c) The commission shall meet at such times and places as are designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the Chief of the Office of Oil and Gas. Notification of each meeting shall be given in writing to each member by the chair at least 14 calendar days in advance of the meeting. Four members of the commission, at least two of whom are appointed members, constitute a quorum for the transaction of any business.

(d) The commission shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses incurred in the discharge of official duties.

(e) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer, and enforce the provisions of this article in the manner provided herein. Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission considers proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commission's duty to prevent waste is paramount.

(f) Without limiting the commission's general authority, the commission has specific authority to:

(1) Regulate the spacing of deep wells;

(2) Issue horizontal well unit orders;

(3) Make and enforce reasonable rules and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission and otherwise administer the provisions of this article;

(4) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to the witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of the commission's duties under the provisions of this article; and

(5) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the Chief of Office of Oil and Gas, to the Department of Environmental Protection and to any other agency of state government having responsibility related to the oil and gas industry.

(g) The commission may delegate to the commission staff the authority to approve or deny an application for new well permits, to establish drilling units or special field rules if:

(1) The application conforms to the rules of the commission; and

(2) No request for hearing has been received.

(h) The commission may not delegate its authority to:

(1) Propose legislative rules;

(2) Approve or deny an application for new well permits, to establish drilling units or special field rules if the conditions set forth in subsection (g) of this section are not met; or

(3) Approve or deny an application for the pooling of interests within a drilling unit.

(i) Any exception to the field rules or the spacing of wells which does not conform to the rules of the commission, and any application for the pooling of interests within a drilling unit, must be presented to and heard before the commission.

(j) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code concerning mineral development by cotenants for all wells at all depths and §22-11B-1 *et seq.* of this code concerning underground carbon dioxide sequestration storage facilities at all depths. The commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper.

§22C-9-5. Rules; notice requirements.

(a) The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon the commission under the provisions of this article.

(b) Notwithstanding the provisions of §29A-7-2 of this code, any notice required under the provisions of this article shall be given at the direction of the commission by personal or substituted service or by certified United States mail, addressed, postage prepaid, to the last-known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested. In the case of providing notice upon the filing of an application with the commission, the commission shall, within 14 days of the filing of an application, submit for publication notice of the application notice to be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area

for the publication shall be the county or counties wherein any land which may be affected by the order is situate.

In addition, the commission shall mail a copy of the notice to all other persons who have specified to the commission an address to which all such notices may be mailed. The notice shall issue in the name of the state, shall be signed by the one of the commission members, shall specify the style and number of the proceeding, the time and place of any hearing and shall briefly state the purpose of the proceeding. Each notice of a hearing must be provided no fewer than 20 days preceding the hearing date. Personal or substituted service and proof thereof may be made by an officer authorized to serve process or by an agent of the commission in the same manner as is now provided by the West Virginia Rules of Civil Procedure for service of process in civil actions in the various courts of this state.

A certified copy of any pooling or unit order entered under the provisions of this article shall be presented by the commission to the clerk of the county commission of each county wherein all or any portion of the pooled or unit tract is located, for recordation in the record book of the county in which oil and gas leases are normally recorded. The recording of the order from the time noted thereon by the clerk shall be notice of the order to all persons.

§22C-9-7a. Unitization of interests in horizontal well drilling units.

(a) *Declaration of public policy; legislative findings regarding unitization for all horizontal wells. —*

The Legislature finds that horizontal drilling is a technique that effectively and efficiently recovers natural resources and should be encouraged as a means of production of oil and gas and it is hereby declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage, and promote exploration for and development, production, utilization, and conservation of oil and

gas resources by horizontal drilling in deep and shallow formations;

(2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(3) Encourage the maximum recovery of oil and gas; and

(4) Safeguard, protect, and enforce the correlative rights of operators and royalty owners of oil and gas in a horizontal well unit to the end that each such operator and royalty owner may obtain his or her just and equitable share of production from that pool, horizontal well unit or unconventional reservoir of oil or gas; and

(5) Safeguard, protect, and enforce the property rights and interests of surface owners and the owners and agricultural users of other interests in the land.

(b) *Definitions.*— Unless the context in which used clearly requires a different meaning, as used in this section:

(1) “Bonded operator” means a person that has posted a bond under §22-6-1 *et seq.* or §22-6A-1 *et seq.* of this code; is registered as an oil and gas well operator with the West Virginia Department of Environmental Protection, Office of Oil and Gas; and operates eight or more oil and gas wells, as defined in §22-6-1 *et seq.* or §22-6A-1 *et seq.* of this code, in West Virginia that are active, producing oil and gas wells;

(2) “Executive interest” and “executory interest” means the interest entitling the owner to lease the oil and gas estate or amend an existing oil and gas lease. For purposes of this section, the owner of the executive interest is considered to be the royalty owner and interested party for purposes of notice and participation in proceedings here in this article, and all horizontal well unit orders are binding on the owners of executive interests and non-executive interests in a horizontal well unit. The owners of the executive interest and the associated non-executive interest owners are considered to be the same interest for purposes of computing percentages pursuant to §22C-9-7a(c)(2)(A) and §22C-9-7a(c)(2)(B) of this code;

(3) “Horizontal well unit” means an area in which horizontal drilling may occur, and that is designated for the allocation of production from one or more horizontal wells drilled in the unit to oil and gas tracts, or portions of the tracts, included in the unit for production of oil and gas and payment of royalty and proceeds of production regardless of the tract or tracts in which the horizontal well is drilled or completed, and the corresponding authorization to drill and produce oil and gas from that area as a unit, notwithstanding the lack of adequate consensual rights allowing pooling or unitization of oil and gas or allowing drilling horizontally across tract lines. When a horizontal well unit is formed, that portion of the production allocated to each tract or portion of the unit included in the horizontal well unit shall, when produced, be considered for all purposes to have been actually produced from the tract by an oil and gas well drilled, completed and producing on the tract;

(4) “Lateral” means the portion of a well bore that deviates from approximate vertical orientation to approximate horizontal orientation and all wellbore beyond the initial deviation to total depth or terminus of the wellbore;

(5) “Overriding royalty” means an interest carved out of the leasehold or out of the working interest and is not included within the meaning of royalty;

(6) “Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as defined in §22C-9-2(a) of this code. A royalty owner does not include a person whose interest is limited to: (A) A working interest in a wellbore only; (B) overriding royalties; (C) non-participating royalty interests; (D) non-executive mineral interests; or (E) net profits interests;

(7) “Target formation” means the primary geologic formation from which oil or gas is intended to be produced from a horizontal drilling operation and, where completions can reasonably be expected to produce from formations above or below the target formation, includes the formations from which production can reasonably be expected;

(8) “Unitization” means the combination of two or more tracts of oil and gas, or portions thereof, or leases, for drilling of horizontal wells and production of oil and gas from the unit with allocation of production to the net acreage of each tract included in the unit to operate as a consolidated horizontal well unit;

(9) “Unitization consideration” means consideration provided as set forth in subsection (f) of this section. Unitization consideration relates to the net acreage of the non-consenting royalty owner included in a horizontal well unit;

(10) “Unknown and unlocatable interest owner” means a royalty owner, executive interest owner, operator, or other person vested with an interest in oil and gas in the target formation to be included in a horizontal well unit, whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission for the county or counties where the oil and gas is located and any immediately adjacent counties within this state;

(B) Diligent inquiry to known interest owners in the same tract;

(C) Inquiry to the sheriff’s and assessor’s offices of the county or counties in which the oil and gas interest is located;

(D) A reasonable inquiry utilizing available internet resources that could reasonably lead to the identification of the person; and

(E) A mailing to the last known address, if available, of the person as reflected in the records of the sheriff’s or assessor’s office, and includes the unknown heirs, representatives, successors, and assigns of the person.

(11) “Weighted average sales price” means a weighted average sales price obtained each month for amounts received at the applicant’s various delivery points to unaffiliated, third-party purchasers accessible by the owner’s production, without deduction of post-production, third-party costs and expenses charged to or incurred by applicant and/or its affiliates other than costs and expenses charged to or incurred by applicant and/or its

affiliates after the first liquid trading point or, if the production does not undergo processing, after delivery to the first interstate pipeline.

(c) *Applicability.* —

(1) For all horizontal wells, including shallow horizontal wells and deep horizontal wells, the commission may unitize tracts, or portions of tracts, in a horizontal well unit established under this section upon the filing of an application with the commission by a person that controls the horizontal well unit and upon the issuance of a horizontal well unit order pursuant to this section.

(2) Before filing an application under this section, an applicant must have:

(A) With respect to the royalty interest, for shallow horizontal wells and deep horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, compliance with §37B-1-1, *et seq.* of this code with respect to unknown or unlocatable interest owners defined in §37B-1-3 of this code only, contract or other agreement the right, consent or agreement to pool or unitize the acreage to be included in the horizontal well unit from executory interest royalty owners of 75 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit, as provided and determined in subdivision (3) of this subsection; and

(B) With respect to the operator interest:

(i) For shallow horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, contract or other agreement the right, consent or agreement to pool or unitize as to 55 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit owned, leased, or operated by operators and the applicant, collectively, by ownership, lease, farmout, assignment, contract or other agreement, as provided and determined in subdivision (3) of this subsection; or

(ii) For deep horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, compliance with §37B-1-1, *et seq.* of this code with respect to unknown or unlocatable interest owners defined in §37B-1-3 of this code only, contract or other agreement the right, consent or agreement to develop the acreage to be included in the horizontal well unit from executory interest royalty owners of 55 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit, as provided and determined in subdivision (3) of this subsection;

(C) (i) Made good-faith offers to consent or agree to pool or unitize, and has negotiated in good faith with, all known and locatable royalty owners having executory interests in the oil and gas in the target formation within the acreage to be included in the proposed horizontal well unit who have not previously consented or agreed to the pooling or unitization of the interests and whose interests are not subject to development under §37B-1-1, *et seq.* of this code; and

(ii) Made good-faith offers to participate or consent or agree to the proposed horizontal well unit, and has negotiated in good faith with, all known and locatable operators who have not previously agreed to participate or consent or agree to pool or unitize the acreage to be included in a proposed horizontal well unit.

(iii) A person who satisfies the conditions of paragraphs (A) through (C) of this subdivision is referred to in this section as a person that controls the horizontal well unit.

(3) For purposes of determining whether a person has obtained the requisite control of the proposed horizontal well unit, the commission may not include overriding royalty owners, non-executive interest royalty owners or acreage owned or otherwise held by unleased unknown and unlocatable interest owners whose acreage is not subject to development pursuant to §37B-1-1, *et seq.* of this code, or acreage owned or otherwise held by operators who are not bonded operators, unless such operators have consented or otherwise agreed to develop their operator interest in the net acreage in the target formation proposed to be included in the

horizontal well unit. Furthermore, for purposes of determining whether a person has the requisite control of the proposed horizontal well unit, the identity and rights of royalty owners and operators shall be determined as of the date on which the application for a horizontal well unit is filed.

(4) If the applicant has not met all the provisions of this subsection, the application shall be dismissed without prejudice.

(5) If the applicant meets all of the provisions of this subsection, the commission shall authorize unitization of tracts, or portions of the tracts, as to all interests in oil and gas in the target formation acreage proposed to be unitized for horizontal drilling, including interests of unknown and unlocatable interest owners, for production of oil and gas from the target formation as a horizontal well unit, and shall issue a horizontal well unit order in accordance with this section.

(d) *Application requirements.* —

(1) An applicant who is a person that controls the horizontal well unit proposed for a horizontal well unit order and has drilled or plans to drill one or more horizontal wells in the proposed horizontal well unit may file an application with the commission for a horizontal well unit order. The application shall contain:

(A) A description of the proposed horizontal well unit and identification of the target formation or formations;

(B) A statement of the nature of the operations contemplated;

(C) A plat that depicts the boundaries and acreage of the proposed horizontal well unit, the tracts in the horizontal well unit, the surface tax map and parcel numbers of the surface tracts above the tracts to be included in the horizontal well unit in accordance with county assessor's records, and the district(s) and county or counties where the proposed horizontal well unit is located. The plat shall show the surface location of the vertical borehole of the horizontal well(s) to be included in the proposed horizontal well unit determined by survey, the courses, and distances of the surface location from two permanent points or landmarks on those tracts,

the deviation from vertical, and also the proposed horizontal lateral portion of each proposed horizontal well to be included in the proposed horizontal well unit. The plat shall show the proposed horizontal well unit name, the proposed horizontal well names, and if known, the well number of each horizontal well to be drilled in the horizontal well unit. The plat shall also show the location of each permitted, active oil and gas well located in the horizontal well unit, and the name of the operator of the well as shown by the records of the Department of Environmental Protection, Office of Oil and Gas: *Provided*, That the applicant is not required to depict or identify any abandoned or plugged well that is not required to be depicted or identified on the plat required by §22-6A-5(a)(6) of this code;

(D) A listing of all oil and gas tracts, or portions thereof, within the proposed horizontal well unit, the size of each tract, and the extent to which each tract is leased;

(E) The names and last known addresses of royalty owners of the target formation of each tract within the proposed horizontal well unit, specifying:

(i) Which, if any, of them are unknown and unlocatable;

(ii) Which of them hold executive rights; and

(iii) With respect to owners of an executory interest, whether they have consented to pooling or unitization of the acreage proposed to be included in the horizontal well unit;

(F) The names and last known addresses of operators of proposed horizontal well unit target formation acreage whose interest is of record in the county where the property is located, specifying:

(i) Which, if any, of them are unknown and unlocatable; and

(ii) Which, if any of them, are bonded operators, and if a bonded operator, whether he or she has consented to pooling or unitization as to the acreage proposed to be included in the horizontal well unit;

(G) Information regarding the applicant's actions to identify and locate unknown and unlocatable interest owners of target formation acreage to be included in the horizontal well unit;

(H) The percentage of the net acreage in the proposed horizontal well unit owned by executory interest target formation royalty owners who have consented to pooling or unitization;

(I) The percentage of the net acreage in the proposed horizontal well unit held by bonded operators and the applicant, collectively, as to which consent or agreement to pool or unitize has been granted;

(J) A percentage allocation to the separately owned tracts, or portions thereof, in the proposed horizontal well unit of the oil and gas that will be produced from the horizontal well unit as determined by the proportion that each tract's net acreage within the horizontal well unit bears to the total net acreage in the horizontal well unit;

(K) A certification that the applicant meets the requirements of subsection (c) of this section with respect to the proposed horizontal well unit, a list of the instruments granting the control and a certification that the applicant has mailed a copy of the application to all known and locatable interested parties by United States certified mail, return receipt requested, to their last known address and to the most current address filed with the West Virginia Department of Environmental Protection, Office of Oil and Gas, if any;

(L) A statement whether the applicant has submitted, either previously or contemporaneously with the application filed pursuant to this section, an application for a well work permit with the Department of Environmental Protection for one or more horizontal wells to be completed within the boundaries of the proposed horizontal well unit; and

(M) A proposed joint operating agreement that will govern the contractual relationship between the applicant and any unleased royalty owners following an election by the executive interest

owners to participate in the drilling in the horizontal well unit on a carried basis under §22C-9-7a(f)(9) of this code.

(2) Upon the filing of an application for a horizontal well unit order, the commission shall provide notice of a hearing to all interested parties, as defined in this section, in accordance with §22C-9-5 of this code and subsection (g) of this section.

(e) *Standard of review.* —

(1) The commission shall evaluate the application and shall consider:

(A) The ownership and control of the tracts, or portions of the tracts, in the proposed horizontal well unit;

(B) Whether the tracts, or portions of the tracts, proposed to be made subject to a horizontal well unit order are owned, in whole or in part, by unknown and unlocatable interest owners;

(C) Information regarding the applicant's actions to locate unknown and unlocatable interest owners for the tracts, or portions of the tracts, sought to be included in the horizontal well unit;

(D) The percentage of executory interest royalty owner target formation acreage to be included in the horizontal well unit as to which consent or agreement for pooling or unitization has been granted;

(E) The percentage of proposed horizontal well unit target formation acreage held, collectively, by the applicant and bonded operators who have consented or agreed to the unit in accordance with subsection (c) of this section;

(F) Whether the applicant is a person that controls the horizontal well unit proposed for unitization;

(G) The area to be drained by well(s) completed or to be completed in the horizontal well unit;

(H) Correlative rights;

(I) The extent to which the application will prevent waste including the stranding of acreage of oil and gas formations between units that would be uneconomical to produce;

(J) Whether the applicant has complied with subsection (c) of this section;

(K) Whether notice has been provided in accordance with this section; and

(L) Whether the applicant demonstrates the intent and ability to drill all the wells proposed in the unit.

(2) The commission may not issue a horizontal well unit order pursuant to this section unless it finds that the applicant has before the filing of the application met the requirements of subsection (c) of this section.

(3) The commission may not change the operator of an existing well drilled in the proposed horizontal well unit, or a well actually being drilled within the proposed horizontal well unit as of the date the application is filed under this section and shall consider and protect the interests of owners of the well when issuing a horizontal well unit order.

(f) *Horizontal well unit orders.* —

(1) A horizontal well unit order under this section shall specify:

(A) The size and boundaries of the horizontal well unit giving due regard for maximization of the amount of oil and gas produced to prevent waste and protect correlative rights: *Provided*, That a horizontal well unit's size may not exceed 640 acres: *Provided, however*, That the commission may exceed the acreage limitation if the applicant demonstrates that the proposed horizontal well unit area would be drained efficiently and economically by a larger horizontal well unit: *Provided further*, That a horizontal well unit containing one or more horizontal wells may not contain more than 128 net acres controlled by non-consenting royalty owners determined as of the date that the application for the horizontal well unit application is filed.

(B) The horizontal wells which may be drilled in the horizontal well unit, and whether the horizontal wells to be drilled are shallow or deep;

(C) If there are vertical wells completed in the target formation in the horizontal well unit, the area where a horizontal well may not be completed;

(D) The target formation or target formations to which the horizontal well unit applies; and

(E) Any unitization consideration due.

(2) An order authorizing unitization of tracts with unknown and unlocatable interest owners shall contain a finding that identifies the persons as unknown and unlocatable.

(3) An order shall specify that the allocation of the percentage of production of the horizontal wells drilled in the horizontal well unit to the separately owned tracts, or portions of the tracts, included within the horizontal well unit shall be in the proportion that each tract's net acreage within the horizontal well unit bears to the total net acreage within the horizontal well unit.

(4) A horizontal well unit order shall authorize and perfect unitization of all interests in the target formation as to the tracts, or portions of the tracts, included in the horizontal well unit.

(5) If the applicant is a person that controls the horizontal well unit proposed for a horizontal well unit order under this section, the commission shall form a horizontal well unit pursuant to this section and authorize the drilling and operation of one or more horizontal wells in the unit for the production of oil or gas from the target formation from any tract within the horizontal well unit.

(6) With respect to royalty owners of leased tracts who have not consented to pooling or unitization, the commission shall require that unitization consideration be paid to executive interest royalty owners in an amount equal to 25 percent of the weighted average monetary bonus amount on a net mineral acre basis and a production royalty percentage equal to 80 percent of the weighted

average production royalty percentage rounded to the nearest one tenth of one percent paid to other executive interest owners of leased tracts in the unit in the same target formation: *Provided*, That the weighted average calculation shall not include any fixed amounts paid to royalty owners or payments made on any basis other than a net mineral acre basis. Further, the royalty percentage cannot be less than the production royalty percentage in the existing lease or 12 and one-half percent for a flat rate lease. The applicant, all royalty owners, and owners of leasehold, working interest, overriding royalty interest and other interests in the oil and gas are bound by the order and the remaining lease terms, including other terms related to the payment of royalties. Unitization consideration shall be paid by the participating operators, including the applicant, to the extent of their interest in the horizontal well unit.

(7) With respect to interests in oil and gas as to which there is no lease in existence:

(A) Executive interest owners may elect to surrender the oil and gas underlying the tract to the participating operators, including the applicant, to the extent of their interest in the horizontal well unit for consideration, which if not agreed upon, shall be an amount equal to the weighted average amount paid, per net mineral acre, by the applicant to executive interest owners in bona fide, third-party transactions for the acquisition of the oil and gas mineral estate in the same target formation underlying the horizontal well unit: *Provided*, That the weighted average calculation shall not include any fixed amounts paid to royalty owners or payments made on any basis other than a net mineral acre basis; or

(B) Executive interest owners may make an election for unitization consideration, and if the executive interest owner elects unitization consideration, the interests of the executive interest owner and the associated nonexecutive interest owners shall be considered leased to the participating operators, including the applicant, to the extent of their interest in the horizontal well unit on terms which, if not agreed upon, shall consist of the following:

(i) A bonus payment per net mineral acre equal to the weighted average monetary bonus paid, per net mineral acre, to executive interest owners by the applicant in connection with other leases in the same target formation controlled by the applicant within the horizontal well unit: *Provided*, That the weighted average calculation shall not include any fixed amounts paid as bonus payments to executive interest owners or payments made on any basis other than a net mineral acre basis; and

(ii) A production royalty for the natural gas, oil and natural gas liquids produced and sold equal to the highest production royalty percentage in connection with other leases in the same target formation controlled by the applicant within the horizontal well unit and dated within the 24 months preceding the application date. Executive interest owners may make a one-time election prior to the issuance of a horizontal well unit order by the commission to be paid production royalties for natural gas based on either: (a) An index price in effect at the beginning of each calendar month, as published in an independent, third-party publication reflecting arm's-length, market-based sales, for natural gas applicable to the first interstate pipeline into which the natural gas is delivered, and shall not be reduced by post-production expenses; or (b) the weighted average sales price.

Production royalties for natural gas liquids will be calculated using the sum of the proceeds received at the tailgate of the processing facility for each natural gas liquid product during each month divided by the volume of such natural gas liquid product that was sold during such month and shall not be reduced by post-production expenses. If an executive interest owner does not make the one-time election regarding the price on which royalties for natural gas shall be paid prior to the issuance of a horizontal well unit order by the commission, the applicant shall determine whether it will pay royalties to the executive interest owner and the associated nonexecutive interest owners based on either the index price described in this subparagraph or the weighted average sales price, and such determination shall be binding on the applicant, operators, executive interest owners and the associated non-executive interest owners for the term of the lease. The applicant

and all royalty owners and owners of leasehold, working interest, overriding royalty interest and other interests in the associated unleased oil and gas shall be bound by the order. Nothing contained in paragraph (B) applies to any lease in this state now in existence or entered into in the future, or to any award of unitization consideration made by the commission other than unitization consideration awarded to an executive interest owner of an unleased tract who elects to be considered leased pursuant to this paragraph; or

(C) Executive interest owners may make an election to participate in a horizontal well unit consistent with §22C-9-7a(f)(9) and §22C-9-7a(f)(10) of this code.

(D) Owners of oil and gas interests as to which there is no lease in existence who do not elect (A), (B) or (C) of this subdivision shall be considered to have made an election to receive unitization consideration and lease their interest in the oil and gas mineral estate in the target formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code.

(8) No unitization consideration may be required to be paid to any royalty owner who has consented or agreed to pooling or unitization by virtue of the terms contained in an oil and gas lease, or other agreement which permits pooling or unitization.

(9) An operator may elect to consent to and participate in a horizontal well unit after an application is filed. Subject to subdivision (7) of this subsection, when the commission issues a horizontal well unit order pursuant to this section, the commission shall consider each nonconsenting operator, who does not elect to participate in the risk and cost of drilling in the horizontal well unit through a voluntary agreement with the applicant, to participate in the drilling in the horizontal well unit on a carried basis on terms and conditions which, if not agreed upon, shall be consistent with the terms and conditions contained in the proposed joint operating agreement submitted by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code: *Provided*, That the commission determines that the proposed terms and conditions of the joint operating agreement are consistent with terms typically found in

other similarly situated, arm's-length joint operating agreements within the horizontal well unit that were entered into by the applicant for the same target formation prior to the filing of the application for the horizontal well unit.

(10) If a non-consenting operator participates in the drilling in the horizontal well unit on a carried basis under the horizontal well unit order and an owner of any operating interest in any portion of the horizontal well unit drills and operates, or pays the costs of drilling, completing, equipping, and operating a horizontal well for the benefit of a non-consenting operator as provided in the horizontal well unit order, then the operating owner is entitled to the share of production from the tracts or portions thereof subject to the horizontal well unit order accruing to the interest of the non-consenting operator, exclusive of any unitization consideration, and royalty and overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of the tracts or portions of the tracts, until the net revenue from the non-consenting operator's share of the production, exclusive of the unitization consideration, royalty and overriding royalty, equals double the share of the costs payable by or charged to the interest of the non-consenting operator, as set forth in the accounting procedures included within the joint operating agreement submitted by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code.

(11) If all wells proposed in a horizontal well unit approved by the commission are not drilled and completed as approved in the horizontal well unit order, the applicant shall file a request to modify the horizontal well unit with the commission within 60 days from the later of: Completion of all drilling activities within the horizontal well unit; or the date that is five years after the most recent drilling activity in the horizontal well unit occurs.

(12) Any interested party may file an application to correct a clerical error in a horizontal well unit order at any time.

(13) The applicant may file a request to modify a horizontal well unit order at any time.

(14) If an operator has not drilled and completed a well in a horizontal well unit formed by the commission within three years after the latter of either the drilling and completion of the initial horizontal well in the horizontal well unit or the drilling and completion of the most recent horizontal well within the horizontal well unit, as the case may be, an interested party may file a request to modify the horizontal well unit, and the commission may modify the horizontal well unit. Upon the modification of the horizontal well unit, the commission shall recalculate the allocation of production from the tracts in the modified horizontal well unit from and after the modification order date and the modification order shall be binding on the property subject to the horizontal well unit order, and all owners thereof, their heirs, representatives, successors, and assigns for so long as the horizontal well unit order remains in effect. Following the entry of a modified horizontal well unit order containing the commission's recalculation of the allocation of production from the tracts in the modified horizontal well unit order, the applicant and all other operators shall have no liability whatsoever to pay royalty in any manner other than that set forth in the modified horizontal well unit order.

(15) All operations, including, but not limited to, the commencement, drilling, or operation of a horizontal well upon any portion of a horizontal well unit for which a unit order has been entered pursuant to this section, shall be considered for all purposes the conduct of the operations upon each separate tract or portion of the tract in the horizontal well unit. That portion of the production allocated to each tract or portion of the tract included in a horizontal well unit shall, when produced, be considered for all purposes to have been actually produced from the tract by an oil and gas well drilled, completed, and producing on the tract.

(16) Subject to the provisions of subsection (o) of this section, where the commission finds that the interest of one or more unknown and unlocatable interest owners are included in the horizontal well unit, the horizontal well unit operator shall deposit the moneys payable to unknown and unlocatable interest owners into an escrow account bearing a market rate of interest to be held,

administered, and disbursed in accordance with an order of the commission and this section.

(17) A horizontal well unit order under this section shall expire if a horizontal well has not been drilled in the horizontal well unit within three years of the date the order is final and is nonappealable, unless the commission extends the order for good cause, and if a well has been drilled within three years the horizontal well unit shall continue in force and effect until the last producing horizontal well in the horizontal well unit is no longer capable of producing oil and gas.

(18) So long as the order remains in effect, a horizontal well unit order shall be binding on the property subject to the horizontal well order and all owners of the property and their heirs, representatives, successors, and assigns.

(g) *Notice, timelines, hearings, and orders.* —

(1)(A) For purposes of this section and the West Virginia Administrative Procedures Act, “interested parties” and “parties” mean owners of the executive interest in the oil and gas in the target formation within the horizontal well unit, including the unknown and unlocatable interest owner of the executive interest in the tracts, or portions of the tracts, to be included in the horizontal well unit subject to an application for a horizontal well unit order; owners of unleased oil and gas to be included in the horizontal well unit; operators of all target formation acreage in the horizontal well unit; and operators of all oil and gas wells located in the unit that have been drilled to or through the target formation.

(B) Bonded operators of wells drilled to or through the target formation that are not within the horizontal well unit but are located within 500 feet of a proposed horizontal well unit boundary and executive interest owners owning an interest in the target formation that is not located within the horizontal well unit but is located within 500 feet of a proposed horizontal well unit boundary may submit written comments regarding the horizontal well unit application at any time before the start of any hearing regarding the application, but are not interested parties and may not participate

in the hearing nor have the right to appeal the commission's decision regarding the application.

(2) Each notice issued in accordance with this section shall describe the area for which a horizontal well unit order is proposed in recognizable, narrative terms and contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing. As soon as practicable the commission shall establish a website. Within three business days of the filing of an application under this section, the commission shall publish on its website a copy of: (i) The horizontal well unit application notice required to be published pursuant to this section and section five of this article; and (ii) the proposed horizontal well unit plat filed with the application, both identified as a horizontal well unit application and indexed by county and district where the majority of the acreage to be included in the proposed horizontal well unit is located, so that the plat and notice of the application are readily accessible. Timely publication on the website for a period of 10 business days shall be notice to all operators.

(3) Upon request of any interested party or the commission, the commission shall conduct a hearing and receive evidence regarding the application. All interested parties may participate in any hearing. If a hearing has been held regarding an application, the order shall be a final order. If no hearing has been requested by the commission or an interested party within 15 days after notice of the application is posted on the commission website in accordance with subdivision (2) of this subsection, the commission may issue a proposed order and provide a copy of the proposed order, together with notice of the right to appeal to the commission and request a hearing, to all interested parties. Any interested party aggrieved by the proposed order may appeal the proposed order to the commission and request a hearing. Notice of appeal and request for hearing shall be made within 15 days of entry of the proposed order. If no appeal and request for hearing have been received within 15 days, the proposed order shall become final. If a hearing is requested, the hearing shall commence within 45 days of issuance of the initial notice. The commission may, upon written request, extend the date for the hearing: *Provided*, That the hearing

must be convened within 45 days of the initial notice issued by the commission. The commission shall, within 20 days of the hearing, enter an order authorizing the unit, dismiss the application, or for good cause continue the process.

(4) At least 10 days prior to a hearing to consider an application for a horizontal well unit order, the applicant shall file with an independent, third-party attorney, or accountant selected by the chair of the commission a summary of:

(A) The prevailing economic terms of the leases within the proposed horizontal well unit relating to the target formation where the applicant is the operator, including the bonus payment per net mineral acre and production royalty rate, including whether the production royalty is subject to reduction for post-production expenses; and

(B) The prevailing amounts paid to the executive interest royalty owners, per net mineral acre, for the modification of leases relating to the target formation within the proposed unit where the applicant is the operator to allow the lessee to unitize the leased tract with other tracts for purposes of drilling horizontal wells.

(C) The independent, third party selected by the chair of the commission shall review the economic information filed by the applicant to determine its accuracy and, upon completion of his or her review, shall submit a report to the commission specifying the following information for inclusion by the commission in the horizontal well unit order:

(i) The weighted average monetary bonus paid, per net mineral acre, to executive interest owners by the applicant in connection with other leases in the same target formation controlled by the applicant within the horizontal well unit, as provided in §22C-9-7a(f)(6) and §22C-9-7a(f)(7)(B)(ii) of this code;

(ii) The weighted average production and highest royalty percentage, calculated on a net mineral acre basis, of the leases in the same target formation controlled by the applicant within the

horizontal well unit, as provided in §22C-9-7a(f)(6) of this code; and

(iii) The highest production royalty percentage in the unit in connection with other leases in the same target formation controlled by the applicant within the horizontal well until and dated within the 24 months preceding the application date, as provided in §22C-9-7a(f)(7)(B)(ii) of this code.

(D) The reasonable fees and expenses of the independent, third party selected by the chair of the commission to review the information filed by the applicant and render his or her report to the commission pursuant to this subsection shall be paid by the applicant.

(E) When filing information with the independent third party selected by the chair of the commission, the applicant may mark the summary of the prevailing economic terms of leases and amounts paid for lease modifications, and any associated documents or information, as “CONFIDENTIAL” to the extent that the documents contain confidential, commercial information. Any information marked “CONFIDENTIAL” may only be used by the independent third-party selected by the chair of the commission for the purpose of performing his or her review and preparation and submission of his or her report to the commission, and by the court for the purpose of any appeal pursuant to §22C-9-7a(g)(5) of this code. All information marked “CONFIDENTIAL” pursuant to this subdivision shall retain that character in any court of competent jurisdiction on appeal, and the applicant may file a motion with the court seeking to have the documents sealed and withheld from the public record throughout the appeal from a final order of the commission pertaining to a horizontal well unit order. Furthermore, any information marked “CONFIDENTIAL” pursuant to this subdivision is exempt from disclosure under §29B-1-1 *et seq.* of this code.

(5) An order establishing a horizontal well drilling unit or dismissing an application shall be a final order. Any interested party aggrieved by the order may seek judicial review pursuant to section eleven of this article. Notice of appeal shall be made in

accordance with §22C-9-11 of this code within 15 days of entry of the order. If no appeal has been received within 15 days, the order shall become final.

(h) *Unit order does not grant surface rights.* — A horizontal well unit order under this section does not grant or otherwise affect surface use rights: *Provided*, That without limiting the foregoing, in no event shall drilling be initiated upon, or other surface disturbance occur upon, the surface of or above a tract of minerals that was forced into the unit pursuant to this section without the owner's consent.

(i) *Commission approval required for certain additional drilling.* — After the filing of an application for a horizontal well unit order, no well may be drilled or completed to or through the target formation of the proposed horizontal well unit unless authorized by the commission.

(j) *Contemporaneous permit applications authorized.*— Notwithstanding anything to the contrary in §22-6A-1 *et seq.* of this code, upon the filing of an application for a horizontal well unit order pursuant to this section, an applicant may file an application for a well work permit under §22-6A-1 *et seq.* of this code for any proposed development within the horizontal well unit for which the unit order is sought.

(k) *A party may appear in person.* — At any hearing an interested party may represent themselves or be represented by an attorney-at-law.

(l) No provision of this section alters the common law of this state regarding the deduction of post-production expenses for the purpose of calculating royalty.

(m) *Conflict resolution.* — After the effective date of this section, all applications requesting unitization for horizontal wells shall be filed pursuant to this section. Deep well horizontal unit applications filed before the effective date of this section shall continue to proceed under and be governed by the provisions of section seven of this article. With respect to horizontal well unit

applications filed after the effective date of this section, if this section conflicts with section seven of this article, the provisions of this section shall prevail. When considering an application pursuant to this section, rules regarding deep wells promulgated before the effective date of this section shall not apply.

(n) *Unknown and unlocatable interest owners.* — Notwithstanding the existence of unknown and unlocatable interest owners, a horizontal well unit order may be entered and development, drilling, and production may occur in the horizontal well unit. Unknown and unlocatable interest owners of oil and gas in place not subject to lease shall be considered to have made an election to receive unitization consideration and lease their interest in the oil and gas mineral estate in the target formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code. Unknown and unlocatable interest owners of working interest in property subject to lease before an application for a horizontal well unit is filed pursuant to this section shall be considered to have elected to participate in the drilling in the horizontal well unit on a carried basis pursuant to §22C-9-7a(f)(9) and §22c-9-7a(f)(10) of this code.

(o) *Opportunity of surface owners to acquire interests of unknown and unlocatable interest owners in oil and gas underlying horizontal well unit.* —

(1) When the interests of unknown and unlocatable interest owners' property is included in a horizontal well unit, if the applicant has not filed a proceeding pursuant to §55-12A-1 *et seq.* of this code (entitled Lease and Conveyance of Mineral Interests Owned by Missing or Unknown Owners or Abandoning Owners) with respect to the interest of an unknown and unlocatable interest owner in the horizontal well unit, and taxes on the unknown and unlocatable interest owners' property are not delinquent, then, after a horizontal well unit order is entered by the commission, the applicant shall inform the parties paying taxes on the surface overlying that portion of the oil and gas included in the horizontal well unit that the surface owner(s) (TSO) may acquire the underlying interest of the unknown and unlocatable interest owners in the horizontal well unit in a proceeding pursuant to this

subsection and that information about the interest may be obtained from the applicant. Upon written request to the applicant by any TSO, the applicant shall, to the extent practicable under the circumstances, furnish the requesting TSO the following information: *Provided*, That applicant is not required to provide confidential, trade secret, attorney client communications or attorney work product:

(A) An identification of the last known owner, and information in the possession of the applicant regarding the last known identity and address of, the interest believed to be held by unknown and unlocatable interest owners.

(B) The efforts to locate unknown and unlocatable interest owners.

(C) Such other information known to the applicant which might be helpful in identifying or locating the present owners thereof.

(D) A copy of the most recent recorded instrument embracing the interest of the unknown and unlocatable interest owners as necessary to show the vesting of title to the minerals in the last record owner of the title to the minerals.

(E) The acreage of the tract and the net acreage of the unknown or unlocatable mineral owner or owners in the tract.

(F) The amount of money at any point to which the surface owners would be entitled upon written request.

(2) When an unknown and unlocatable interest in oil and gas is included in a horizontal well unit an owner of the surface overlying the interest may file a verified petition with respect to all the interests of unknown and unlocatable interest owners included in a horizontal well unit and underlying the surface owner's property. The circuit court in which the majority of the property subject to the petition authorized by this subsection is located has jurisdiction of the proceeding. The petition shall refer to this subsection and identify the oil and gas property subject to the petition. The prayer in any such petition shall be for the court to order, in the case of any defendant or heir, successor, or assign of any defendant who

does not appear to claim ownership of the defendant's interest for five years after the date the unit order is filed, a conveyance of the defendants' oil and gas mineral interest under this subsection, subject to the horizontal well unit order and lease terms approved by the commission, to the petitioners.

(3) In any proceeding authorized in this subsection the circuit court in which the petition is filed shall consider the property subject to the petition leased to the participating operators in the horizontal well unit on the terms determined by the commission.

(4) The person filing a petition under this subsection shall join as defendants to the action all unknown and unlocatable interest owners having record title to the particular oil and gas minerals subject to the petition, and the unknown heirs, successors, and assigns of all such owners not known to be alive. All persons not in being who might have some contingent or future interest therein, and all persons whether in being or not in being, having any interest, present, future or contingent, in the mineral interests subject to the petition, shall be fully bound by the proceedings under this subsection.

(5) Any other owner of an overlying surface tract shall be joined as a petitioner in the proceeding. Any other person purporting to be the unknown and unlocatable interest owner, or any heir, successor, or assign of an unknown and unlocatable interest owner, may appear as a matter of right at any time prior to the entry of judgment confirming the deed authorized by this subsection, for the purpose of establishing his or her title to a mineral interest subject to the petition. If the appearing unknown and unlocatable interest owner's claim is established to the satisfaction of the court, the court shall dismiss the action as to the appearing owner's interest without cost, fees, or damages: *Provided*, That if the appearance of the formerly unknown and unlocatable interest owner was as a result of the filing of the petition by the surface owner pursuant to this subsection, then the court may order the petitioner's reasonable proportionate attorneys' fees and costs to be paid to the petitioner out of the amounts payable to the formerly unknown and unlocatable interest owner.

(6) The court may appoint a special commissioner at any time to deliver a deed to the petitioners in the form provided herein five years after first production reported to the state occurs or one year after the first publication service of a petition under this subsection is made, whichever is later. The special commissioner shall be an attorney duly admitted to practice before the West Virginia Supreme Court of Appeals and in good standing, but may not be required to give bond. If the petitioners do not agree as to the interest each is to acquire by the deed contemplated herein, or the division of any moneys associated therewith, the court shall equitably determine the interests of the petitioners.

(7) In any action under this subsection, if personal service of process is possible, it shall be made as provided by the West Virginia Rules of Civil Procedure. In addition, immediately upon the filing of the petition, the petitioner shall: (1) Publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and in the county wherein any part of the oil and gas mineral estate described in the petition lies and any immediately adjacent counties; and (2) no later than the first day of publication, file a lis pendens notice in the county clerk's office of the county where the petition is filed and the county wherein the larger part of the oil and gas mineral estate described in the petition lies. Both the advertisement and the lis pendens notice shall set forth: (1) The names of the petitioner and the defendants, as they are known to be by the exercise of reasonable diligence by the petitioner, and their last known addresses; (2) the date and record data of the instrument or other conveyance which immediately created the oil and gas mineral interest; (3) an adequate description of the land as contained therein; (4) the source of title of the last known owners of the oil and gas mineral interests; and (5) a statement that the action is brought for the purpose of authorizing payments from a horizontal well unit, and thereafter, in the case of any defendant or heir, successor, or assign of any defendant who does not appear to claim ownership of the defendant's interest within five years after the date of the court ordering a conveyance of the defendant's oil and gas mineral interest under this subsection, subject to the lease terms determined by the commission and horizontal well unit order, to the owners of the

surface overlying the oil and gas mineral interest. In addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there is one, of all named defendants. In addition, the court may order advertisement elsewhere or by additional means if there is reason to believe that additional advertisement might result in identifying and locating the unknown and unlocatable interest owners.

(8) Upon a finding by the court of the present ownership of the petitioners of the surface estate, the court shall order the special commissioner to convey to the proven surface owners, subject to the horizontal well unit order and lease terms approved by the commission, the mineral interest specified in the petition authorized herein, by a deed substantially in the form as follows:

This deed, made the ____ day of _____, 20____, between _____, special commissioner, grantor and _____, grantee,

Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by an order of the circuit court of _____ county, West Virginia, entered on the ____ day of _____, 20____, in civil action no. _____ therein pending, to convey the mineral interest more particularly described below to the grantee,

Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the provisions of the horizontal well unit order of the Oil and Gas Conservation Commission in _____ and lease terms provided therein, and further subject to all other liens and encumbrances of record, that certain oil and gas mineral interest in _____ County, West Virginia, more particularly described in the cited order of the circuit court as follows: (here insert the description in the order).

Witness the following signature.

Special Commissioner

(9) Prior to the delivery of the special commissioner's deed, no deed from owners of the surface to another party shall sever any benefits from this subsection from ownership of the surface. A deed doing so is void and unenforceable.

(10) After the date of the special commissioner's deed authorized herein, the surface owner grantee is entitled to receive all proceeds due and payable under a horizontal well unit order attributable to the mineral interests specified in the special commissioner's deed accruing before and after the date of the special commissioner's deed.

(11) The applicant may not be joined as a party, but shall be served with copies of all pleadings and other papers filed in the proceeding, and may intervene at any time. A surface owner must provide a copy of the recorded special commissioner deed to the applicant and any other necessary information reasonably requested by the applicant before the applicant or any other operator has an obligation to provide payment to the surface owner.

(12) Payment by the applicant shall relieve the participating operators of all liability whatsoever that the participating operators may have had to any unknown and unlocatable interest owners, their heirs, successors, and assigns with respect to the payment and all operations in the horizontal well unit, all operations therein and all production from the operations.

(13) If a surface owner does not file a petition pursuant to this subsection within six years of the date notice is given to a TSO as provided herein, amounts payable with respect to the unknown and unlocatable interest owners' interests included in a horizontal well unit shall be paid to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code, and the payment shall relieve the participating operators of all liability of the participating operators with respect to the horizontal well unit and all operations therein and production therefrom to any unknown and unlocatable interest owners, their heirs, successors, and assigns and to any owners of surface overlying the unknown and unlocatable interest owners' interest, their heirs, successors, and assigns, with respect to the payment.

(14) After the recording of the special commissioner's deed, no action may be brought by any unknown and unlocatable interest owner or any heir, successor, or assign thereof either to recover any past or future proceeds accrued or to be accrued from the property subject to the deed, or to recover any right, title or interest in and to the mineral interest subject to the deed.

(15) If any unknown and unlocatable interest owner or heir, successor, or assign thereof appears in the proceeding in circuit court, the unknown and unlocatable interest owner, if he or she establishes his or her claim to the satisfaction of the circuit court, shall only be entitled to receive amounts payable in connection with the horizontal well unit or production therefrom after the date of appearance in the proceeding. Further, the participating operators and the petitioning surface owners shall have no liability to the unknown and unlocatable interest owner or their heirs, successors, or assigns for any amount paid with respect to the unknown and unlocatable interest or the horizontal well unit or production therefrom paid in accordance with this subsection.

(p) If any part of this section is adjudged to be unconstitutional or invalid, the invalidation shall not affect the validity of the remaining parts of this section; and to this end, the provisions of this section are hereby declared to be severable.

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CHAPTER 122

**(S. B. 713 - By Senators Smith, Phillips, Brown, Caputo,
Clements, Hamilton, Jeffries, Nelson, Romano, Swope, and
Sypolt)**

[Passed March 3, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §22-1-15 of the Code of West Virginia, 1931, as amended, relating to removing the statutory limit of \$300,000 for the Environmental Laboratory Certification Fund; and allowing field tests and remote monitoring or testing equipment to be certified by the laboratory certification program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

(a) The director shall promulgate rules to require the certification of laboratories conducting waste and wastewater tests and analyses to be used for purposes of demonstrating compliance under the covered statutory programs, including reasonable annual certification fees based upon the type or classification of tests or analyses being conducted by laboratories, to be assessed against laboratory owners or operators in an amount necessary to cover the actual costs of administration of this program and the processing of certification applications, to be deposited in the state Environmental Laboratory Certification Fund created pursuant to this section. By July 1, of each year, the director shall provide to

the secretary a written report reflecting funds collected, how the funds were expended, and an assessment of the adequacy of the funding to administer the program.

(b) After the effective date of the rules promulgated pursuant to this section, waste and wastewater tests and analyses conducted in laboratories that are not certified for the parameters or toxicity being tested or analyses shall not be accepted by the division, except as otherwise provided, as being in compliance with the requirements, rules or orders of the division issued under authority of one or more of the covered statutory programs: *Provided*, That field tests and remote monitoring or testing equipment which is conducted or located away from any laboratory may be considered a laboratory for purposes of assessing the fee, but shall be subject to such quality assurance and quality control standards as may be established by the director in rules promulgated pursuant to this section. The director shall provide by rule for the granting of certification for laboratories located outside of West Virginia pursuant to this section if the laboratories provide written documentation that approval has been received under requirements in their state and determined by the director to be equivalent to the West Virginia laboratory certification program. The reciprocal certification shall be granted only for testing methods and parameters for which the laboratory holds a valid authorization in the other state and only for laboratories in states which allow reciprocity with respect to laboratories located in this state.

(c) Application shall be made to the director for approval or certification by laboratories on forms and in a manner prescribed by the director.

(d) Certification shall be renewed on an annual basis. The existing certification remains in effect until the director notifies the applicant for renewal that renewal of certification has been granted or denied.

(e) Certification shall be granted for those tests or parameters for which the laboratory demonstrates adequate performance on performance evaluation tests based on the criteria established in rules by the director. The director shall, by rule, establish criteria

governing what shall be considered in any decision to deny or issue a certification.

(f) Failure to comply with the requirements of the applicable analytical methods and procedures or standards specified in the rules of the director is grounds for revocation or suspension of certification for the affected test procedures or parameters.

(g) No person subject to the covered statutory programs shall be allowed to use data or test results from waste and wastewater tests and analyses conducted at laboratories lacking certification for purposes of demonstrating compliance under the covered statutory programs: *Provided*, That any person whose data or test results are invalidated because that person had relied upon a laboratory which loses its certification, shall be granted 30 days after notice of the invalidated test results by the director during which data or test results may be repeated or reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered statutory programs.

(h) A special revenue fund designated the Environmental Laboratory Certification Fund shall be continued in the State Treasury on July 1, 1994. The net proceeds of all fees collected pursuant to this section shall be deposited in the environmental laboratory certification fund. Upon line-item appropriation by the Legislature, the director shall expend the proceeds, including the interest thereon, of the environmental laboratory certification fund solely for the administration of the requirements of this section.

(i) For purposes of this section, “covered statutory program” means one of the regulatory programs developed under statutory authority of one of the following acts of the Legislature: Water Pollution Control Act, §22-11-1 *et seq.* of this code; Hazardous Waste Management Act, §22-18-1 *et seq.* of this code; Hazardous Waste Emergency Response Fund Act, §22-19-1 *et seq.* of this code; Underground Storage Tank Act, §22-17-1 *et seq.* of this code; the Solid Waste Management Act, §22-15-1 *et seq.* of this code; or the Groundwater Protection Act, §22-12-1 *et seq.* of this code.

(j) Any person adversely affected by an order or action by the director pursuant to this section, or aggrieved by the failure or refusal of the director to act within a reasonable time, or by the action of the director in granting or denying a certification or renewal of a certification, may appeal to the environmental quality board pursuant to §22B-1-1 *et seq.* of this code.

(k) The provisions of this section apply only to tests and analyses of waste or wastewater subject to regulation by the Division of Environmental Protection. The provisions of this section do not apply to tests or analyses of potable or drinking water.

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CHAPTER 123

(H. B. 3082 - By Delegates Anderson, J. Kelly, Espinosa and Riley)

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §22-5-2 and §22-5-4 of the Code of West Virginia, 1931, as amended, relating to air pollution control; providing the West Virginia Department of Environmental Protection, Division of Air Quality, the authority to invest and reinvest funds held in the Air Pollution Control Fund and the Air Pollution Education and Environment Fund and to receive interest thereon from lawful investments of public funds to offset decreasing permit fee collections; providing that at the end of each fiscal year, unexpended balances, including accrued interest, shall not be transferred or redesignated to other accounts or the General Revenue Fund, but shall remain in the two funds for expenditure by the West Virginia Department of Environmental Protection, Division of Air Quality, in furtherance of its mission; and updating code language with technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-2. Definitions.

The terms used in this article are defined as follows:

(1) “Air pollutants” means solids, liquids, or gases which, if discharged into the air, may result in a statutory air pollution.

(2) “Board” means the air quality board continued pursuant to the provisions of §22B-2-1 *et seq.* of this code.

(3) “Director” means the Secretary of the Department of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to §22-1-6 or §22-1-8 of this code.

(4) “Discharge” means any release, escape, or emission of air pollutants into the air.

(5) “Person” means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public, or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

(6) “Statutory air pollution” means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

§22-5-4. Powers and duties of director; and legal services; rules.

(a) The director is authorized:

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

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;

(4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: *Provided*, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the “Federal Clean Air Act,” as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: *Provided, however*, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;

(5) To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries, and others in preserving the purity of the air within the state;

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

(9) To enter and inspect any property, premise, or place on or at which a source of air pollutants is located or is being constructed, installed, or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules promulgated under the provisions of this article. No person shall refuse entry or access to any authorized representative of the director who requests entry for purposes of inspection, and who

presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: *Provided*, That nothing contained in this article eliminates any obligation to follow any process that may be required by law;

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

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

(12) To cooperate with any public or private agency or person and receive therefrom and on behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of the "Air Pollution Education and Environment Fund" which is hereby continued in the state Treasury.

(A) The moneys collected pursuant to this article which are directed to be deposited in the "Air Pollution Education and Environment Fund" must be deposited in a separate account in the state Treasury and expenditures for purposes set forth in this article are not authorized from collection but are to be made only in accordance with appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code.

(B) Moneys in the fund, if not needed for immediate use or disbursement, may be invested or reinvested by the agency in obligations or securities which are considered lawful investments for public funds under this code.

(C) At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Air Pollution Education and Environment Fund shall not be transferred to the General Revenue Fund, but shall remain in the Air Pollution Education and Environment Fund for expenditure pursuant to this section.

(13) To represent the state in any and all matters pertaining to plans, procedures, and negotiations for interstate compacts in relation to the control of air pollution;

(14) To appoint advisory councils from such areas of the state as he or she may determine. The members shall possess some knowledge and interest in matters pertaining to the regulation, control, and abatement of air pollution. The council may advise and consult with the director about all matters pertaining to the regulation, control, and abatement of air pollution within such area;

(15) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the director such information as the director may require in a form or manner prescribed by him or her for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(16) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may prescribe and to submit periodic reports on the nature and amount of such discharges to the director;

(17) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act," as amended: *Provided*, That in preparing and submitting each such plan the director shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: *Provided, however*, That nothing herein contained affects plans for achievement, maintenance and enforcement of motor vehicle emission standards and of standards for fuels used in dwellings;

(18) To promulgate legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, providing for the following:

(A) Procedures and requirements for permit applications, transfers and modifications and the review thereof;

(B) Imposition of permit application and transfer fees;

(C) Establishment of criteria for construction, modification, relocation, and operating permits;

(D) Imposition of permit fees and of certificate fees: *Provided*, That any person subject to operating permit fees pursuant to section twelve of this article is exempt from imposition of the certificate fee; and

(E) Imposition of fees, and penalties and interest for the nonpayment of fees.

(i) The fees, penalties, and interest shall be deposited in a special account in the State Treasury designated the "Air Pollution Control Fund", formerly the "Air Pollution Control Commission Fund", which is hereby continued to be appropriated for the sole purpose of paying salaries and expenses of the board, the division of air quality and their employees to carry out the provisions of this article: *Provided*, That the fees, penalties and interest collected for operating permits required by section twelve of this article shall be expended solely to cover all reasonable direct and indirect costs required to administer the operating permit program.

(ii) The fees collected pursuant to this subdivision must be deposited in a separate account in the State Treasury and expenditures for purposes set forth in this article are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code.

(iii) Moneys in the fund, if not needed for immediate use or disbursement, may be invested or reinvested by the agency in

obligations or securities which are considered lawful investments for public funds under this code.

(iv) At the end of each fiscal year, any unexpended balance, including accrued interest, on deposit in the Air Pollution Control Fund shall not be transferred to the General Revenue Fund, but shall remain in the Air Pollution Control Fund for expenditure pursuant to this section.

(19) Receipt of any money by the director as a result of the entry of any consent order shall be deposited in the State Treasury to the credit of the Air Pollution Education and Environment Fund.

(b) The Attorney General and his or her assistants and the prosecuting attorneys of the several counties shall render to the director without additional compensation such legal services as the director may require of them to enforce the provisions of this article.



CHAPTER 124

(Com. Sub. for H. B. 4003 - By Delegates Keaton, Barrett, Hanshaw (Mr. Speaker), Summers, Espinosa, Riley, Howell, Burkhammer, Clark, Pack, and Maynor)

[Passed March 10, 2022; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-2-10, relating generally to the ownership and commercial benefit of substances removed from waters of the state by the treatment of mine drainage; restating public policies concerning the maintenance of reasonable standards of purity and quality of the waters of the state consistent with public health and the protection of all forms of life; providing for legislative findings, intent, and purpose, including that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state, that such treatment may produce valuable concentrations of materials which may be utilized for commercial gain, and that said materials are part of the water; stating the legislative intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state by encouraging investments into the treatment of mine drainage; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by the Department of Environmental Protection or its designee for commercial gain and benefit; providing that all funds received by said department shall be deposited and used at the discretion of the secretary into already established environmental funds; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state

and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by any party who successfully removes the same from the waters of this state for commercial gain and benefit; providing for the protection of existing and future contracts; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-10. Benefits derived from substances separated by treatment of pollution from mine drainage in the waters of the state; public policy; legislative findings, intent, and purpose; severability.

(a) *Public Policy.* It is the long-standing public policy of the State of West Virginia, pursuant to § 22-11-1 *et seq.* of this code, the Water Pollution Control Act, that the state is compelled to maintain reasonable standards of purity and quality of the waters of the state which are consistent with public health and the protection of all forms of life. It is also the long-standing public policy of this state, pursuant to § 20-2-1 *et seq.* of this code, that wildlife resources in this state shall be held as a public trust by the state and protected for the use and enjoyment of its citizens.

(b) *Legislative Findings, Intent, and Purpose.* The Legislature finds that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state. The Legislature finds that the necessary and expensive treatment of mine drainage to remove pollution from the waters of the state, and disposal of the same, may produce materials that contain valuable concentrations of rare earth elements, critical materials, and other substances which may be utilized for commercial gain. The Legislature finds that these materials found within the waters of the state are part of the water and can only be separated from the water with expensive and continuing investments of resources which may last for decades. The Legislature enacts this section with the intent of fulfilling the

state's obligations to maintain reasonable standards of purity and quality of the waters of the state, consistent with public health and the protection of all forms of life, by encouraging investments into the treatment of mine drainage.

(c) Notwithstanding any provision of this code or common law to the contrary, all chemical compounds, elements, and other potentially toxic materials which are found within the waters of this state, which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by the Department of Environmental Protection, or its designee, for commercial gain and benefit. All funds received by the department shall be deposited at the discretion of the secretary into the Special Reclamation Water Trust Fund or the Acid Mine Drainage Set-Aside Fund, and used by the department to fulfill its obligations under this code: *Provided*, That nothing in this subsection shall be construed to interfere with any existing contract or the ability of the department to enter into an agreement with private parties with respect to the removal, sale, or transfer of said chemical compounds, elements, and other potentially toxic materials.

(d) Notwithstanding any provision of this code or common law to the contrary, all chemical compounds, elements, and other potentially toxic materials which are found within the waters of this state which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by any party, other than the department, who successfully removes said chemical compounds, elements, and other potentially toxic materials from the waters of this state for commercial gain and benefit: *Provided*, That nothing in this subsection shall be construed to interfere with any existing contract or the ability of parties to enter into an agreement with respect to the removal, sale, or transfer of said chemical compounds, elements, and other potentially toxic materials.

(e) The provisions of this section are severable, and if any part of this section is adjudged to be unconstitutional, unenforceable, or invalid, that determination does not affect the continuing validity of the remaining provisions of this section.

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CHAPTER 125

**(Com. Sub. for H. B. 4084 - By Delegates Zatezalo, Anderson,
J. Kelly, Reynolds, Howell, Miller, Forsht, Keaton, Mandt,
Evans and Young)**

[Passed March 3, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §22-15-2 of the Code of West Virginia, 1931, as amended, relating to advanced recycling of solid waste under the Solid Waste Management Act; adding definitions of advanced recycling, advanced recycling facility, catalytic cracking, depolymerization, gasification, hydrogenation, post-use polymer, pyrolysis, recovered feedstock, and solvolysis; amending the definition of solid waste to except out post-use polymers and recovered feedstocks which are converted or held for conversion at an advanced recycling facility; amending the definition of solid waste facility to except out advanced recycling facilities; and facilitating the conversion and use of plastics and other recovered materials through advanced recycling processes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-2. Definitions.

Unless the context clearly requires a different meaning, as used in this article the terms:

“Advanced recycling” means a manufacturing process for the conversion of post-use polymers and recovered feedstocks into basic hydrocarbon raw materials, feedstocks, chemicals, and other products like waxes and lubricants through processes that include pyrolysis, gasification, depolymerization, catalytic cracking,

hydrogenation, solvolysis, and other similar technologies. The recycled products produced at advanced recycling facilities include, but are not limited to, monomers, oligomers, plastics, plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and other basic hydrocarbons. Advanced recycling shall not be considered solid waste management or solid waste disposal.

“Advanced recycling facility” means a facility that receives, stores, and converts post-use polymers and recovered feedstocks it receives using advanced recycling. An advanced recycling facility is a manufacturing facility subject to applicable department manufacturing regulations for air, water, and land use. Advanced recycling facilities shall not be considered solid waste facilities.

“Agronomic rate” means the whole sewage sludge application rate, by dry weight, designed:

- (1) To provide the amount of nitrogen needed by the food crop, feed crop, fiber crop, cover crop, or vegetation on the land; and
- (2) To minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

“Applicant” means the person applying for a commercial solid waste facility permit or similar renewal permit and any person related to such person by virtue of common ownership, common management, or family relationships as the director may specify, including the following: Spouses, parents, children, and siblings.

“Approved solid waste facility” means a solid waste facility or practice which has a valid permit under this article.

“Back hauling” means the practice of using the same container to transport solid waste and to transport any substance or material used as food by humans, animals raised for human consumption, or reusable item which may be refilled with any substance or material used as food by humans.

“Bulking agent” means any material mixed and composted with sewage sludge.

“Catalytic cracking” is a manufacturing process through which post-use polymers are heated and melted in the absence of oxygen and then processed in the presence of a catalyst to produce valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons.

“Class A facility” means a commercial solid waste facility which handles an aggregate of between 10,000 and 30,000 tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tonnage of solid waste handled per month by such landfills exceeds 9,999 tons of solid waste per month.

“Commercial recycler” means any person, corporation, or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least 70 percent by weight of the materials coming into the commercial recycling facility.

“Commercial solid waste facility” means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of the disposal, processing, or composting of solid wastes created by that person or such person and other persons on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation, and similar applications.

“Compost” means a humus-like material resulting from aerobic, microbial, or thermophilic decomposition of organic materials.

“Composting” means the aerobic, microbial, or thermophilic decomposition of natural constituents of solid waste to produce a stable, humus-like material.

“Commercial composting facility” means any solid waste facility processing solid waste by composting, including sludge composting, organic waste or yard waste composting, but does not include a composting facility owned and operated by a person for the sole purpose of composting waste created by that person or such person and other persons on a cost-sharing or nonprofit basis and shall not include land upon which finished or matured compost is applied for use as a soil amendment or conditioner.

“Cured compost” or “finished compost” means compost which has a very low microbial or decomposition rate which will not reheat or cause odors when put into storage and that has been put through a separate aerated curing cycle stage of 30 to 60 days after an initial composting cycle or compost which meets all regulatory requirements after the initial composting cycle.

“Department” means the Department of Environmental Protection.

“Depolymerization” means a manufacturing process where post-use polymers are broken into smaller molecules such as monomers and oligomers or raw, intermediate, or final products, plastics and chemical feedstocks, basic and unfinished chemicals, waxes, lubricants, coatings, and other basic hydrocarbons.

“Energy recovery incinerator” means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity, or any other use not specified herein.

“Gasification” means a manufacturing process through which recovered feedstocks are heated and converted into a fuel and gas mixture in an oxygen-deficient atmosphere and the mixture is converted into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers,

chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons that are returned to economic utility in the form of raw materials and products.

“Hydrogenation” is a manufacturing process through which hydrogen is used to remove impurities from post-use polymers or recovered feedstock to enable further processing into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons.

“Incineration technologies” means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation, or any other method by which solid waste is incinerated.

“Incinerator” means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

“Landfill” means any solid waste facility used for the disposal of solid waste on or in the land for the purpose of permanent disposal. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

“Materials recovery facility” means any solid waste facility at which source-separated materials or materials recovered through a mixed waste processing facility are manually or mechanically shredded or separated for purposes of reuse and recycling, but does not include a composting facility.

“Mature compost” means compost which has been produced in an aerobic, microbial, or thermophilic manner and does not exhibit phytotoxic effects.

“Mixed solid waste” means solid waste from which materials sought to be reused or recycled have not been source-separated from general solid waste.

“Mixed waste processing facility” means any solid waste facility at which materials are recovered from mixed solid waste through manual or mechanical means for purposes of reuse, recycling, or composting.

“Municipal solid waste incineration” means the burning of any solid waste collected by any municipal or residential solid waste disposal company.

“Open dump” means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

“Person” or “persons” means any industrial user, public or private corporation, institution, association, firm, or company organized or existing under the laws of this or any other state or country; State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

“Post-use polymer” means a plastic to which all the following apply:

- (1) The plastic is derived from any industrial, commercial, agricultural, or domestic activities;
- (2) It is not mixed with solid waste or hazardous waste onsite or during processing at the advanced recycling facility;
- (3) The plastic’s use or intended use is as a feedstock for the manufacturing of plastic and chemical feedstocks, other basic

hydrocarbons, raw materials, or other intermediate products or final products using advanced recycling;

(4) The plastic has been sorted from solid waste and other regulated waste but may contain residual amounts of solid waste such as organic material and incidental contaminants or impurities (e.g., paper labels and metal rings); and,

(5) The plastic is processed at an advanced recycling facility or held at such facility prior to processing.

“Publicly owned treatment works” means any treatment works owned by the state or any political subdivision thereof, any municipality or any other public entity which processes raw domestic, industrial, or municipal sewage by any artificial or natural processes in order to remove or so alter constituents as to render the waste less offensive or dangerous to the public health, comfort, or property of any of the inhabitants of this state before the discharge of the plant effluent into any of the waters of this state, and which produces sewage sludge.

“Pyrolysis” means a manufacturing process through which post-use polymers are heated in the absence of oxygen until melted and thermally decomposed and are then cooled, condensed, and converted into valuable raw materials and intermediate and final products, including, but not limited to, plastic monomers, chemicals, waxes, lubricants, plastic and chemical feedstocks, and other basic hydrocarbons, that are returned to economic utility in the form of raw materials or products.

“Recovered feedstock” means one or more of the following materials that has been processed so that it may be used as feedstock in an advanced recycling facility:

(1) Post-use polymers;

(2) Materials for which the United States Environmental Protection Agency has made a nonwaste determination pursuant to 40 C.F.R. 241.3(c), or has otherwise determined are feedstocks and not solid waste;

(3) Recovered feedstock does not include unprocessed municipal solid waste;

(4) Recovered feedstock is not mixed with solid waste or hazardous waste onsite or during processing at an advanced recycling facility.

“Recycling facility” means any solid waste facility for the purpose of recycling at which neither land disposal nor biological, chemical, or thermal transformation of solid waste occurs: *Provided*, That mixed waste recovery facilities, sludge processing facilities, and composting facilities are not considered recycling facilities nor considered to be reusing or recycling solid waste within the meaning of this article, §22-15A-1 *et seq.* and §22C-4-1 *et seq.* of this code.

“Sewage sludge” means solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment processes and a material derived from sewage sludge. “Sewage sludge” does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator.

“Sewage sludge processing facility” is a solid waste facility that processes sewage sludge for: (A) Land application; (B) incineration; or (C) disposal at an approved landfill. Such processes include, but are not limited to, composting, lime stabilization, thermophilic, microbial, and anaerobic digestion.

“Secretary” means the Secretary of the Department of Environmental Protection or such other person to whom the secretary has delegated authority or duties pursuant to §22-1-1 *et seq.* of this code.

“Sludge” means any solid, semisolid, residue, or precipitate, separated from or created by a municipal, commercial, or industrial waste treatment plant, water supply treatment plant, air pollution control facility, or any other such waste having similar origin.

“Solid waste” means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration; sludge from a waste treatment plant; water supply treatment plant or air pollution control facility; and other discarded materials, including offensive or unsightly matter, solid, liquid, semisolid, or contained liquid or gaseous material resulting from industrial, commercial, mining, or community activities but does not include solid or dissolved material in sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under §22-5A-1 *et seq.* of this code, or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under §22-5E-1 *et seq.* of this code or refuse, slurry, overburden, or other wastes or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage, and recovery of coal, oil, and gas, and other mineral resources placed or disposed of at a facility which is regulated under Chapter 22, Chapter 22A, or Chapter 22B of this code, so long as placement or disposal is in conformance with a permit issued pursuant to such chapters, or post-use polymers and recovered feedstocks converted at an advanced recycling facility or held at such facility prior to conversion.

“Solid waste disposal” means the practice of disposing of solid waste including placing, depositing, dumping, throwing, or causing any solid waste to be placed, deposited, dumped, or thrown.

“Solid waste disposal shed” means the geographical area which the solid waste management board designates and files in the state register pursuant to §16-26-8 of this code.

“Solid waste facility” means any system, facility, land, contiguous land, improvements on the land, structures, or other appurtenances or methods used for processing, recycling, or disposing of solid waste, including landfills, transfer stations, materials recovery facilities, mixed waste processing facilities, sewage sludge processing facilities, commercial composting facilities, and other such facilities not herein specified, but not

including land upon which sewage sludge is applied in accordance with §22-15-20 of this code . Such facility shall be deemed to be situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located: *Provided*, That a salvage yard, licensed and regulated pursuant to the terms of §17-23-1 *et seq.* of this code, is not a solid waste facility and an advanced recycling facility is not a solid waste facility.

“Solid waste facility operator” means any person or persons possessing or exercising operational, managerial, or financial control over a commercial solid waste facility, whether or not such person holds a certificate of convenience and necessity or a permit for such facility.

“Solvolysis” means a manufacturing process through which post-use polymers are purified with the aid of solvents, while heated at low temperatures and/or pressurized to make useful products, allowing additives and contaminants to be separated. The products of solvolysis include monomers, intermediates, valuable chemicals, and raw materials. The process includes, but is not limited to, hydrolysis, aminolysis, ammonolysis, methanolysis, and glycolysis.

“Source-separated materials” means materials separated from general solid waste at the point of origin for the purpose of reuse and recycling but does not mean sewage sludge.

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CHAPTER 126

(Com. Sub. for H. B. 4098 - By Delegates Anderson, J. Kelly, Steele, Boggs, Pethtel, Burkhammer, Riley, Statler, Westfall, Wamsley, and Reynolds)

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-33-1, §22-33-2, §22-33-3, §22-33-4, §22-33-5, §22-33-6, §22-33-7, §22-33-8, §22-33-9, §22-33-10, §22-33-11, and §22-33-12, all relating to geothermal energy development; providing for a short title; providing for certain legislative findings and declaration of policy; providing for applicability of geothermal resources regulatory program and exceptions; providing for ownership of geothermal resources; defining terms; requiring a permit; establishing the jurisdiction of the secretary of the Department of Environmental Protection to regulate the geothermal resources regulatory program; providing for powers and duties of the secretary and minimum requirements of the regulatory program; providing for civil penalties; providing for administrative orders and injunctive relief; providing for administrative and judicial review of decisions and orders issued pursuant to the provisions of the program; and directing the secretary to propose a legislative rule to implement the geothermal resources regulatory program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. GEOTHERMAL ENERGY DEVELOPMENT.

§22-33-1. Short title.

This article shall be known and cited as the Geothermal Resources Act.

§22-33-2. Legislative findings; declaration of policy.

(a) The Legislature finds that:

(1) A geothermal resource is a reservoir inside the Earth from which heat can be extracted economically compared to other conventional sources of energy and used for generating electric power or any other suitable industrial, commercial, agricultural, residential, or domestic application in the future;

(2) Geothermal resources vary widely from one location to another depending on the temperature and depth of the resource; and

(3) The secretary should have broad authority to develop a regulatory program for geothermal resources to meet the economic needs of the state and to protect the public interest.

(b) The Legislature declares that the establishment of a new regulatory program to address the exploration, development, and production of geothermal resources in this state is in the public interest and should be done in a manner that protects the environment and our economy for current and future generations.

§22-33-3. Applicability; exceptions.

The provisions of this article shall apply to geothermal resources at temperatures and volumetric flow rates established by the secretary by legislative rule: *Provided*, That this article shall not apply to geothermal heating and cooling heat pump systems for private residential dwellings and farm buildings and any geothermal system regulated pursuant to section 10 of the Bureau of Public Health legislative rule for Water Well Design Standards, 64 CSR 46 or any horizontal system with a depth of less than 30 feet.

§22-33-4. Ownership of geothermal resources.

(a) Ownership of any geothermal resource is vested in the owner of the surface property overlying the geothermal resource unless severance of the geothermal resource is clear and

unambiguous in an instrument conveying or reserving ownership of the geothermal resource.

(b) No mineral or water estate shall be construed to include any geothermal resource unless clearly and unambiguously included in an instrument reserving or conveying the geothermal resource.

(c) Nothing in this article shall divest any person or the state of any right, title, or interest they might have in any geothermal resource.

(d) Nothing in this article may be construed as vesting in the secretary the jurisdiction to adjudicate property rights disputes.

§22-33-5. Definitions.

As used in this article:

(a) “Correlative right” means the right of each geothermal owner in a geothermal system to produce without waste his or her just and equitable share of the geothermal resource in the geothermal system.

(b) “Geothermal energy” means the usable energy that is produced or that can be produced from a geothermal resource.

(c) “Geothermal resource” means the natural heat of the earth and the energy, in whatever form, that is present in, associated with, or created by, or that may be extracted from, such natural heat, as determined by the secretary by legislative rule.

(d) “Geothermal system” means any aquifer, pool, reservoir, or other geologic formation containing geothermal resources.

(e) “Secretary” means the Secretary of the Department of Environmental Protection or his or her designee as provided in article one of this chapter.

§22-33-6. Geothermal resources permit required.

It is unlawful for any person to commence any work relating to the exploration, development, or production of geothermal

resources without first obtaining a well permit from the secretary pursuant to this article.

§22-33-7. Jurisdiction of the secretary; powers and duties; geothermal resources regulatory program.

(a) The secretary is vested with jurisdiction over all aspects of this article and has the exclusive authority to perform all acts necessary to implement this article.

(b) The secretary shall develop a regulatory program for the exploration, development, and production of geothermal resources in this state. The regulatory program promulgated by the secretary shall include, but not be limited to, the following:

(1) Application for a permit on a form prescribed by the secretary and containing any information the secretary considers is necessary to issue a decision on the permit application;

(2) A procedure for reviewing a permit application and issuance of decision to grant or deny a permit;

(3) A procedure allowing the public to comment on a permit application prior to issuance of a decision by the secretary;

(4) A permit term not to exceed five years;

(5) A procedure to renew or modify permits on forms prescribed by the secretary and containing any information the secretary considers is necessary to issue a decision on the renewal or modification;

(6) Fees for permit applications and for permit renewals and modifications;

(7) A procedure to suspend or revoke permits;

(8) Standards for developing, drilling, plugging, and reclaiming well sites;

(9) Guidelines for the safe disposal of spent geothermal fluids and other unusable or contaminated fluids generated in the production of geothermal resources;

(10) Standards to ensure protection of all water resources of this state; and

(11) Inspections and investigations to ensure compliance with any provision in this article or rule or permit or order issued by the secretary.

§22-33-8. Civil penalties.

Any person who knowingly violates any provision of this article or rule promulgated hereunder or order or permit issued pursuant to this article is liable for a civil penalty of not less than \$100 nor more than \$500 for each violation.

§22-33-9. Administrative orders; injunctive relief.

(a) When the secretary determines, on the basis of any information, that a person is in violation of any requirement of this article or rule promulgated thereunder, the secretary may issue an order stating with reasonable specificity the nature of the violation and requiring compliance within a reasonable specified time period, or the secretary may commence a civil action in the circuit court of the county in which the violation occurred or in the circuit court of Kanawha County for appropriate relief, including a temporary or permanent injunction. The secretary or the Environmental Quality Board may stay any order issued by the secretary until the order is reviewed by the Environmental Quality Board.

(b) In addition to the powers and authority granted to the secretary by this chapter to enter into consent agreements, settlements, and otherwise enforce this chapter, the secretary shall propose a rule for legislative approval to establish a mechanism for the administrative resolution of violations set forth in this article through consent order or agreement as an alternative to instituting a civil action.

§22-33-10. Appeal to Environmental Quality Board.

Any person aggrieved or adversely affected by an action, decision, or order of the secretary made and entered in accordance with the provisions of this article may appeal to the Environmental Quality Board pursuant to the provisions of §22B-1-1 *et seq.* of this code.

§22-33-11. Judicial review.

Any person or the secretary aggrieved or affected by a final order of the Environmental Quality Board is entitled to judicial review thereof pursuant to the provisions of §29B-1-9 of this code.

§22-33-12. Rulemaking.

The secretary shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement and carry out the provisions of this article.

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CHAPTER 127

**(Com. Sub. for H. B. 4488 - By Delegates Anderson, J. Kelly,
Hansen, and Young)**

[Passed March 11, 2022; in effect ninety days from passage.]

AN ACT to amend and reenact §22-11-10 of the Code of West Virginia, 1931, as amended, relating to coal mining operations, permitting, and fees paid to the Department of Environmental Protection; increasing certain defined fees for permitting actions; and establishing and defining certain new fees for permitting actions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water Quality Management Fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

(a) The special revenue fund designated the Water Quality Management Fund established in the State Treasury on July 1, 1989, is hereby continued.

(b) The permit application fees and annual permit fees established and collected pursuant to this section; any interest or surcharge assessed and collected by the secretary; interest accruing on investments and deposits of the fund; and any other moneys designated by the secretary shall be deposited into the Water Quality Management Fund. The secretary shall expend the proceeds of the Water Quality Management Fund for the review of

initial permit applications, renewal permit applications, and permit issuance activities.

(c) The secretary shall propose for promulgation, legislative rules in accordance with the provisions of § 29A-1-1 *et seq.* of this code, to establish a schedule of application fees for all applications except for surface coal mining operations as defined in § 22-3-13 of this code. The appropriate fee shall be submitted by the applicant to the department with the application filed pursuant to this article for any state water pollution control permit or national pollutant discharge elimination system permit. The schedule of application fees shall be designed to establish reasonable categories of permit application fees based upon the complexity of the permit application review process required by the department pursuant to the provisions of this article and the rules promulgated under this article: *Provided*, That no initial application fee may exceed \$15,000 for any facility nor may any permit renewal application fee exceed \$5,000. The department may not process any permit application pursuant to this article until the required permit application fee has been received.

(d) The secretary shall propose for promulgation legislative rules in accordance with the provisions of § 29A-1-1 *et seq.* of this code to establish a schedule of permit fees to be assessed annually upon each person holding a state water pollution control permit or national pollutant discharge elimination system permit issued pursuant to this article except for permits held by surface coal mining operations as defined in § 22-3-1 *et seq.* of this code. Each person holding a permit shall pay the prescribed annual permit fee to the department pursuant to the rules promulgated under this section: *Provided*, That no person holding a permit for a home aerator of 600 gallons and under shall be required to pay an annual permit fee. The schedule of annual permit fees shall be designed to establish reasonable categories of annual permit fees based upon the relative potential of categories or permits to degrade the waters of the state: *Provided, however*, That no annual permit fee may exceed \$5,000. The secretary may declare any permit issued pursuant to this article void when the annual permit fee is more than 90 days past due pursuant to the rules promulgated under this

section. Voiding of the permit will only become effective upon the date the secretary mails, by certified mail, written notice to the permittee's last known address notifying the permittee that the permit has been voided.

(e) The secretary shall file a quarterly report with the Joint Committee on Government and Finance setting forth the fees established and collected pursuant to this section.

(f) On July 1, 2022, and each year thereafter, a \$1,000 fee shall be assessed for permit applications and a \$3,000 fee shall be assessed for permit renewals submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. On July 1, 2022, and each year thereafter, a \$2,000 fee shall be assessed for application for major permit modifications and a \$1,000 fee for minor permit modifications submitted pursuant to this article for surface coal mining operations, as defined in § 22-3-1 *et seq.* of this code. On July 1, 2022, and each year thereafter, a \$3,000 fee shall be assessed for application for permit reissuance and a \$2,000 fee for permit transfer submitted pursuant to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. Beginning July 1, 2022, and every year thereafter, an annual permit fee of \$2,000 shall be assessed on the issuance anniversary dates of all permits issued pursuant to this article for surface coal mining operations as defined in § 22-3-1 *et seq.* of this code. Beginning July 1, 2022, and each year thereafter, an application for a water quality certification for activities covered by United States Army Corps of Engineers permits issued pursuant to 33 U.S.C. § 1344 and 33 C.F.R. Parts 323 or 330, in accordance with the legislative rules entitled Rules for Individual State Certification of Activities Requiring a Federal Permit, 47 C.F.R. 5A, must be accompanied by a \$500 fee. For all other categories of permitting actions pursuant to this article related to surface coal mining operations, the secretary shall propose for promulgation legislative rules in accordance with the provisions of §29A-1-1 *et seq.* of this code to establish a schedule of permitting fees.



CHAPTER 128

(Com. Sub. for H. B. 4491 - By Delegates Anderson, J. Kelly, Ferrell, Hansen, Wamsley, Holstein, Clark, Hott, and Young)

[Passed March 1, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §22-11A-3 and §22C-9-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §22-11B-1, §22-11B-2, §22-11B-3, §22-11B-4, §22-11B-5, §22-11B-6, §22-11B-7, §22-11B-8, §22-11B-9, §22-11B-10, §22-11B-11, §22-11B-12, §22-11B-13, §22-11B-14, §22-11B-15, §22-11B-16, §22-11B-17, §22-11B-18, §22-11B-19, §22-11B-20, and §22-11B-21, all relating to regulating the permitting, drilling, operation, and closure of injection wells for the sequestration of carbon dioxide in underground storage reservoirs; declaring legislative purpose; defining terms; amending and specifying the scope of the prior program; providing an option for holders of pre-existing permits to pursue permit modifications under the prior or new law; establishing requirements for permitting; specifying application requirements and fees; clarifying that the provisions apply only to underground carbon dioxide sequestration operations and facilities; directing and authorizing the promulgation of rules by the Department of Environmental Protection and the Oil and Gas Conservation Commission; providing for public notice, participation, and hearings; authorizing certain conditions in permits and orders; preserving other existing powers of the secretary and the commission; preserving rights of existing mineral owners and authorizing cooperative agreements; declaring that carbon dioxide injected into an underground storage facility is not a pollutant and not a public nuisance; requiring permit holders to provide and update identification of a local agent; excluding enhanced oil, natural gas, or coalbed methane recovery projects

using carbon dioxide injection from requirements of underground carbon dioxide storage permits; specifying requirements for completion of an underground carbon dioxide storage project; directing transfer of carbon dioxide ownership to surface owners upon completion of project; providing for all liability and regulatory responsibilities to transfer to the state upon completion; establishing state responsibility for maintenance and monitoring after completion; establishing the Carbon Dioxide Storage Facility Administrative Fund and the Carbon Dioxide Storage Facility Trust Fund as special revenue accounts and describing the source of revenue, authorized purposes and uses of the funds; providing a process for completion of underground carbon dioxide storage projects; requiring fees for underground storage of carbon dioxide; limiting state and permittee liability; authorizing the secretary to make determinations of the amount of carbon dioxide able to be sequestered at a location; specifying local filing requirements; defining ownership of pore space formations; authorizing entry onto lands to conduct seismic surveys and establishing requirements and conditions therefore; requiring permit applicants and storage facility operators to identify and obtain consent from pore space owners; providing for acquisition and pooling of interests of nonconsenting pore space owners for the construction and operation of a storage facility; providing for acquisition and pooling of interests of unknown and unlocatable pore space owners for the construction and operation of a storage facility; providing for just and reasonable compensation for unknown, unlocatable, and nonconsenting pore space owners; providing for hearings to establish interests of pore space owners in reservoirs; providing for management of funds of unknown and unlocatable owners; limiting and establishing requirements for surface use; expanding the jurisdiction of the Oil and Gas Conservation Commission; providing for reporting; and providing for judicial review.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. CARBON DIOXIDE SEQUESTRATION PILOT PROGRAM.**§22-11A-3. Prohibition of underground carbon dioxide sequestration without a permit; injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article, application to existing sequestration sites.**

(a) The provisions of §22-11-1 *et seq.* of this code apply to all permits issued pursuant to this article except, where the express provisions of this article conflict with the provisions of §22-11-1 *et seq.* of this code, the express provisions of this article control.

(b) Except as set forth in subsection (c) of this section, no person shall engage in underground carbon dioxide sequestration in this state unless authorized by a permit issued by the department in accordance with §22-11-1 *et seq.* or §22-11B-1 *et seq.* of this code.

(c) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other minerals pursuant to a project approved by the department shall not be subject to the provisions of this article.

(d) The provisions of this article apply to all permits issued and to all applications for permits submitted prior to the effective date of §22-11B-1 *et seq.* of this code. If the permit holder for an underground carbon dioxide sequestration facility that was granted a permit prior to the effective date of §22-11B-1 *et seq.* of this code seeks a modification of that permit after that article became effective, then the permit holder shall have the option to proceed either pursuant to the provisions of this article or the provisions of §22-11B-1 *et seq.* of this code.

(e) Any entity owning or operating an underground carbon dioxide sequestration facility which has commenced construction on or before the effective date of this article is hereby authorized to continue operating until such time as the secretary has established operational and procedural requirements applicable to

such existing facilities and the entity owning or operating such facility has had a reasonable opportunity to comply with those requirements.

ARTICLE 11B. UNDERGROUND CARBON DIOXIDE SEQUESTRATION AND STORAGE.

§22-11B-1. Statement of Purpose.

It is the purpose of this article to:

(1) Foster, encourage, promote, and establish a legal and regulatory framework for the development and approval of underground carbon dioxide sequestration facilities;

(2) Designate a state agency responsible for establishing standards and rules for the development and approval of underground carbon dioxide sequestration and storage facilities; and

(3) Safeguard, protect and enforce the correlative rights of operators, mineral owners, pore space owners, and surface owners in that each may obtain just and reasonable compensation for their respective contribution for underground carbon dioxide sequestration facilities.

§22-11B-2. Definitions.

Unless the context clearly requires a different meaning, as used in this article:

(1) “Carbon dioxide” means carbon dioxide produced by anthropogenic sources which is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain a stored gas;

(2) “Carbon dioxide sequestration” or “carbon dioxide storage” means the injection of carbon dioxide and associated constituents into subsurface geologic reservoirs intended to provide for the long-term containment of a gaseous, liquid, or supercritical carbon

dioxide stream in subsurface geologic formations and thereby prevent its release into the atmosphere;

(3) “Class VI underground injection control” or “Class VI UIC” refers to the classification by the US EPA of wells for injection of substances or materials into deep rock formations and, specifically, to the class of wells that are used to inject carbon dioxide into underground rock formations to reduce carbon dioxide emissions to the atmosphere and mitigate climate change;

(4) “Class VI underground injection control permit,” “Class VI UIC permit,” or “Class VI permit” means a permit to drill injection wells and to conduct carbon dioxide sequestration at a specified site;

(5) “Commission” means the Oil and Gas Conservation Commission established pursuant to §22C-9-1 *et seq.* of this code.

(6) “Completion certificate” means a Certificate of Underground Carbon Dioxide Storage Project Completion;

(7) “Excursion” means the migration of carbon dioxide at or beyond the designated boundary of a carbon dioxide sequestration site;

(8) “Permit” means a Class VI underground injection control permit issued by the secretary or by the US EPA, authorizing a person or business entity to drill an injection well and to construct and operate a carbon dioxide sequestration facility;

(9) “Pore space” means a cavity or void, whether naturally or artificially created, in a subsurface stratum and is also known as container space or storage rights;

(10) “Reservoir” means a subsurface stratum, formation, aquifer, cavity, or void, whether naturally or artificially created, including oil and gas reservoirs, saline formations, and coal seams suitable for, or capable of being made suitable for, injecting and storing carbon dioxide;

(11) “Secretary” means the Secretary of the Department of Environmental Protection;

(12) “Storage facility” or “sequestration facility” means the reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a carbon dioxide sequestration project, but does not include pipelines used to transport carbon dioxide to the storage facility;

(13) “Storage operator” means a person applying for or holding a permit until the issuance of a completion certificate for the relevant storage facility;

(14) “Storage reservoir” means a reservoir proposed, authorized, or used for storing carbon dioxide;

(15) “UIC” means underground injection control;

(16) “Unknown or unlocatable owner” means a person vested with a present ownership interest in the pore space whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission, the sheriff, the assessor, and the clerk of the circuit court in the county or counties in which the property is located, and includes unknown heirs, successors and assigns known to be alive;

(B) A reasonable inquiry in the vicinity of the owner’s last known place of residence;

(C) A diligent inquiry into known interest owners in the same tract; and

(D) A reasonable review of available Internet resources commonly utilized by the industry; and

(17) “US EPA” means United States Environmental Protection Agency.

§22-11B-3. Prohibition of underground carbon dioxide sequestration without a permit; injection of carbon dioxide for the purpose of enhancing the recovery of oil or other minerals not subject to the provisions of this article.

(a) It is unlawful for any person to commence work on, or to operate, a carbon dioxide sequestration facility or storage site without first securing a Class VI underground injection control permit from the secretary or from the US EPA.

(b) The injection of carbon dioxide for purposes of enhancing the recovery of oil or other minerals pursuant to a project approved by the secretary shall not be subject to the provisions of this article.

(c) If an oil, natural gas or coalbed methane well operator proposes to convert its operations to carbon dioxide sequestration, then the underground carbon dioxide sequestration facility shall be regulated pursuant to this article and §22-11-1 *et seq.* of this code.

(d) All applications for permits submitted after the effective date of this article shall be governed by the provisions of this article. Permits issued and applications submitted prior to the effective date of this article shall be governed by the provisions of §22-11-1 *et seq.* and §22-11A-1 *et seq.* of this code. If the holder of a Class VI underground injection control permit or other carbon dioxide sequestration permit, granted prior to the effective date of this article, seeks a modification of that permit after this article becomes effective, then the permit holder shall have the option to proceed either according to the provisions of this article or the provisions of §22-11A-1 *et seq.* of this code.

§22-11B-4. Permit application requirements and contents; application fee, required findings, and rulemaking.

(a) Every permit application filed under this article shall be on a form as may be prescribed by the secretary, shall be verified, and shall contain all information specified by legislative rule.

(b) Upon filing an application for a permit, an applicant shall:

(1) Pay a fee in an amount set by the secretary. The amount of the fee shall be set by rule and shall be based on the secretary's anticipated cost of processing applications for permits, orders, or determinations under this article. The fee shall be deposited in the Carbon Dioxide Storage Facility Administrative Fund.

(2) Pay to the secretary the costs the secretary incurs in publishing notices of applications and notices for hearings on applications submitted under this article.

(c) Before a permit application may be approved, the secretary shall determine whether the proposed storage facility contains commercially valuable minerals and, if it does, a permit may be issued only if the secretary is satisfied that the interests of the mineral owners or mineral lessees will not be adversely affected or have been addressed in an written agreement entered into by the mineral owners, mineral lessees, and the storage operator;

(d) No permit shall be issued under this article unless the secretary finds:

(1) That the application and the proposed operations comply with all requirements established by the secretary, including any applicable underground injection rules, and with all applicable provisions of state and federal law;

(2) That the storage facility is suitable and feasible for carbon dioxide injection and sequestration;

(3) That the storage operator has made a good-faith effort to obtain the consent of all persons who own the storage reservoir's pore space;

(4) That the storage operator has obtained the written consent of persons who own at least 75 percent of the storage reservoir's pore space and have at least begun the process to obtain the remaining interests through the commission;

(5) That the proposed storage facility will not adversely affect surface waters or formations containing fresh water;

(6) That the storage facility will not unduly endanger human health or the environment;

(7) That adequate horizontal and vertical boundaries of the storage reservoir are defined, including buffer areas, to ensure that the storage facility is operated safely and prudently;

(8) That the storage operator will establish monitoring facilities and protocols to assess the location and migration of carbon dioxide injected for storage and to ensure compliance with all permit, statutory, and administrative requirements;

(9) That all nonconsenting pore space owners are or will be justly and reasonably compensated in accordance with the rules and procedures set forth in or promulgated under this article by the secretary and the commission; and

(10) That the storage facility is in the public interest.

(e) To the extent not inconsistent with state and federal regulations, the secretary shall render a decision on a permit application within one year after submission of a complete application.

(f) The secretary shall propose rules for legislative approval, pursuant to the provisions of §29A-3-1 *et seq.* of this code, detailing additional requirements for inclusion in a permit application, such as:

(1) Site characterization requirements;

(2) Injection well construction requirements for materials that are compatible with and can withstand contact with carbon dioxide over the life of a carbon dioxide sequestration project;

(3) Well operation requirements;

(4) Comprehensive monitoring requirements that address all aspects of well integrity, carbon dioxide injection and storage, as well as air and ground water quality during the injection operation and the post-injection site care period;

(5) Financial responsibility requirements assuring the availability of funds for the life of a carbon dioxide sequestration project (including post-injection site care and emergency response); and

(6) Reporting and recordkeeping requirements that provide project-specific information to continually evaluate the site operations and confirm environmental protection.

§22-11B-5. Public participation in permit process, notices, public hearing.

(a) Public notice of an application for a permit required under this article shall allow at least 30 days for public comment. The secretary shall specify the required contents of the public notice.

(b) The secretary shall send the public notice to the applicant, who shall be responsible for publication of a Class 1 legal advertisement of the notice by a date and in a paper specified by the secretary. Upon publication, the applicant shall send the secretary a copy of the certificate of publication. The costs of publication shall be borne by the applicant.

(c) Notice of an application for a permit shall be served to each mineral lessee, mineral owner, and pore space owner with a legal interest that involves the storage reservoir.

(d) Notice of an application for a permit shall be served to each surface owner of land overlying the storage reservoir.

(e) Notice of an application for a permit shall be served to any additional persons that the secretary requires.

(f) Service of individual notices required by this section shall be through personal service, by registered mail, or by any method of delivery that requires a receipt or signature confirmation.

(g) The secretary and/or the commission shall hold a public hearing whenever he or she finds, on the basis of requests, a significant degree of public interest of issues relevant to the draft permit. The secretary and/or the commission may also hold a

public hearing at his or her discretion if a hearing may assist in clarifying one or more issues involved in the permit decision. Should a public hearing be held, notice of the hearing shall be provided in the same manner as set forth above with respect to public notice of the preparation of a draft permit.

§22-11B-6. Permit and order provisions; identification of agent.

(a) The secretary may include in any permit or order all things necessary to carry out this article's objectives and to protect and adjust the respective rights and obligations of persons affected by a carbon dioxide sequestration facility.

(b) Every well operator required to designate an agent under this article shall, within five days after the termination of the designation, notify the secretary of the termination and designate a new agent.

§22-11B-7. Additional rulemaking authority.

In addition to the rules specified in §22-11B-4 of this code, the secretary and the commission may promulgate such emergency, interpretive, legislative, and procedural rules, pursuant to the provisions of §29A-3-1 *et seq.* of this code, useful or necessary to carry out the requirements of this article, including, but not limited to:

(1) The issuance of Underground Carbon Dioxide Storage Facility Completion Certificates;

(2) The administration of the Carbon Dioxide Storage Facility Administrative Fund and the Carbon Dioxide Storage Facility Trust Fund;

(3) The issuance of determinations of the amounts of carbon dioxide stored pursuant to individual underground injection control permits issued for that purpose, based upon requests for storage determination;

(4) The issuance of orders allowing for seismic studies and other steps to explore for suitable locations of carbon dioxide geologic storage; and

(5) The issuance of collective storage orders as a part of the development of a proposed carbon dioxide sequestration project.

§22-11B-8. Environmental protection, other law.

(a) For the purposes of this article and in all other respects, any carbon dioxide injected and sequestered in accordance with an underground injection control permit issued by the secretary shall not be considered a pollutant and the operation and existence of such a carbon dioxide sequestration facility shall not be considered a public nuisance.

(b) The secretary's and the commission's authority as set forth in this article shall not otherwise limit the authority or jurisdiction of the secretary and the commission in any manner.

§22-11B-9. Oil, natural gas and coalbed methane activities at carbon dioxide sequestration sites; extraction of sequestered carbon dioxide.

(a) Nothing in this article shall be deemed to affect the otherwise lawful right of a mineral owner to drill or bore through a carbon dioxide storage facility if done in accordance with the secretary's underground injection control permit rules or any other applicable legal requirements which are intended to protect the carbon dioxide storage facility against the escape of carbon dioxide.

(b) Nothing in this article is intended to impede or impair the ability of an oil, natural gas, or coalbed methane operator to inject carbon dioxide through an approved enhanced oil, natural gas, or coalbed methane recovery project and to establish, verify, register, and sell emission reduction credits associated with the project.

(c) Subject to compliance with any applicable underground injection control regulations or permit, the Office of Oil and Gas shall have jurisdiction to review and approve of any subsequent

extraction of sequestered carbon dioxide from a permitted underground carbon dioxide storage facility that is intended for commercial or industrial purposes.

§22-11B-10. Cooperative agreements.

The secretary is authorized to enter into cooperative agreements with other governments or government entities for the purpose of regulating carbon dioxide sequestration projects that extend beyond state regulatory authority under this article.

§22-11B-11. Ownership of carbon dioxide.

The storage operator shall be the owner of the carbon dioxide injected into and stored in a storage reservoir approved under this article and shall maintain ownership and control until the secretary issues a Certificate of Underground Carbon Dioxide Storage Project Completion. While the storage operator has ownership, the operator is liable for any damage the carbon dioxide may cause, including damage caused by carbon dioxide that escapes from the storage facility.

§22-11B-12. Certificate of project completion, release, transfer of title and custody, filing.

(a) After carbon dioxide injections into a reservoir end and upon application by the storage operator demonstrating compliance with this article, the secretary may issue a Certificate of Underground Carbon Dioxide Storage Project Completion (“completion certificate”).

(b) The completion certificate may only be issued after public notice and hearing. The secretary shall establish notice requirements for this hearing by legislative rule.

(c) The completion certificate may not be issued until at least 10 years after carbon dioxide injections end.

(d) The completion certificate may only be issued if the storage operator:

(1) Is in full compliance with all laws and other requirements governing the storage facility, including, without limitation, the terms of any underground injection control permit associated with the facility and other applicable requirements;

(2) Demonstrates that it has addressed all pending claims regarding the storage facility's operation; and

(3) Demonstrates that the storage reservoir is reasonably expected to retain the carbon dioxide stored in it.

(e) As of the effective date of a completion certificate:

(1) Ownership of the stored carbon dioxide transfers, without payment of any compensation, to the owners of the pore space as established in §22-11B-18 of this code;

(2) Ownership acquired by the pore space owners under subdivision (e)(1) of this section includes all rights and interests in the stored carbon dioxide and any associated leasing rights; *Provided*, That all liability and regulatory requirements associated with the stored carbon dioxide shall become the responsibility of the state and the state shall defend, indemnify, and hold harmless the pore space and surface owners against all claims using only funds from the Carbon Dioxide Storage Facility Trust Fund;

(3) The storage operator and all persons who transported and/or generated any stored carbon dioxide are released from all liability and regulatory requirements associated with the storage facility;

(4) Any bonds posted by the storage operator shall be released; and

(5) Notwithstanding ownership of the stored carbon dioxide in the pore space owners as provided herein, monitoring, and managing the storage facility shall become the state's responsibility to be overseen by the secretary utilizing only money from the Carbon Dioxide Storage Facility Trust Fund until such time as the federal government assumes responsibility for the long-term monitoring and management of storage facilities.

(f) The secretary shall require that a copy of the completion certificate and a survey of the storage field be filed with the county recorder in the county or counties where the carbon dioxide storage facility is located.

§22-11B-13. Carbon Dioxide Storage Facility Administrative Fund.

(a) There is hereby created in the State Treasury a special revenue fund to be known as the Carbon Dioxide Storage Facility Administration Fund. Expenditures from the fund shall be made by the secretary for the purposes set forth in this article, and are not authorized from collections, but are to be made only in accordance with appropriation from the Legislature and §12-3-1 *et seq.* of this code. The fund may only be used for the purpose of payment of all expenses of the department in processing permit and certificate applications; regulating storage facilities during their construction, operation, and pre-closure phases; and making storage amount determinations under §22-11B-17 of this code. Any balance remaining in the fund at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue fund. The moneys accrued in the fund, any interest earned thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section.

(b) The secretary may, through a cooperative agreement with another agency, use money from the fund to compensate the cooperating agency for expenses that cooperating agency incurs in carrying out regulatory responsibilities that agency may have over a storage facility.

§22-11B-14. Application fee, deposit, use in cooperative regulatory functions.

Permit applicants and operators seeking completion certificates shall pay the secretary an application fee, established by legislative rule, based upon each ton of carbon dioxide stored or to be stored at the facility. This fee shall be deposited in the Carbon Dioxide Storage Facility Administrative Fund.

§22-11B-15. Carbon Dioxide Storage Facility Trust Fund.

(a) There is hereby created in the State Treasury a special revenue fund to be known as the Carbon Dioxide Storage Facility Trust Fund. Expenditures from the fund shall be made by the secretary for the anticipated expenses associated with the long-term monitoring and management of closed storage facilities, and are not authorized from collections, but are to be made only in accordance with appropriation from the Legislature and §12-3-1 *et seq.* of this code. Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund, but remains in the special revenue fund. The moneys accrued in the fund, any interest earned thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section.

(b) The secretary may, through a cooperative agreement with another agency, use money from the fund to compensate the cooperating agency for expenses that cooperating agency incurs in carrying out regulatory responsibilities that agency may have over a storage facility.

§22-11B-16. Operation fee, use, report to legislature.

(a) Storage operators shall pay the secretary a fee on each ton of carbon dioxide injected for storage. The fee shall be in the amount set by legislative rule. The amount shall be based on the contribution of the storage facility and the source of the carbon dioxide to the energy and agriculture production economy of West Virginia and the secretary's anticipated expenses associated with the long-term monitoring and management of closed storage facilities. This fee shall be deposited in the Carbon Dioxide Storage Facility Trust Fund.

(b) The secretary shall file with the Legislature's Joint Committee on Government and Finance a report discussing whether the amount in the Carbon Dioxide Storage Facility Trust Fund and fees being paid into it are sufficient to satisfy the fund's

objectives. The first report is due December 31, 2025, and subsequent reports are due every four years thereafter.

§22-11B-17. Determining storage amounts, carbon credits, fee.

(a) The secretary, under procedures and criteria developed by legislative rule, shall determine the amount of injected carbon dioxide stored in a reservoir that has been or is being used for an enhanced oil or gas recovery project. The secretary may also make such a determination for carbon dioxide stored under this article.

(b) The storage amounts determined by the secretary under subsection (a) of this section may be used for such matters as establishing the amounts of carbon credits, allowances, trading, emissions allocations, and offsets, and for other similar purposes.

(c) The secretary may charge a reasonable fee to the person requesting a storage determination. The fee shall be set by legislative rule.

(d) Fees the secretary receives for storage determinations shall be deposited into the Carbon Dioxide Storage Facility Administrative Fund.

§22-11B-18. Subsurface pore space or container space.

(a) Title to pore space in all strata underlying the surface of lands and waters is vested in the owner of the overlying surface estate.

(b) A conveyance of title to the surface of real property conveys the pore space in all strata underlying the surface of the real property.

(c) Title to pore space may not be severed from title to the surface of the real property overlying the pore space. An instrument or arrangement that seeks to sever title to pore space from title to the surface is void and unenforceable as to the severance of the pore space from the surface interest.

(d) This article does not affect transactions before the effective date of this article, where the terms are clear and unambiguous upon the face of the instruments which severed pore space from title to the surface estate. However, there shall be a rebuttable presumption that for all transactions prior to the effective date of this article, that the pore space remains vested with the surface owner unless there was a clear and unambiguous reservation, conveyance, and/or severance of the pore space from the surface upon the face of the instruments.

(e) In the relationship between a severed mineral owner and a pore space estate, this article does not change or alter the common law, as it relates to the rights belonging to, or the dominance of, the mineral estate.

§22-11B-19. Co-tenants, ownership of pore space by multiple co-tenants and collective storage.

(a) If a storage operator does not obtain the consent of all persons who own the storage reservoir's pore space to the construction and operation of an underground carbon dioxide storage facility, the commission may require that the pore space owned by nonconsenting owners be included in a storage facility and be subject to geologic storage.

(1) The permit applicant and prospective storage operator shall negotiate with the pore space owners and acquire rights needed to access the pore space.

(2) If, after good-faith negotiation, the applicant or operator cannot locate or cannot reach an agreement with all necessary pore space owners of a tract or parcel but has secured written consent or agreement from the owners of at least 75 percent of the interests in the pore space of the tract or parcel for the storage facility, all of the pore space of said interests for which an agreement has not been reached shall be declared to be included within the proposed storage facility if the commission finds that the requirements of this section have been met. For the purposes of this section, any unknown or unlocatable owners shall be deemed to have consented or agreed to the use of said pore space, provided that the storage operator has complied with the publication requirements of this article.

(3) Except for temporary access for seismic studies and in cases of emergency, the commission or the secretary may not allow any surface disturbance on any surface tract or tracts overlying the pore space of a non-consenting owner.

(b) *Seismic study.* — It is the policy of this State to allow for the exploration for geologic storage. If an operator is unable to reasonably negotiate with a surface owner for the right to conduct seismic study on lands owned by the surface owner, the secretary or the commission is authorized to issue an order for the entry onto such lands by the operator. In such instance, the operator shall notify the owner or owners 15 days prior to entry, pay the surface owner just and reasonable compensation as established by the secretary or the commission, and reasonably repair all damages to the surface and anything thereon resulting from entry. Just and reasonable compensation shall include, without limitation, compensation for all unrepairable damages to the surface and anything thereon. Any order for entry shall establish an expiration date after a reasonable duration but also allow for reauthorization as needed. The operator shall post a bond with the secretary before entry to be used as compensation to the surface owner but shall not limit the amount of compensation to be paid to the surface owner for any damages to the surface and anything thereon. Further, any such seismic study conducted by this section shall be limited to geologic storage and shall remain confidential and proprietary. The operator shall defend, indemnify, and hold harmless the property owner for all claims arising out of any entry onto the property by the operator, its contractors, and its agents, except those claims arising from the intentional acts of a property owner.

(c) *Collective storage.* —

(1) The storage operator shall provide a list to the commission of all persons reasonably known to own an interest in pore space proposed to be collectively used in an application to the commission for a collective storage order.

(2) If after applying the provisions of §22-11B-19(a), the applicant or operator cannot locate, reach an agreement, or receive a commission order for all necessary pore space in a storage

reservoir, but has under the provisions of §22-11B-19(a), secured written consent, agreement, or a commission order for at least 75 percent of the pore space acreage in the storage reservoir, all of the pore space in the storage reservoir shall be declared to be included within the proposed storage facility if the commission finds that the requirements of this section have been met. For the purposes of this section, any unknown or unlocatable owners shall be deemed to have consented or agreed to the use of said pore space, provided that the storage operator has complied with the publication requirements of this article. A collective storage order shall be made only after the commission provides notice to all pore space owners proposed to be included within the order.

(3) The secretary shall set and collect a fee adequate to pay expenses associated with the conduct of administrative hearings for the collective storage of pore space and reimburse the commission for said expenses.

(4) If the proposed collective storage order concerns pore space with unknown or unlocatable owners, the storage operator shall publish one notice in the newspaper of the largest circulation in each county in which the pore space is located. The notice shall appear no more than 30 days prior to the initial application for the collective storage order. The applicant shall file proof of notice with the commission concurrently with the application. The notice shall:

(A) State that an application for a collective storage order has been filed with the commission;

(B) Describe the pore space proposed to be collectively used;

(C) In the case of an unknown pore space owner, indicate the name of the last known owner;

(D) In the case of a unlocatable pore space owner, identify the owner and the owner's last known address; and

(E) State that any person claiming an interest in the pore space proposed to be collectively used should notify the commission and

the storage operator at the published address within twenty (20) days of the publication date.

(5) A collective storage order shall authorize the long-term storage of carbon dioxide beneath the tract or portion thereof. The order shall also specify, where necessary, the location of carbon injection wells, outbuildings, roads, monitoring equipment, and access to them. The collective storage order shall identify the compensation to be paid to unknown, unlocatable, and nonconsenting pore space owners and the basis for valuation of the collective interest. The commission may consider evidence submitted by nonconsenting surface and nonconsenting pore space owners as to the valuation of their interest.

(6) Except for temporary access for seismic studies and in cases of emergency, the commission or the secretary shall not allow any surface disturbance on any surface tract or tracts overlying the pore space of a non-consenting owner.

(7) A certified copy of any collective storage order and a survey of the storage field shall be recorded by the operator in the office of the county clerk of the county or counties in which all or any portion of the collective tract is located. The commission shall attempt to provide a copy of the collective storage order to those required to be noticed. For purposes of this section, any unknown or unlocatable owners shall be deemed to have received notice, provided that the operator has complied with the publication requirements of subdivision (c)(3) of this section with respect to the unknown or unlocatable owners.

(8) The commission shall provide a certified copy of any collective storage order to the secretary.

§22-11B-20. Funds to be held in trust for unknown or unlocatable owners.

The storage operator shall hold all funds of unknown or unlocatable owners in trust in an interest bearing account and shall transfer said funds as unclaimed property to the State Treasurer pursuant to §36-8-1 *et seq.*, the Uniform Unclaimed Property Act.

§22-11B-21. Judicial Review.

Any person aggrieved by a final decision of the department or the commission under this article is entitled to review of such final decision in accordance with the applicable provisions of §29A-1-1 of this code, State Administrative Procedures Act, §22-9-1 *et seq.* of this code, and in the Circuit Court of Kanawha County or any other county where the property is located.

ARTICLE 9. OIL AND GAS CONSERVATION.***§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.**

(a) The “oil and gas conservation commission” shall be composed of five members. The director of the Department of Environmental Protection and the chief of the office of oil and gas shall be members of the commission *ex officio*. The remaining three members of the commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and may not be employees of the Department of Environmental Protection. Of the three members appointed by the Governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the federal energy regulatory commission. The third appointee shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and shall serve as commissioner and as chair of the commission.

(b) The members of the commission appointed by the Governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the Governor shall serve until the members successor has been appointed and

*NOTE: This section was also amended by S. B. 694 (Chapter 121), which passed subsequent to this act.

qualified. Members may be appointed by the Governor to serve any number of terms. The members of the commission appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership appointed by the Governor shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and such appointment shall be made by the Governor within 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. A commission member's appointment shall be terminated as a matter of law if that member fails to attend three consecutive meetings. The Governor shall appoint a replacement within 30 days of the termination.

(c) The commission shall meet at such times and places as shall be designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the chief of the office of oil and gas. Notification of each meeting shall be given in writing to each member by the chair at least 14 calendar days in advance of the meeting. Three members of the commission, at least two of whom are appointed members, shall constitute a quorum for the transaction of any business.

(d) The commission shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses incurred in the discharge of official duties.

(e) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority over all persons and property necessary

therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commission's duty to prevent waste shall be paramount.

(f) Without limiting the commission's general authority, the commission shall have specific authority to:

(1) Regulate the spacing of deep wells;

(2) Make and enforce reasonable rules and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission and otherwise administer the provisions of this article;

(3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams and other pertinent documents, and administer oaths and affirmations to such witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of the commission's duties under the provisions of this article; and

(4) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the chief of office of oil and gas, to the Department of Environmental Protection and to any other agency of state government having responsibility related to the oil and gas industry.

(g) The commission may delegate to the commission staff the authority to approve or deny an application for new well permits, to establish drilling units or special field rules if:

(1) The application conforms to the rules of the commission; and

(2) No request for hearing has been received.

(h) The commission may not delegate its authority to:

(1) Propose legislative rules;

(2) Approve or deny an application for new well permits, to establish drilling units or special field rules if the conditions set forth in subsection (g) of this section are not met; or

(3) Approve or deny an application for the pooling of interests within a drilling unit.

(i) Any exception to the field rules or the spacing of wells which does not conform to the rules of the commission, and any application for the pooling of interests within a drilling unit, must be presented to and heard before the commission.

(j) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code concerning mineral development by cotenants for all wells at all depths and §22-11B-1 *et seq.* of this code concerning underground carbon dioxide sequestration storage facilities at all depths. The commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper.

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CHAPTER 129

**(H. B. 4566 - By Delegates Hanshaw (Mr. Speaker),
McGeehan, Steele, Rohrbach, Anderson, J. Kelly, Toney, D.
Kelly, Hott and Hamrick)**

[Passed March 11, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22C-1-6a, relating generally to additional powers of the West Virginia Water Development Authority; providing for the creation and administration of the Economic Enhancement Grant Fund; establishing sources of revenue for the fund; allowing administration costs; establishing a matching grant subaccount; establishing an enhancement grant subaccount; providing purposes for the fund and the subaccounts; providing for the participation of the West Virginia Infrastructure and Jobs Development Council, the West Virginia Department of Economic Development and the Secretary of Tourism; authorizing the Water Development Authority to enter into certain grant agreements; and requiring audit process and report to the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-6a. Additional powers of the West Virginia Water Development Authority; Creation of Economic Enhancement Grant Fund.

(a) The Water Development Authority shall create and establish a special fund of moneys made available by appropriations, grants, contributions or other sources to be known

as the West Virginia Economic Enhancement Grant Fund. This fund shall be governed, administered and accounted for by the directors, officers and management staff of the Water Development Authority as a special program account separate and distinct from any other money, fund or funds owned and/or managed by the Water Development Authority. The Economic Enhancement Grant Fund shall consist of subaccounts as deemed necessary by the Water Development Authority for the deposit of any appropriations, grants, gifts, contributions or other moneys received by the Economic Enhancement Grant Fund from any source, public or private, and all income earned on moneys held in the Economic Enhancement Grant Fund. Amounts in the Economic Enhancement Grant Fund shall be administered by the Water Development Authority separate and apart from its other assets and programs. Amounts in the Economic Enhancement Grant Fund may not be transferred to any other fund or account or used for the payment of any other programs of the Water Development Authority except the Water Development Authority may use funds in the Economic Enhancement Grant Fund to reimburse itself for any administration costs incurred by it. Pending distribution of any money in the Economic Enhancement Grant Fund the Water Development Authority shall invest and reinvest the money subject to the limitations of §22C-1-15 of this code.

(b) The Water Development Authority shall establish the Matching Grant Subaccount in the Economic Enhancement Grant Fund to be expended to provide the local or state match for any federal or other programs that require a match for projects and infrastructure projects as defined in §31-15A-2 of this code and where the commitment of the matching funds is required to be made and submitted with the application for the federal or other grant. Upon receipt of a recommendation from the West Virginia Infrastructure and Jobs Development Council and/or the West Virginia Department of Economic Development, the Water Development Authority shall review the application of a governmental agency or not-for-profit and if the governmental agency or not-for-profit is eligible for the federal or other matching grant funding, set aside moneys in the subaccount and provide a written binding commitment to the governmental agency or not-

for-profit to submit with its application. If the federal or other programs subsequently approve funding to the governmental agency or not-for-profit, the Water Development Authority shall enter into a grant agreement with the governmental agency or not-for-profit providing the grant funding if the governmental agency or not-for-profit is in compliance with §12-4-14 of this code. The Water Development Authority shall disperse funds under the grant agreement from time to time to comply with the terms of the other funding sources.

(c) The Water Development Authority shall establish the Enhancement Grant Subaccount in the Economic Enhancement Grant Fund to be expended as grants to governmental agencies or not-for-profits to cover all or a portion of the costs of projects or infrastructure projects as defined in §31-15A-2 of this code and more specifically:

(1) To cover the cost of bid overruns for projects and infrastructure projects approved by the West Virginia Infrastructure and Jobs Development Council;

(2) To cover all or a portion of the costs of extending or expanding water, stormwater and/or wastewater service to enhance economic development and/or tourism when recommended by the Secretary of Commerce, the Secretary of Economic Development and/or the Secretary of Tourism;

(3) To cover the costs of facilitating the merger and/or consolidation of water or wastewater providers where all parties to the proposed merger make joint applications to the West Virginia Infrastructure and Jobs Development Council;

(4) To cover the cost of water, stormwater and/or wastewater projects for governmental agencies where the combined rates for water, stormwater and wastewater exceed 1.5% of the governmental agency's Median Household Income;

(5) To cover the startup costs for governmental utilities that are providing or extending service to unserved areas of the State;

(6) To provide a commitment to cover the difference between the cost of funded projects and the updated cost estimate, and when the project is bid, to provide a grant for the dollar difference between the committed funding and the bid results; and

(7) To cover all or a portion of the infrastructure projects to enhance economic development and/or tourism when recommended by the Secretary of Commerce, the Secretary of Economic Development and/or the Secretary of Tourism.

(d) The Water Development Authority is hereby authorized to enter into grant agreements with governmental agencies and not-for-profits to evidence the grant which agreements shall include the following provisions:

(1) The estimated cost of the project or infrastructure project, the amount of the grant and the other funding sources;

(2) The specific purpose for which the grant proceeds shall be expended and the conditions and procedures for distributing the grant proceeds;

(3) The duties and obligations imposed regarding the acquisition, construction, improvement, or operation of the project or infrastructure project; and

(4) The agreement of the governmental agency or not-for-profit to comply with all applicable federal and state laws, and all rules and regulations issued or imposed by the Water Development Authority or other state, federal, or local bodies regarding the acquisition, construction, improvement, or operation of the infrastructure project or project.

(e) The Water Development Authority shall cause an annual audit to be made by an independent certified public accountant of its books, accounts and records with respect to the system and distributions and all matters relating to the financial application of the Economic Enhancement Grant Fund including all subaccounts therein. The Water Development Authority shall provide copies of the audit report to the Legislature.

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CHAPTER 130

**(H. B. 4758 - By Delegates Anderson, Cooper, Zatezalo, J.
Kelly, Westfall, and Ferrell)**

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to developing and maintaining a database to track reclamation liabilities in the West Virginia Department of Environmental Protection Special Reclamation Program in order to better quantify the potential liability of the Special Reclamation Program for forfeited coal mining permits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

(a) After a surface mining permit application has been approved pursuant to this article, but before a permit has been issued, each operator shall furnish a penal bond, on a form to be prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal amount of the bond shall be not less than \$1,000 nor more than \$5,000 for each acre or fraction of an acre: *Provided*, That the minimum amount of bond furnished for any type of reclamation bonding shall be \$10,000. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the

permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: *Provided, however,* That once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues for the full term of the permit plus any additional period necessary to achieve compliance with the requirements in the reclamation plan of the permit.

(c)(1) The form of the bond shall be approved by the secretary and may include, at the option of the operator, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, self bonding or a combination of these methods. If collateral bonding is used, the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the United States or its possessions of the Federal Land Bank or of the Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West Virginia or other states and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the department. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities, or certificates, promptly place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The operator making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities, or certificates so deposited, upon depositing

with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(2) The secretary may approve an alternative bonding system if it will: (A) Reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time; and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self insure.

(e) It is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

(f) All bond releases shall be accomplished in accordance with §22-3-23 of this code.

(g)(1) The Special Reclamation Fund previously created is continued. The Special Reclamation Water Trust Fund is created within the state treasury into and from which moneys shall be paid for the purpose of assuring a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the secretary has obtained or applied for an NPDES permit as of the effective date of this article. The moneys accrued in both funds, any interest earned thereon and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section and §22-1-17 of this code.

(2) The funds shall be administered by the secretary who is authorized to expend the moneys in both funds for the reclamation and rehabilitation of lands which were subjected to permitted

surface mining operations and abandoned after August 3, 1977, where the amount of the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under §22-2-1 *et seq.* of this code. The secretary may also expend an amount not to exceed 10 percent of the total annual assets in both funds to implement and administer the provisions of this article and, as they apply to the Surface Mine Board, §22B-1-1 *et seq.* and §22B-1-4 *et seq.* of this code.

(3)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section to any mine operator who performs reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive and may be claimed for reclamation or remediation performed on or after January 1, 2012: *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may be granted unless a written application for the tax credit was submitted to the Tax Commissioner prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

(B) The amount of a reclamation tax credit granted under this subsection shall be equal to the amount that the Tax Commissioner determines, based on the project costs, as shown in the records of the secretary, that would have been spent from the Special Reclamation Fund or Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed by the mine operator, including expenditures for water treatment.

(C) To claim the credit, the mine operator shall, from time to time, file with the Tax Commissioner a written application seeking the amount of the credit earned. Within 30 days of receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for the difference. Should no certification be issued within the 30-day period, the application shall be considered certified.

Any decision by the Tax Commissioner is appealable pursuant to the provisions of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code. Applications for certification of the proposed tax credit shall contain the information and be in the detail and form as required by the Tax Commissioner.

(h) The Tax Commissioner may promulgate rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code to carry out the purposes of this subdivision two, subsection (g) of this section.

(i)(1) Rate, deposits, and review.

(A) For tax periods commencing on and after July 1, 2009, every person conducting coal surface mining shall remit a special reclamation tax of 14 and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund.

(B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal surface mining shall remit a special reclamation tax of 27 and nine-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, 15 cents per ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

(C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste material as part of a fuel supply.

(D) Beginning with the tax period commencing on July 1, 2009, and every two years thereafter, the special reclamation tax

shall be reviewed by the Legislature to determine whether the tax should be continued: *Provided*, That the tax may not be reduced until the Special Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet the reclamation responsibilities of the state established in this section.

(2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-effective alternative water treatment strategies; (B) conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund; and (C) develop and maintain a database to track existing reclamation liabilities (including water treatment) at coal mining operations in the state that were permitted after August 3, 1977. This information is to be updated on a quarterly basis beginning July 2022 to ensure that actuarial studies of the special reclamation fund and special reclamation water trust fund are informed by current data.

(3) Prior to December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

(B) Determine the feasibility of creating an incremental bonding program by which operators can post a reclamation bond for those areas actually disturbed within a permit area, but for less than all of the proposed disturbance and obtain incremental release of portions of that bond as reclamation advances so that the released bond can be applied to approved future disturbance; and

(C) Determine the feasibility for sites requiring water reclamation by creating a separate water reclamation security account or bond for the costs so that the existing reclamation bond in place may be released to the extent it exceeds the costs of water reclamation.

(4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the secretary may propose legislative rules in accordance with §29A-3-1 *et seq.* of this code to implement an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination thereof.

(j) This special reclamation tax shall be collected by the Tax Commissioner in the same manner, at the same time and upon the same tonnage as the minimum severance tax imposed by §11-12B-1 *et seq.* of this code is collected: *Provided*, That under no circumstance may the special reclamation tax be construed to be an increase in either the minimum severance tax imposed by that article or the severance tax imposed by §11-13-1 *et seq.* of this code.

(k) Every person liable for payment of the special reclamation tax shall pay the amount due without notice or demand for payment.

(l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons known to be delinquent in payment of the special reclamation tax. The secretary may take the delinquencies into account in making determinations on the issuance, renewal, or revision of any permit.

(m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation Water Trust Fund.

(n) At the beginning of each quarter, the secretary shall advise the Tax Commissioner and the Governor of the assets, excluding payments, expenditures, and liabilities, in both funds.

(o) To the extent that this section modifies any powers, duties, functions, and responsibilities of the department that may require

approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. § 1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

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CHAPTER 131

(Com. Sub. for H. B. 4329 - By Delegate Criss)

[Passed March 10, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §44-1-28, §44-1A-1, §44-1A-2, and §44-1A-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Small Estate Act; updating definitions; adding a definition of the term “interested person” for purposes of identifying those who have a property right in or a claim against the estate of a decedent or property; and clarifying treatment of real estate of decedents in small estates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PERSONAL REPRESENTATIVES

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications

(a) When the State of West Virginia, any of its political subdivisions, the United States, or any employer owes wages, salary, pension payments, or money allowed for burial expenses to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the amount owed does not exceed \$5,000, the State of West Virginia, any of its political subdivisions, the United States, or the decedent’s employer, after 120 days from the death of the decedent, may pay the amount owed to the decedent’s surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect.

(b) When the Treasurer holds property in accordance with §36-8-1 *et seq.* of this code on behalf of a decedent upon whose estate there has been no qualification, and the amount of the property is \$5,000 or less, the Treasurer may remit the property to the surviving spouse of the decedent, if any; and if no spouse survives the decedent, then to the distributees of the decedent under the laws of the State of West Virginia. When the Treasurer holds property in accordance with §36-8-1 *et seq.* of this code on behalf of a decedent whose estate is closed or has no present qualification and a valid will or an affidavit naming the decedent's distributees has been filed with the appropriate probate jurisdiction, the Treasurer may remit the property to the distributees as reflected in the will, or in the absence of a will, as established by the affidavit, in accordance with the laws of intestate descent and distribution.

(c) When any person holds an asset or property on behalf of or owed to a decedent who died domiciled in this state, upon whose estate there has been no qualification, and the value of that asset or property of the decedent does not exceed \$5,000, including a bank account, a savings institution account, a credit union account, a certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle, after 120 days from the death of the decedent, that person may pay the amount owed to or transfer the asset or property to the decedent's surviving spouse, if any; and if no spouse survived the decedent, then to the distributees of the decedent under the laws of the State of West Virginia, as established by an affidavit to that effect. As used in this section, "person" means any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity and expressly includes a bank, financial institution, credit union, or West Virginia Division of Motor Vehicles.

(d) Payment in accordance with this section is in full discharge and acquittance to all persons whomsoever on the account of the property to the same extent as if that person dealt with a personal representative of the decedent. That person is not required to see the application of the asset or proceeds or to inquire into the truth of any statement in the affidavit.

§44-1A-1. Short title; definitions.

(a) This article may be cited as the West Virginia Small Estate Act.

(b) For the purposes of this article, the following definitions apply:

(1) “Authorized successor” means the successor of a decedent who files an affidavit and is certified and authorized by the clerk of the county commission or the fiduciary supervisor thereof, pursuant to the provisions of this article.

(2) “Interested Person” means heirs, devisees, distributees, legatees, children, spouses, or creditors of the decedent and beneficiaries and any others having a property right in or a claim against the estate of a decedent or property in a small estate. Interested persons include persons having priority for appointment as a personal representative and other fiduciaries representing interested persons. An interested person may also include a bank, financial institution, credit union, or person that is holding assets related to the estate.

(3) “Person” means any individual, corporation, business trust, fiduciary, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality, public corporation, or any other legal or commercial entity.

(4) “Small asset” means any probate personal property or asset belonging or presently distributable to the decedent having a fair market value on the decedent’s date of death of not more than \$50,000. A small asset includes, but is not limited to, cash, a bank account, a savings institution account, a credit union account, a

certificate of deposit, a brokerage account, stock, a mutual fund, a security, a bond, a note, a promissory note, an obligation, an instrument evidencing a debt, indebtedness owed to the decedent, proceeds of life insurance payable to the estate, a deposit, a refund, a tax refund, an overpayment, a chose in action, or an item of tangible personal property including a motor vehicle. A small asset does not include real estate or an interest in real property. A small asset does not include a nonprobate asset of the decedent which would not be subject to administration in the decedent's probate estate.

(5) "Small estate" means a probate estate of a decedent who died domiciled in this state in which: (A) The total aggregate fair market value, on the decedent's date of death, of all probate personal property and all probate personal assets does not exceed \$50,000; and (B) the total aggregate fair market value on the decedent's date of death of all real estate or interests in real property situate in this state of which the decedent owned or was seized or possessed does not exceed \$100,000, excluding any real estate of the decedent which was held in any nonprobate form. For the purposes of this article, the fair market value of real estate shall be presumed to be 167 percent of the current assessed value of the real estate on the land books as reported by the assessor of the county in which the real estate is situate. It is provided, however, that a probate estate of a testate decedent in which the decedent's will provides for real estate devised to be sold and not a mere power to sell the decedent's real estate shall not be considered to be a small estate.

(6) "Successor" means any person, other than a creditor, who is nominated as a personal representative or executor under the provisions of the will of the decedent, or who is entitled under the provisions of the decedent's will or the laws of intestate descent and distribution of this state to a part or all of a small asset of the decedent.

§44-1A-2. Administration of a small estate upon affidavit and without appointment.

(a) Notwithstanding any provisions of this code to the contrary, the small estate of a decedent who dies domiciled in this state may be administered upon affidavit and without the appointment of a

personal representative, and the small assets of the decedent may be paid or delivered to the authorized successor as provided in this article.

(b) Any successor of a decedent who dies domiciled in this state may execute and tender for recording to the clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, of the county in this state which would have jurisdiction over the probate concerning the estate and assets of the decedent an affidavit made upon oath and under penalty of perjury concerning the small estate setting forth in substance:

(1) The name and current address of the affiant;

(2) The name of the decedent, the date of death of the decedent, and the address and residence of the decedent at his or her death;

(3) Whether the decedent had any known will, with the original of the known will to be attached to the affidavit and tendered for recording in the county as long as the will is in due and proper form for probate as a will in this state, or whether the decedent died intestate with no known will;

(4) A listing of the names, current addresses, and relationship to the decedent of any person nominated as a personal representative under the known will, together with a listing of the names, current addresses, and relationship to the decedent of the beneficiaries under the known will entitled to the estate or assets of the decedent. If there is no known will of the decedent, a listing of the names, current addresses, and relationship to the decedent of all of the intestate heirs-at-law and distributees of the decedent determined under the laws of intestate descent and distribution of this state;

(5) That the decedent's entire personal probate estate as of the date of the decedent's death, wherever located, consists only of small assets and the aggregate fair market value of all of the small assets does not exceed \$50,000, together with a description or itemization of the small assets with an estimate of value, if known or ascertainable;

(6) Whether the decedent died seized and possessed of any probate real estate or interests in probate real property situate in this state and if so, that the aggregate fair market value of all of the real estate or interests in real property situate in this state does not exceed \$100,000, together with a description of the real estate, the county in which it is situate, its assessed value for tax purposes, and its fair market value at the decedent's date of death;

(7) That if the successor is nominated as a personal representative or executor under the provisions of the will of the decedent, at least 30 days have elapsed since the decedent's date of death and no application for the appointment of a personal representative for the decedent is pending or has been granted in any jurisdiction. If the successor is not nominated as a personal representative or executor under the provisions of the will of the decedent, at least 60 days have elapsed since the decedent's date of death, no application for the appointment of a personal representative for the decedent is pending or has been granted in any jurisdiction, and no affidavit of small estate has been filed by a successor nominated as a personal representative or executor under the provisions of the will of the decedent; and

(8) That the affiant will faithfully administer the small assets of the decedent in accordance with the law and pay or deliver the small assets to the successor or successors so entitled, after paying any known or ascertainable creditors of the decedent.

(c) The clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, shall upon receipt of the affidavit review and inspect the affidavit, and if the county clerk or fiduciary supervisor determines the affidavit to be in completed form, the county clerk or fiduciary supervisor shall record and index the affidavit, together with the original of any will tendered with the affidavit, in the same manner and upon the same fees as wills and affidavits of beneficiaries or heirs are recorded and indexed in case of probate administration with appointment of a personal representative. The clerk of the county commission, or the fiduciary supervisor of the clerk of the county commission, may require a certified copy of the decedent's death certificate or other

proof of death and residence prior to fulfilling the responsibilities under this article.

(d) A bond, security, or oath is not required when an appointment of a personal representative is not made for a small estate under the provisions of this article.

(e) A document substantially in the following form may be used as the affidavit provided in subsection (b) of this section with the effect as prescribed in this article:

IN THE COUNTY COMMISSION OF _____
COUNTY, WEST VIRGINIA

RE: THE ESTATE OF _____

DOD: _____

AFFIDAVIT FOR SMALL ESTATE

STATE OF _____,

COUNTY OF _____, to-wit:

I, _____, being a Successor of the Decedent identified below, being first duly sworn, upon oath and under penalty of perjury, do depose and say to the best of my knowledge and belief as follows:

1. My name is _____, and my current address is _____.

2. The Decedent, _____, died on _____ (date of death), a resident of _____ County, State of West Virginia, with his/her usual residence being _____. A certified death certificate has been furnished herewith for filing in this County. I am a Successor of the decedent as _____ (state relationship).

3. TESTACY () [Check if applies] or () [Check if Not Applicable]

At the date of death, the Decedent died with an original Last Will and Testament of the Decedent dated _____, without any codicil thereto () or with codicil(s) thereto dated _____ () [Check if applies]. The aforesaid original Last Will and Testament of the decedent, together with any codicil(s), is furnished herewith for recording in this County as permitted by West Virginia Code § 44-1A-2(b).

Under the Last Will and Testament of the Decedent, the following person(s) is/are nominated to be the personal representative(s) of the Estate:

a. Name: _____

Address: _____

b. Name: _____

Address: _____

Pursuant to the provisions of the above referenced Will of the Decedent, the following persons are the named beneficiaries of the estate of the Decedent:

a. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage or particular item: _____

b. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage or particular item: _____

c. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage or particular item: _____

d. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage or particular item: _____

e. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage or particular item: _____

(If more space is needed, attach additional page(s) to affidavit)

4. INTESTACY () [Check if applies] or () [Check if Not Applicable]

At the date of death, the Decedent died intestate with no known will. The Decedent left as his/her heirs-at-law and distributees in accordance with the laws of intestate descent and distribution of the State of West Virginia the following persons:

a. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

b. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

c. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

d. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

e. Name: _____

Address: _____

Relationship to Decedent: _____

Share or percentage: _____

(If more space is needed, attach additional page(s) to affidavit)

5. The Decedent's entire personal probate estate, as of the date of the Decedent's death, wherever located, consists only of small

assets and the aggregate fair market value of the small assets does not exceed \$50,000. The small assets of the Decedent are described and itemized as follows:

	Description	Fair Market value
a.		
b.		
c.		
d.		
e.		
f.		
	Total	

(If more space is needed, attach additional page(s) to affidavit)

6. The Decedent did () / did not () [Check one which applies] die seized and possessed of any probate real estate or interests in probate real estate in the state of West Virginia. If the Decedent died seized and possessed of any probate real estate or interest in real estate in the state of West Virginia, the aggregate fair market value of all of the real estate or interests in real property situate in this state does not exceed \$100,000 and the real estate of the Decedent in West Virginia is as follows:

	Description	County	Assessed Value	Fair Market value
A				
B				
C				
D				
E				
	Total			

(If more space is needed, attach additional page(s) to affidavit)

7. () [Check if applies] or () [Check if Not Applicable] If the affiant is a Successor who was nominated as a personal representative or executor under the provisions of the above Will of the Decedent, at least 30 days have elapsed since the Decedent's date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction;

or

() [Check if applies] or () [Check if Not Applicable] If the affiant is a Successor who was NOT nominated as a personal representative or executor under the provisions of the above Will of the Decedent or if the Decedent died intestate without a will, at least 60 days have elapsed since the Decedent's date of death and no application for the appointment of a personal representative for the Decedent is pending or has been granted in any jurisdiction, and no affidavit of Small Estate has been filed by a Successor nominated as a personal representative or executor under the provisions of the Will of the Decedent.

8. The undersigned Affiant will faithfully administer the small assets of the Decedent in accordance with the law and pay or deliver the same to the Successor or Successors so entitled.

Witness my hand and seal this ____ day of _____,
20__.

Signature of Affiant/Successor

Taken, subscribed, and sworn to before me the undersigned authority by _____, this ____ day of _____, 20__.

{seal}

My Commission expires: _____

Notary Public

(f) Upon acceptance and recording of the affidavit provided in this section, the county clerk or fiduciary supervisor shall mail a copy of the affidavit to the personal representative, if any is nominated in an attached will, and the beneficiaries under the will when the decedent dies with a will or the heirs-at-law when the decedent dies without a will, all of whom are listed on the affidavit, and shall issue a certificate and authorization of a small estate to the authorized successor who completed the affidavit, authorizing the successor to be paid, transferred, and delivered the small assets of the decedent with authority to pay, transfer, and deliver the small assets to the successor or successors of the decedent entitled pursuant to the provisions of this article and the other laws of the State of West Virginia and with authority to faithfully perform the duties of the office necessary to collect and administer the small assets of the decedent including, but not limited to, making application for and executing receipts, assignments, transfers, releases, waivers, applications, claims, claims for refunds, and federal, state, or local tax returns of the decedent concerning the

small assets, pursuing litigation for or against the decedent or the decedent's estate, and paying or settling the funeral expenses or the claims of creditors of the decedent.

(g) If within 30 days after the mailing of a copy of the affidavit by the county clerk or fiduciary supervisor any interested person in the estate of the decedent files a written objection with the county clerk or fiduciary supervisor upon good and proper grounds, the county clerk or fiduciary supervisor shall refer the objection to a fiduciary commissioner for determination, report, and recommendation which may, among other things, revoke the certificate and authorization of small estate and require full and complete probate administration of the estate of the decedent in accordance with the other applicable provisions of this article. Upon any revocation of the certificate and authorization of small estate, the authorized successor shall provide an accounting and report of all payments or deliveries made of the small assets of the decedent.

(h) The authorized successor may act under the certificate and authorization of small estate issued under the provisions of this article for a period of six months from the date of the original issuance of the certificate and authorization but may, upon a showing of good cause in an application made to the county clerk or fiduciary supervisor, be granted an extension of an additional time period not to exceed six months upon issuance of an extended certificate and authorization of small estate to be issued by the county clerk or fiduciary supervisor.

(i) If at any time after the original issuance of the certificate and authorization by the county clerk or fiduciary supervisor, the authorized successor or an interested person determines that the probate estate of the decedent does not qualify as a small estate because the aggregate values of all of the small assets or the real estate of the decedent exceed the values provided in this article, upon application by an interested person the county clerk or fiduciary supervisor shall rescind the certificate and authorization of the small estate and shall mail a written order of rescission to the authorized successor and other interested persons, and a probate

under the other provisions of this article shall be commenced by an interested person.

§44-1A-3. Payment or delivery of small assets to authorized successor.

(a) Any person having possession of a small asset of the decedent shall pay or deliver the small asset to the authorized successor of the decedent upon being presented the certificate and authorization of a small estate of the county clerk or fiduciary supervisor.

(b) The authorized successor has a fiduciary duty to safeguard and promptly pay or deliver the small asset or assets to the successor or successors of the decedent entitled to the small asset as required by the laws of the State of West Virginia.

(c) The authorized successor may discharge his or her fiduciary duty concerning the payment or delivery of the small asset or assets by:

(1) Applying the small asset in payment of the administrative costs of obtaining the certificate and authorization of a small estate under this article, the funeral expenses of the decedent, or the claims of any known or ascertainable creditors of the decedent as provided by the laws of the State of West Virginia;

(2) Paying or delivering the small asset to a successor entitled to the small asset who is sui juris; or

(3) For any successor entitled to the small asset who is, or is reasonably believed to be, incapacitated or under a legal disability, by paying or delivering the small asset to the successor's conservator or, if no conservator exists, guardian; to any custodian of an account for the successor under §36-7-1 *et seq.* of this code (the West Virginia Uniform Transfers to Minors Act); or to an adult relative or other person having legal or physical care or custody of the successor to be expended on the successor's behalf directly to the incapacitated or disabled successor or applying it for the successor's benefit. Any successor may be represented and bound under the provisions of virtual representation set forth in §44D-3-

1 *et seq.* of this code with respect to affidavits required and designations of persons to receive payment or delivery of a small asset under this article.

(d) Upon the presentation of the certificate and authorization of a small estate, the authorized successor may endorse or negotiate any small asset that is a check, draft, or other negotiable instrument that is payable to the decedent or the decedent's estate.

(e) A transfer agent of any security, upon the surrender of any certificate evidencing the security, shall change the registered ownership on the books of a corporation from the decedent to the successor entitled to the small asset upon the presentation of the certificate and authorization of small estate.

(f) The payment or delivery of a small asset made in good faith to, or by the authorized successor, and upon an affidavit filed in good faith and upon reasonable premises by the authorized successor, may not be ineffective, void, or voidable, if the aggregate value of all of the small assets constituting the small estate of the decedent is subsequently found to exceed \$50,000.

(g) The authorized successor is liable to the successors of the decedent, including any personal representative subsequently appointed for the decedent's estate, for any breach of fiduciary duty committed by the authorized successor in failing to pay, deliver, or administer a small asset and causing injury to the entitled successor for a period of three years after the date of the issuance of the certificate and authorization of small estate by the county clerk or fiduciary supervisor.

§44-1A-4. Discharge and release of payor; treatment of real estate in a small estate.

(a) Any person paying or delivering a small asset pursuant to the provisions of this article is discharged and released to the same extent as if that person dealt with the personal representative of the decedent. That person is not required to see the application of the small asset or to inquire into the truth of any statement in the

affidavit or the certificate and authorization of a small estate presented under this article.

(b) If any person to whom the certificate and authorization of small estate is presented refuses to pay or deliver any small asset to the authorized successor, the small asset may be recovered, or its payment or delivery compelled, and damages may be recovered, on proof of rightful claim in a proceeding brought for that purpose by or on behalf of the person entitled to the small asset in the magistrate court or circuit court of this state having jurisdiction.

(c) For any real estate or interest in real property of the decedent which is reported on the recorded affidavit provided in this article, the provisions of §44-8-5, §41-5-19 and §41-5-20 of this code shall apply, and any will attached to and tendered with the affidavit shall be deemed to be duly admitted to probate. The authorized successor or a successor or creditor of a decedent in a small estate may within six months of the issuance of the certificate and authorization of small estate commence a proceeding in equity before the circuit court under the provisions of §44-8-7 of this code to subject real estate to the payment of debts when the small assets are insufficient for the payment thereof.

(d) Nothing in this article releases or discharges any claim which a creditor may have against the decedent, the decedent's estate, or the assets of the decedent, and creditors of a small estate have the same rights provided under the provisions of §44-2-27 and §44-3A-33 of this code as against distributees and legatees.

§44-1A-5. Construction of article.

(a) The remedies provided by this article are in addition to, and not in exclusion of, any other remedies provided by the laws of this state.

(b) For any will attached to and tendered with the affidavit provided in this article, the provisions of §41-5-11 of this code apply in like manner as if the will had been probated by an order of the county commission entered on the date of the issuance of the

certificate and authorization of a small estate by the county clerk or fiduciary supervisor.

(c) Nothing in this article may be construed to affect or limit the right of a surviving spouse of a decedent who dies domiciled in this state to his or her elective share as provided in §42-3-1 *et seq.* of this code.

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CHAPTER 132

**(H. B. 4450 - By Delegates Espinosa, Holstein, Barrett, Criss,
Westfall, Clark, Householder, Hardy, Hamrick and Hott)**

[Passed March 12, 2022; in effect July 1, 2022.]
[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §3-2-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-3-1 of said code; and to amend and reenact §17B-2-8 of said code, all relating to removing the \$0.50 fee charged and deposited in the Combined Voter Registration and Driver's Licensing Fund for each driver's license issued by the Department of Motor Vehicles, which fees are no longer necessary for affording voter registration costs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 3. ELECTIONS.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-12. Combined voter registration and driver licensing fund; transfer of funds.

[Repealed].

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 3. STATE ROAD FUND.

§17-3-1. What constitutes fund; payments into fund; use of money in fund.

There shall be a State Road Fund, which shall consist of the proceeds of all state license taxes imposed upon automobiles or other motor or steam driven vehicles; the registration fees imposed

upon all owners, chauffeurs, operators and dealers in automobiles or other motor driven vehicles; all sums of money which may be donated to such fund; all proceeds derived from the sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the Better Roads Amendment to the Constitution of this state, adopted in November, 1964, except that the proceeds from the sale of these bonds shall be kept in a separate and distinct account in the State Road Fund; all proceeds from the sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the Safe Roads Amendment of 1996 to the Constitution of this state, adopted in November, 1996, except that the proceeds from the sale of these bonds shall be kept in a separate and distinct account in the State Road Fund; all proceeds from the sale of state bonds issued pursuant to any resolution or act of the Legislature carrying into effect the Roads to Prosperity Amendment of 2017 to the Constitution of this state, adopted in October, 2017, except that the proceeds from the sale of these bonds shall be kept in a separate and distinct account in the State Road Fund; all moneys and funds appropriated to it by the Legislature; and all moneys allotted or appropriated by the federal government to this state for road construction and maintenance pursuant to any act of the Congress of the United States; the proceeds of all taxes imposed upon and collected from any person, firm or corporation and of all taxes or charges imposed upon and collected from any county, district or municipality for the benefit of the fund; the proceeds of all judgments, decrees or awards recovered and collected from any person, firm or corporation for damages done to, or sustained by, any of the state roads or parts thereof; all moneys recovered or received by reason of the violation of any contract respecting the building, construction or maintenance of any state road; all penalties and forfeitures imposed, recovered or received by reason thereof; and any and all other moneys and funds appropriated to, imposed and collected for the benefit of such fund, or collected by virtue of any statute and payable to such fund.

When any money is collected from any of the sources aforesaid, it shall be paid into the State Treasury by the officer whose duty it is to collect and account for the same, and credited

to the State Road Fund, and shall be used only for the purposes named in this chapter, which are: (a) To pay the principal and interest due on all state bonds issued for the benefit of said fund, and any costs related to the issuance thereof, and set aside and appropriated for that purpose; (b) to pay the expenses of the administration of the Division of Highways; and (c) to pay the cost of maintenance, construction, reconstruction and improvement of all state roads.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-8. Issuance and contents of licenses; fees.

(a) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver's license, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter or chapter 17E of this code, or motorcycle-only license. Each license shall contain a coded number assigned to the licensee, the full legal name, to be displayed in a manner selected by the applicant when supported by appropriate documentation and consistent with federal law, this code, and existing system capabilities of the division, date of birth, residence address, a brief description and a color photograph of the licensee, and either a facsimile of the signature of the licensee or a space upon which the signature of the licensee is written with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

(b) A driver's license which is valid for operation of a motorcycle shall contain a motorcycle endorsement. A driver's license which is valid for the operation of a commercial motor vehicle shall be issued in accordance with chapter 17E of this code.

(c) The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any

identity theft, alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, the license.

(d) The fee for the issuance of a Class E driver's license is \$5 per year for each year the license is valid. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year. The fee for issuance of a Class D driver's license is \$6.25 per year for each year the license is valid. The additional fee for adding a motorcycle endorsement to a driver's license is \$1 per year for each year the license is issued.

(e) The fee for issuance of a motorcycle-only license is \$2.50 for each year for which the motorcycle license is valid. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the State Treasury known as the Motorcycle Safety Fund as established in §17B-1D-7 of this code.

(f) The fee for the issuance of either the level one or level two graduated driver's license as prescribed in §17B-2-3a of this code is \$5.

(g) The fee for issuance of a federally compliant driver's license or identification card for federal use is \$10 in addition to any other fee required by this chapter. Any fees collected under the provisions of this subsection shall be deposited into the Motor Vehicle Fees Fund established in accordance with §17A-2-21 of this code.

(h) The division may use an address on the face of the license other than the applicant's address of residence if:

(1) The applicant has a physical address or location that is not recognized by the post office for the purpose of receiving mail;

(2) The applicant is enrolled in a state address confidentiality program or the alcohol test and lock program;

(3) The applicant's address is entitled to be suppressed under a state or federal law or suppressed by a court order; or

(4) At the discretion of the commissioner, the applicant's address may be suppressed to provide security for classes of applicants such as law-enforcement officials, protected witnesses, and members of the state and federal judicial systems.

(i) Notwithstanding any provision in this article to the contrary, a valid military identification card with an expiration date issued by the United States Department of Defense for active duty, reserve, or retired military personnel containing a digitized photo and the holder's full legal name may be used to establish current full legal name and legal presence. The commissioner may at his or her discretion expand the use of military identification cards for other uses as permitted under this code or federal rule.

(j) The division may accept any document as proof of identity, residency, and lawful presence that is acceptable under the Real ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 302 (May 11, 2005), 49 U.S.C. §30301 *et seq.*

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CHAPTER 133

**(Com. Sub. for H. B. 4826 - By Delegates Capito, Queen,
Westfall, Fluharty, Riley, Linville and Nestor)**

[Passed March 12, 2022; in effect ninety days from passage.]

AN ACT to amend and reenact §29-22D-3 of the Code of West Virginia, 1931, as amended relating to allowing wagering on e-sports events; providing definition of e-sports events; and including e-sports event in the definition of sports event or sporting event.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22D. WEST VIRGINIA LOTTERY SPORTS WAGERING ACT.

§29-22D-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them in this section:

(1) “Adjusted gross sports wagering receipts” means an operator’s gross sports wagering receipts from West Virginia Lottery sports wagering, less winnings paid to wagerers in such games.

(2) “Collegiate sport or athletic event” means a sport or athletic event offered or sponsored by, or played in connection with, a public or private institution that offers educational services beyond the secondary level.

(3) “Commission” or “State Lottery Commission” means the West Virginia Lottery Commission, created by §29-22-1 *et seq.* of this code.

(4) “Director” means the Director of the West Virginia State Lottery Commission, appointed pursuant to §29-22-6 of this code.

(5) “E-sports event” means leagues, competitive circuits, tournaments, or similar competitions where individuals or teams play video games, typically for spectators, either in person or online, for the purpose of prizes, money, or entertainment.

(6) “Gaming equipment” or “sports wagering equipment” means any mechanical, electronic, or other device, mechanism, or equipment, and related supplies used or consumed in the operation of West Virginia Lottery sports wagering at a licensed gaming facility including, but not limited to, a kiosk installed to accept sports wagers.

(7) “Gaming facility” means a designated area on the premises of an existing historic resort hotel, licensed under §29-25-1 *et seq.* of this code, to operate video lottery and table games or the facility of an entity authorized to operate racetrack video lottery machines pursuant to §29-22A-1 *et seq.* of this code.

(8) “Government” means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States government.

(9) “Gross sports wagering receipts” means the total gross receipts received by a licensed gaming facility from sports wagering.

(10) “License” means any license applied for or issued by the commission under this article including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery sports wagering at a licensed gaming facility (operator license or West Virginia Lottery sports wagering license);

(B) A license to supply a gaming facility licensed under this article to operate sports wagering with sports wagering equipment or services necessary for the operation of sports wagering (supplier license);

(C) A license to be employed at a racetrack or gaming facility licensed under this article to operate West Virginia Lottery sports wagering when the employee works in a designated gaming area that has sports wagering or performs duties in furtherance of or associated with the operation of sports wagering at the licensed gaming facility (occupational license); or

(D) A license to provide management services under a contract to a gaming facility licensed under this article to operate sports wagering (management services provider license).

(11) “Licensed gaming facility” means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 *et seq.* of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 *et seq.* of this code licensed under this article to conduct West Virginia Lottery sports wagering.

(12) “Lottery” means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, and §29-25-1 *et seq.* of this code.

(13) “National criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.

(14) “Operator” means a licensed gaming facility which has elected to operate a sports pool and other authorized West Virginia Lottery sports wagering activities.

(15) “Professional sport or athletic event” means an event at which two or more persons participate in sports or athletic events and receive compensation in excess of actual expenses for their participation in such event.

(16) “Sports event” or “sporting event” means any professional sport or athletic event, any collegiate sport or athletic event, motor

race event, e-sports event, or any other special event authorized by the commission under this article.

(17) “Sports pool” means the business of accepting wagers on any sports event by any system or method of wagering.

(18) “Sports wagering account” means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for sports wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.

(19) “Sports wagering agreement” means a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in sports wagering conducted by one or more operators licensed by the signatory governments.

(20) “Sports wagering fund” means the special fund in the State Treasury created in §29-22D-17 of this code.

(21) “Supplier” means a person that requires a supplier license to provide a sports wagering licensee with goods or services to be used in connection with operation of West Virginia Lottery sports wagering.

(22) “Wager” means a sum of money or thing of value risked on an uncertain occurrence.

(23) “West Virginia Lottery sports wagering” or “sports wagering” means the business of accepting wagers on sporting events, and other events, the individual performance statistics of athletes in a sporting event or other events, or a combination of any of the same by any system or method of wagering approved by the commission including, but not limited to, mobile applications and other digital platforms that utilize communications technology to accept wagers originating within this state. The term includes, but is not limited to, exchange wagering, parlays, over-under, moneyline, pools, and straight bets. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia State Lottery authorized by §29-22-1 *et seq.* of this code;

(C) Racetrack video lottery authorized by §29-22A-1 *et seq.* of this code;

(D) Limited video lottery authorized by §29-22B-1 *et seq.* of this code;

(E) Racetrack table games authorized by §29-22C-1 *et seq.* of this code;

(F) Video lottery and table games authorized by §29-25-1 *et seq.* of this code; and

(G) Daily Fantasy Sports (DFS).

(24) “West Virginia Lottery sports wagering license” means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 *et seq.* or §29-25-1 *et seq.* of this code, which permits the gaming facility as an agent of the commission to operate West Virginia Lottery sports wagering in one or more designated areas or in one or more buildings owned by the licensed gaming facility on the grounds where video lottery is conducted by the licensee or through any other authorized platform developed by the gaming facility. This term is synonymous with “operator’s license”.

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CHAPTER 134

**(Com. Sub. for S. B. 205 - By Senators Maroney, Stollings,
Lindsay, Nelson, Jeffries, and Plymale)**

[Passed March 11, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §5-16-4 of the Code of West Virginia, 1931, as amended, relating to the expansion of membership of the Public Employees Insurance Agency Finance Board; increasing number of appointed members on board; designating interests to be represented by additional appointed members of board; and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4. Public Employees Insurance Agency Finance Board continued; qualifications, terms, and removal of members; quorum; compensation and expenses; termination date.

(a) The Public Employees Insurance Agency Finance Board is continued and consists of the Secretary of the Department of Administration or his or her designee, as a voting member, and 10 members appointed by the Governor, with the advice and consent of the Senate, for terms of four years and each may serve until his or her successor is appointed and qualified. Members may be reappointed for successive terms. No more than six members, including the Secretary of the Department of Administration, may be of the same political party. Effective July 1, 2017, members of the board shall satisfy the qualification requirements provided for by subsection (b) of this section: *Provided*, That any member

-serving upon the effective date of this section who does not satisfy a requirement of subsection (b) of this section may continue to serve until his or her successor has been appointed and qualified. The Governor shall make appointments necessary to satisfy the requirements of subsection (b) of this section to staggered terms as determined by the Governor.

(b) (1) Of the 10 members appointed by the Governor with advice and consent of the Senate:

(A) One member shall represent the interests of education employees. The member shall hold a bachelor's degree, shall have obtained teacher certification, shall be employed as a teacher for a period of at least three years prior to his or her appointment, and shall remain a teacher for the duration of his or her appointment to remain eligible to serve on the board.

(B) One member shall represent the interests of public employees. The member shall be employed to perform full- or part-time service for wages, salary, or remuneration for a public body for a period of at least three years prior to his or her appointment and shall remain an employee of a public body for the duration of his or her appointment to remain eligible to serve on the board.

(C) One member shall represent the interests of retired employees. The member shall meet the definition of retired employee as provided in §5-16-2 of this code.

(D) One member shall represent the interests of a participating political subdivision. The member shall have been employed by a political subdivision for a period of at least three years prior to his or her appointment and shall remain an employee of a political subdivision for the duration of his or her appointment to remain eligible to serve on the board. The member may not be an elected official.

(E) One member shall represent the interests of hospitals. The member shall have been employed by a hospital for a period of at least three years prior to his or her appointment and shall remain an

employee of a hospital for the duration of his or her appointment to remain eligible to serve on the board.

(F) One member shall represent the interests of non-hospital health care providers. The member shall have owned his or her non-hospital health care provider business for a period of at least three years prior to his or her appointment and shall maintain ownership of his or her non-hospital health care provider business for the duration of his or her appointment to remain eligible to serve on the board.

(G) Four members shall be selected from the public at large, meeting the following requirements:

(i) One member selected from the public at large shall generally have knowledge and expertise relating to the financing, development, or management of employee benefit programs;

(ii) One member selected from the public at large shall have at least three years of experience in the insurance benefits business;

(iii) One member selected from the public at large shall be a certified public accountant with at least three years of experience with financial management and employee benefits program experience; and

(iv) One member selected from the public at large shall be a health care actuary or certified public accountant with at least three years of financial experience with the health care marketplace.

(2) No member of the board may be a registered lobbyist.

(3) All appointments shall be selected to represent the different geographical areas within the state and all members shall be residents of West Virginia. No member may be removed from office by the Governor except for official misconduct, incompetence, neglect of duty, neglect of fiduciary duty, or other specific responsibility imposed by this article or gross immorality.

(c) The Secretary of the Department of Administration shall serve as chair of the finance board, which shall meet at times and

places specified by the call of the chair or upon the written request to the chair by at least two members. The Director of the Public Employees Insurance Agency shall serve as staff to the board. Notice of each meeting shall be given in writing to each member by the director at least three days in advance of the meeting. Six members shall constitute a quorum. The board shall pay each member the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties for each day or portion of a day engaged in the discharge of official duties.

(d) Upon termination of the board and notwithstanding any provisions of this article to the contrary, the director is authorized to assess monthly employee premium contributions and to change the types and levels of costs to employees only in accordance with this subsection. Any assessments or changes in costs imposed pursuant to this subsection shall be implemented by legislative rule proposed by the director for promulgation pursuant to §29A-3-1 *et seq.* of this code. Any employee assessments or costs previously authorized by the finance board shall then remain in effect until amended by rule of the director promulgated pursuant to this subsection.

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CHAPTER 135

**(Com. Sub. for S. B. 522 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 8, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §5A-1-11 of the Code of West Virginia, 1931, as amended, relating to combining the offices of the West Virginia State Americans with Disabilities Act Office and the West Virginia Equal Employment Opportunity Office within the Department of Administration; creating the position of State Equal Opportunity Coordinator; establishing qualifications for the position; setting forth how the State Equal Opportunity Coordinator is selected; outlining scope of responsibilities; removing the fee for service model and associated fund; and making other technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-11. State of West Virginia Office of Equal Opportunity.

(a) There is created within the Department of Administration the State of West Virginia Office of Equal Opportunity, to be directed by the State Equal Opportunity Coordinator, who shall be appointed by the Secretary of the Department of Administration.

(b) The coordinator shall be a full-time employee and shall have an in-depth working knowledge of the federal Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, The Equal Pay Act of 1963, the Age Discrimination in Employment Act

of 1977, Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008. The coordinator shall also have an in-depth working knowledge of the challenges facing West Virginian minorities and those living with disabilities and shall continually seek to update his or her understanding of such challenges through further education and information gathering.

(c) The coordinator shall:

(1) Advise the Director of Personnel in the development of comprehensive policies and programs for the development, implementation, and monitoring of a statewide program to assure compliance with 42 U.S.C. §12101, *et seq.*, the federal Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, The Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1977, Sections 102 and 103 of the Civil Rights Act of 1991, Sections 501 and 505 of the Rehabilitation Act of 1973, and the Genetic Information Nondiscrimination Act of 2008;

(2) Assist in the formulation of rules and standards relating to the review, investigation, and resolution of complaints of discrimination in employment, education, housing, and public accommodation;

(3) Consult and collaborate with state and federal agency officials to develop the statewide compliance program;(4) Consult and collaborate with state agencies on the federal Equal Employment Opportunity Act and Americans with Disabilities Act and provide training for managers and supervisors on regulations and related issues;

(5) Represent the state on local, state, and national committees and panels related to the Americans with Disabilities Act and the Equal Employment Opportunity Act;

(6) Advise the Governor and agency heads on federal Americans with Disabilities Act and Equal Employment Opportunity Act issues;

(7) Consult with state equal employment opportunity officers on the hiring of persons with disabilities;

(8) Be available to inspect and advise the leasing section of the Division of Purchasing on all physical properties owned or leased by the State of West Virginia for compliance with 42 U.S.C. §12101, *et seq.*, the federal Americans with Disabilities Act; and

(9) Report annually on the Office of Equal Opportunity to the Governor, President of the Senate, and Speaker of the House of Delegates.

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CHAPTER 136

**(Com. Sub. for S. B. 524 - By Senators Blair (Mr. President)
and Baldwin)**

[By Request of the Executive]

[Passed March 7, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to repeal §10-1-12, §10-1-13, §10-1-14, §10-1-14a, §10-1-15, §10-1-16, §10-1-17, §10-1-18, §10-1-18a, §10-1-19, §10-1-20, §10-1-21, §10-1-22, §10-1-23, and §10-1-24 of the Code of West Virginia, 1931, as amended; to repeal §29-27-1, §29-27-2, §29-27-3, §29-27-4, §29-27-5, and §29-27-6 of said code; to amend and reenact §5F-2-1 of said code; to amend and reenact §29-1-1 of said code; and to amend said code by adding thereto two new sections, designated §29-1-8c and §29-1-8d, all relating to placing the duties and functions of certain boards and commissions under the Department of Arts, Culture, and History; repealing certain sections related to the powers and authority of the State Library Commission; creating a state library section in the Department of Arts, Culture, and History; amending the makeup of the State Library Commission; providing for appointment of state library section director; establishing powers and duties of the state library section; providing for powers and duties of State Library Commission; creating National Coal Heritage Area Commission; providing for makeup of National Coal Heritage Area Commission; setting forth powers and duties of National Coal Heritage Area Commission; and repealing article related to National Coal Heritage Area Authority.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE
BRANCH OF STATE GOVERNMENT.**

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

**§5F-2-1. Transfer and incorporation of agencies and boards;
funds.**

(a) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;

(2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;

(3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;

(4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this code;

(5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

(6) Boundary Commission provided in §29-23-1 *et seq.* of this code;

(7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

(8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

(9) West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

(10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

(11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code. The following boards are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code;

(B) Board of Miner Training, Education, and Certification provided in §22A-7-1 *et seq.* of this code; and

(C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

(3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

(6) Workforce West Virginia provided in chapter 21A of this code, which includes:

- (A) Division of Unemployment Compensation;
- (B) Division of Employment Service;
- (C) Division of Workforce Development;
- (D) Division of Research, Information and Analysis; and

(7) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

(c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and the Water Development Authority Board provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of this code is continued as a separate independent agency within the Department of Arts, Culture, and History, which shall provide administrative support for the authority.

(f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch as the Department of Arts, Culture, and History. All references throughout this code to the “Division of Culture and History” means the “Department of Arts, Culture, and History”.

(g) The following agencies and boards, including all of the allied, advisory, and affiliated entities, are transferred to the Department of Environmental Protection for purposes of administrative support and liaison with the Office of the Governor:

- (1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

(2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

(3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of this code;

(4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

(5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;

(6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

(7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

(2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 *et seq.* of this code;

(4) Health Care Authority provided in §16-29B-1 *et seq.* of this code;

(5) State Commission on Intellectual Disability provided in §29-15-1 *et seq.* of this code;

(6) Women's Commission provided in §29-20-1 *et seq.* of this code; and

(7) Bureau for Child Support Enforcement provided in §48-1-1 *et seq.* of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Homeland Security:

(1) West Virginia State Police;

(2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That notwithstanding any other provision of this code to the contrary, whenever in this code, or a rule promulgated thereunder, a reference is made to the Division of Homeland Security and Emergency Management, it shall be construed to mean the Division of Emergency Management;

(3) Division of Administrative Services;

(4) Division of Corrections and Rehabilitation;

(5) Fire Commission;

(6) State Fire Marshal;

(7) Board of Probation and Parole;

(8) The West Virginia Fusion Center;

(9) Division of Protective Services; and

(10) Any other agency or entity hereinafter established within the Department of Homeland Security by an act of the Legislature.

(j) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in §11-1-1 *et seq.* of this code;

(2) Racing Commission provided in §19-23-1 *et seq.* of this code;

(3) Lottery Commission and position of Lottery Director provided in §29-22-1 *et seq.* of this code;

(4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of this code and §60-2-1 *et seq.* of this code;

(6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;

(7) Lending and Credit Rate Board provided in §47A-1-1 *et seq.* of this code;

(8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;

(9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

(10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

(11) The Office of Tax Appeals provided in §11-10A-1 *et seq.* of this code; and

(12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

(2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;

(3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

(4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;

(5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

(6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

(7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

(l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code, including all of the allied, advisory, affiliated, or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

(m) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the position of administrator and the powers, authority, and duties of each administrator and agency are not affected by the enactment of this chapter.

(n) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by §5F-2-2 of this code, the existence, powers, authority, and duties of boards and the membership, terms, and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers may not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division

of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(p) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary, or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

(q) The Department of Economic Development as established in §5B-2-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch.

(r) The Department of Tourism as established in §5B-2I-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC
RECREATION; ATHLETIC ESTABLISHMENTS;
MONUMENTS AND MEMORIALS; ROSTER OF
SERVICEMEN; EDUCATIONAL BROADCASTING
AUTHORITY.**

ARTICLE 1. PUBLIC LIBRARIES.

§10-1-12. State Library Commission.

[Repealed.]

§10-1-13. State Library Commission – officers.

[Repealed.]

§10-1-14. Same. – Powers and duties.

[Repealed.]

§10-1-14a. West Virginia Program for Open Education Resources; material description.

[Repealed.]

§10-1-15. State Library Commission – Disposition of monetary gifts.

[Repealed.]

§10-1-16. Regional libraries and library areas – Establishment and location.

[Repealed.]

§10-1-17. Regional libraries and library areas – Referral of plan to county courts; action on; alteration of plan.

[Repealed.]

§10-1-18. Regional libraries and library areas – Powers of West Virginia Library Commission.

[Repealed.]

§10-1-18a. Establishment of state publications; designation clearinghouse; definitions; powers of West Virginia Library Commission; designations by state agencies.

[Repealed.]

§10-1-19. Regional libraries and library areas – Transfer of certain libraries to Library Commission.

[Repealed.]

§10-1-20. Aid to libraries by library Commission.

[Repealed.]

§10-1-21. Collection of and preservation of library data; surveys; employment of personnel; use of data.

[Repealed.]

§10-1-22. Confidential nature of certain library records.

[Repealed.]

§10-1-23. Library Survey; status report; and ten-year plan.

[Repealed.]

§10-1-24. Library Facilities Improvement Fund.

[Repealed.]

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of Culture and History continued as the Department of Arts, Culture, and History; sections and commissions; purposes; definitions; effective date.

(a) The Division of Culture and History and the office of Commissioner of Culture and History heretofore created are hereby continued as the Department of Arts, Culture, and History. The Governor shall nominate and, by and with the advice and consent of the Senate, appoint the Curator of Arts, Culture, and History, who shall be the chief executive officer of the department and shall be paid an annual salary as provided in §6-7-2a of this code. The curator 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, arts, history, or a related field.

(b) The department shall consist of seven sections as follows:

(1) The arts section;

- (2) The archives and history section;
- (3) The museums section;
- (4) The historic preservation section;
- (5) The state library section;
- (6) The National Coal Heritage Area Commission; and
- (7) The administrative section.

(c) The department shall also consist of three citizens commissions as follows:

- (1) A Commission on the Arts;
- (2) A Commission on Archives and History; and
- (3) A Library Commission.

(d) The curator shall exercise control and supervision of the department and shall be responsible for the projects, programs, and actions of each of its sections. 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 state government and at state-owned facilities; to acquire, preserve, and classify books, documents, records, and memorabilia of historical interest or importance; and, in general, to do all things necessary or convenient to preserve and advance the arts, humanities, culture, and history of the state. In the furtherance of these purposes and duties, the curator shall report directly to the Governor as a curator for both the intrinsic and extrinsic value for individuals, communities, and the economy of

the arts, humanities, culture, and history in West Virginia. As such, the curator shall represent the Department of Arts, Culture, and History as a full participating member in meetings of the secretaries of the departments created in §5F-1-2 of this code that are convened at the call of the Governor.

(e) The department shall have jurisdiction and control and may set and collect fees for the use of all space in the building presently known as the West Virginia Science and Culture Center, including the deck and courtyards forming an integral part thereof; the building presently known as West Virginia Independence Hall in Wheeling, including all the grounds and appurtenances thereof; “Camp Washington Carver” in Fayette County, as provided in §29-1-14 of this code; and any other sites as may be transferred to or acquired by the department. Notwithstanding any provision of this code to the contrary, beginning on and after July 1, 2018, the department shall have responsibility for, and control of, all visitor touring and visitor tour guide activities within the Capitol Building at Charleston.

(f) For the purposes of this article, “commissioner” or “curator” means the Curator of Arts, Culture, and History, and “division” or “department” means the Department of Arts, Culture and History. References throughout this code to the “Commissioner of Culture and History” mean the “Curator of Arts, Culture, and History”, and references throughout this code to the “Division of Culture and History” mean the “Department of Arts, Culture, and History”.

(g) Nothing in this article or any other provision of this code may be construed to mean that the Department of Arts, Culture, and History is an executive department created pursuant to §5F-1-2 of this code, nor that the curator is the secretary of an executive department created pursuant to that section.

§29-1-8c. State Library Section.

(a) There is hereby created a West Virginia State Library Section under the Department of Arts, Culture, and History.

(b) The State Library Commission is continued as an advisory council to support the West Virginia State Library Section, and shall consist of the Curator of the Department of Arts, Culture, and History as an ex officio voting member and six voting members.

(1) The Governor shall appoint, by and with the advice and consent of the Senate, the voting members of the commission each for a term of four years:

(A) No more than three appointed members may reside in the same congressional district;

(B) The Governor shall make the initial appointment of State Library Commission members for staggered terms as follows: Two members, one from each congressional district, for a term of two years; two members, one from each congressional district, for a term of three years; and two members, one from each congressional district, for a term of four years; and

(C) Three appointed members of the commission shall be women and three appointed members shall be men.

(2) No member of the State Library Commission may receive compensation for services rendered, nor be engaged or interested in the publishing business.

(3) On or before the expiration of the terms for which the members are appointed, the Governor shall appoint their successors.

(b) The Curator of the Department of Arts, Culture, and History shall appoint a library section director, with the advice and consent of the State Library Commission, to carry out the duties and functions of the State Library Section outlined in this section through the Department of Arts, Culture, and History library section. The library section director shall have at least the following qualifications: A master's degree from an American Library Association-accredited program in a library-related discipline and three years of management or administrative work experience in a library. The library section director shall also serve

as the Secretary of the State Library Commission for the purpose of board meetings.

(c) The State Library Commission shall advise the curator and the library section director on carrying out certain duties and functions of the State Library Section, as provided in this section.

(d) *General authority of the State Library Section.* —

(1) The State Library Section shall provide assistance, advice, and counsel to all school, state-institutional, free and public libraries, and to all communities in the state which may propose to establish libraries, as to the best means of establishing and administering them, selecting and cataloging books, and other details of library management, and may send any of its members to aid in organizing such libraries or assist in the improvement of those already established.

(2) The State Library Section may:

(A) Receive gifts of money, books, or other property which may be used or held for the purpose or purposes given; and may purchase and operate traveling libraries under such conditions and rules as the commission deems necessary to protect the interests of the state and best increase the efficiency of the service it is expected to render the public.

(B) Purchase suitable books for traveling libraries and distribute them as needed to those persons and places in the state without adequate public library service.

(C) Collect books and other suitable library matter and distribute the same among state institutions desiring the same.

(D) Issue and offer for sale printed material, such as lists and circulars of information, and in the publication thereof may cooperate with other state library commissions and libraries, in order to secure the more economical administration of the work for which it was formed.

(E) Conduct courses of library instruction and hold librarians' institutes in various parts of the state.

(F) Perform such other services on behalf of public libraries as it may consider to be in the best interest of the state.

(e) *West Virginia Program for Open Education Resources; material description.* —

(1) The State Library Section shall establish and maintain the West Virginia Program for Open Education Resources to encourage and facilitate the use of open education resource materials in both higher education and kindergarten through grade 12 in West Virginia schools.

(2) "Open education resource materials" means teaching, learning, and resource materials in any medium, digital or otherwise, that reside in the public domain or have been released under an open license that permits low-cost access, use, adaptation, and redistribution by others with no or limited restrictions.

(3) The State Library Commission may consult with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education, and the State Superintendent of Schools, or his or her designee, to:

(A) Ascertain what institutions or faculty are currently using open education resource material;

(B) Identify material currently associated with core general education courses and readily available for use by faculty and institutions;

(C) Identify any statutory or other impediments which interfere with selection and use of open education resource materials by administrators or teachers at all levels of instruction in West Virginia schools;

(D) Identify sources of potential grants for funding for teachers and institutions to use open education resource materials for classes and courses, and propose a competitive application system to

award grant funding for those faculty and institutions seeking to use the open education resource materials;

(E) Establish a digital clearinghouse that will function as a publicly accessible database for open education resource material;

(F) Develop strategies to leverage further open education resource material to benefit higher education institutions and school systems, as well as private and foundation support for the project; and

(G) Report no later than July 1 of each year the program's findings, progress, and recommendations to the State Library Section, the Governor, and the chairs of the Legislature's House and Senate Committees on Education.

(f) State Library Section—disposition of monetary gifts. —

(1) If any sums of money are received by the State Library Section as gifts, they shall be paid into the State Treasury and used exclusively for carrying out the provisions of this section, and paying expenses of the State Library Section and the State Library Commission.

(2) The State Library Section shall expend no sums unless they are available by gift, appropriation, or otherwise.

(g) Regional libraries and library areas — establishment and location. —

(1) The State Library Commission is hereby authorized to develop a plan for the establishment and location of regional libraries, and library areas throughout the state, based on a detailed survey to be made by the State Library Commission of the needs of the various localities of the state. A region shall include two or more counties.

(2) On completion of such survey of any proposed region, the State Library Commission shall report their findings to the State Library Section and the state library director, who may refer the proposal to the county commissions or councils of all the counties

included in such proposed region. The county commissions or councils may act upon such proposal by resolution, and the votes of a majority of each of the county commissions or councils of the counties included in the proposed region shall be necessary for the adoption of such proposal. The proposal may be amended and resubmitted as necessary.

(3) The State Library Section may, with advice and input from the State Library Commission, and as the state library director may consider necessary or beneficial:

(A) Establish, maintain, and operate a public library for the region;

(B) Appoint a librarian and the necessary assistants, and fix their compensation, such appointments to be based upon merit and efficiency as determined by the state library section director. The librarian shall hold a certificate from an approved school of library science and shall have had not less than three years of practical experience in library work. The state library section director may also remove said librarian and other assistants;

(C) Purchase books, periodicals, equipment, and supplies;

(D) Purchase sites and erect buildings, or lease suitable quarters, and have supervision and control of that property;

(E) Borrow books from and lend books to other libraries;

(F) Enter into contracts to receive service from, or give service to, libraries within or without the region and give service to municipalities without the region that have no libraries, or cooperate with and aid generally, without such contracts, public school, institutional, and other libraries;

(G) Make such bylaws, rules, and regulations not inconsistent with this article as may be expedient for the government of regional library areas and the regional libraries therein, and for the purpose of carrying out the provisions of this article; and

(H) Accept for the State of West Virginia any appropriations of money that may hereafter be made out of the federal treasury by an act or acts of Congress and to disburse such funds for the purpose of carrying out the provisions of this article, in accordance with §18-10-11 and §18-10-12 of this code.

(h) *Aid to libraries by State Library Section.*—

(1) The State Library Section may render such aid and assistance, financial, advisory or otherwise, to public, school, county, or regional libraries, whether established or maintained by the State Library Section or not, under such conditions and rules and regulations as the State Library Section may determine necessary to further the interests of the state and best increase the efficiency of the service it is expected to render the public.

(2) The State Library Commission may review and analyze the status of libraries across the state and advise the State Library Section on projects and libraries for which it has determined the development and support of will further the education of the people of the state as a whole and will thereby aid in the discharge of the responsibility of the state to encourage and foster education. The West Virginia Library Section may pay over and contribute to any board of library directors created and maintained pursuant to the provisions of this section or any special act of the Legislature such sum or sums of money as may be available from funds included in appropriations made for the State Library Section for that purpose.

(i) *Collection and preservation of library data; surveys; employment of personnel; use of data.*

(1) The State Library Section may collect and preserve statistics and other data, concerning libraries of any sort located within this state; to make surveys relating to the needs or conditions of such libraries or the library conditions of any city, town, county, regional library area, or other subdivision of this state; and to publish the results and findings thereof in accordance with the provisions of this section.

(2) The State Library Section may employ necessary personnel for any of these purposes.

(3) Such data, surveys, and findings of the State Library Section shall be available to all school, public, institutional, regional, and other libraries within this state, whether proposed or established.

(j) *Confidential nature of certain library records.*—

(1) Circulation and similar records of any public library in this state which identify the user of library materials are not public records but shall be confidential and may not be disclosed except:

(A) To members of the library staff in the ordinary course of business, including paid employees and unpaid volunteers upon completing a written confidentiality agreement which shall prevent disclosure of circulation records, personal information, and similar records of any public library except to the extent allowed under this subsection and obtaining written permission from the library director of the library system wherein he or she will be working;

(B) Upon written consent of the user of the library materials or the user's parents or guardian if the user is a minor or ward; or

(C) Upon appropriate court order or subpoena.

(2) Any disclosure authorized by subdivision (1) of this subsection, or any unauthorized disclosure of materials made confidential by subdivision (1), does not in any way destroy the confidential nature of that material, except for the purpose for which an authorized disclosure is made. A person disclosing material as authorized by subdivision (1) of this subsection is not liable therefor.

(k) *Library Facilities Improvement Fund.*—

(1) There is continued in the State Treasury a special fund known as the Library Facilities Fund. Expenditures from the fund shall be for the purposes set forth in this section. The fund shall be administered by the State Library Section.

(2) The fund shall consist of moneys received from the following sources:

(A) All appropriations made by the Legislature to the fund;

(B) Any moneys available from sources outside the State Library Section;

(C) Repayment of loans made by the State Library Section pursuant to this section; and

(D) All interest and other income earned from investment of moneys in the fund.

(3) The State Library Section shall utilize moneys in the fund to support public library facilities construction, renovation, maintenance, and improvement projects. The State Library Section shall evaluate potential recipient projects of funds from the fund on a competitive basis.

(A) The State Library Section may provide loans to public libraries to support energy savings and critical maintenance projects with moneys in the fund.

(B) With the exception of loans made under this section, the State Library Section may not expend any money from the fund toward a particular project unless the proposed expenditure is matched on a dollar-for-dollar basis by other sources.

(4) The State Library Section shall propose a rule for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section. The rule shall contain at least the following:

(A) A process for submitting and reviewing proposals;

(B) The content of proposals;

(C) Criteria for evaluating proposals; and

(D) Other provisions the State Library Section considers necessary to administer the program in accordance with this section.

(5) Any balance, including accrued interest and any other returns, in the fund at the end of each fiscal year will not expire to the General Revenue Fund but remain in the fund and be expended for the purposes provided by this section.

(6) In any calendar year, the State Library Section may not allocate an amount in excess of four percent of the balance of the fund on December 31 of the immediately preceding calendar year for administrative expenses.

(7) The State Library Section may invest any or all of the balance of the fund with the state's Consolidated Investment Fund.

(l) Any rules promulgated by the Library Commission will remain in full force and effect until amended, repealed, or superseded by another rule promulgated by the Library Commission or State Library Section.

§29-1-8d National Coal Heritage Area Commission.

(a)(1) The National Coal Heritage Area originally was a partnership project of the National Park Service and the State of West Virginia as represented by the Division of Tourism and the Division of Culture and History. In January 1999, the Governor of West Virginia appointed 28 experts from the state and the region to the National Coal Heritage Area Steering Committee to provide guidance in the development of the National Coal Heritage Area, and in 2002 the West Virginia Legislature created the National Coal Heritage Area Authority, a state agency with an independent board, to serve as the management entity for the National Coal Heritage Area.

(2) The West Virginia Legislature finds that there continues to be a significant need for a public body to promote and enhance historic preservation, tourism, and economic development activities that relate to the state's history as a coal-producing state within the counties of Boone, Cabell, Fayette, Lincoln, Logan,

Kanawha, Marion, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

(3) The Legislature additionally finds that the state entity previously known as the National Coal Heritage Area Authority may more effectively serve the people of West Virginia through the Department of Arts, Culture, and History as the National Coal Heritage Area Commission, where it will continue to work with the landowners, county officials, and community leaders, state and federal government agencies, and other interested parties to enable and facilitate the development of the National Coal Heritage Area will greatly assist in the realization of these potential benefits.

(b) Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

(1) “Commission” means the National Coal Heritage Area Commission;

(2) “Department” means the Department of Arts, Culture, and History; and

(3) “National Coal Heritage Area” means and comprises the counties of Boone, Cabell, Fayette, Lincoln, Logan, Kanawha, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne, and Wyoming.

(c) *Creation; appointment of commission; terms; expenses; executive director:*

(1) There is hereby created the National Coal Heritage Area Commission which is a division of the Department of Arts, Culture, and History, existing for the purposes of providing direction to and assistance with state and federal historic preservation, economic development, and tourism projects in the National Coal Heritage Area and aiding in the development and implementation of integrated cultural, historical, and land resource management policies and programs in order to retain, enhance, and interpret the significant values of the lands, waters, and structures in the National Coal Heritage Area.

(2) The commission shall be composed of, at a minimum, 19 members as follows:

(A) The following six persons shall be nonvoting members, and shall serve by virtue of their offices, and may be represented at meetings of the commission by designees:

(i) The Curator of the Department of Arts, Culture, and History, or his or her designee;

(ii) The Secretary of the Department of Environmental Protection, or his or her designee;

(iii) The Secretary of the Department of Tourism, or his or her designee;

(iv) The Secretary of the Department of Economic Development, or his or her designee;

(v) The State Superintendent of Schools, or his or her designee; and

(vi) The Director of the Division of Natural Resources, or his or her designee;

(B) The remaining 13 members shall be appointed for terms of four years by the Governor with the advice and consent of the Senate. The county commission of each county within the National Coal Heritage Area may submit to the Governor a list of three candidates to be considered for board appointment. Of the 13 members appointed by the Governor, each candidate must live or work within the subject county and the appointees shall be representative of the tourism industry, the coal industry, the United Mine Workers of America, economic development activity, historic preservation activity, or higher education. Additional counties may submit names of individuals fitting the above criteria for consideration as ex-officio, non-voting, board membership;

(C) The terms of office shall be four years and shall expire on June 30. No appointed member may serve more than two

consecutive full terms. A member shall continue to serve until his or her successor has been appointed and qualified;

(D) If an appointed member is unable to complete a term, the Governor shall appoint a person to complete the unexpired term. Each vacancy occurring on the board must be filled within 60 days after the vacancy is created;

(E) Any appointed member of the board shall immediately and automatically forfeit his or her membership on the board if he or she becomes a nonresident of the county, or ceases to be employed in the county, from which he or she was appointed;

(F) Each member of the board shall serve without compensation, but shall receive expense reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of the office, in the same amount paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law: *Provided*, That no member may be reimbursed for expenses paid by a third party.

(3) The Curator of the Department of Arts, Culture, and History shall appoint a director to carry out the actions of the board, which appointment may be in addition to other duties, to serve at the will and pleasure of the curator. The director may employ necessary personnel and retain such temporary consultants or technicians as may be necessary for any special study or survey consistent with the provisions of this section. The director shall carry out plans to implement the provisions of this section and to exercise those powers. The director shall prepare annually, in consultation with the board, a budget for the commission.

(d) *Board; quorum; chairperson; bylaws.*—

(1) The board is the governing body of the National Coal Heritage Area Commission, and may exercise all the powers given the commission in this section.

(2) The director shall serve as the board chairperson. The board shall meet at such times as shall be specified by the chairperson,

but in no case less than quarterly. A majority of seven appointed members shall constitute a quorum for the transaction of business.

(3) There shall be a standing committee of the National Coal Heritage Area Commission known as the Coal Heritage Trail Committee composed of the chairperson and members of the National Coal Heritage Area from the counties through which the Coal Heritage Trail passes. These counties are Mercer, McDowell, Wyoming, Raleigh, and Fayette. This standing committee shall be responsible for making recommendations to the full board regarding development and promotion of the Coal Heritage Trail, a national scenic byway.

(4) The board shall prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the commission is conducted, shall keep a record of its proceedings, and shall review and approve an annual budget. The board may appoint such officers as necessary to carry out its meetings.

(e) *Powers of commission.*—

The commission may exercise all powers necessary or appropriate to carry out the purposes of this section, including, but not limited to, the power:

(1) To assist in the development and implementation of integrated cultural, historical, and land resource management policies and programs in the National Coal Heritage Area;

(2) To advise the executive director of the National Coal Heritage Commission in retaining, enhancing, and interpreting the significant values of the lands, waters, and structures of the area;

(3) To enter into partnerships with various preservation groups, landmark commissions, certified local governments, county commissions, and other entities to undertake the preservation, restoration, maintenance, operation, development, interpretation, and promotion of lands and structures that possess unique and significant historic, architectural, and cultural value associated with the coal mining heritage of the national coal heritage area;

(4) To make, amend, repeal, and adopt bylaws for the management and regulation of its affairs;

(5) To appoint officers, agents, and employees, and to contract for and engage the services of consultants;

(6) To execute contracts necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government, or with any person, individual, partnership, or corporation to effect any or all of the purposes of this article;

(7) Without in any way limiting any other subdivision of this section, to accept grants and loans from and enter into contracts and other transactions with any federal agency;

(8) To maintain an office at such places within the state as it may designate;

(9) To accept gifts or grants of property, funds, money, materials, labor, supplies, or services from the federal government or from any governmental unit, or any person, firm, or corporation;

(10) To construct, reconstruct, improve, maintain, repair, operate, and manage certain facilities in the National Coal Heritage Area as may be determined by the commission;

(11) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for public recreation or growing out of the public activities operated or managed by the commission from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees; and

(12) To assess and collect a reasonable fee from those persons who use the designated facilities which are part of the national coal heritage area, and to retain and utilize that revenue for any purposes consistent with this article.

(f) *Continuation of legal obligations.* —

Nothing in this section may be considered as superseding, amending, modifying, or repealing any contract or agreement entered into for the benefit of the National Coal Heritage Area prior to the date of enactment of this section. All obligations, contracts, grants, and assets currently belonging to the Coal Heritage Highway Authority and the National Coal Heritage Area Authority shall be transferred to and become the responsibility and property of the National Coal Heritage Area Commission.

ARTICLE 27. NATIONAL COAL HERITAGE AREA AUTHORITY.

§29-27-1. Legislative findings.

[Repealed.]

§29-27-2. Definitions.

[Repealed.]

§29-27-3. Creation; appointment of board; terms; expenses; executive director.

[Repealed.]

§29-27-4. Board; quorum; chairperson; bylaws.

[Repealed.]

§29-27-5. Powers of authority.

[Repealed.]

§29-27-6. Continuation of legal obligations.

[Repealed.]

CHAPTER 137

(Com. Sub. for S. B. 595 - By Senator Trump)

[Passed March 9, 2022; in effect from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §27-6A-13 of the Code of West Virginia, 1931, as amended, relating to the Dangerousness Assessment Advisory Board; barring the subpoenaing of board members to testify in proceedings about which the board issues advice, guidance, or opinion; and requiring in lieu of testifying that the board provides copies of all documents and materials used in providing its advice, guidance, or opinion upon request of the circuit court.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-13. Dangerousness Assessment Advisory Board.

(a) The Dangerousness Assessment Advisory Board is continued. The board shall consist of the following persons:

(1) The Commissioner of the Bureau of Behavioral Health and Health Facilities, or a designee of the commissioner who was not involved in the decision under review;

(2) The forensic coordinator of the state;

(3) A representative of the protection and advocacy system for the state as defined by 29 U.S.C. §794e, 42 U.S.C. §15041 *et seq.*, and 42 U.S.C. §10801 *et seq.*;

(4) An employee of the Division of Corrections and Rehabilitation designated by the commissioner with experience in inmate classification;

(5) An employee of the Division of Rehabilitation Services with experience in independent living programs;

(6) Two board-certified forensic psychiatrists appointed by the Governor with the advice and consent of the Senate; and

(7) Two psychologists who are West Virginia qualified forensic evaluators with at least five years demonstrated experience in state and federal courts, appointed by the Governor with the advice and consent of the Senate.

(b) The purpose of the board is to provide opinion, guidance, and informed objective expertise to circuit courts as to the appropriate level of custody or supervision necessary to ensure that persons who have been judicially determined to be incompetent to stand trial and not restorable or not guilty by reason of mental illness are in the least restrictive environment available to protect the person, other persons, and the public generally.

(c) A circuit court when reviewing a proposed less restrictive placement for a person found incompetent to stand trial and not restorable or not guilty by reason of mental illness may request the assistance of the board in considering the proposed placement plan. The circuit court may request that the medical director convene the board to seek its opinion or opinions on the appropriateness of the proposed placement. The secretary shall provide necessary suggestions, space, and support staff to the board to conduct its activities.

(d) The provisions of §6-9A-1 *et seq.* and §29B-1-1 *et seq.* of this code are inapplicable to the operation of the board.

(e) In performing its duties under this section, the board shall have access to all court records and medical and mental health records available to the court, and all documents of any type used by the medical director in developing the proposed placement plan.

(f) Each member of the board whose regular salary is not paid by the State of West Virginia shall be paid the same compensation and expense reimbursement that is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. Reimbursement for expenses shall not be made, except upon an itemized account, properly certified by the members of the board. All reimbursement for expenses shall be paid out of the State Treasury upon a requisition upon the State Auditor.

(g) A board member shall recuse himself or herself if the board member has previously evaluated a person whose classification or placement is under review.

(h) The members of the board are immune from suit and liability, either personally or in their official capacity, for any claim for damage to, or loss of, property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred within the scope of their board duties or responsibilities: *Provided*, That nothing in this subsection shall be construed to protect any person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(i) A board member is not subject to a subpoena to appear at a judicial hearing by virtue of being a member of the board, or fulfilling his or her duties under this section. Upon request of the circuit court, the board shall make all documents, reports, and other materials used in making its report available to the court or a party in the judicial proceeding regarding placement in redacted form upon the circuit court's request.

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CHAPTER 138

(Com. Sub. for S. B. 610 - By Senator Clements)

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-2-1 and §17-2-2, all relating to the duties, powers, and responsibilities of the Secretary of the Department of Transportation; defining terms; and specifying duties, powers, and responsibilities of the Secretary of the Department of Transportation.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. DEPARTMENT OF TRANSPORTATION.

§17-2-1. Definitions.

(a) As used in this article, unless the context clearly requires a different meaning:

(1) “Administrator” means any person who fills a statutorily created position in an agency within the Department of Transportation and who is designated by statute as commissioner, executive director, or other administrative title, however designated;

(2) “Agency” means any division, authority, board, commission, or other entity of state government, however designated, transferred to and incorporated in and administered as part of the Department of Transportation and includes agencies incorporated in the department pursuant to this code, including, but not limited to, §5F-2-1 of this code;

(3) “Code” means the Code of West Virginia, 1931, as amended by the Legislature;

(4) “Department of Transportation” and “department” means the executive department created pursuant to chapter 5F of this code as the Department of Transportation; and

(5) “Secretary” and “Secretary of Transportation” means the Secretary of the Department of Transportation, who is appointed by the Governor with advice and consent of the Senate pursuant to §5F-1-2 of this code.

(b) All words defined shall be construed to include both the plural and the singular.

§17-2-2. Powers and duties of the Secretary of Transportation.

(a) The secretary is the administrative head of the department, controls and supervises the department, and is responsible for the work of all department employees.

(b) The secretary has the power and authority set forth in this article or elsewhere in code, including, but not limited to, the power and authority specified in §5F-2-2 of this code.

(c) The secretary may employ professional staff, including, but not limited to, certified public accountants, engineers, attorneys, deputies, assistants, hearing officers, and other employees as necessary for the efficient operation of the department, may prescribe their powers and duties, and may fix their compensation within the amounts appropriated and in accordance with the department’s merit-based system authorized in §5F-2-8 of this code.

(d) The secretary may designate any administrator or employee of the department as the secretary’s designee on any board, authority, or commission on which the secretary serves. An administrator or employee thus designated may take the secretary’s place in any hearings, appeals, meetings, or other activities, and such designee shall have the same powers, duties, authority, and responsibility as the secretary.

(e) The secretary may arrange for any of the department's agencies to utilize the services of the department or any other agency within the department, on an as-needed or ongoing basis, for the cost-effective and efficient administration of the department. Interagency agreements may be executed among the department's agencies, or between one or more agencies and the department, if, in the secretary's discretion, such agreement is desired or necessary for the cost-effective and efficient administration of the department.

(f) The secretary shall ensure that the department and its agencies carry out functions in a manner that supplements, complements, and complies with policies, programs, and funding requirements of the Federal Aviation Administration, the Federal Highway Administration, the Federal Railroad Administration, and the Federal Transit Administration, as applicable. The secretary may require that administrators and employees of the department or its agencies consult with appropriate federal, state, and local governmental units to ensure that the department is aware of and in compliance with policies, programs, laws, and regulations affecting the department.

(g) The secretary may, on behalf of the department, sign in the name of the state any contract or agreement with any division, agency, or other unit of federal, state, or local government, any legal entity, or any individual: *Provided*, That the powers granted to the secretary under this subsection may not exceed, or be interpreted as authority to exceed, the powers granted by the Legislature to the department or the various agencies of the department.

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CHAPTER 139

(Com. Sub. for H. B. 4062 - By Delegates Criss and Booth)

(By Request of the Division of Highways)

[Passed February 10, 2022; in effect ninety days from passage.]

[Approved by the Governor on February 21, 2022.]

AN ACT to amend and reenact §17-2A-2 of the Code of West Virginia, 1931, as amended, relating to modifying the residency requirement for the Commissioner of the Division of Highways.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-2. Qualifications; office requirements; devotion of full time to duties; supervisory authority; oath; bond.

The commissioner shall be a person who is experienced in highway planning, finance, construction, maintenance, management and supervision qualifying him or her for the duties of his or her office; shall devote his or her full time and attention to his or her official duties and responsibilities; shall be a resident of West Virginia; shall maintain his or her office headquarters at the state capital; shall be the chief executive officer of the commission and, subject to other provisions of law, shall have direct and full control, management and supervision of the entire state road program and system; and shall, prior to assumption of the duties of his or her office, take and subscribe to the oath prescribed by the Constitution and execute a bond, with surety approved by the commission, in the penal sum of \$25,000, which executed oath and bond shall be filed with the Secretary of State. Premiums on the commissioner's bond shall be paid from commission funds.

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CHAPTER 140

(Com. Sub. for H. B. 4067 - By Delegates Summers, Steele and Foster)

[Passed February 10, 2022; in effect from passage.]
[Approved by the Governor on February 23, 2022.]

AN ACT to repeal §8-13C-13 of the Code of West Virginia, 1931, as amended; to repeal §16-1-21 of said code; to repeal §16-41-6 of said code; to repeal §18-10L-7 of said code; to repeal §22A-6-11, §22A-6-12, and §22A-6-13 of said code; to repeal §29-6-7a of said code; to repeal §33-25A-35 of said code; to amend and reenact §5-11B-7 of said code; to amend and reenact §5A-6C-4 of said code; to amend and reenact §9-4A-2b of said code; to amend and reenact §9-4C-7 of said code; to amend and reenact §12-7-12 of said code; to amend and reenact §14-2A-21 of said code; to amend and reenact §16-3B-4 of said code; to amend and reenact §16-33-6 of said code; to amend and reenact §31-15A-17b of said code; to amend and reenact §31-18-24 of said code; and to amend and reenact §49-2-604 of said code, all relating to making certain reports electronic rather than in printed hard-copy form; providing for hard copies to be furnished upon request; and eliminating the reporting requirement entirely for those agencies whose reports are no longer needed or whose deadlines have passed with reports already submitted.

Be it enacted by the Legislature of West Virginia:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE, AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 11B. PREGNANT WORKERS FAIRNESS ACT.

§5-11B-7. Reports.

The Commission shall on October 1 of each year report to the Joint Committee on Government and Finance on the number of complaints filed under this article during the previous year and their resolution. The report shall be transmitted to the members of the committee electronically. Further, the report shall be provided to the legislative librarian to be posted to the legislative website. No hard copy of the report shall be issued; however, a member shall be provided a hard copy upon request.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 6C. WEST VIRGINIA CYBER INCIDENT REPORTING.

§5A-6C-4. Cybersecurity Office annual report.

(a) On or before December 31 of each year, and when requested by the Legislature, the Cybersecurity Office shall provide a report to the Joint Committee on Government and Finance containing the number and nature of incidents reported to it during the preceding calendar year. The report shall be transmitted to the members of the committee electronically and shall be sent to the legislative librarian to be posted on the legislative website. No hard copy of the report shall be issued; however, a member shall be provided a hard copy upon request.

(b) The Cybersecurity Office shall also make recommendations, if any, on security standards or mitigation that should be adopted.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX; AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS; ADDITIONAL AUTHORITIES RELATING TO PENSIONS AND BOND ISSUANCE.

§8-13C-13. Study.

[Repealed.]

CHAPTER 9. HUMAN SERVICES

ARTICLE 4A. MEDICAID UNCOMPENSATED CARE FUND.

§9-4A-2b. Expansion of coverage to children and terminally ill.

(a) It is the intent of the Legislature that steps be taken to expand coverage to children and the terminally ill and to pay for this coverage by fully utilizing federal funds. To achieve this intention, the Department of Health and Human Resources shall undertake the following:

(1) The department shall provide a streamlined application form, which shall be no longer than two pages, for all families applying for medical coverage for children under any of the programs set forth in this section; and

(2) The department shall provide the option of hospice care to terminally ill West Virginians who otherwise qualify for Medicaid.

(3) The department shall accelerate the Medicaid option for coverage of Medicaid to all West Virginia children whose family income is below one hundred percent of the federal poverty guideline.

(b) Notwithstanding the provisions of §9-4A-2a of this code, the accruing interest in the medical services trust fund may be utilized to pay for the programs specified in subsection (a) of this section: *Provided*, That to the extent the accrued interest is not sufficient to fully fund the specified programs, the disproportionate share hospital funds paid into the medical services trust fund after June 30, 1994, may be applied to cover the cost of the specified programs.

(c) Annually on January 1, the department shall report to the Governor and to the Legislature information regarding the number

of children and elderly covered by the programs in subdivisions (2) and (3) of subsection (a), the cost of services by type of service provided, a cost-benefit analysis of the acceleration and expansion on other insurers and the reduction of uncompensated care in hospitals as a result of the programs.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4C-7. Powers and duties.

(a) Each board created pursuant to this article shall:

(1) Develop, recommend, and review reimbursement methodology where applicable, and develop and recommend a reasonable provider fee schedule, in relation to its respective provider groups, so that the schedule conforms with federal Medicaid laws and remains within the limits of annual funding available to the single state agency for the Medicaid program. In developing the fee schedule the board may refer to a nationally published regional specific fee schedule, if available, as selected by the secretary in accordance with §9-4C-8 of this code. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal Medicaid laws, and may recommend higher reimbursement rates for basic primary and preventative health care services than for other services. In identifying basic primary and preventative health care services, the board may consider factors, including, but not limited to, services defined and prioritized by the basic services task force of the health care planning commission in its report issued in December of the year 1992; and minimum benefits and coverages for policies of insurance as set forth in and minimum benefits and coverages for policies of insurance as set forth in chapter thirty-three of this code and rules of the Insurance Commissioner promulgated thereunder. If the single state agency approves the adjustments to the fee schedule, it shall implement the provider fee schedule;

(2) Review its respective provider fee schedule on a quarterly basis and recommend to the single state agency any adjustments it

considers necessary. If the single state agency approves any of the board's recommendations, it shall immediately implement those adjustments;

(3) Assist and enhance communications between participating providers and the Department of Health and Human Resources;

(4) Meet and confer with representatives from each specialty area within its respective provider group so that equity in reimbursement increases or decreases may be achieved to the greatest extent possible and when appropriate to meet and confer with other provider boards; and

(5) Appoint a chairperson to preside over all official transactions of the board.

(b) Each board may carry out any other powers and duties as prescribed to it by the secretary.

(c) Nothing in this section gives any board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's Medicaid program. If the single state agency disapproves the recommendations or adjustments to the fee schedule, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's Medicaid plan are met and shall report such modifications to the Joint Committee on Government and Finance on a quarterly basis. The purpose of each board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the health care provider community and the agency.

(d) In addition to the duties specified in subsection (a) of this section, the ambulance service provider Medicaid board shall develop a method for regulating rates charged by ambulance services.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

***§12-7-12. Reports of board; report of housing development fund.**

(a) The board shall prepare annually, or more frequently if deemed necessary by the board, a report of its operations and the performance of the various investments administered by it. A copy thereof shall be furnished to the Governor, the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, to any legislative committee. Such report shall be kept available for inspection by any citizen of this state.

(b) The West Virginia housing development fund shall prepare annually and submit to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, any legislative committee, a report on the performance of the board and the quality of its investments for the preceding year.

(c) The report shall be transmitted to the President of the Senate, the Speaker of the House of Delegates, the Legislative Auditor and, upon request, any legislative committee electronically. Further, the report shall be provided to the legislative librarian to be posted to the legislative website. No hard copy of the report shall be issued; however, upon request a hard copy shall be provided.

CHAPTER 14. CLAIMS DUE AND AGAINST THE STATE.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-21. Annual report of West Virginia Legislative Claims Commission.

The West Virginia Legislative Claims Commission shall prepare and transmit annually to the Governor and the Legislature

*NOTE: This section was also amended by S. B. 523 (Chapter 238), which passed subsequent to this act.

a report of the activities of the West Virginia Legislative Claims Commission under this article. The report shall include the number of claims filed, the number of awards made, the amount of each award, and a statistical summary of claims and awards made and denied; the balance in the Crime Victims Compensation Fund with a listing by source and amount of the moneys that have been deposited in the fund; the amount that has been withdrawn from the fund, including separate listings of the administrative costs incurred by the West Virginia Legislative Claims Commission, compensation of commissioners and commission personnel, and the amount awarded as attorneys' fees. The report shall be transmitted to the Governor and members of the Legislature electronically. Further, the report shall be provided to the legislative librarian to be posted to the legislative website. No hard copy of the report shall be issued; however, upon request a hard copy shall be provided.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-21. Creation of Diabetes Action Plan.

[Repealed.]

ARTICLE 3B. PERTUSSIS.

§16-3B-4. Data collection on pertussis vaccine administration.

(a) By guideline, the department shall establish a system, sufficient for the purposes of subsections (b) and (c) of this section, to collect data from the local health officers, from public and private health care providers and from parents on the incidence of pertussis and major adverse reactions to pertussis vaccine.

(b) On the basis of information collected under this subsection and of other information available, the department shall periodically revise and update the information required by and the guidelines adopted under §16-3B-2 of this code.

(c) The department shall report to the United States Centers for Disease Control and Prevention all information collected under this section, including that received under §16-3B-3 of this code.

ARTICLE 33. BREAST AND CERVICAL CANCER PREVENTION AND CONTROL ACT.

§16-33-6. Annual report.

The director shall submit an annual report to the Governor and the Legislature concerning the operation of the breast and cervical cancer detection and education program including available data and assessment. Such report shall also include any recommendations for additional action to respond to the high incidence of breast and cervical cancer in this state. The report shall be transmitted to Governor and members of the Legislature electronically. Further, the report shall be provided to the legislative librarian to be posted to the legislative website. No hard copy of the report shall be issued; however, upon request a hard copy shall be provided.

ARTICLE 41. ORAL HEALTH IMPROVEMENT ACT.

§16-41-6. Reporting requirements.

[Repealed.]

CHAPTER 18. EDUCATION.

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-7. Report.

[Repealed.]

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-11. Study of methane detecting shut off devices.

[Repealed.]

§22A-6-12. Study of whistleblower protections.

[Repealed.]

§22A-6-13. Study of ingress and egress to bleeder and gob areas of longwall panels and pillar.

[Repealed.]

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-7a. Report on a centralized personnel system.

[Repealed.]

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17b. Infrastructure lottery revenue bonds for watershed compliance projects.

(a)(1) The Chesapeake Bay has been identified as an impaired water body due to excessive nutrients entering the bay from various sources in six states, including wastewater facilities in West Virginia. To restore the Chesapeake Bay, the states have agreed to reduce their respective nutrient contributions to the Chesapeake Bay.

(2) The Greenbrier River Watershed in southeastern West Virginia which encompasses approximately 1,646 square miles, the majority of which lies within Pocahontas, Greenbrier, Monroe, and Summers counties, has been identified as an impaired water body due to excessive levels of fecal coliform and phosphorus

entering the watershed from various sources, including wastewater facilities in West Virginia. To restore the Greenbrier River Watershed, the state agrees to reduce the fecal coliform and phosphorus contributions to the Greenbrier River Watershed.

(b) Notwithstanding any other provision of this code to the contrary, the Water Development Authority may issue, in accordance with the provisions of §31-15A-17 of this code, infrastructure lottery revenue bonds payable from the West Virginia Infrastructure Lottery Revenue Debt Service Fund created by §31-15A-9 of this code and such other sources as may be legally pledged for such purposes other than the West Virginia Infrastructure Revenue Debt Service Fund created by §31-15A-17 of this code.

(c) The council shall direct the Water Development Authority to issue bonds in one or more series when it has approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects with an authorized permitted flow of 400,000 gallons per day or more. The proceeds of the bonds shall be used solely to pay costs of issuance, fund a debt service reserve account, capitalize interest, pay for security instruments necessary to market the bonds, and to make grants to governmental instrumentalities of the state for the construction of approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects. To the extent funds are available in the West Virginia Infrastructure Lottery Revenue Debt Service Fund that are not needed for debt service, the council may direct the Water Development Authority to make grants to project sponsors for the design or construction of approved Chesapeake Bay watershed compliance projects and Greenbrier River watershed compliance projects: *Provided*, That the council shall direct the Water Development Authority to provide from moneys in the Lottery Revenue Debt Service Fund not needed to pay debt service in fiscal year 2013, a grant of \$6 million to a Chesapeake Bay watershed compliance project which opened bids on December 28, 2011, and further provided that such Chesapeake Bay watershed compliance project shall receive no further grant funding under this section after receipt of the \$6 million grant.

(d) No later than June 30, 2012, each publicly owned facility with an authorized permitted flow of 400,000 gallons per day or more that is subject to meeting Chesapeake Bay compliance standards or Greenbrier River watershed compliance standards shall submit to the council a 10-year projected capital funding plan for Chesapeake Bay watershed compliance projects or Greenbrier River watershed compliance projects, as the case may be, including a general project description, cost estimate, and estimated or actual project start date and project completion date, if any. The council shall timely review the submitted capital funding plans and forward approved plans to the Water Development Authority for further processing and implementation pursuant to this article. If the council finds a plan to be incomplete, inadequate, or otherwise problematic, it shall return the plan to the applicant with comment on the plan shortcomings. The applicant may then resubmit to council an amended capital funding plan for further consideration pursuant to the terms of this subsection.

(e) Upon approval, each proposed Chesapeake Bay watershed compliance project or Greenbrier River watershed compliance project, or portion of a larger project, which portion is dedicated to compliance with nutrient standards, or fecal coliform and phosphorus standards, established for the protection and restoration of the Chesapeake Bay or the Greenbrier River watershed, as the case may be, shall be eligible for grant funding by funds generated by the infrastructure lottery revenue bonds described in subsection (b) of this section. At the request of the applicant, the remaining percentage of project funding not otherwise funded by grant under the provisions of this article may be reviewed as a standard project funding application.

(f) Eligible projects that have obtained project financing prior to December 31, 2012, may apply to the council for funding under the provisions of this section. These applications shall be processed and considered as all other eligible projects, and a grant funding awarded shall, to the extent allowed by law, be dedicated to prepay all or a portion of debt previously incurred by governmental instrumentalities of the state for required Chesapeake Bay nutrient removal projects or Greenbrier River watershed fecal coliform and

phosphorus removal projects, subject to the bond covenants and contractual obligations of the borrowing governmental entity. However, any private portion of funding provided by agreement between a political subdivision and one or more private entities, either by direct capital investment or debt service obligation, shall not be eligible for grant funding under the provisions of this article.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-24. Annual audit; reports to Joint Committee on Government and Finance; information to joint committee or legislative auditor.

The Housing Development Fund shall cause an annual audit to be made by an independent certified public accountant of its books, accounts, and records, with respect to its receipts, disbursements, contracts, mortgages, leases, assignments, loans, and all other matters relating to its financial operations, including those of the Operating Loan Fund, the Land Development Fund, and the Mortgage Finance Bond Insurance Fund. The person performing such audit shall furnish copies of the audit report to the commissioner of finance and administration, where they shall be placed on file and made available for inspection by the general public. The person performing such audit shall also furnish copies of the audit report to the Speaker of the House of Delegates, the President of the Senate, and the majority and minority leaders of both houses. The audit report shall be transmitted to the Speaker of the House of Delegates, the President of the Senate, and the majority and minority leaders of both houses of the Legislature electronically. Further, the report shall be provided to the legislative librarian to be posted to the legislative website. No hard copy of the audit report shall be issued; however, upon request a hard copy shall be provided.

In addition to the foregoing annual audit report, the Housing Development Fund shall also render every six months to the Joint Committee on Government and Finance a report setting forth in detail a complete analysis of the activities, indebtedness, receipts, and financial affairs of such fund and the Operating Loan Fund, the

Land Development Fund, Affordable Housing Fund, and the Mortgage Finance Bond Insurance Fund. Upon demand, the Housing Development Fund shall also submit to the Joint Committee on Government and Finance or the Legislative Auditor any other information requested by such committee or the Legislative Auditor. The report shall be available electronically only, and no hard copy of the report shall be issued; however, upon request a hard copy shall be provided.

CHAPTER 33. INSURANCE.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-35. Rural health maintenance organizations.

[Repealed.]

CHAPTER 49. CHILD WELFARE

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-604. Program administration; implementation; procedures; annual evaluation; coordination; plans; grievances; reports.

(a) The administering agency for the family support program is the Department of Health and Human Resources.

(b) The Department of Health and Human Resources shall initially implement the family support program through contracts with an agency within four of the state's behavioral health regions, with the four regions to be determined by the Department of Health and Human Resources in consultation with the state family support council. These regional family support agencies of the family support program will be responsible for implementing this article and subsequent policies for the families of persons with developmental disabilities residing within their respective regions.

(c) The Department of Health and Human Resources, in conjunction with the state family support council, shall adopt policies and procedures regarding:

(1) Development of annual budgets;

(2) Program specifications;

(3) Criteria for awarding contracts for operation of regional family support programs and the role of regional family support councils;

(4) Annual evaluation of services provided by each regional family support agency, including consumer satisfaction;

(5) Coordination of the family support program and the use of its funds, throughout the state and within each region, with other publicly funded programs, including Medicaid;

(6) Performance of family needs assessments and development of family service plans;

(7) Methodology for allocating resources to families within the funds available; and

(8) Resolution of grievances filed by families pertaining to actions of the family support program.

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CHAPTER 141

(Com. Sub. for H. B. 4297 - By Delegates Westfall and Pack)

[Passed March 7, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §9-6-8 of the Code of West Virginia, 1931, as amended, relating to the coordination of efforts and sharing of information between the Department of Health and Human Resources and the State Auditor's Office for the purpose of conducting investigations of financial exploitation of a vulnerable adult.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-8. Confidentiality of records.

(a) Except as otherwise provided in this section, all records of the department, state and regional long-term care ombudsmen, nursing home or facility administrators, the Office of Health Facility Licensure and Certification, and all protective services agencies concerning an adult or facility resident under this article are confidential and may not be released, except in accordance with the provisions of §9-6-11 of this code.

(b) Unless the vulnerable adult concerned is receiving adult protective services, or unless there are pending proceedings regarding the vulnerable adult, the records maintained by the adult protective services agency shall be destroyed 30 years following their preparation.

(c) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning reports of abuse, neglect, or financial exploitation of a

vulnerable adult, including all records generated as a result of such reports, may be made available to:

(1) Employees or agents of the department who need access to the records for official business;

(2) Any law-enforcement agency investigating a report of known or suspected abuse, neglect, or financial exploitation of a vulnerable adult;

(3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect, or financial exploitation occurred;

(4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court shall, before permitting use of the records in connection with any court proceeding, review the records for relevancy and materiality to the issues in the proceeding. The court may issue an order to limit the examination and use of the records or any part of the record;

(5) A grand jury, by subpoena, upon its determination that access to the records is necessary in the conduct of its official business;

(6) The recognized protection and advocacy agency for the disabled of the State of West Virginia;

(7) The victim; and

(8) The victim's legal representative, unless he or she is the subject of an investigation under this article.

(d) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, summaries concerning substantiated investigative reports of abuse, neglect, or financial exploitation of vulnerable adults may be made available to:

Any person who the department has determined to have abused, neglected, or financially exploited the victim.

(e) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, summaries concerning substantiated and unsubstantiated investigative reports of abuse, neglect, or financial exploitation of vulnerable adults may be made available to:

(1) Any appropriate official of the state or regional long-term care ombudsman investigating a report of known or suspected abuse, neglect or financial exploitation of a vulnerable adult;

(2) Any person engaged in bona fide research or auditing, as defined by the department. However, information identifying the subjects of the report may not be made available to the researcher;

(3) Employees or agents of an agency of another state that has jurisdiction to investigate known or suspected abuse, neglect, or exploitation of vulnerable adults;

(4) A professional person when the information is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult; and

(5) A department administrative hearing officer when the hearing officer determines the information is necessary for the determination of an issue before the officer.

(f) Notwithstanding the provisions of subsection (a), subsection (e), or any other provision of this code to the contrary, all records concerning substantiated and unsubstantiated referrals of financial exploitation of a vulnerable adult may be made available to the State Auditor's Office in order to carry out any investigations which that office or its appropriate divisions are required or authorized to undertake.

(g) The identity of any person reporting abuse, neglect, or financial exploitation of a vulnerable adult may not be released without that person's written consent to any person other than employees of the department responsible for protective services or the appropriate prosecuting attorney or law-enforcement agency. This subsection grants protection only for the person who reported the abuse, neglect, or financial exploitation and protects only the

fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect, or financial exploitation when deemed necessary by the prosecuting attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.

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CHAPTER 142

**(H. B. 4463 - By Delegates Crouse, Clark, Steele, Howell,
Mazzocchi, Householder, and D. Jeffries)**

(By Request of the Athletic Commission)

[Passed March 12, 2022; in effect July 1, 2022.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §29-5A-1 and §29-5A-16 of the Code of West Virginia, 1931, as amended, all relating to the compensation the members of the State Athletic Commission may receive during a fiscal year for their attendance and participation in public meetings of the commission; and their work at exhibitions and matches sanctioned by the commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5A. STATE ATHLETIC COMMISSION.

§29-5A-1. Creation of commission; members; officers; seal and rules.

(a) The State Boxing Commission, heretofore created, is hereby continued and renamed the State Athletic Commission. The commission shall consist of five persons appointed by the Governor, by and with the consent of the Senate, no more than three of whom shall belong to the same political party and no two of whom shall be residents of the same county at the same time. One member shall have at least three years of experience in the sport of boxing. One member shall have at least three years of experience in the sport of mixed martial arts. One member shall have at least three years of experience in the health care industry as a licensed physician, registered nurse, nurse practitioner, or

physicians' assistant. Two members shall be citizen members who are not licensed under the provisions of this article and who do not perform any services related to the persons regulated under this article. The members shall serve without pay except that each member shall receive \$100 for each day that he or she attends and participates in a public meeting in which the commission makes or deliberates towards an official act: *Provided*, That the compensation a member may receive pursuant to this subsection during each fiscal year may not exceed \$2,000.

(b) At the expiration of the term of each member, his or her successor shall be appointed by the Governor for a term of four years. If there is a vacancy in the board, the vacancy shall likewise be filled by appointment by the Governor and the Governor shall likewise have the power to remove any commissioner at his or her pleasure.

(c) Any three members of the commission shall constitute a quorum for the exercise of the power or authority conferred upon it. The members of the commission shall, at the first meeting after their appointment, elect one of their number chairman of the commission and another of their number secretary of the commission, shall adopt a seal for the commission, and shall make such rules for the administration of their office, not inconsistent herewith, as they may consider expedient; and they may hereafter amend or abrogate such rules.

(d) The concurrence of at least three commissioners is necessary to render a choice or decision of the commission except that, notwithstanding the requirements of the Open Governmental Proceedings Act, §6-9a-1 *et seq.* of this code, a quorum of the commission may vote in writing to approve changes to the roster of participants or the roster of officials if the need for the substitution(s) is made known to the commission within 48 hours of an event that the commission previously approved: *Provided*, That the substitution(s) is necessary to effectuate the match: *Provided, however*, That the written decision of the commission is presented at the next scheduled meeting of the commission and recorded in its minutes.

§29-5A-16. Presence of members of commission or inspector at exhibitions and matches.

(a) Each member of the commission may be present at all exhibitions and matches without charge therefor, and shall, when present, see that the rules are strictly observed, and may be present at the counting of the gross receipts. The commission may appoint an inspector to be present representing the commission, which inspector has the same privilege hereby conferred upon a member of the commission; and the inspector shall immediately mail to the commission the official box office statement received from the officers of the club.

(b) Subject to available funds, the commission may pay a member of the commission \$150 for each day that he or she performs the work of the commission at a sanctioned exhibition or match. But the commission may pay no more than two members of the commission for each day of an exhibition or match. The commission may pay no more than \$3,000, collectively, to the members of the commission pursuant to this subsection during any fiscal year.

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CHAPTER 143

**(Com. Sub. for H. B. 4479 - By Delegates Dean, Evans,
Mazzocchi, Haynes, Holstein, Paynter, Zukoff, Brown,
Reynolds, Bridges, and Hansen)**

[Passed March 10, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2K-1, §5B-2K-2, §5B-2K-3, §5B-2K-4, §5B-2K-5, and §5B-2K-6, all relating to establishing the Coalfield Communities Grant Facilitation Commission; providing legislative findings; establishing the Commission and providing for its membership and duties; providing for commission assistance from the Department of Economic Development and certain institutions of higher education; authorizing the Commission to provide the local match portion for local public and private entities applying for grants from federal, state and private sources; providing what constitutes a public purpose for eligibility for grant match; establishing a special revenue account; directing the creation of a special subcommittee of the Commission to assist the Commission and grant applicants with training and other technical expertise as directed by the Commission; and providing for annual electronic reports to the Legislature's Joint Committee on Government and Finance.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2K. COALFIELD COMMUNITIES GRANT FACILITATION COMMISSION.

§5B-2K-1. Short title.

This article shall be known as the Coalfield Grant Facilitation Act of 2022.

§5B-2K-2. Legislative Findings.

The Legislature finds that the historical coal field communities of this state that were once thriving and vital parts of the state have seen decades of decline as changes in coal mining technologies and mining practices and the decline in the market for coal have resulted in a steady decline in the populations and economic vitality of the coal mining regions of our state; and every effort made to revitalize these areas is an important and necessary component of the success and advancement of the economy of this state.

Many funding initiatives available to these areas in the form of matching grants from federal and private sources have become a significant and important opportunity for access to capital to initiate revitalization, but limitations of funds to match grants and having the resources to apply for and facilitate receipt of these grants has encumbered the utilization of these resources.

The Legislature, by enactment of this article, intends to initiate mechanisms to facilitate the access to such capital, by establishing a commission to administer state funds to provide to eligible local entities the required local matching portion for certain grants; and to facilitate assistance to these local entities by providing access to grant writing expertise and support by utilizing our state university and colleges to assist in the development of successful grant writing resources for local entities to maximize their success in rebuilding their communities.

§5B-2K-3. Coalfield Community Grant Facilitation Commission created.

(a) The Coalfield Community Grant Facilitation Commission is hereby created as an independent body corporate. The commission shall consist of 12 members, who shall be residents and citizens of the state. Commission members shall be appointed by the Governor, by and with the advice and consent of the Senate. The commission shall consist of the following members:

(1) The Secretary of the Department of Economic Development, or his or her designee, who shall serve as chairperson of the commission;

(2) A representative of county governments of this state;

(3) A representative of large municipalities of this state;

(4) A representative of small municipalities of this state;

(5) Two representatives of a foundation, nonprofit, or other organization that provides grants for public interest projects in this state and who has expertise in grant issuance or administration;

(6) Two representatives of institutions of higher education with specialized knowledge in economic development;

(7) A representative from businesses and industries within the state; and

(8) Three members at large appointed from regions and counties within coalfield areas of the state who have knowledge and experience in local issues, economic development, or other areas of expertise within the directive of the commission.

(b) Each member shall serve a term of five years. Of the members first appointed, five shall be appointed for a term ending December 31, 2023, and three each for terms ending one and two years thereafter. Commission members may be reappointed to additional terms, and although their terms may have expired shall continue to serve until their successor has been appointed.

(c) It is the duty of the commission:

(1) To establish a process for timely review of applications and approval of awards of funds needed as a required match to receive federal, state, or private grants with the goal to assure the greatest possibility that a grant being applied for is received;

(2) To award grants of commission funds, as available, in an efficient and fair manner to provide a match for local entities that

would otherwise qualify for a federal, state, or private grant but are unable to fulfill the grant's matching fund requirements;

(3) To provide grant applicants with technical assistance and support; and

(4) To disseminate information for the purpose of educating persons and entities as to the existence and functions of the commission and as to the availability of state, federal, and nongovernmental resources.

(d) The Department of Economic Development shall assist the commission in its functions and operations including, but not limited to, providing administrative, clerical, and technical support.

(e) Members of the commission are not entitled to compensation for services performed as members. Each member is entitled to reimbursement for reasonable expenses incurred in the discharge of their official duties. All expenses incurred by members shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from the funds of the Department of Economic Development or from funds appropriated for that purpose by the Legislature.

(f) No liability or obligation is incurred by the commission beyond the extent to which moneys are awarded for grant acquisition facilitation.

(g) Members shall meet as designated and scheduled by the chairperson. The presence of a majority of commission members, in person or by real-time electronic communication, constitutes a quorum to conduct business at a meeting.

(h) The commission shall prioritize the locations for grant funding assistance by utilizing the designation of priority communities established by the "Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization" established by presidential executive order 14008, issued on January 21, 2021. The commission may not certify a project unless it finds that the proposal is in the public interest and the grant will

be used for a public purpose. For purposes of this article, projects in the public interest and for a public purpose can provide private benefit, if the commission, in its judgment determines that: (1) the project will enhance a local community or region; (2) the granting entity for which the commission's matching grant is being used requires a public purpose for grant eligibility; and (3) the commission in its judgment concludes the proposal will enhance the quality of life or services of a community or region. A public purpose includes, but is not limited to, proposals that:

(1) Enhance economic vitality, including revitalization of structures that have public purpose or benefit;

(2) Promote or develop an artistic or philanthropic purpose;

(3) Improve traditional infrastructure, such as water and wastewater treatment facilities, transmission lines, transportation facilities, and flood and wastewater management;

(4) Create or enhance telecommunications infrastructure including cellular towers, fiber optic expansion and technology infrastructure;

(5) Promote agricultural activities and development;

(6) Enhance development of previously mined areas or areas previously used by the coal industry and other industrial activities into uses that diversify the local economy;

(7) Create or expand recreational facilities, such as walking, hiking, all-terrain vehicle, bike trails, picnic facilities, restrooms, boat docking and fishing piers, and athletic facilities;

(8) Are used for acquisition of private property for local public purposes that promote economic vitality and housing development and enhancement;

(9) Preserve or enhance buildings that are of local historic or economic interest;

(10) Restore or create retail facilities, including related service, parking, and transportation facilities, to revitalize decaying downtown areas;

(11) Are the construction or expansion of other facilities that promote or enhance economic development or tourism opportunities thereby promoting the general welfare of local residents;

(12) Provide facilities and activities that provide resources for local residences that enhance quality of life including, but not limited to, childcare access and public transportation;

(13) Provide vocational and entrepreneurial training for displaced miners and other persons that have lost jobs or have been unable to find employment or business opportunities in the region;

(14) Make investments in coal field communities housing stock removal and remediation to facilitate community preservation and aesthetics; and

(15) Create drug and substance abuse rehabilitation programs and facilities.

(i) Prior to making any matching grant award, the commission may conduct a public hearing to assess local public support. If a public hearing is to be held, notice of the time, place, date, and purpose of the hearing shall be published in at least one newspaper in the county where the proposed grant project is located at least 14 days prior to the hearing date.

(j) When a member of the commission must recuse himself or herself because of a perceived or actual conflict of interest regarding a proposed grant assistance award, a majority of the remaining members of the commission without a conflict shall be sufficient for the conduct of commission business.

§5B-2K-4. Coalfield Community Grant Facilitation Special Revenue Account.

A special revenue fund to be known as the Coalfield Community Grant Facilitation Fund is hereby created which shall consist of all moneys made available for the purposes of this article

and include any amounts to be deposited in the fund, including all appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants, or contributions received by the fund. All amounts deposited in the fund shall be awarded by the commission as provided pursuant to the provisions of this article to local governmental units and private and public entities for purposes provided for in this article.

§5B-2K-5. Facilitation of grant submissions by higher education institutions.

To maximize the resources of the state and to create a resource for entities and persons interested in applying for grants that need assistance with grant proposal and applications, the commission shall coordinate and administer a specialized subcommittee of the commission made up of representatives of West Virginia University, Marshall University, the Alliance for Economic Development of Southern West Virginia, and all institutions of higher learning in the coal field counties and regions of this state to provide assistance in the development of grants and grant applications by persons or entities that need assistance in designing, preparing, or implementing a grant proposal submission to a governmental or private entity providing grants. This assistance shall include:

- (1) Training of persons to have expertise in developing, applying for, and administering grants;
- (2) Providing technical assistance to the commission on administration and facilitation of grant assistance applications; and
- (3) Any other actions or initiatives that assist the commission and promote the goals of this article.

§5B-2K-6. Report to the Legislature.

The commission shall provide by December first of each year to the Joint Committee on Government and Finance an annual electronic report that provides the following:

(1) A summary of grant assistance applications received and relevant statistics relating to actions taken by the commission and grants awarded;

(2) An analysis of types of grants or public, private and nonprofit grants available but not applied for that if received could be utilized to benefit coal field communities;

(3) Recommendations regarding appropriations to the Coalfield Community Grant Facilitation Fund for the upcoming fiscal year; and

(4) Any recommended legislation or policy actions needed to facilitate greater receipt of grant funding to coalfield communities.

CHAPTER 144

(Com. Sub. for H. B. 4492 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to repeal §17-16B-1, §17-16B-2, §17-16B-3, §17-16B-5, §17-16B-6, §17-16B-7, §17-16B-7a, §17-16B-7b, §17-16B-8, §17-16B-9, §17-16B-10, §17-16B-11, §17-16B-12, §17-16B-13, §17-16B-14, §17-16B-15, §17-16B-16, §17-16B-17, §17-16B-18, §17-16B-19, §17-16B-20, §17-16B-21, and §17-16B-22 of the Code of West Virginia, 1931, as amended; to repeal §17-16C-1, §17-16C-2, §17-16C-3, and §17-16C-5 of the Code of West Virginia, 1931, as amended; to repeal §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-2A-8, §29-2A-10, §29-2A-11, §29-2A-11a, §29-2A-11b, §29-2A-11c, §29-2A-11d, §29-2A-11e, §29-2A-11f, §29-2A-12, §29-2A-13, §29-2A-14, and §29-2A-20 of said code; to repeal §29-18-1, §29-18-2, §29-18-3, §29-18-4, §29-18-4a, §29-18-5, §29-18-6, §29-18-7, §29-18-8, §29-18-9, §29-18-10, §29-18-11, §29-18-12, §29-18-13, §29-18-14, §29-18-15, §29-18-16, §29-18-17, §29-18-18, §29-18-19, §29-18-20, §29-18-21, §29-18-22, §29-18-23, §29-18-24, and §29-18-25 of said code; and to amend said code by adding thereto a new article, designated §17-16F-1, §17-16F-2, §17-16F-3, §17-16F-4, §17-16F-5, §17-16F-6, §17-16F-7, §17-16F-8, §17-16F-9, §17-16F-10, §17-16F-11, §17-16F-12, §17-16F-13, §17-16F-14, §17-16F-15, §17-16F-16, §17-16F-17, §17-16F-18, §17-16F-19, §17-16F-20, §17-16F-21, §17-16F-22, §17-16F-23, §17-16F-24, §17-16F-25, §17-16F-26, §17-16F-27, §17-16F-28, §17-16F-29, §17-16F-30, §17-16F-31, §17-16F-32, §17-16F-33, and §17-16F-34, all relating to creating

the Division of Multimodal Transportation and combining the powers and duties and eliminating certain references to the Public Port Authority, the West Virginia State Rail Authority and the state Aeronautics Commission; providing for legislative findings and creation of the division; transferring employees, equipment, assets, liabilities, contracts, agreements, functions and duties to the division or its sections; providing for all property currently held by the Public Port Authority, the West Virginia State Rail Authority and the state Aeronautics Commission to be transferred to the division; authorizing the Secretary of the Department of Transportation to appoint the commissioner; establishing general powers and duties of the commissioner; defining terms; establishing the powers and duties of the division generally; requiring the division to promote, supervise and support safe, adequate and efficient transportation, preserve rail, water and airway facilities and promote economic development and tourism; authorizing division to work cooperatively with similar entities within and without the state; providing for siting, development and operation of facilities; authorizing employment of trained and qualified staff and consultants and compensating therefor; providing the right to enter into contracts and agreements; authorizing acquisition of various types and interests in property to be held in the name of the state; authorizing use of eminent domain; authorizing acquisition and disposal of property by various means; authorizing interagency cooperation; authorizing division to act on behalf of the state in planning, financing, development, construction and operation of port, railroad and aeronautic projects or facilities; reporting annually to Legislature on status of projects, operations, finances and related information; authorizing study and assessment of state transportation needs; authorizing use of various financing options including issuing revenue bonds and receipt of grants and loans; authorizing division to make grants and loans to governmental agencies and persons for multimodal transportation projects; permitting collection of reasonable fees and charges connected to making and servicing loans, notes, bonds and other obligations; granting rule-making authority to the division; continuing all rules, policies and

orders of the combined entities until revised and reissued by the division; requiring strategic plan and reports to the Governor and the Legislature; requiring collection and analysis of shipping through state ports; providing for confidentiality of collected information and providing criminal penalty for violation; providing that division employees may not have direct or indirect financial interest in contracts, sale of property of the division and providing criminal penalty for violation; providing that activities of division are for public purpose; authorizing the division to use certain property or facilities of a public utility, common carrier, public road or railroad for certain public projects; requiring the division to relocate any such property or facilities; providing for rules regarding relocation or removal of railroad or public utility located on division property; requiring the division to pay for said relocation or removal; encouraging participation of private enterprise in construction and operation of facilities; authorizing lease back to division; authorizing development of foreign trade zones, free trade zones, ports of entry and customs zones; providing for specific duties related to port projects; authorizing the division to act on behalf of the state in developing, operating, improving and maintaining ports; authorizing the division to coordinate and cooperate with other port entities; creating the West Virginia Multimodal Operations Fund and transference of funds and liabilities of the West Virginia Public Port Authority Operations Fund; providing for specific duties related to rail projects; authorizing the exercise of powers necessary to qualify for federal subsidies; authorizing various means to carry out rail projects that are consistent with state plan with other entities; providing authority for the division to establish, fund, construct, reconstruct, acquire, repair, replace, operate, maintain and make available to other entities railroad projects; providing that research and development of railroads may be conducted; providing that contracts may be entered into to acquire various rolling stock, equipment or trackage and providing the requirements therefor; providing for the authority to enter into agreements that are beneficial to railroad projects notwithstanding other code provisions, including the authority

to reject bids; authorizing division to purchase various types of insurance; authorizing the collection of fees for use of rail projects; providing for the administration and coordination of a state plan, including the distribution of federal subsidies; providing for investigation, research, promotion and development with public participation; authorizing the provision of fiscal assurances and adoption of accounting procedures necessary to continue subsidies; authorizing compliance with applicable federal regulations; authorizing all actions necessary to maximize federal assistance for rail subsidies; providing powers necessary to coordinate with the Maryland Transit Administration for continued operation in the state, including negotiation and contracting authority; providing that any commuter rail operation agreement will meet certain service standards; providing that any track access fees to be paid pursuant to the agreement shall be paid from the West Virginia Commuter Rail Access Fund; authorizing sale or transfer of interest in rail property with federal approval when required; authorizing assistance to entities seeking federal railroad service certification, including the provision of any necessary assurances or guarantees; authorizing division to retain attorney or others to title ownership of rail properties within the state; requiring rail properties offered for sale within the state to be offered first to the state; providing that division may acquire railroad rights in other states and may cooperate with other states in so purchasing any rail properties; providing for the division to give consideration to county or municipality interest in acquiring abandoned property interest and providing for the division to acquire any such abandoned property for subsequent conveyance to a county or municipality; authorizing the division to apply for and utilize federal funds or loans in carrying out its purposes of this article; authorizing the purchase of any railroad rolling stock, equipment and machinery necessary for the operation and maintenance of state rail properties and authorizing contracts with the Division of Highways for maintenance or purchase of vehicles; authorizing maintenance, rebuilding or relocation of state rail properties and authorizing expenditures for the modernization, rebuilding and relocation of any rail properties owned by the state or

private carrier; providing for contracting with domestic or foreign entities to provide, maintain or improve rail transportation service on state rail properties; providing for transfer of rail properties to other entities within the state when permitted by the Governor; authorizing the division to resolve conflicts when multiple entities want to utilize the same rail property; providing for proceeds from the sale of state rail property to be deposited in Railroad Maintenance Fund; terminating Railroad Maintenance Authority Fund and creating a Railroad Maintenance Fund for proceeds and expenditures related to division's purpose; authorizing expenditure from any fund for study of proposed rail projects and use of funds from Railroad Maintenance Fund for study and engineering costs; authorizing the issuance of railroad maintenance revenue bonds and notes for costs of rail projects, including issuance of renewal notes and bond refund, with aggregate amount of all issues of bonds and notes outstanding at one time not exceeding amount capable of being serviced by revenues received; providing that issues of bonds or notes are negotiable instruments and are obligations of the division and are payable out of the revenues which are pledged for such payment; providing for maturity date, terms of execution, sale, redemption and delivery; authorizing the establishment of various conditions necessary to secure sufficient funds to protect bonds or notes; providing that person executing bonds or notes is not personally liable therefor; providing for trust agreement to secure bonds issued by division and creating conditions therefor, not including mortgage of any rail project; allocating expenses of bond issuance or trust agreement to rail projects; providing for civil action for bondholders seeking to enforce rights granted; providing that bonds are payable from division revenues and are not a debt of state or political subdivision; restricting division from incurring debt on behalf of state or political subdivision; authorizing use of proceeds from bonds to carry out division's powers and prohibiting commingling with other funds; providing for the investment of excess funds by West Virginia State Board of Investments; authorizing division to collect rents or revenues for use of rail projects; providing for cooperation with other governmental

agencies to effect acquisition of rail project or bond issuance; authorizing division to maintain rail projects in good repair; providing that railroad maintenance bonds are lawful investments for various entities; continuing West Virginia Commuter Rail Access Fund which is administered by division commissioner; requiring division to establish a state rail plan that complies with federal requirements for funding; providing specific powers and duties for director of public transit; designation of public transit as the agency of the state responsible for administering all federal and state programs related to public transportation; providing for assistance and cooperation of other state agencies with all multimodal sections; providing for specific duties related to aeronautics projects; authorizing division to advance development of aeronautics in cooperation with municipalities; authorizing rules necessary for public safety related to airports and aeronautics; authorizing division to fund grants for public airport authorities; authorizing division to receive federal funding to support airports or air navigation facilities; providing for procedures and conditions for use of federal funds; requiring a federal license to operate an aircraft; allowing for the use of state and municipal facilities and services; disposing of fees collected under this code section and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16B. PUBLIC PORT AUTHORITY.

§17-16B-1. Creation of authority.

[Repealed].

§17-16B-2. Board of directors — Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.

[Repealed].

§17-16B-3. Executive director; appointment; powers and duties; compensation.

[Repealed].

§17-16B-5. Definitions.

[Repealed].

§17-16B-6. Powers and duties of authority.

[Repealed].

§17-16B-7. Special West Virginia public port authority operations fund.

[Repealed].

§17-16B-7a. Special Railroad and Intermodal Enhancement Fund; purposes.

[Repealed].

§17-16B-7b. Study of feasibility intermodal facility at Prichard, West Virginia.

[Repealed].

§17-16B-8. Designation of local port authority districts, powers and duties; plan for development.

[Repealed].

§17-16B-9. Construction and operation of facilities by private enterprise; leasing of facilities by port authority.

[Repealed].

§17-16B-10. Foreign trade zones; free trade zones; ports of entry and customs zones.

[Repealed].

§17-16B-11. Study of feasibility of establishment of export trading company.

[Repealed].

§17-16B-12. Division of tourist trains and transportation; duties.

[Repealed].

§17-16B-13. Disclaimer of any liability of state of West Virginia.

[Repealed].

§17-16B-14. Prohibition on funds inuring to the benefit of or being distributable to directors, employees, officers or private persons; prohibition against certain financial interests; criminal penalties.

[Repealed].

§17-16B-15. Port revenue bonds — Generally.

[Repealed].

§17-16B-16. Public port revenue bonds — Trust agreements.

[Repealed].

§17-16B-17. Tolls, rents, fees, charges and revenues.

[Repealed].

§17-16B-18. Trust funds.

[Repealed].

§17-16B-19. Remedies.

[Repealed].

§17-16B-20. Exemption from taxes.

[Repealed].

§17-16B-21. Preliminary expenses.

[Repealed].

§17-16B-22. Public port revenue refunding bonds — Generally.

[Repealed].

ARTICLE 16C. DIVISION OF PUBLIC TRANSIT.

§17-16C-1. Creation of division.

[Repealed].

§17-16C-2. Designation of department.

[Repealed].

§17-16C-3. Powers and duties of the division.

[Repealed].

§17-16C-5. Assistance of other state agencies.

[Repealed].

ARTICLE 16F. WEST VIRGINIA DIVISION OF MULTIMODAL TRANSPORTATION FACILITIES.

§17-16F-1. Legislative findings and creation of division.

(a) The Legislature finds and declares that there is a need to streamline the execution and implementation of the state's multimodal transportation goals and reduce related costs by consolidating existing multimodal authorities to a single division, known as the West Virginia Division of Multimodal Transportation Facilities, under the Secretary of Transportation pursuant to the provisions of chapter 5F of this code. The Department of Transportation, through the West Virginia Division of Multimodal Transportation Facilities, is designated as the agency of this state responsible for administering all federal and state programs related to public ports, railroads, aeronautics, airports, and air navigation facilities.

(b) On July 1, 2022, the Public Port Authority, the West Virginia State Rail Authority, Division of Public Transit, and the West Virginia State Aeronautics Commission are reestablished, reconstituted, and continued as the West Virginia Division of Multimodal Transportation Facilities, an agency of the state. The purpose of the division is to administer all federal and state programs related to public ports, railroad transportation and commerce, public transit, aeronautics, airports, and air navigation facilities in the State of West Virginia, and thereby to encourage and facilitate growth and economic development opportunities utilizing such transport facilities. The powers and duties heretofore imposed upon the Public Port Authority, the West Virginia State Rail Authority, Division of Public Transit, and the West Virginia State Aeronautics Commission are transferred to and imposed upon the West Virginia Division of Multimodal Transportation Facilities in the manner prescribed by this article.

(c) It is the intent of this article to consolidate into the West Virginia Division of Multimodal Transportation Facilities those entities and employees performing functions which will be facilitated by their consolidation. The Department of Transportation shall provide appropriate office locations necessary to fulfill the functions of the division.

(d) On the effective date of this article, all real property interests, vehicles, equipment contracts or agreements, interests under any existing insurance policy, and records belonging to the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission shall be transferred to the West Virginia Division of Multimodal Transportation Facilities. Any state funds, special revenue funds, and all accounts created for the benefit or use of the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission are transferred to the West Virginia Division of Multimodal Transportation Facilities in accordance with the provisions of this article.

§17-16F-2. Secretary's Powers and duties.

The Secretary of the Department of Transportation or his or her designee shall be the chief operating officer of the division who shall:

(1) Administer the operations of the division, consistent with the provisions of this article, by allocating the functions, activities, and personnel of the division among the various sections;

(2) Coordinate with the Secretary of the Department of Economic Development and any other applicable departments or agencies to facilitate economic development utilizing transportation facilities;

(3) Supervise payrolls and audit payrolls, reports, or transactions for conformity with the provisions of this article;

(4) Plan, evaluate, administer, and implement multimodal transportation programs and policies in the state as set forth in this article;

(5) Utilize professional staff within the Department of Transportation to assist in the operations of the division and authorize reimbursement therefor;

(6) Assist the Governor in multimodal transportation matters; and

(7) Make a report by June 30, and every year thereafter, to the Governor and all other special or periodic reports as may be required and post all reports on its website. Reports to the Legislature are not required; however, upon request of any member or committee, a report must be provided and may be provided electronically. Paper copies of any report shall be provided upon request.

§17-16F-3. Definitions.

As used in this article, unless the context indicates another or different meaning or intent:

“Aeronautics” means the art and science of flight, including, but not limited to, transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment,

construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities.

“Aircraft” means any contrivance now known, or hereafter invented, used, or designed for navigation of or flight in the air whether manned or unmanned.

“Air navigation” means the operation or navigation of aircraft in the air space over this state or upon any airport within this state.

“Air navigation facility” means any facility other than one owned or controlled by the federal government used in, available for use in, or designed for use in aid of air navigation, including airports, and any structures, mechanisms, lights, beacons, markers, communications system, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, air navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

“Airport” means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

“Bond” means a revenue bond or rate issued by the division to effectuate the intents and purposes of this article.

“Commissioner” means the chief operating officer and administrative head of the Multimodal Division, when such person is appointed by the Secretary of Transportation.

“Commuter rail” means a transit mode that is an electric or diesel propelled railway for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburbs. Service must be operated on a regular basis by or under contract with a transit operator for the purpose of transporting passengers within urbanized areas or between urbanized areas and outlying areas. The rail service, using either locomotive-hauled or self-propelled railroad passenger cars, is

generally characterized by multi-trip tickets, specific station-to-station fares, or railroad employment practices and usually has only one or two stations in the central business district. It does not include heavy rail, rapid transit, light rail, or streetcar transit service. Intercity rail service is excluded except for that portion of service operated by or under contract with a public transit agency for predominantly commuter services. Only the predominantly commuter service portion of an intercity route is eligible for inclusion when determining commuter rail route miles.

“Development plan” means a document which details the overall strategy of the division for the proper planning and sustainable development of an area and consists of a written statement and accompanying maps.

“Division” means the West Virginia Division of Multimodal Transportation Facilities.

“Heavy rail” means a transit mode that is an electric railway with the capacity for a heavy volume of traffic. It is characterized by high speed and rapid acceleration passenger rail cars operating singly or in multicar trains on fixed rails, separate rights-of-way from which all other vehicular and foot traffic are excluded, sophisticated signaling and high platform loading.

“Income” means and includes all money accruing to the division or part thereof from any source.

“Intermodal transportation” means the successive transport of goods or passengers using more than one mode of transportation, including air, rail, ship, or roadway.

“Light rail” means a transit mode that typically is an electric railway with a light volume traffic capacity. It is characterized by passenger rail cars operating singly or in short, usually two-car trains, on fixed rails in shared or exclusive rights-of-way, low- or high-platform loading, and vehicle power drawn from an overhead electric line via a trolley or a pantograph.

“Multimodal transportation” means the consideration or connection of various modes of transportation, including air, rail, ship, or roadway.

“Municipality” means any county, city, town, village, or other political subdivision of this state.

“Municipal” means pertaining to a municipality.

“Operation fund” means the special West Virginia Public Port Operation Fund as created by §17-16F-12 of this code.

“Operation of aircraft” or “operate aircraft” means the use, navigation, or piloting of aircraft in the airspace over this state or upon the ground within this state.

“Owner” means and includes all individuals, co-partnerships, associations, corporations, companies, transportation companies, public service corporations, the United States or any of its agencies or instrumentalities, common carriers by rail and railroad companies having any title or interest in any rail properties authorized to be acquired, leased, or used by this article.

“Person” means any individual, firm, corporation, partnership, company, foreign or domestic association, including railroads, joint stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative.

“Port” or “public port” means ports, airports, wayports, terminals, buildings, roadways, rights-of-way, rails, rail lines, facilities for rail, water, highway or air transportation, and such structures, equipment, facilities, or improvements as are necessary.

“Predominantly commuter services” means that for any given trip segment (i.e., distance between two stations), more than 50 percent of the average daily ridership travels on the train at least three times a week.

“Public port development” or “public port project” means any activities which are undertaken with respect to public ports.

“Rail properties” means assets or rights owned, leased, or otherwise controlled by a railroad or other person which are used, or useful, in rail transportation service: *Provided*, That rail properties do not include any properties owned, leased or otherwise controlled by a railroad not in reorganization, unless it consents to such properties’ inclusion in the particular transaction.

“Rail service” means both freight and passenger service.

“Railroad” means a common carrier by railroad as defined in Section 10102 of the Interstate Transportation Act (49 U.S.C. § 10102).

“Railroad project” means the initiation, acquisition, construction, maintenance, repair, equipping, or operation of rail properties or rail service, or the provisions of loans or grants to or with government agencies, or to persons for such purposes, by the division.

“Wayport” means an airport used primarily as a location at which passengers and cargo may be transferred between connecting flights of air carriers engaged in air commerce, but also allows passengers to initiate and terminate flights and shipments of cargo to originate and terminate at the airport or similar type facility.

“West Virginia Commuter Rail Access Fund” means the special West Virginia Commuter Rail Access Fund created by §17-16F-27 of this code.

“West Virginia Railroad Maintenance Fund” means the West Virginia Railroad Maintenance Fund created by §17-16F-17 of this code.

§17-16F-4. Powers and duties of division.

The division shall perform all acts necessary and proper to carry out the purposes of this article and is granted the following powers and duties:

(1) To promote, supervise, and support safe, adequate, and efficient transportation throughout the state;

(2) To preserve roadway, railroad, waterway, and airway facilities,

(3) To help facilitate economic development in this state utilizing transportation facilities;

(4) To meet and cooperate with similar divisions, authorities, or bodies of any of the several states contiguous with this state, whose purpose in their respective states is to establish an interstate or intermodal transportation network;

(5) To take all steps appropriate and necessary to effect siting, development, and operation of public ports, railroads, or airport facilities within the state;

(6) To employ managers, superintendents, and other sufficiently trained and qualified personnel and retain or contract with consulting engineers, financial consultants, accountants, attorneys, and other consultants and independent contractors when necessary to carry out the provisions of this article and fix their compensation or fees. All expenses are payable from the proceeds of revenue bonds or notes issued by the division, from revenues and funds appropriated for this purpose by the Legislature, or from grants from the federal government which may be used for such purpose;

(7) To make and enter into all contracts and agreements with any federal, state, county, municipal agency, or private entity and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers including, but not limited to, the power to make contracts and agreements in accordance with the provisions set forth in this article;

(8) To acquire, purchase, lease, construct, own, hold, operate, maintain, equip, use, and control, by eminent domain or other means, any land, property, rights, franchises, easements, ports, and such terminals, buildings, roadways, rights-of-way, rails and such structures, equipment, facilities, any and every kind or character of

motive powers and conveyances or appliances necessary or proper to carry goods, wares, and merchandise over, along, upon or through the railway, waterway or airway, or other conveyance of such transportation system, excluding pipelines or improvements, as are necessary or incident to carry out the provisions of this article, upon such terms and at such price as may be considered by it to be reasonable and to take title in the name of the state;

(9) To lease, sell, or otherwise dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article;

(10) To act on behalf of the state and to represent the state in the planning, financing, development, construction, and operation of any port, transit facility, railroad, or aeronautics project or any facility related to any such project, with the concurrence of the affected public agency. Other state agencies and local governmental entities in this state shall cooperate to the fullest extent the division deems appropriate to effectuate the duties of the division;

(11) To act as agent for the United States of America, or any of its agencies, departments, corporations, or instrumentalities, in any manner coming within the purposes or powers of the division;

(12) To expend funds available for the purpose of studying any proposed railroad project, which may include consulting with engineers. All expenses incurred in conducting the study and necessary engineering shall be paid from the funds established in §17-16F-17 of this code;

(13) To report annually to the Legislature by December 31 of each year the status of projects, operations, financial condition, and other necessary information relating to the statewide multimodal transportation system and activities in accordance with this article and any report may be made electronically with paper copies provided upon request to any member of the Legislature;

(14) To meet with political subdivisions of the state to assess both specific and general transportation needs of the state in terms

of transportation, as well as consider feasibility studies for the purpose of determining the best site locations for transportation centers, terminals, railroads, airports, ports and harbors, and foreign trade zones;

(15) To apply for and accept loans, grants or gifts of money, property, or service from the United States, any political subdivision, any public or private sources available, or any public or private lender or donor, to give such evidences of indebtedness as may be required and to permit the state Board of Investments to invest, as provided by this code, any funds received by the division pursuant to the provisions of this code;

(16) To make loans and grants, out of any appropriation made to the division by the Legislature or out of any funds at its disposal, to governmental agencies and persons for carrying out any multimodal transportation projects by any governmental agency or person in accordance with rules adopted under this article;

(17) To issue revenue bonds or request other appropriate state agencies to issue and administer revenue bonds to finance port, railroad, transit, or aeronautics projects;

(18) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments, and other evidence of indebtedness, and in connection with providing technical, consulting, and project assistance services; and

(19) To act, through the Department of Transportation, the division is hereby designated as the agency of this state responsible for administering all federal and state programs relating to public transportation and public transit facilities.

§17-16F-5. Rules of division.

(a) All rules promulgated by the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, or the West Virginia State Aeronautics Commission in effect at the time of creation of the division shall continue in full force and effect until revised or repealed by the division.

(b) The division, upon consultation with the Secretary of the Department of Transportation, may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the purposes of this article. The division may promulgate any necessary emergency rules to implement the provisions of this article pursuant to the provisions of §29A-3-15 of this code.

§17-16F-6. Advisory Boards.

(a) The division may convene advisory boards composed of members with subject-matter expertise and experience in the various modes of transportation under the purview of the division.

(b) Any such advisory board may advise the division on issues and assist the division as requested.

(c) The Secretary of the Department of Transportation shall be the chairperson of any such advisory board: *Provided*, That the secretary may appoint a designee to act in his or her stead at meetings.

(d) The Secretary of the Department of Transportation shall not receive any compensation for serving as chairperson. Any appointed members of a board shall receive the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or substantial portion thereof engaged in the discharge of official duties. All compensation and expenses incurred shall be payable from funds applicable to the advisory board from the corresponding section within the division or from funds appropriated for such purpose by the Legislature and no liability or obligation shall be incurred by the section beyond the extent to which moneys are available from funds of the section or from such appropriations.

§17-16F-7. Annual report.

(a) The division shall prepare and file a comprehensive report annually by December 31 with the Governor and the Joint

Committee on Government and Finance setting forth the overall strategic plan for both short term and long term for goals and accomplishments of the purposes set forth in this article. Incidental to the development of a comprehensive strategic plan for multimodal transportation, the division shall analyze the intermodal shipment of products and passengers through the state, and shall be authorized to collect and analyze such information, which is maintained in the ordinary course of business by the person, firm, or corporation providing such information, pertaining to the transportation of products and passengers which has been moved by rail, water, or air to and from points within and without this state.

(b) Any such information and data supplied to the division shall be for exclusive use of the division. Such information is deemed confidential and is not subject to disclosure under the Freedom of Information Act, §29B-1-1 *et seq.* of this code. The division shall not publicly disclose this information and data to any person, firm, corporation, or agent. It is unlawful for any employee of this State to divulge or make known in any manner any information obtained pursuant to this subsection or disclose information concerning the personal or business affairs of any individual or the business of any single firm or corporation, or disclose any particulars set forth or disclosed in any report or other information provided to the division. Violation of this subsection by any employee or former employee will result in a misdemeanor, and upon conviction thereof, is punishable by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both, together with costs of prosecution.

§17-16F-8. Financial interest in contracts prohibited; penalty.

No employee of the division may be financially interested, directly or indirectly, in any contract of any person with the division, or in the sale of any property, real or personal, to or from the division. This section does not apply to contracts or purchases of property, real or personal, between the division and any governmental agency. Violation of this subsection by a division employee will result in a misdemeanor, and upon conviction thereof, is punishable by a fine of not more than \$1,000 or by

imprisonment for not more than one year, or by both, together with costs of prosecution.

§17-16F-9. Public purpose of activities; property of public utilities and common carriers.

(a) The division is authorized to acquire any lands or interests pursuant to this article. The planning, acquisition, establishment, construction, improvement, maintenance, and operation of public port, railroad, transit, airport, or air navigation facilities, whether by the state separately or jointly with any municipalities and the exercise of any other powers granted to the division are declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the state in the manner and for the purposes enumerated in this article are declared to be acquired and used for governmental purposes and as a matter of public necessity.

(b) The division shall take or distribute property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier, if provision is made for the restoration, relocation, or duplication of such property or facilities elsewhere at the cost of the division.

(c) The division shall make reasonable policies for the installation, construction, maintenance, repair, renewal, relocation, and removal of railroad or public utility facilities in, on, over or under any public port, railroad, airport, or air navigation facility project. Whenever the division determines that any such facilities installed or constructed in, on, over, or under property of the division pursuant to such policies must be relocated, the railroad or public utility owning or operating such facilities shall relocate or remove them in accordance with the order of the division. The cost and expenses of such relocation or removal, including the cost of installing such facilities in a new location, the cost of any lands or any rights or interests in lands and the cost of any other rights acquired to accomplish such relocation or removal, may be paid by the division as a part of the cost of such project.

(d) When relocating or removing facilities, the railroad or public utility owning or operating them, and its successors or assigns, shall maintain, and operate such facilities, with the necessary appurtenances in the new location in, on, over, or under the property of the division for as long a period and upon the same terms as it had the right to maintain and operate such facilities in their former location.

(e) In the condemnation of property authorized by this section, the division shall proceed in the name of the State in the manner provided by chapter 54 of this code.

§17-16F-10. Construction and operation of facilities by private enterprise; leasing of facilities by division.

(a) The division shall foster and encourage the participation of private enterprise in the development of railroad, waterway, transit, and airway facilities to the fullest extent it deems practicable in the interest of limiting the necessity of construction and operation of such facilities by the division. In this respect, the division shall advertise and solicit for the construction, operation, maintenance, or a combination thereof for any facility included in the development plan in accordance to plans, specifications, policies, or guidance prepared by the division.

(b) When the division considers it advisable and practicable, it may include certain facilities in the development plan to be installed by private enterprise and leased back to the division on an installment contract or option to purchase: *Provided*, That any such lease back arrangement must be financially feasible, and any bonds or loans utilized to enter into such lease back arrangement shall be repayable in full from the expected rentals to be generated by such facility.

§17-16F-11. Foreign trade zones; free trade zones; ports of entry and customs zones.

The division shall develop, maintain, and operate foreign trade zones, free trade zones, ports of entry and customs zones under such terms and conditions as are or may be prescribed by federal

law, and to keep foreign trade zone status for, and to assist in the applications for foreign trade zone status of political subdivisions and eligible private corporations under federal law.

§17-16F-12. Special West Virginia Public Port Operations Fund; West Virginia Multimodal Division Operations Fund; other funds transferred to the Division of Multimodal Transportation.

(a) The special West Virginia Public Port Authority Operations Fund created by prior enactment of §17-16B-7 of this code, is continued and shall be known as the West Virginia Multimodal Division Fund. The moneys in the fund shall only be expended to fulfill the provisions of this article. At the end of each fiscal year, any unexpended funds in this account shall be appropriated and available for expenditure for the subsequent fiscal year.

(b) Any fund utilized for any purpose within the State Aeronautics Commission, the Division of Public Transit, the Public Port Authority, or the State Rail Authority shall be transferred to the Division of Multimodal Transportation and continued until such time when the division determines a fund is unnecessary or may be better managed by combining certain funds to best serve the interests of the division and the public.

§17-16F-13. Additional powers and duties of division related to railroad projects.

(a) The secretary shall appoint necessary staff to oversee and manage the facilities and operations of the state rail section. Staff are covered by the Department of Transportation merit-based personnel system and the Classification and Compensation Career Plan. The division shall facilitate railroad transportation and commerce within the state by exercising those powers of the state necessary to qualify for rail services continuation subsidies pursuant to the provisions of the federal Fixing America's Surface Transportation Act of 2015 and any future amendments and regulations from the federal government.

(b) The division shall carry out railroad projects or direct railroad projects to be carried out pursuant to a lease, sublease, or agreement with any person or governmental agency; shall make loans and grants to or with governmental agencies or to persons for railroad projects; and shall issue bonds of this state, payable solely from revenues, to pay the cost of such projects. The division will not undertake a railroad project unless it is consistent with any applicable development plans for railroad projects previously approved.

(c) The division shall establish, fund, construct, reconstruct, acquire, repair, replace, operate, and maintain railroads and railroad projects.

(d) The division shall make available the use of services of any railroad project to one or more persons, one or more governmental agencies or any combination.

(e) The division shall engage in research and development with respect to railroads.

(f) The division shall make and enter into contracts and agreements to acquire rolling stock or equipment with a value of \$1 million or less exempt from the provisions of §5A-3-1 *et seq.* of this code. The secretary may propose rules for promulgation for adoption by the Legislature in accordance with the provisions of §29A-3-1 *et seq.* of this code which set forth the methods for determining value of rolling stock or equipment to be purchased and any other rules as may be needed.

(1) Where rolling stock, equipment or trackage of the division is in need of immediate maintenance, repair, or reconstruction to avoid a cessation of its operations, economic loss, the inability to provide essential service to customers, or would otherwise be a danger to rail personnel or the public, the following requirements and procedures for entering into the contract or agreement to remedy the condition shall be in lieu of those provided in §5A-3-1 *et seq.* of this code or any pursuant promulgated legislative rule:

(A) If the cost under the contract or agreement involves an expenditure of more than \$1,000, but \$50,000 or less, the division shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three oral bids made pursuant to the requirements of the contract or agreement; or

(B) If the cost under the contract or agreement, other than one for compensation for personal services, involves an expenditure of more than \$50,000, but \$150,000 or less, the division shall award the contract to or enter into the agreement with the lowest responsible bidder based upon at least three bids, submitted to the division in writing on letterhead stationery, made pursuant to the requirements of the contract or agreement.

(2) Notwithstanding any provision of this code to the contrary, a contract or lease for the operation of a railroad project constructed and owned by the division or an agreement for cooperation in the acquisition or construction of a railroad project authorized by this article is not subject to the provisions of §5A- 3-1 *et seq.* of this code or any promulgated legislative rule and the division shall enter into the contract or lease or the agreement pursuant to negotiation and upon such terms and conditions and for a period of time as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of the railroad project.

(3) The division may reject any bids. A bond with good and sufficient surety, approved by the division, is required of all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon the faithful performance of the contract.

(g) The division shall purchase fire and extended coverage and liability insurance for any railroad project, and for any offices of the division insurance protecting the division, officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and be a member of, and to participate in, the state workers' compensation insurance.

(h) The division shall charge, alter, and collect rates, rentals and other charges for the use or services of any railroad project as provided in this article.

(i) The division may purchase railroad tracks being abandoned by any common carrier.

(j) The division shall acquire rail properties both within and not within the jurisdiction of the Surface Transportation Board and rail properties within the purview of the federal Fixing America's Surface Transportation Act of 2015, any amendments to it, and any other relevant federal legislation.

(k) The division shall assume the agreements and contracts currently in effect for the State Rail Authority and may enter into agreements with owners of rail properties for the acquisition of rail properties or use, or both, of rail properties upon the terms, conditions, rates, or rentals that can best effectuate the purposes of this article.

(l) The division shall acquire rail properties and other property of a railroad in concert with another state or states as is necessary to ensure continued rail service in this state.

(m) The division shall provide in the state plan for the equitable distribution of federal rail service continuation subsidies among state, local, and regional transportation authorities.

(n) The division shall maintain adequate programs of investigation, research, promotion, and development in connection with the purposes of the division and to provide for public participation.

(o) The division shall provide satisfactory assurances on behalf of the state that fiscal control and fund accounting procedures will be adopted by the state necessary to assure proper disbursement of and accounting for federal funds paid to the state as rail service continuation subsidies.

(p) The division shall comply with the regulations of the Secretary of Transportation of the United States Department of Transportation affecting federal rail service continuation programs.

(q) The division shall maximize federal assistance to the state under Title IV of the federal Regional Rail Reorganization Act of 1973 or any current or future federal statutes and to qualify for rail service continuation subsidies pursuant to the federal Fixing America's Surface Transportation Act of 2015 or any future federal statutes.

§17-16F-14. Additional authority regarding the Maryland Area Regional Commuter.

(a) The division shall coordinate all activities with the Maryland Transit Administration for the operation of the commuter rail operation between Maryland, the Washington, D.C. metropolitan area, and West Virginia. Any payments of track access fees pursuant to the agreement shall be paid from the fund created in §17-16F-27 of this code as provided by appropriation of the Legislature.

§17-16F-15. Rail operations; purchases.

(a) The division may sell, transfer, or lease all, or any part of, the rail properties and other property acquired under the provisions of this article to any responsible person, firm, or corporation for continued operation of a railroad or other public purpose: *Provided*, That approval for the continued operation or other public purpose, is granted by the Surface Transportation Board of the United States, whenever approval is required. The sale, transfer, or lease shall be for a price and subject to any further terms and conditions which the division deems necessary and appropriate to this article.

(b) After acquiring any railroad lines within the state, the division shall assist any responsible person, firm, or corporation to secure, as promptly as possible, any order or certificate required by the Surface Transportation Board for the performance of railroad service. The division shall also give any assurances or guarantees

which are necessary or desirable to carry out the purposes of this article.

(c) The division shall take whatever steps are necessary to determine the absolute fee simple title ownership of all rail properties of any railroad within the state. The determination may include the status of the rail properties with respect to easements, rights-of-way, leases, reversionary rights, fee simple title ownership, and any related title matters. The division may retain attorneys, experts, or other assistants, and issue any contracts as are necessary to make the title determination.

(d) All rail properties offered for sale by any railway corporation within the state after the enactment date of this article shall be offered first for sale to the state.

(e) The division shall cooperate with other states when purchasing rail properties within this state. The division shall also acquire railroad rights in other states and rail properties lying in other states to carry out the intentions and purposes of this article. In carrying out the powers and duties conferred by this article, the division shall enter into general contractual arrangements, including joint purchasing and leasing of rail properties with other states.

(f) In weighing the varied interests of the residents of this state, the division shall consider the individual interest of any county or municipality expressing a desire to acquire a portion, or all, of the abandoned real estate located within its jurisdiction. The division may acquire the abandoned property for subsequent conveyance to the county or municipality.

(g) The division may utilize federal funds, grants, gifts, or donations which are available and any sums that are appropriated in carrying out the purposes of this article. The division may also apply for discretionary or other funds available under the provisions of the federal Regional Rail Reorganization Act of 1973 or any current or future federal programs.

(h) The division may apply for an acquisition and modernization loan, or a guarantee of a loan, pursuant to the federal Regional Rail Reorganization Act of 1973, or any other federal programs, within the limit of funds appropriated for those purposes.

(i) The division may purchase any railroad rolling stock, equipment, and machinery necessary for the operation and maintenance of any rail properties purchased by it on behalf of the state, with any funds made available for this purpose. The division may also acquire and have available a pool of equipment and machinery which may be utilized by the operators of the rail properties for the purpose of track maintenance and other related railroad activities upon terms and conditions determined appropriate. Notwithstanding any the provisions of this code to the contrary, the division and the Commissioner of the Division of Highways may enter into contracts or agreements for the lease or purchase and maintenance of any vehicles required for its purposes.

(j) The division may contract for the rebuilding or relocation of any rail properties acquired pursuant to this article, within the provisions of the federal Regional Rail Reorganization Act of 1973 or any current or future federal statutes, or any other applicable legislation. The division may also spend any sums appropriated, as well as any other available funds, for the modernization, rebuilding, and relocation of any rail properties owned by the state or by a private carrier. The division shall do any maintenance on any rail properties owned by the state as is necessary in the public interest.

(k) The division may contract with any domestic or foreign person, firm, corporation, agency, or government to provide, maintain, or improve rail transportation service on the rail properties acquired by the state under this article.

(l) Whenever the division determines that any rail properties acquired by the state are no longer needed for railroad purposes, it shall, with the permission of the Governor, permanently or temporarily transfer the rail properties to any other state department or agency or political subdivision of the state, which

shall utilize the properties for a public purpose. Whenever more than one department or agency or political subdivision wishes to utilize the property, the division shall resolve such a conflict and make a prompt determination of the reasonable and proper order of priority, taking into consideration any applicable state plans, policies, or objectives. If no state department or agency or political subdivision wants the properties, the division may sell them.

§17-16F-16. Railroad Maintenance Fund.

The Railroad Maintenance Fund heretofore created is hereby continued and shall be administered by the division. Expenditures are authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions of §11B-2-1 *et seq.* of this code. Any balance remaining in the special revenue account at the end of any state fiscal year does not revert to the General Revenue Fund but remains in the special revenue account and shall be used solely in a manner consistent with the state rail portions of this article. All costs and expenses incurred pursuant to this article for state rail, including administrative, shall be paid from those funds. The division may expend, out of any funds available for the purpose, such moneys as are necessary for the study of any proposed railroad project and may use its engineering and other forces, including consulting engineers for the purpose of effecting such study. All such expenses incurred by such study and engineering shall be paid from the Railroad Maintenance Fund.

§17-16F-17. Division empowered to issue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

(a) The division, with approval of the secretary, may raise the cost of one or more railroad projects or parts of railroad projects by the issuance of railroad maintenance revenue bonds and notes of the state in such principal amount as the division deems necessary, but the aggregate amount of all issues of bonds and notes outstanding at one time for all projects authorized hereunder may

not exceed that amount capable of being serviced by revenues received from such projects.

(b) The division, with approval of the secretary, may issue renewal notes, issue bonds to pay the notes and whenever it deems refunding expedient, refund any bonds by the issuance of railroad maintenance revenue refunding bonds of the state, whether the bonds to be refunded have or have not matured, and issue bonds partly to refund bonds then outstanding and partly for any other authorized purpose. The refunding bonds shall be sold, and the proceeds applied to the purchase, redemption, or payment of the bonds to be refunded. Except as may otherwise be expressly provided by the division, every issue of its bonds or notes pursuant to this section are obligations of the division payable out of the revenues of the State Rail Section, which are pledged for such payment, without preference or priority of the first bonds issued, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues. Such pledge is valid and binding from the time the pledge is made, and the revenue so pledged and thereafter received by the division is immediately subject to the lien of such pledge without any physical delivery or further act and the lien of any such pledge is valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the division irrespective of whether the parties have notice.

(c) All bonds and notes have and are declared to have all the qualities of negotiable instruments.

(d) The bonds and notes authorized by the division, with approval of the secretary, shall bear the date and shall mature at such time, in the case of any note or any renewals not exceeding five years from the date of issue of the original note, and in the case of any bond not exceeding 50 years from the date of issue, as the authorization may provide. The bonds and notes shall bear interest at a rate, be in denominations, be in the form, either coupon or registered, carry registration privileges, be payable in a medium of payment, at place and be subject to any terms of redemption that the division may authorize. The bonds and notes shall be sold by the division at public or private sale, at or not less than the price

the division determines. The bonds and notes shall be executed by the commissioner. The official seal of, or a facsimile, shall be affixed or printed and attested, manually or by facsimile signature, by the commissioner, which may be made by facsimile or electronic signature. Any coupons attached shall bear the signature, facsimile signature, or electronic signature of the commissioner. In case the commissioner whose signature, a facsimile signature, or an electronic signature, appears on any bonds, notes or coupons ceases to be commissioner before delivery of the bonds or notes, the signature, facsimile or electronic signature is nevertheless sufficient for all purposes the same as if he or she had remained in their respective positions until delivery and in case the seal of the commissioner has been changed after a facsimile has been imprinted on such bonds or notes the facsimile seal will continue to be sufficient for all purposes.

(e) Any authorization of any bonds or notes or any issue shall contain provisions, subject to agreements with bondholders or noteholders as may then exist, as part of the contract with the holders, as to pledging all or any part of the revenues of the State Rail Section to secure the payment of the bonds or notes or of any issue; the use and disposition of revenues of the State Rail Section; a covenant to fix, alter and collect rates, rentals and other charges so that pledged revenues will be sufficient to pay the costs of operation, maintenance and repairs, pay principal of and interest on bonds or notes secured by the pledge of such revenues and provide any reserves that may be required by the applicable authorization or trust agreement; the setting aside of reserve funds, sinking funds or replacement and improvement funds and the regulation and disposition; the crediting of the proceeds of the sale of bonds or notes to and among the funds referred to or provided for in the authorization of issuance of the bonds or notes; the use, lease, sale or other disposition of any railroad project or any other assets of the division; limitations on the purpose to which the proceeds of sale of bonds or notes may be applied and pledging such proceeds to secure the payment of the bonds or notes or of any issue; notes issued in anticipation of the issuance of bonds, the agreement of the commissioner to do all things necessary for the authorization, issuance and sale of such bonds in such amounts that may be

necessary for the timely retirement of the notes; limitations on the issuance of additional bonds or notes; the terms upon which additional bonds or notes may be issued and secured; the refunding of outstanding bonds or notes; the procedure, if any, by which the terms of any contract with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which must consent and the manner in which such consent may be given; limitations on the amount of moneys to be expended by the division for operating, administrative or other expenses of the division; securing any bonds or notes by a trust agreement; and any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes.

(f) No person executing the bonds or notes is liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance.

§17-16F-18. Trustee for bondholders; contents of trust agreement.

(a) In the discretion of the commissioner, any railroad maintenance bonds or notes or railroad maintenance refunding bonds issued by them under this article may be secured by a trust agreement between the commissioner and a corporate trustee, which trustee may be any trust company or banking institution having the powers of a trust company within or without this state.

(b) Any such trust agreement shall pledge or assign revenues of the State Rail Section to be received, but shall not convey or mortgage any railroad project in whole or in part. Any such trust agreement or any authorization providing for the issuance of such bonds or notes may contain such provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as are reasonable and proper and not in violation of law, including covenants setting forth the duties of the division in relation to the acquisition of property, the construction, improvement, maintenance, repair, operation, and insurance of the railroad project in connection with which such bonds or notes are authorized, the rentals or other charges to be imposed for the use or services of any railroad project, the custody, safeguarding, and

application of all moneys and provisions for the employment of consulting engineers in connection with the construction or operation of such railroad project. Any banking institution or trust company incorporated under the laws of this state which may act as depository of the proceeds of bonds or notes or of revenues shall furnish such indemnifying bonds or pledge such securities as are required by the division. Any such trust agreement may set forth the rights and remedies of the bondholders and noteholders and of the trustee and may restrict individual rights of action by bondholders and noteholders as customarily provided in trust agreements or trust indentures securing similar bonds. Such trust agreement may contain such other provisions as the commissioner deems reasonable and proper for the security of the bondholders or noteholders. All expenses incurred in carrying out the provisions of any trust agreement may be treated as a part of the cost of the operation of the railroad project. Any trust agreement or authorization of the issuance of railroad maintenance revenue bonds may provide the method whereby the general administrative overhead expenses of the division shall be allocated among the several projects acquired or constructed by it as a factor of the operating expenses of each such project.

§17-16F-19. Legal remedies of bondholders and trustees.

Any holder of railroad maintenance revenue bonds issued under the authority of this article or any of the appertaining coupons and the trustee under any trust agreement, except to the extent the rights given by this article may be restricted by the applicable authorization or trust agreement, may by civil action, mandamus, or other proceedings, protect and enforce any rights granted under the laws of this state or granted under this article, by the trust agreement or by the authorization of issuance of bonds, and may enforce and compel the performance of all duties required by this article, or by the trust agreement or authorization, to be performed by the commissioner, division or any employee, including the fixing, charging and collecting of sufficient rentals or other charges.

§17-16F-20. Bonds and notes not debt of state, county, municipality, or of any political subdivision; expenses incurred pursuant to article.

(a) Railroad maintenance revenue bonds and notes and railroad maintenance revenue refunding bonds issued under authority of this article and any coupons in connection therewith do not constitute a debt or a pledge of the faith and credit or taxing power of this state or of any county, municipality, or any other political subdivision of this state, and the holders or owners have no right to have taxes levied by the Legislature or taxing authority of any county, municipality, or any other political subdivision of this state for the payment of the principal or interest, but such bonds and notes are payable solely from the revenues and funds pledged for their payment as authorized by this article unless the notes are issued in anticipation of the issuance of bonds or the bonds are refunded by refunding bonds issued under authority of this article, which bonds or refunding bonds are payable solely from revenues and funds pledged for their payment as authorized by this article. All bonds and notes shall contain on the face of a statement to the effect that the bonds or notes, as to both principal and interest, are not debts of the state or any county, municipality, or political subdivision, but are payable solely from revenues and funds pledged for their payment.

(b) All expenses incurred in carrying out the provisions of this article are payable solely from funds provided under authority of this article. The division is not authorized to incur indebtedness or liability on behalf of or payable by the state or any county, municipality, or political subdivision.

§17-16F-21. Use of funds by division; restrictions.

All moneys, properties and assets acquired by the division, whether as proceeds from the sale of railroad maintenance revenue bonds or as revenues or other source which are attributable to a railroad project or purpose, shall be held by it in trust for the purposes of carrying out his or her powers and duties, and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys may at no time be commingled with other

public funds. Such moneys, except as otherwise provided in any authorization of the issuance of railroad maintenance revenue bonds or in any trust agreement securing the same, or except when invested pursuant to §17-16F-23 of this code, shall be kept in appropriate depositories and secured as provided and required by law. The authorization of the issuance of bonds of any issue or the trust agreement securing bonds shall provide that any person to whom, or any banking institution or trust company to which, moneys are paid shall act as trustee of such moneys and hold and apply them for the purposes hereof, subject to the conditions this article and the authorization or trust agreement provide.

§17-16F-22. Investment of funds by division.

Funds of the State Rail Section in excess of current needs, except as otherwise provided in any authorization for the issuance of railroad maintenance revenue bonds or in any trust agreement securing the same, may be invested by the West Virginia Investment Management Board as authorized to invest under §12-6-1 *et seq.* of this code. Income from all such investments of moneys in any fund shall be credited to such funds as the commissioner determines, subject to the provisions of any authorization or trust agreement and such investments may be sold at such times as the commissioner, determines.

§17-16F-23. Rentals and other revenues from railroad projects; contracts and leases of division; cooperation of other governmental agencies; bonds of such agencies.

(a) The division shall charge, alter, and collect rates, rentals, or other charges for the use or services of any project, and contract in the manner provided by this section with one or more persons, one or more governmental agencies, or a combination, desiring the use or services, and fix the terms, conditions, rates, rentals, or other charges for use or services. The rentals or other charges are not subject to supervision, or regulation by any other division, authority, department, commission, board, bureau, or agency of the state, and the contract may provide for acquisition by a person or governmental agency of all or any part of a railroad project for consideration payable over the period of the contract or otherwise

as the division in its sole discretion determines to be appropriate, but subject to the provisions of any authorized issue of railroad maintenance revenue bonds or notes or railroad maintenance revenue refunding bonds of the division or any trust agreement securing the same. Any governmental agency which has power to construct, operate, and maintain railroad projects may enter into a contract or lease with the division whereby the use or services of any railroad project of the division will be made available to such governmental agency and pay for such use or services such rentals or other charges as may be agreed to by such governmental agency and the division.

(b) Any governmental agency or agencies shall cooperate with the division in the acquisition or construction of a railroad project and shall enter into such agreements with the division when necessary, facilitating cooperation and safeguarding the respective interests of the parties, which agreements shall provide for such contributions by the parties in such proportion as may be agreed upon and such other terms as may be mutually satisfactory to the parties, including without limitation the authorization of the construction of the project by one of the parties acting as agent for all of the parties and the ownership and control of the project by the division to the extent necessary or appropriate for purposes of the issuance of railroad maintenance revenue bonds by the commissioner. Any governmental agency may provide contributions as is required under the agreements by the appropriation of money or, if authorized by a favorable vote of the electors to issue bonds or notes or levy taxes or assessments and issue notes or bonds in anticipation of the collection, by the issuance of bonds or notes or by the levying of taxes or assessments and the issuance of bonds or notes in anticipation of the collection, and by the payment of such appropriated money or the proceeds of such bonds or notes to the division pursuant to such agreements.

(c) Any governmental agency, pursuant to a favorable vote of the electors in an election held for the purpose of issuing bonds to provide funds to acquire, construct or equip, or provide real estate and interests in real estate for a railroad project, whether or not the governmental agency at the time of such election had the authority

to pay the proceeds from such bonds or notes issued in anticipation to the division as provided in this section, may issue such bonds or notes in anticipation of the issuance and pay the proceeds to the division in accordance with an agreement between such governmental agency and the division: *Provided*, That the legislative authority of the governmental agency finds and determines that the railroad project to be acquired or constructed by the division in cooperation with such governmental agency will serve the same public purpose and meet substantially the same public need as the facility otherwise proposed to be acquired or constructed by the governmental agency with the proceeds of such bonds or notes.

§17-16F-24. Maintenance, operation, and repair of projects; reports to Governor and Legislature.

(a) Each railroad project, when constructed and placed in operation, shall be maintained, and kept in good condition by the division. Each project shall be operated by the division's employees pursuant to a contract or lease with a governmental agency or person. All public or private property damaged or destroyed while carrying out the provisions of this article shall be restored or repaired to its original condition, or as nearly as practicable or adequate compensation made out of funds provided in accordance with the provisions of this article.

(b) As soon as possible after the close of each fiscal year, the authority shall make an annual report of its activities for the preceding fiscal year to the Governor and the Joint Committee on Government and Finance. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the preceding fiscal year. The authority shall cause an audit of its books and accounts to be made at least once each fiscal year by certified public accountants and the cost thereof may be treated as a part of the cost of construction or of operations of its projects. Any report under this section may be made electronically and paper copies may be provided upon request.

§17-16F-25. Railroad maintenance bonds lawful investments.

By the provisions of §12-6-1 *et seq.* of this code, notwithstanding any code section to the contrary, all railroad maintenance revenue bonds issued pursuant to this article are lawful investments for the West Virginia Investment Management Board and are also lawful investments for banking institutions, societies for savings, building and loan associations, savings and loan associations, deposit guarantee associations, trust companies, insurance companies, including domestic for life and domestic not for life insurance companies.

§17-16F-26. West Virginia Commuter Rail Access Fund.

There is continued a special fund in the State Treasury known as the West Virginia Commuter Rail Access Fund. The fund shall be administered by the division and shall consist of appropriations by the Legislature. Subject to legislative appropriation, the division shall administer the fund to pay track access fees pursuant to agreement as required by this article. Balances in the fund at the end of any fiscal year shall not expire but shall be expended for those purposes in ensuing fiscal years.

§17-16F-27. State rail plan required.

(a) The division shall establish, administer, and coordinate a state plan for rail transportation and local rail services. In establishing and updating the plan, the division may request input from freight and rail passenger associations.

(b) The plan shall, at a minimum, comply with the provisions of the laws and regulations of the United States relating to capturing and administering federal moneys for rail transportation, local rail services, and intermodal facilities as deemed necessary by the division.

§17-16F-28. Additional powers and duties of division related to aeronautics, airports, and air navigation projects.

(a) The secretary shall appoint necessary staff to oversee and manage the facilities and operations of the aeronautics section.

Staff are covered by the Department of Transportation merit based system and the Career, Classification, and Compensation Plan. The division shall encourage, foster, and assist in the development of aeronautics in this state and encourage the establishment of airports and air navigation facilities. The division shall cooperate with and assist the federal government, the municipalities of this state, and other persons in the development of aeronautics and shall act to coordinate the aeronautical activities of these bodies and persons. Municipalities are authorized to cooperate with the division in developing aeronautics and aeronautics facilities in this state. The division is given the power and authority to make such policies as it may consider necessary and advisable for the public safety, governing the designing, laying out, locating, building, equipping, and operating of all airports and the conduct of all other phases of aeronautics.

§17-16F-29. State financial assistance for county, municipal and regional airports.

The division, out of any appropriation funds made by the Legislature or any funds at its disposal, may make funds available by grant or otherwise to counties, municipalities, and regional airport authorities, created under the provisions of chapter 8 of this code, for the planning, acquisition, construction, improvement, maintenance, or operation of airports owned or operated or to be owned or operated by such counties, municipalities, or regional airport authorities. Acceptance of any moneys by any such county, municipality, or regional airport authority, shall constitute consent by the recipient that a reasonable use of such airport may be made, upon request of the division, by the United States, the state, or any of their respective agencies, including the National Guard of West Virginia for State purposes related or incidental to aeronautics. Such financial assistance may be furnished in connection with federal or other financial aid for the same purpose.

§17-16F-30. Financial aid.

(a) The division shall cooperate with the United States, and any agency or department, in the planning, acquisition, construction, improvement, maintenance, and operation of airports and other air

navigation facilities in this state and may accept federal aid either outright or by way of matching, in whole or in part, as required, and when funds for matching are available to the division, comply with the provisions of the laws and regulations of the United States for the expenditure of federal moneys upon such airports and other air navigation facilities.

(b) The division may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and on behalf of this state, or any municipality, for the planning, acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether such work is to be done by the state or by such municipality, or jointly, aided by grants of aid from the United States, upon such terms and conditions as are or may be prescribed by the laws, rules, or regulations of the United States. The division shall be designated as the agency of the state and shall act as agent of any municipality upon the request of such municipality, in accepting, receiving, and receipting for such moneys on its behalf for airports or other air navigation facility purposes, and in contracting for the planning, acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities, financed, either in whole or in part, by federal moneys. Any such municipality shall enter an agreement with the division prescribing the terms and conditions of such agency in accordance with federal laws and regulations and with this article. Such moneys paid by the United States shall be retained by the state or said municipalities under such terms and conditions as may be imposed by the United States in making such grants.

(c) All contracts for the planning, acquisition, construction, improvement, maintenance, and operation of airports, or other air navigation facilities made by the division, either as the agent of the State or as the agent of any municipality, shall be made pursuant to the laws of this state: *Provided*, That where the planning, acquisition, construction, improvement, maintenance, and operation of any airport or other air navigation facility is financed wholly or partially with federal moneys, the division, as agent of the State or of any municipality, shall execute contracts in the

manner prescribed by the federal laws, rule, or regulations, notwithstanding State law to the contrary.

(d) All moneys accepted for disbursement by the division pursuant to this section shall be deposited in the State Treasury, and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the State in trust. All such moneys are appropriated for the purposes for which the same were made available and shall be expended in accordance with federal laws and regulations and with the provisions of this article. The division shall, whether acting for this state or the agent of any municipality, when requested by the United States or any agency or department or by the state or municipality for which the money has been made available, disburse such moneys for the designated purposes, but this shall not preclude any other authorized method of disbursement.

(e) The state or municipality shall cooperate with the United States, and any agency or department, in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and shall accept federal aid, either by way of outright grant or by matching the same, in whole or in part, as required to comply with the provisions of the laws and regulations of the United States for the expenditure of federal moneys upon such airports and other air navigation facilities.

§17-16F-31. Establishment and operation of state airports.

(a) The commissioner is authorized on behalf of and in the name of the State, out of appropriations and other moneys made available for such purposes, to plan, establish, construct, maintain, and operate airports and air navigation facilities within the state. For these purposes the director may, by purchase, gift, devise, lease, condemnation, or otherwise, acquire such property, real or personal, as is necessary to permit safe and efficient operation of the airports and air navigation facilities. In like manner, the director may acquire existing airports and air navigation facilities: *Provided*, That he or she may not acquire or take over any airport

or air navigation facility owned or controlled by a municipality of this or any other state without the consent of the municipality.

(b) The commissioner may by sale, lease, or otherwise, dispose of property, airport, air navigation facility, or portion thereof or interest therein. Any disposal by lease shall be made pursuant to the terms of §8-28-7 of this code. Any disposal by sale or otherwise shall be in accordance with the laws of this state governing the disposition of other property of the state, except that in the case of disposal to any municipality or state government or the United States for aeronautical purposes incident thereto the sale or other disposal may be effected in such manner and upon such terms as the director determines are in the best interest of the state.

(c) Nothing contained in this article shall be construed to limit any right, power, or authority of the State or a municipality to regulate airport hazards by zoning.

(d) The commissioner may exercise any powers granted by this section jointly with any municipalities or agencies of the state government, with other states or their municipalities, or with the United States.

(e) In the condemnation of property authorized by this section, the director shall proceed in the name of the State in the manner provided by §54-1-1 *et seq.* of this code.

(f) The acquisition of any lands or interests therein pursuant to this article, the planning, acquisition, establishment, construction, improvement, maintenance, and operation of airports and air navigation facilities, whether by the state separately or jointly with any municipalities, and the exercise of any other powers herein granted to the director are hereby declared to be public and governmental functions, exercised for a public purpose, and matters of public necessity. All lands and other property and privileges acquired and used by or on behalf of the State in the manner and for the purposes enumerated in this article shall and are hereby declared to be acquired and used for public and governmental purposes and as a matter of public necessity.

§17-16F-32. Use of state and municipal facilities and services.

The division shall use the facilities and services of other agencies of the state and of the municipalities to the utmost extent possible, and such agencies and municipalities shall make available their facilities and services in furtherance of aeronautics in this state.

§17-16F-33. Disposition of fees.

All fees or other moneys collected by the division under the provisions of this article shall be paid into the State Treasury in the manner provided in §12-2-1 *et seq.* of this code, and shall be deposited in a separate account and be used and expended only to carry out the provisions of this article. The fees or other moneys so paid into the State Treasury shall constitute and be treated as an excepted fund, and all the provisions of §12-2-2 of this code, applicable to the funds excepted from the general provisions for the deposit and payment of state funds, shall be applicable to the fund derived from collections made pursuant to the provisions of this article.

§17-16F-34. Severability.

If any provision of this article or the application to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this article which can be given effect without the invalid provisions or application, and to this end the provisions of this article are declared to be severable.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 2A. STATE AERONAUTICS COMMISSION.

§29-2A-1. Definitions.

[Repealed].

§29-2A-2. Short title; continuation of commission; membership and compensation; quorum.

[Repealed].

§29-2A-3. Powers and duties of commission.

[Repealed].

§29-2A-4. Organization of commission; meetings; reports; offices.

[Repealed].

§29-2A-5. Director of aeronautics; appointment, qualifications, compensation, powers and duties; staff.

[Repealed].

§29-2A-6. State financial assistance for county, municipal, and regional airports.

[Repealed].

§29-2A-7. Federal aid.

[Repealed].

§29-2A-8. Establishment and operation of state airports.

[Repealed].

§29-2A-10. Public purpose of activities.

[Repealed].

§29-2A-11. Operation of aircraft while under influence of alcohol, controlled substances or drugs; criminal penalties.

[Repealed].

§29-2A-11a. Implied consent to test; administration at direction of law-enforcement officer; designation of type of test; definition of law-enforcement officer.

[Repealed].

§29-2A-11b. Preliminary analysis of breath to determine alcoholic content of blood.

[Repealed].

§29-2A-11c. How blood test administered; additional test at option of person tested; use of test results; certain immunity from liability incident to administering test.

[Repealed].

§29-2A-11d. Interpretation and use of chemical test.

[Repealed].

§29-2A-11e. Right to demand test.

[Repealed].

§29-2A-11f. Fee for withdrawing blood sample and making urine test; payment of fees.

[Repealed].

§29-2A-12. Operation of aircraft at low altitude or in careless and reckless manner; penalty.

[Repealed].

§29-2A-13. Unauthorized taking or operation of aircraft; penalty.

[Repealed].

§29-2A-14. Federal license required for operation of aircraft.

[Repealed].

§29-2A-20. Enforcement of aeronautics laws.

[Repealed].

ARTICLE 18. WEST VIRGINIA STATE RAIL AUTHORITY.

§29-18-1. Short title.

[Repealed].

§29-18-2. Declaration of policy and responsibility; purpose and intent of article; findings.

[Repealed].

§29-18-3. Definitions.

[Repealed].

§29-18-4. West Virginia state rail authority continued; organization of authority; appointment of members; term of office, compensation and expenses; director of authority; termination date.

[Repealed].

§29-18-4a. Supervision of West Virginia State Rail Authority; executive director's compensation.

[Repealed].

§29-18-5. Authority may construct, maintain, etc., railroad maintenance projects.

[Repealed].

§29-18-6. Powers, duties and responsibilities of authority generally.

[Repealed].

§29-18-7. Operations; purchases.

[Repealed].

§29-18-8. Creation of railroad maintenance authority fund.

[Repealed].

§29-18-9. Expenditure of funds for study and engineering of proposed projects.

[Repealed].

§29-18-10. Authority empowered to issue bonds, renewal notes and refunding bonds; requirements and manner of such issuance.

[Repealed].

§29-18-11. Trustee for bondholders; contents of trust agreement.

[Repealed].

§29-18-12. Legal remedies of bondholders and trustees.

[Repealed].

§29-18-13. Bonds and notes not debt of state, county, municipality or of any political subdivision; expenses incurred pursuant to article.

[Repealed].

§29-18-14. Use of funds by authority; restrictions thereon.

[Repealed].

§29-18-15. Investment of funds by authority.

[Repealed].

§29-18-16. Rentals and other revenues from railroad projects; contracts and leases of authority; cooperation of other governmental agencies; bonds of such agencies.

[Repealed].

§29-18-17. Maintenance, operation and repair of projects; reports by authority to Governor and Legislature.

[Repealed].

§29-18-18. Railroad maintenance bonds lawful investments.

[Repealed].

§29-18-19. Exemption from taxation.

[Repealed].

§29-18-20. Acquisition of property by authority; governmental agencies authorized to convey, etc., property.

[Repealed].

§29-18-21. Property of public utilities and common carriers.

[Repealed].

§29-18-22. Financial interest in contracts prohibited; penalty.

[Repealed].

§29-18-23. Meetings and records of authority to be kept public.

[Repealed].

§29-18-24. Creation of the West Virginia Commuter Rail Access Fund.

[Repealed].

§29-18-25. State rail plan required.

[Repealed].

CHAPTER 145

(Com. Sub. for H. B. 4499 - By Delegates Hanshaw (Mr. Speaker) and Skaff)

[By Request of the Executive]

[Passed March 9, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §5A-3-1, §5A-3-3, §5A-3-4, §5A-3-10, §5A-3-10a, §5A-3-11, §5A-3-12, §5A-3-17, §5A-3-18, §5A-3-29, §5A-3-35, and §5A-3-45 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6D-1-2 of said code, all relating generally to making procurement process more efficient by modifying and updating outdated processes and requirements and encouraging earlier communication with and assistance from experts within Purchasing Division regarding manner and process of procurement of commodities and services by spending units of the state; authorizing open market procurement in emergencies; eliminating outdated references to audits of exempted agencies; allowing director to exempt certain transactions from the requirements of §5A-3-1 *et seq.*; allowing division resources to be made available to exempt spending units; clarifying that grant recipients need not pay registration fees as a vendor; establishing qualifications for state buyer and for director positions; authorizing other procurement methods in lieu of formal competitive bidding when determined to be in best interest of state; granting director discretion to increase delegated procurement limits; making procurement from nonprofit workshops optional; clarifying timing required on rebidding; changing requirement for affidavit verifying that no debt is owed to affirmation; granting director discretion to increase \$2,500 no bid limit; eliminating outdated information reporting requirements for vendor registration; clarifying

procurement penalties and inventory submission language; removing surplus fees for inter-agency asset transfers; requiring inter-agency asset transfers be recorded in accordance with governmental accounting standards; shifting time for disclosure of interested party information from date of contract award to before work begins to make procurement process more efficient; and making technical changes throughout.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 3. PURCHASING DIVISION.

§5A-3-1. Division created; purpose; director; applicability of article; continuation.

(a) The Purchasing Division within the Department of Administration is continued. The underlying purposes and policies of the Purchasing Division are:

(1) To serve as a source of expertise in procurement methods and practices for the various state agencies, and to assist and facilitate state agencies in procurement matters, including for travel services;

(2) To simplify, clarify and modernize the law governing procurement by this state;

(3) To permit the continued development of procurement policies and practices;

(4) To make as consistent as possible the procurement rules and practices among the various spending units;

(5) To provide for increased public confidence in the procedures followed in public procurement;

(6) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state;

(7) To provide increased economy in procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(8) To foster effective broad-based competition within the free enterprise system;

(9) To provide safeguards for the maintenance of a procurement system of quality and integrity; and

(10) To obtain in a cost-effective and responsive manner the commodities and services required by spending units for those spending units to better serve this state's businesses and residents.

(b) The provisions of this article apply to all of the spending units of state government, except as otherwise provided by this article or by law.

(c) The provisions of this article do not apply to the judicial branch, the West Virginia State Police, the West Virginia Office of Laboratory Services, the legislative branch, to purchases of stock made by the Alcohol Beverage Control Commissioner and to purchases of textbooks, instructional materials, digital content resources, instructional technology, hardware, software, telecommunications and technical services by the State Board of Education for use in and in support of the public schools.

(d) Notwithstanding any other provisions of this article, commodities and services may be purchased by a spending unit in the open market for immediate delivery in emergencies: *Provided*, That the purchase and a description of the circumstances warranting such emergency purchase are timely reported by the agency head or other authorized agent of the spending unit under the provisions of § 5A-3-4(a)(2) of this code.

(e) The provisions of this article apply to every expenditure of public funds by a spending unit for commodities and services irrespective of the source of the funds, except as otherwise provided by this article or by law.

§5A-3-3. Authority of Director of Purchasing.

The director, under the direction and supervision of the secretary, is the executive officer of the Purchasing Division and has the authority to:

(1) Direct the activities and employees of the Purchasing Division;

(2) Ensure that the purchase of or contract for commodities and services are based on competitive bid, except when another method of procurement is determined to be in the best interest of the state;

(3) Purchase or contract for, or assist and facilitate the purchase or contract for the spending units of the state government, in the name of the state, the commodities, services, and printing required by the spending units of the state government;

(4) Apply and enforce standard specifications established in accordance with §5A-3-5 of this code as hereinafter provided;

(5) Transfer to or between spending units or sell commodities that are surplus, obsolete, or unused as hereinafter provided;

(6) Have charge of central storerooms for the supply of spending units as the director considers advisable;

(7) Establish and maintain a laboratory for the testing of commodities and make use of existing facilities in state institutions for that purpose as hereinafter provided as the director considers advisable;

(8) Suspend the right and privilege of a vendor to bid on state purchases when the director has evidence that the vendor has violated any of the provisions of the purchasing law or the rules and regulations of the director;

(9) Timely provide guidance to and assist any spending unit in the development of the provisions and terms of contracts entered into for and on behalf of the State of West Virginia that impose any obligation upon the state to pay any sums of money for

commodities or services and approve contracts as to such provisions and terms; and the duties of providing guidance and assistance and approval herein set forth do not supersede the responsibility and duty of the Attorney General to approve the contracts as to form; *Provided*, That the provisions of this subdivision do not apply in any respect whatever to construction or repair contracts entered into by the Division of Highways of the Department of Transportation or to construction or reclamation contracts entered into by the Department of Environmental Protection; *Provided, however*, That the provisions of this subdivision do not apply in any respect whatsoever to contracts entered into by the University of West Virginia Board of Trustees or by the board of directors of the state college system, except to the extent that such boards request the facilities and services of the director under the provisions of this subdivision: *Provided further*, That the provisions of this subdivision do not apply to the West Virginia State Police and the West Virginia Office of Laboratory Services: *And provided further*, That the provisions of this subdivision shall not apply to contracts for any natural disaster recovery activities entered into by the West Virginia State Conservation Committee or the West Virginia Conservation Agency;

(10) Timely provide guidance to and assist any spending unit in the development of the specifications and descriptions in solicitations to be prepared so as to provide all potential suppliers-vendors who can meet the requirements of the state an opportunity to bid and to assure that the specifications and descriptions do not favor a particular brand or vendor; If the director determines that any such specifications or descriptions as written favor a particular brand or vendor or if it is decided by the relevant spending unit, in consultation with the director, either before or after the bids are opened, that a commodity or service having different specifications or quality or in different quantity can be acquired to better achieve the ends sought by the relevant spending unit, the solicitation may be rewritten and the matter shall be rebid or another procurement method pursued, where determined appropriate;

(11) Issue a notice to cease and desist to a spending unit when the director has credible evidence that a spending unit has violated the requirements of this article and the rules promulgated hereunder. Failure to abide by the notice may result in penalties set forth in §5A-3-17 of this code; and

(12) Exempt particular transactions, or particular categories of transactions, from the requirements of this article; provided that the director, in consultation with any relevant spending unit, shall determine such exemption to be in the best interest of the state.

(13) Make the resources and expertise of the division available to spending units exempted from the requirements of this article: *Provided*, That the director may, in consultation with the relevant spending unit, assess an exempt spending unit for the division's reasonable costs in order to ensure sufficient staffing and other resources to timely provide all necessary or requested assistance to the various spending units of the state.

§5A-3-4. Rules of director.

(a) The director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to:

(1) Authorize a spending unit to purchase specified commodities and services directly and prescribe the manner in which such purchases shall be made;

(2) Prescribe the manner in which emergency purchases made under § 5A-3-1(d) shall be reported to the director;

(3) Prescribe the manner in which commodities and services shall be purchased, delivered, stored and distributed;

(4) Prescribe the time for making requisitions and estimates of commodities and services, the future period which they are to cover, the form in which they shall be submitted and the manner of their authentication;

(5) Prescribe the manner of inspecting all deliveries of commodities, and making chemical and physical tests of samples

submitted with bids and samples of deliveries to determine compliance with specifications;

(6) Prescribe the amount and type of deposit or bond to be submitted with a bid or contract and the amount of deposit or bond to be given for the faithful performance of a contract;

(7) Prescribe a system whereby the director shall be required, upon the payment by a vendor of an annual fee established by the director, to give notice to such vendor of all bid solicitations for commodities and services of the type with respect to which such vendor specified notice was to be given, but no such fee shall exceed the cost of giving the notice to such vendor, nor shall such fee exceed the sum of \$125 per fiscal year nor shall such fee be charged to persons or entities seeking only reimbursement from a spending unit or to persons or entities only seeking to accept moneys granted by a spending unit under a grant agreement;

(8) Prescribe that each state contract entered into by the Purchasing Division shall contain provisions for liquidated damages, remedies or provisions for the determination of the amount or amounts which the vendor shall owe as damages, in the event of default under such contract by such vendor, as determined by the director;

(9) Prescribe contract management procedures for all state contracts except government construction contracts including, but not limited to, those set forth in §5-22-1 *et seq.* of this code;

(10) Prescribe procedures by which oversight is provided to actively monitor spending unit purchases, including, but not limited to, all technology and software commodities and services exceeding \$1 million, approval of change orders and final acceptance by the spending units;

(11) Prescribe that each state contract entered into by the Purchasing Division contain provisions for the cancellation of the contract upon 30 days' notice to the vendor;

(12) Prescribe procedures for selling surplus commodities to the highest bidder by means of an Internet auction site;

(13) Provide such other matters as may be necessary to give effect to the foregoing rules and the provisions of this article; and

(14) Prescribe procedures for encumbering purchase orders to ensure that the proper account may be encumbered before sending purchase orders to vendors.

(b) A person may not be employed as a state buyer unless he or she at the time of employment fulfills either of the following requirements:

(1) A graduate of an accredited college or university in a field determined relevant by the director; or

(2) Has at least two years' experience in purchasing for any unit of government or for any business, commercial or industrial enterprise.

Persons serving as State buyers are subject to the provisions of §29-6-1 *et seq.* of this code. Any director of the Purchasing Division hired after July 1, 2022, shall serve at the will and pleasure of the secretary and may not be subject to the provisions of §29-6-1 *et seq.* of this code.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops; continuing procurements over \$1 million.

(a) A purchase of and contract for commodities, printing, and services shall be based on competitive bids, except when another method of procurement is determined to be in the best interest of the State.

(b) The director shall solicit, on behalf of spending units, sealed bids for the purchase of commodities and printing which is estimated to exceed \$25,000. The director may delegate the procurement of commodities, services, or printing estimated to be \$25,000 or less to the spending unit. The director may set a higher or lower delegated procurement limit for a particular spending unit if the director determines that such action would be in the best

interest of the spending unit and the State. In no event may the director authorize more than \$100,000 of delegated procurement authority to a spending unit.

(c) Spending units shall not make an individual purchase in excess of the delegated procurement limit established in subsection (b) of this section, issue a series of requisitions for the same or similar commodity or service or divide or plan procurements with the intention to circumvent the delegated procurement limit established in subsection (b), or otherwise avoid the use of sealed bids. Any spending unit that discovers it has awarded multiple contracts for the same or similar commodity or service to an individual vendor over any 12-month period shall file copies of all contracts awarded or orders placed for the commodity, service, or printing in question within the 12 preceding months with the director upon exceeding the delegated limit, along with a statement explaining how either the multiple contract awards or orders do not circumvent the delegated procurement limit, or how the contracts or orders were not intended to circumvent the delegated limit. If the spending unit does not report to the director within a reasonable period, the director shall contact the spending unit to request such statement and may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection, as determined appropriate. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, in consultation with the relevant spending unit, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on January 1 and July 1 of each year the spending units which have reported under this subsection and the findings of the director.

(d) The director may permit bids by electronic transmission to be accepted in lieu of sealed bids.

(e) Bids shall be solicited by public notice. The notice may be published by any advertising medium the director considers advisable. The director may also solicit sealed bids by sending requests by mail or electronic transmission to prospective vendors.

(f) (1) The director may, without competitive bidding, purchase commodities and services produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code, which are located in this state: *Provided*, That the commodities and services shall be of a fair market price and of like quality comparable to other commodities and services otherwise available as determined by the director.

(2) To encourage contracts for commodities and services with nonprofit workshops, the director shall employ a person whose responsibilities in addition to other duties are to identify all commodities and services available for purchase from nonprofit workshops, to evaluate the need of the state for commodities and services to coordinate the various nonprofit workshops in their production efforts, and to make available to the workshops information about available opportunities within state government for purchase of commodities or services which might be produced and sold by such workshops. Funds to employ such a person shall be included annually in the budget.

(g) For all commodities and services in an amount exceeding \$1 million, if the procurement of the commodity or service is continuing in nature, 12 months prior to the expiration of the contract or final renewal option, whichever is later, the spending unit shall coordinate with the Purchasing Division on a new procurement for such commodity or service under the requirements of this article. This procurement shall be awarded or terminated no later than 180 days after the procurement specifications have been finally approved by the Purchasing Division.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the State or its political subdivisions.

(a) Unless the context clearly requires a different meaning, for the purposes of this section, the terms:

(1) “Debt” means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, amounts owed to the Workers’ Compensation Funds

as defined in §23-2C-1 *et seq.* of this code, penalty or other assessment or surcharge presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

(2) “Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions, and includes any person or entity that is in employer default.

(3) “Employer default” means having an outstanding balance or liability to the old fund or to the uninsured employers’ fund or being in policy default, as defined in §23-2C-2 of this code, failure to maintain mandatory workers’ compensation coverage, or failure to fully meet its obligations as a workers’ compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

(4) “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties or municipalities.

(5) “Related party” means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

(b) No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and:

(1) The debt owed is an amount greater than \$1,000 in the aggregate; or

(2) The debtor is in employer default.

(c) The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter 11 of this code, amount owed to the Workers' Compensation Funds as defined in §23-2C-1 *et seq.* of this code, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

(d) By submitting a bid or contract proposal or entering into a contract with the state or any of its political subdivisions, the vendor or prospective vendor is deemed to be affirming that the vendor or prospective vendor or a related party to the vendor or prospective vendor is not in employer default and does not owe any debt in an amount in excess of \$1,000 or, if a debt is owed, that the provisions of subsection (c) of this section apply. This affirmation, combined with verification of State tax compliance, will satisfy the public contracting entities verification requirements contained in §5-22-1(j) of this code.

§5A-3-11. Purchasing in open market on competitive bids; debarment; bids to be based on written specifications; period for alteration or withdrawal of bids; awards to lowest responsible bidder; uniform bids; record of bids; requirements of vendors to pay taxes, fees and debts; exception; grant exemption.

(a) The director may make a purchase of commodities, printing and services of \$25,000 or less in amount in the open market, but the purchase shall, wherever possible, be based on at least three

competitive bids, and shall include the cost of maintenance and expected life of the commodities if the director determines there are nationally accepted industry standards for the commodities being purchased.

(b) The director may authorize spending units to purchase commodities, printing and services in the amount of \$2,500 or less in the open market without competitive bids: *Provided*, That the cost of maintenance and expected life of the commodities must be taken into consideration if the director determines there are nationally accepted industry standards for the commodities being purchased: *Provided, however*, That the director may authorize spending units to purchase commodities, printing, and services in an amount greater than \$2,500 in the open market without competitive bids, subject to the limitations set forth in §5A-3-10(b) of this Code.

(c) Bids shall be based on the written specifications in the advertised bid request and may not be altered or withdrawn after the appointed hour for the opening of the bids.

(d) A vendor who has been debarred pursuant to the provisions of §5A-3-33b through §5A-3-33f of this code may not bid on or be awarded a contract under this section.

(e) All open market orders, purchases based on advertised bid requests or contracts made by the director or by a state department shall be awarded to the lowest responsible bidder or bidders, taking into consideration the qualities of the commodities or services to be supplied, their conformity with specifications, their suitability to the requirements of the government, the delivery terms and, if the director determines there are nationally accepted industry standards, cost of maintenance and the expected life of the commodities: *Provided*, That state bids on school buses shall be accepted from all bidders who shall then be awarded contracts if they meet the state board's Minimum Standards for Design and Equipment of School Buses. County boards of education may select from those bidders who have been awarded contracts and shall pay the difference between the state aid formula amount and the actual cost of bus replacement. Any or all bids may be rejected.

(f) If all bids received on a pending contract are for the same unit price or total amount, the director has the authority to reject all bids, and to purchase the required commodities, printing and services in the open market, if the price paid in the open market does not exceed the bid prices.

(g) The bid must be received by the Purchasing Division prior to the specified date and time of the bid opening. The failure to deliver or the nonreceipt of the bid by the Purchasing Division prior to the appointed date and hour shall result in the rejection of the bid. The vendor is solely responsible for the receipt of bid by the Purchasing Division prior to the appointed date and hour of the bid opening. All bids will be opened publicly by two or more persons from the Purchasing Division. Vendors will be given notice of the day, time and place of the public bid opening. Bids may be viewed immediately after being opened.

(h) After the award of the order or contract, the director, or someone appointed by him or her for that purpose, shall indicate upon the successful bid that it was the successful bid. Thereafter, the copy of each bid in the possession of the director shall be maintained as a public record, shall be open to public inspection in the office of the director and may not be destroyed without the written consent of the Legislative Auditor.

(i)(1) A grant awarded by the state is exempt from the competitive bidding requirements set forth in this chapter, unless the grant is used to procure commodities or services that directly benefit a spending unit.

(2) If a grant awarded to the state requires the procurement of commodities or services that will directly benefit a spending unit, the procurement is not exempt from the competitive bidding requirements set forth in this chapter.

(3) If a grant awarded to the state requires the state to transfer some or all of the grant to an individual, entity or vendor as a subgrant to accomplish a public purpose, and no contract for commodities or services directly benefitting a spending unit will

result, the subgrant is not subject to the competitive bidding requirements set forth in this chapter.

§5A-3-12. Prequalification disclosure and payment of annual fee by vendors required; form and contents; register of vendors; false certificates; penalties.

(a) The director may not accept any bid received from any vendor unless the vendor has paid the annual fee specified in §5A-3-4 of this code and has filed with the director a certificate of the vendor or the certificate of a member of the vendor's firm or, if the vendor is a corporation, the certificate of an officer, director or managing agent of the corporation, disclosing the following information:

(1) If the vendor is an individual, his or her name and city and state of residence and business address, and, if he or she has associates or partners sharing in his business, their names and city and state of residence and business addresses;

(2) If the vendor is a firm, the name and city and state of residence and business address of the firm;

(3) If the vendor is a corporation created under the laws of this state or authorized to do business in this state, the name and business address of the corporation;

(4) A statement of whether the vendor is acting as agent for some other individual, firm or corporation, and if so, a statement of the principal authorizing the representation shall be attached to the certificate or whether the vendor is doing business as another entity;

(5) The vendor's latest Dun & Bradstreet number and rating, if there is any rating as to the vendor; and

(6) The vendor's tax identification number.

(b) Whenever a change occurs in the information submitted as required, the change shall be reported immediately in the same manner as required in the original disclosure certificate.

(c) The certificate and information received by the director shall be public record.

(d) The director may waive the above requirements in the case of any corporation listed on any nationally recognized stock exchange and in the case of any vendor who or which is the sole source for the commodity in question.

(e) Any person who submits a false certificate or who knowingly files or causes to be filed with the director, a certificate containing a false statement of a material fact or omitting any material fact, is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, and, in the discretion of the court, confined in jail not more than one year. An individual convicted of a misdemeanor under this subsection may never hold an office of honor, trust or profit in this state, or serve as a juror.

§5A-3-17. Purchases or contracts violating article void; personal liability.

If a spending unit purchases or contracts for commodities or services contrary to the provisions of this article or the rules and regulations made thereunder, in any material respect, as determined by the director, such purchase or contract shall be void and of no effect. The spending officer of such spending unit, or any other individual charged with responsibility for the purchase or contract, shall be personally liable for the costs of such purchase or contract and, if already paid out of state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor: *Provided*, That the state establishes by a preponderance of the evidence that the individual acted knowingly and willfully.

§5A-3-18. Substituting for commodity bearing particular trade name or brand.

If a spending unit requests the purchase of a commodity bearing a particular trade name or brand, the director may substitute, after consultation with the relevant spending unit, a commodity bearing a different trade name or brand, if the substituted commodity reasonably conforms to the adopted

standard specifications and can be obtained at an equal or lower price.

§5A-3-29. Penalty for violation of article.

Any person who knowingly and willfully violates a provision of this article, except where another penalty is prescribed, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than ten nor more than \$500, or both, in the discretion of the court.

§5A-3-35. Submission of annual inventories.

The head of every spending unit of State government shall, on or before July 15, of each year, make an accounting and inventory of, and file with the director, all real and personal property, and of all equipment, supplies and commodities in its possession as of the close of the last fiscal year.

§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.

(a) The State agency for surplus property has the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the State when the commodities are or become obsolete or unusable or are not being used or should be replaced: *Provided*, That the director may grant authority to spending units to make disposition of commodities or expendable commodities in appropriate circumstances when determined by the director to be in the State's best interest.

(b) The agency shall determine what commodities or expendable commodities should be disposed of and make disposition in the manner which will be most advantageous to the state. The disposition may include:

(1) Transferring the particular commodities or expendable commodities between departments, after consultation with any

relevant spending units, and recording the transfer in accordance with governmental accounting standards;

(2) Selling the commodities to county commissions, county boards of education, municipalities, public service districts, county building commissions, airport authorities, parks and recreation commissions, nonprofit domestic corporations qualified as tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in this state when the volunteer fire departments have been held exempt from taxation under Section 501(c) of the Internal Revenue Code 1986, as amended;

(3) Trading in the commodities as a part payment on the purchase of new commodities;

(4) Cannibalizing the commodities pursuant to procedures established under §5A-3-45(g) of this code;

(5) Properly disposing of the commodities as waste;

(6) Selling the commodities to the general public at the posted price or to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms, and place of the sale as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for the publication is the county in which the sale is to be conducted. The sale may also be advertised in other advertising media that the agency considers advisable. The agency may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids; or

(7) Selling the commodities to the highest bidder by means of an internet auction site approved by the director, as set forth in a legislative rule pursuant to the provisions of §29A-3-1 *et seq.* of this code.

(c) Upon the sale to the general public, or upon the sale of commodities or expendable commodities to an eligible organization, the agency shall set the price to be paid by the

receiving eligible organization, with due consideration given to current market prices.

(d) The agency may sell expendable, obsolete, or unused motor vehicles owned by the state to an eligible organization, other than volunteer fire departments. In addition, the agency may sell expendable, obsolete, or unused motor vehicles owned by the state with a gross weight in excess of 4,000 pounds to an eligible volunteer fire department. The agency, with due consideration given to fair market value as determined by an independent automotive pricing guide, shall set the price at a fair market price to be paid by the receiving eligible organization for motor vehicles sold pursuant to this provision. The fair market value shall be based on a thorough inspection of the vehicle by an employee of the agency who shall consider the mileage of the vehicle and the condition of the body, engine, and tires as indicators of its fair market value. If no fair market value is available, the agency shall set the price to be paid by the receiving eligible organization with due consideration given to current market prices. The duly authorized representative of the eligible organization, for whom the motor vehicle or other similar surplus equipment is purchased or otherwise obtained, shall cause ownership and proper title to the motor vehicle to be vested only in the official name of the authorized governing body for whom the purchase or transfer was made. The ownership or title, or both, shall remain in the possession of that governing body and be nontransferable for a period of not less than one year from the date of the purchase or transfer. Resale or transfer of ownership of the motor vehicle or equipment prior to an elapsed period of one year may be made only by reason of certified unserviceability.

(e) The agency shall report to the Legislative Auditor, semiannually, all sales of commodities or expendable commodities made during the preceding six months to eligible organizations. The report shall include a description of the commodities sold, the price paid by the eligible organization which received the commodities, and to whom each commodity was sold.

(f) The proceeds of the sales or transfers shall be deposited in the State Treasury to the credit on a pro rata basis of the fund or

funds out of which the purchase of the particular commodities or expendable commodities was made: *Provided*, That the agency may charge and assess fees reasonably related to the costs of care and handling with respect to the transfer, warehousing, sale, and distribution of state property disposed of or sold pursuant to the provisions of this section. Notwithstanding §5A-3-45(e) of this code, if the fund or funds out of which the purchase was made no longer exist, the spending unit may designate an alternate fund within which the proceeds must be deposited.

(g)(1) For purposes of this section, “cannibalization” means the removal of parts from one commodity to use in the creation or repair of another commodity.

(2) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that permit the cannibalization of a commodity when it is in the best interests of the state. The procedures shall require the approval of the director prior to the cannibalization of the commodity under such circumstances as the procedures may prescribe.

(3)(A) Under circumstances prescribed by the procedures, state agencies shall be required to submit a form, in writing or electronically, that, at a minimum, elicits the following information for the commodity the agency is requesting to cannibalize:

- (i) The commodity identification number;
- (ii) The commodity’s acquisition date;
- (iii) The commodity’s acquisition cost;
- (iv) A description of the commodity;
- (v) Whether the commodity is operable and, if so, how well it operates;
- (vi) How the agency will dispose of the remaining parts of the commodity; and

(vii) Who will cannibalize the commodity and how the person is qualified to remove and reinstall the parts.

(B) If the agency has immediate plans to use the cannibalized parts, the form shall elicit the following information for the commodity or commodities that will receive the cannibalized part or parts:

(i) The commodity identification number;

(ii) The commodity's acquisition date;

(iii) The commodity's acquisition cost;

(iv) A description of the commodity;

(v) Whether the commodity is operable;

(vi) Whether the part restores the commodity to an operable condition; and

(vii) The cost of the parts and labor to restore the commodity to an operable condition without cannibalization.

(C) If the agency intends to retain the cannibalized parts for future use, it shall provide information justifying its request.

(D) The procedures shall provide for the disposal of the residual components of cannibalized property.

(h)(1) The Director of the Purchasing Division shall propose for promulgation legislative rules to establish procedures that allow State agencies to dispose of commodities in a landfill, or by other lawful means of waste disposal, if the value of the commodity is less than the benefit that may be realized by the state by disposing of the commodity using another method authorized in this section. The procedures shall specify circumstances where the State agency for surplus property shall inspect the condition of the commodity prior to authorizing the disposal and those circumstances when the inspection is not necessary prior to the authorization.

(2) Whenever a State agency requests permission to dispose of a commodity in a landfill, or by other lawful means of waste disposal, the state agency for surplus property has the right to take possession of the commodity and to dispose of the commodity using any other method authorized in this section.

(3) If the State agency for surplus property determines, within 15 days of receiving a commodity, that disposing of the commodity in a landfill or by other lawful means of waste disposal would be more beneficial to the state than disposing of the commodity using any other method authorized in this section, the cost of the disposal is the responsibility of the agency from which it received the commodity.

CHAPTER 6D. PUBLIC CONTRACTS.

ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.

§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.

(a) A State agency may not allow a vendor to perform work on an applicable contract that has been awarded to a business entity unless and until the business entity submits to the state agency a disclosure of interested parties to the applicable contract.

(b) The business entity shall submit the disclosure to the State agency prior to commencing work on an applicable contract award.

(c) Within 30 days following the completion or termination of the applicable contract, the business entity shall submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract.



CHAPTER 146

(Com. Sub. for H. B. 4559 - By Delegates Hanshaw (Mr. Speaker), Steele, and Lovejoy)

[Passed March 11, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-12-16; and to amend and reenact §61-12-3, §61-12-5, §61-12-6, §61-12-7, §61-12-10, §61-12-10a, §61-12-11, §61-12-12, §61-12-13, §61-12-14 and §61-12-15 of said Code, all relating to the Office of the Chief Medical Examiner and the disposition of unidentified and unclaimed remains; authorizing the Office of the Chief Medical Examiner to locate lands suitable for use as a cemetery; authorizing the Office of the Chief Medical Examiner to determine the appropriate length of time a decedent may be kept prior to burial or cremation; establishing burial for certain conditions; establishing cremation of certain conditions; authorizing the Chief Medical Examiner or a designee to return a decedent's remains to next of kin and remove a decedent from the cemetery; prohibiting any cause of action against the Office of the Chief Medical Examiner for disposal of remains consistent with these provisions; providing for the final disposition of unidentified and unclaimed remains in the possession of the Office of the Chief Medical Examiner pursuant to legislative rule; and providing for emergency legislative rulemaking allowing for the final disposition of unidentified and unclaimed remains.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. POSTMORTEM EXAMINATIONS.

***§61-12-3. Office of chief medical examiner established; appointment, duties, etc., of chief medical examiner; assistants and employees; promulgation of rules.**

(a) The Office of Chief Medical Examiner is continued within the Bureau for Public Health in the Department of Health and Human Resources. The office shall be directed by a chief medical examiner, who may employ pathologists, toxicologists, other forensic specialists, laboratory technicians, and other staff members, as needed to fulfill the responsibilities set forth in this article.

(b) All persons employed by the chief medical examiner shall be responsible to him or her and may be discharged for any reasonable cause. The chief medical examiner shall specify the qualifications required for each position in the Office of Chief Medical Examiner.

(c) The chief medical examiner shall be a physician licensed to practice medicine or osteopathic medicine in the State of West Virginia, who is a diplomat of the American Board of Pathology in forensic pathology, or equivalent, and who has experience in forensic medicine. The chief medical examiner shall be appointed by the Commissioner for the Bureau for Public Health to serve a five-year term unless sooner removed, but only for cause, by the Governor or by the commissioner.

(d) The chief medical examiner shall be responsible to the commissioner in all matters except that the chief medical examiner shall operate with independent authority for the purposes of:

(1) The performance of death investigations conducted pursuant to section eight of this article;

(2) The establishment of cause and manner of death; and

*NOTE: This section was also amended by H. B. 4340 (Chapter 231), which passed subsequent to this act.

(3) The formulation of conclusions, opinions or testimony in judicial proceedings.

(e) The chief medical examiner, or his or her designee, shall be available at all times for consultation as necessary for carrying out the functions of the Office of the Chief Medical Examiner.

(f) The Secretary of the Department of Health and Human Resources shall propose legislative rules in accordance with the provisions of §29-3-1 *et seq.* of this code concerning:

(1) The proper conduct of medical examinations into the cause of death;

(2) The proper methods and procedures for postmortem inquiries conducted by county medical examiners and coroners;

(3) The examination of substances taken from human remains in order to determine the cause and manner of death; and

(4) The training and certification of county medical examiners and coroners.

(g) The chief medical examiner may prescribe specific forms for record books and official papers which are necessary to the functions and responsibilities of the office of the chief medical examiner.

(h) The chief medical examiner, or his or her designee, may order and conduct an autopsy in accordance with the provisions of this article and this code. The chief medical examiner, or his or her designee, shall perform an autopsy upon the lawful request of any person authorized by the provisions of this code to request the performance of the autopsy.

(i) The salary of the chief medical examiner and the salaries of all assistants and employees of the Office of the Chief Medical Examiner shall be fixed by the Legislature from funds appropriated for that purpose. The chief medical examiner shall take an oath as required by law. The chief medical examiner and his or her assistants may lecture or instruct in the field of legal medicine and other related subjects to the West Virginia University or Marshall University School of Medicine, the West Virginia School of

Osteopathic Medicine, the West Virginia State Police, other law-enforcement agencies and other interested groups.

§61-12-5. Certain salaries and expenses paid by state.

The salaries of the chief medical examiner, the salaries of all assistants and employees employed in the central office and laboratory, the expenses of maintaining the central office and laboratory and the cost of pathological, bacteriological and toxicological services rendered by persons other than the chief medical examiner and his or her assistants shall be paid by the state out of funds appropriated for that purpose.

§61-12-6. Chief medical examiner may obtain additional services and facilities.

The chief medical examiner may employ and pay qualified pathologists and toxicologists to make autopsies and such pathological and chemical studies and investigations as he or she considers necessary. Qualified pathologists shall hold board certification or board eligibility in forensic pathology, or equivalent, or have completed an American Board of Pathology fellowship in forensic pathology.

§61-12-7. Medical examiners.

(a) The chief medical examiner shall appoint for each county in the state a county medical examiner to serve for a term of three years under the supervision of the chief medical examiner. A county medical examiner shall be medically trained and licensed by the State of West Virginia as a physician, registered nurse, paramedic, emergency medical technician or a physician assistant, be certified in the practice of medicolegal death investigation. County medical examiners are authorized to establish the fact of death, and to make investigations into all deaths in their respective counties that come within the provisions of §61-2-8 and §61-2-10 of this code and shall in timely fashion record findings of an investigation using forms prescribed by the chief medical examiner. A county medical examiner may be removed from office for cause at any time by the chief medical examiner. Any vacancy in the office of county medical examiner shall be filled by the chief

medical examiner. One person may be appointed to serve as county medical examiner for more than one county, and a county medical examiner need not be a resident of the county which he or she serves. If the chief medical examiner determines that it is necessary, he or she may appoint any person medically trained and licensed by the State of West Virginia as a physician, registered nurse, paramedic, emergency medical technician or a physician assistant to act as an assistant county medical examiner for a term of three years. An assistant shall have the same powers and duties as a county medical examiner and shall perform his or her duties under the supervision of the chief medical examiner.

(b) A county medical examiner or his or her assistant county medical examiner shall, at all times, be available to perform the duties required under this article. He or she shall, additionally, be paid a fee, as determined by the chief medical examiner, but only for the actual performance of his or her duties.

(c) County medical examiners and assistant county medical examiners are authorized to determine the cause and manner of death in any case falling within the provisions of section eight of this article, subject to the supervision of the chief medical examiner, and may exercise any of the powers attendant to the investigation of deaths.

§61-12-10. When autopsies made and by whom performed; records of date investigated; copies of records and information; reporting requirements.

(a) If in the opinion of the chief medical examiner, or of the county medical examiner of the county in which the death in question occurred, it is advisable and in the public interest that an autopsy be made, or if an autopsy is requested by either the prosecuting attorney or the judge of the circuit court or other court of record having criminal jurisdiction in that county, an autopsy shall be conducted by the chief medical examiner or his or her designee, by a member of his or her staff, or by a competent pathologist designated and employed by the chief medical examiner under the provisions of this article. For this purpose, the chief medical examiner may employ any county medical examiner

who is a pathologist who holds board certification or board eligibility in forensic pathology or has completed an American Board of Pathology fellowship in forensic pathology to make the autopsies, and the fees to be paid for autopsies under this section shall be in addition to the fee provided for investigations pursuant to §61-12-8 of this code. A full record and report of the findings developed by the autopsy shall be filed with the office of the chief medical examiner by the person making the autopsy.

(b) Within the discretion of the chief medical examiner, or of the person making the autopsy, or if requested by the prosecuting attorney of the county, or of the county where any injury contributing to or causing the death was sustained, a copy of the report of the autopsy shall be furnished to the prosecuting attorney.

(c) The Office of the Chief Medical Examiner shall keep full, complete and properly indexed records of all deaths investigated, containing all relevant information concerning the death and the autopsy report if an autopsy report is made. Any prosecuting attorney or law-enforcement officer may secure copies of these records or information necessary for the performance of his or her official duties.

(d) Copies of these records or information shall be furnished, upon request, to any court of law, or to the parties therein to whom the cause of death is a material issue, except where the court determines that interests in a civil matter conflict with the interests in a criminal proceeding, in which case the interests in the criminal proceeding shall take precedence. The Office of Chief Medical Examiner shall be reimbursed a reasonable rate by the requesting party for costs incurred in the production of records under this subsection, and subsection (c), (f) and (g) of this section.

(e) The chief medical examiner may release investigation records and autopsy reports to the multidisciplinary team authorized by §49-4-402 of this code and as authorized in subsection (j) of this section. The chief medical examiner may release records and information to other state agencies when considered to be in the public interest.

(f) The chief medical examiner may release a copy of the autopsy and toxicology reports upon the request from a designated representative of a hospital as defined in §16-2D-2 of this code, to said facility who has reported a death under the provisions of §61-12-8 of this code for purposes of quality review and medical record completion.

(g) The chief medical examiner may release a copy of the autopsy and toxicology reports upon the request of an attending physician as defined in §16-30C-3 of this code, to said physician whose patient has died for purposes of quality review and medical record completion.

(h) Any person performing an autopsy under this section may keep and retain, for and on behalf of the chief medical examiner, any tissue from the body upon which the autopsy was performed which may be necessary for further study or consideration.

(i) In cases of the death of any infant, where sudden infant death syndrome is the suspected cause of death and the chief medical examiner or the medical examiner of the county in which the death in question occurred considers it advisable to perform an autopsy, it is the duty of the chief medical examiner or the medical examiner of the county in which the death occurred to notify the sudden infant death syndrome program within the Division of Maternal and Child Health and to inform the program of all information to be given to the infant's parents.

(j) If the chief medical examiner determines that a drug overdose is the cause of death of a person, the chief medical examiner shall provide notice of the death to the West Virginia Controlled Substances Monitoring Program Database Review Committee established pursuant to §60A-9-5(b) and shall include in the notice any information relating to the cause of the fatal overdose.

§61-12-10a. Costs of transportation of bodies; when state will pay; amount of payment.

Whenever an examination of a body is ordered pursuant to §61-12-8 and §61-12-10 of this code and the body of the deceased is transported to the central laboratory or other place of examination,

the reasonable cost of the transportation shall be paid by the state out of funds appropriated to or for the use of the Office of the Chief Medical Examiner. Transportation at state expense shall be provided from the place where the body is being kept at the time the examination is ordered to the central laboratory or other place of examination, and, upon completion of the examination, to the place designated by the person entitled to possession of the body: *Provided*, That if the body is to be returned a greater distance than it was taken for the examination, the state shall only be obligated for the cost of return of the body equal to or less than that incurred to take the body for the examination. The payment shall be of a reasonable amount set by the Office of the Chief Medical Examiner, including, but not limited to, payment of any part of the total cost as the Office of the Chief Medical Examiner allows.

§61-12-11. Exhumation; when ordered.

If, in any case of sudden, violent or suspicious death, the body is buried without any investigation by the chief medical examiner, or by a county medical examiner or coroner, it is the duty of the chief medical examiner or the county medical examiner or coroner, upon being advised of this fact, to notify the prosecuting attorney of the county, who shall communicate the same to the judge of the circuit court or other court of record having jurisdiction in the county and the judge may order that the body be exhumed and an autopsy performed thereon, as provided in §61-12-10 of this code and the pertinent facts disclosed by the autopsy shall be communicated to the prosecuting attorney of the county.

§61-12-12. Facilities and services available to medical examiners.

Pursuant to rules promulgated by the Secretary of the Department of Health and Human Resources, the facilities of the Office of the Chief Medical Examiner and its laboratory, and the services of its professional staff, shall be made available to the county medical examiners and coroners in their investigations under the provisions of §61-12-8 of this code, and to the persons conducting autopsies under the provisions of §61-12-10 of this code.

§61-12-13. Reports and records received as evidence; copies.

Reports of investigations and autopsies, and the records thereof, on file in the Office of the Chief Medical Examiner or in the office of any county medical examiner, shall be received as evidence in any court or other proceeding, and copies of records, photographs, laboratory findings and records on file in the Office of the Chief Medical Examiner or in the office of any county medical examiner, when attested by the chief medical examiner or by the county medical examiner, assistant county medical examiner or coroner in whose office the same are filed, shall be received as evidence in any court or other proceeding for any purpose for which the original could be received without any proof of the official character of the person whose name is signed thereto unless objected to by counsel: *Provided*, That statements of witnesses or other persons and conclusions upon extraneous matters are not hereby made admissible.

§61-12-14. County coroners; appointment, oath, etc.; duties; fees.

The county commission of every county may appoint a coroner for the county, who shall hold the office at the pleasure of the commission and shall take the oath of office prescribed for other county officers. The county coroners shall be certified in medicolegal investigations, be continually available to perform the duties required under this article and shall be paid such fees or amounts for the services as may be fixed by the chief medical examiner.

§61-12-15. Disposition of unidentified and unclaimed remains.

(a) The Office of the Chief Medical Examiner shall cremate unclaimed human remains and shall bury unidentified human remains from its facilities.

(b) The Office of the Chief Medical Examiner, with the assistance of the city of Charleston, shall locate an appropriate cemetery.

(c) Unidentified remains shall be buried after 6 months and after efforts to identify the person and his or her next of kin have been exhausted by the Office of Chief Medical Examiner. In the event the death is determined to be the result of a crime, physical evidence shall be collected from the decedent's body prior to any burial.

(d) Any identified but unclaimed remains shall be cremated after 30 days has passed and after efforts to contact the decedent's next of kin have been exhausted, as determined by the Office of the Chief Medical Examiner, and placed in a cemetery in a manner that the remains may be easily retrieved by the Office of the Chief Medical Examiner in the event the decedent's next of kin wishes to claim the remains.

(e) The chief medical examiner, or his or her designee, may enter onto the premises of the cemetery and cause to be removed from the cemetery any decedent who has been identified and claimed by his or her next of kin upon the next of kin providing proper documentation.

(f) No person may file any cause of action against the Office of the Medical Examiner or against any medical examiner acting in his or her capacity as a medical examiner for any liability or damages relating to burial, cremation, or other disposition of a decedent's remains, consistent with the provisions of this section, prior to a person claiming a decedent.

§61-12-16. Disposition of unidentified or unclaimed remains pursuant to legislative rule.

The Office of the Chief Medical Examiner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code which provide for the disposition of unidentified or unclaimed remains in the possession of the Office of the Chief Medical Examiner, in a manner which does not conflict with the provisions of this article.

Further, the Office of the Chief Medical Examiner shall promulgate emergency rules pursuant to §29A-3-15 of this code providing for the disposition of unidentified or unclaimed remains in their possession, in a manner which does not conflict with the provisions of this article.

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CHAPTER 147

**(S. B. 228 - By Senators Rucker, Baldwin, Lindsay, Jeffries,
Phillips, Romano, Caputo, and Stollings)**

[Passed March 11, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-10-7d, relating to providing tuition and fee waivers for terms of service completed in West Virginia as AmeriCorps volunteer; specifying programs, conditions, required minimum hours of service, and limitation of semesters applicable; defining nominal value; providing that tuition and fee waivers are in addition to others permitted; authorizing governing boards to establish limits; and authorizing legislative rulemaking for certain purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-7d. Tuition waivers for national service volunteers serving in West Virginia.

(a) The governing boards shall make provision for institutions under their respective jurisdictions to award tuition and fee waivers for undergraduate and graduate courses at state institutions of higher education beginning in the 2022 fall semester or term for any student who has completed service in West Virginia as a participant in an AmeriCorps State, National, VISTA, or Senior Corps program in accordance with the following:

- (1) The student has applied and been accepted at the institution;

(2) The student has filed the Free Application for Federal Student Aid and has accepted all offers of state and federal financial assistance for which he or she is eligible: *Provided*, That the student is not required to accept offers of student loan or work study assistance;

(3) The student has accepted the Segal AmeriCorps Education Award;

(4) The student has successfully completed his or her term of service as defined by the AmeriCorps program and consistent with regulations of the Corporation for National and Community Service, the service was completed in West Virginia, and the Certification of Service Letter is provided to the state institution of higher education as documentation of the completion of service;

(5) The student shall be awarded a tuition and fee waiver for one semester if the student successfully completed a term of service consisting of at least 600 hours of service, or if the student successfully completed multiple terms of service that in the aggregate consist of at least 600 hours of service. The student shall be awarded a tuition and fee waiver for two semesters if the student successfully completed a term of service consisting of at least 1,200 hours of service, or if the student successfully completed multiple terms of service that in the aggregate consist of at least 1,200 hours. The hours of service used to qualify for an award may not be again used to qualify for another award;

(6) A student may successfully complete additional terms of service while enrolled at a state institution of higher education or between semesters and provide the documentation specified in subdivision (4) of this subsection to the state institution for waivers of tuition and fees in accordance with this section;

(7) The total number of tuition and fee waivers that may be granted to a student pursuant to this section is limited to eight semesters of enrollment at the undergraduate or graduate levels combined;

(8) The nominal value of a tuition and fee waiver is the remaining cost of tuition and fees after the state and federal financial assistance accepted by the student in accordance with subdivision (2) of this subsection has been applied: *Provided*, That if the subsequent application of the student's Segal AmeriCorps Education Award causes the total of the student's financial assistance, waivers, and grants to exceed the student's cost of attendance, the nominal value of the tuition and fee waiver may be further reduced to reach the cost of attendance; and

(9) The award of a tuition and fee waiver is contingent upon the student meeting the academic progress standards established by the institution.

(b) The award of tuition and fee waivers granted pursuant to this section is in addition to the tuition and fee waivers otherwise permitted in this article.

(c) The governing boards may establish any limitations on the provisions of this section as they consider proper.

(d) The commission and the council may propose rules for legislative approval, pursuant to the provisions of §29A-3A-1 *et seq.* of this code, if necessary, to provide for uniformity in the administration and tracking of awards made pursuant to this section.

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CHAPTER 148

(S. B. 546 - By Senators Tarr, Roberts, Plymale, and Nelson)

[Passed March 10, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 23, 2022.]

AN ACT to amend and reenact §18B-10-1c of the code of West Virginia, 1932, as amended; and to amend and reenact §18B-10-8 of said code, all relating to using fees and other money collected from students at institutions of higher education; defining terms; clarifying allowable expenses for the use of tuition and required general fees; providing for fees charged to be used for information technology purposes; allowing for a specified percentage of gross tuition revenue funds to be spent on information technology projects; and establishing what costs are allowable for information technology projects.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-1c. Definitions.

For the purposes of this article, the following words have the meanings specified unless the context clearly indicates a different meaning:

(a) “Auxiliary capital fees” means charges levied on students to support debt service, information technology projects, capital projects and campus maintenance and renewal for the auxiliary facilities and information technology systems of the institutions;

(b) “Auxiliary fees” means charges levied on all students to support auxiliary enterprises or optional charges levied only on

students using the auxiliary service. Auxiliary fees include sales and service revenue from entities that exist predominately to furnish goods or services to students, faculty or staff such as residence halls, faculty and staff housing, food services, intercollegiate athletics, student unions, bookstores, parking and other service centers;

(c) “Full-time graduate student” means a graduate student who is enrolled for nine or more credit hours in a regular term;

(d) “Full-time undergraduate student” means an undergraduate student who is enrolled for 12 or more credit hours in a regular term;

(e) “Required educational and general capital fees” means:

(1) Charges levied on all students to support debt service of systemwide bond issues; and

(2) Charges levied on all students to support debt service, information technology projects, capital projects and campus maintenance and renewal for an institution’s educational and general educational facilities, and information systems.

(f) “Tuition and required educational and general fees” means:

(1) Charges levied on all students of that class or category to support educational and general program services and to support debt service, information technology projects, capital projects and campus maintenance, and renewal for an institution’s educational and general educational facilities, auxiliary facilities and information technology systems; and

(2) Optional charges levied for education and general services collected only from students using the service or from students for whom the services are made available.

§18B-10-8. Collection; disposition and use of capital and auxiliary capital fees; creation of special capital and auxiliary capital improvements funds; revenue bonds.

(a) This section and any rules adopted by the commission, council, or both, in accordance with this section and §29A-3a-1 *et seq.* of this code, govern the collection, disposition, and use of the capital and auxiliary capital fees authorized by §18B-10-1 of this code. The statutory provisions governing collection and disposition of capital funds in place prior to the enactment of this section remain in effect.

(b) *Fees for full-time students.* — The governing boards shall fix capital and auxiliary capital fees for full-time students at each state institution of higher education per semester. For institutions under its jurisdiction, a governing board may fix the fees at higher rates for students who are not residents of this state.

(c) *Fees for part-time students.* — For all part-time students and for all summer school students, the governing boards shall impose and collect the fees in proportion to, but not exceeding, the fees paid by full-time students. Refunds of the fees may be made in the same manner as any other fee collected at state institutions of higher education.

(d) There is continued in the State Treasury a special capital improvements fund and special auxiliary capital improvements fund for each state institution of higher education and the commission into which shall be paid all proceeds, respectively, of the following:

(1) The capital and auxiliary capital fees collected from students at all state institutions of higher education pursuant to this section; and

(2) The fees collected from the students pursuant to section one of this article. The fees shall be expended by the commission and governing boards for the payment of the principal of or interest on any revenue bonds issued by the board of regents or the succeeding governing boards for which the fees were pledged prior to the enactment of this section.

(e) The governing boards may make expenditures from any of the special capital improvements funds or special auxiliary capital

improvement funds established in this section, and up to 50 percent of its gross tuition revenues to finance or fund on a cash basis, in whole or in part, in combination with any federal, state or other grants or contributions, for any one or more of the following projects:

- (1) The acquisition of land or any rights or interest in land;
 - (2) The construction or acquisition of new buildings;
 - (3) The renovation or construction of additions to existing buildings;
 - (4) The acquisition of furnishings and equipment for the buildings;
 - (5) The costs of information technology projects, including, but not limited to, costs associated with planning, designing, implementing, upgrading, modifying and replacing new and existing enterprise resource planning, data, student, critical, or foundational technology systems, without regard to whether such costs are capitalizable, and which may include costs relating to the improvement of business practices to maximize the use of such systems, design, development, infrastructure, software licenses and subscriptions, testing, training, data transfers and relevant labor costs and consultant costs; and
 - (6) The construction or acquisition of any other capital improvements or capital education facilities at the state institutions of higher education, including any roads, utilities or other properties, real or personal, or for other purposes necessary, appurtenant or incidental to the construction, acquisition, financing, and placing in operation of the buildings, capital improvements, or capital education facilities, including student unions, dormitories, housing facilities, food service facilities, motor vehicle parking facilities, and athletic facilities.
- (f) The commission, when singly or jointly requested by the council or governing boards, periodically may issue revenue bonds of the state as provided in this section to finance all or part of the purposes and pledge all or any part of the moneys in the special

funds for the payment of the principal of and interest on the revenue bonds, and for reserves for the revenue bonds. Any pledge of the special funds for the revenue bonds shall be a prior and superior charge on the special funds over the use of any of the moneys in the funds to pay for the cost of any of the purposes on a cash basis. Any expenditures from the special funds, other than for the retirement of revenue bonds, may be made by the commission or governing boards only to meet the cost of a predetermined capital improvements program for one or more of the state institutions of higher education, in the order of priority agreed upon by the governing board or boards and the commission and for which the aggregate revenue collections projected are presented to the Governor for inclusion in the annual budget bill, and are approved by the Legislature for expenditure. Any expenditure made pursuant to subsection (e) of this section shall be part of the 10-year campus development plan approved by the governing board pursuant to §18B-19-3 of this chapter.

(g) The revenue bonds periodically may be authorized and issued by the commission or governing boards to finance, in whole or in part, the purposes provided in this section in an aggregate principal amount not exceeding the amount which the commission determines can be paid as to both principal and interest and reasonable margins for a reserve therefor from the moneys in the special funds.

(h) The issuance of the revenue bonds by schools other than the exempted schools shall be authorized by a resolution adopted by the governing board receiving the proceeds and the commission, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding 40 years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding 105 percent of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds and by the commission. The revenue bonds issued by schools other than the exempted

schools shall be signed by the Governor and by the chancellor of the commission or the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chancellor of the commission or the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the commission or governing board determines is in the best interests of the state.

(i) The issuance of the revenue bonds by exempted schools shall be authorized by a resolution adopted by the governing board receiving the proceeds, and the revenue bonds shall bear the date or dates; mature at such time or times not exceeding 100 years from their respective dates; be in such form either coupon or registered, with such exchangeability and interchangeability privileges; be payable in such medium of payment and at such place or places, within or without the state; be subject to such terms of prior redemption at such prices not exceeding 105 percent of the principal amount thereof; and have the other terms and provisions determined by the governing board receiving the proceeds. The revenue bonds shall be signed by the Governor and the chair of the governing boards authorizing the issuance of the revenue bonds, under the Great Seal of the state, attested by the Secretary of State, and the coupons attached to the revenue bonds shall bear the facsimile signature of the chair of the appropriate governing boards. The revenue bonds shall be sold in the manner the governing board determines is in the best interests of the state.

(j) The commission or governing boards may enter into trust agreements with banks or trust companies, within or without the state, and in the trust agreements or the resolutions authorizing the issuance of the bonds may enter into valid and legally binding covenants with the holders of the revenue bonds as to the custody, safeguarding and disposition of the proceeds of the revenue bonds, the moneys in the special funds, sinking funds, reserve funds, or any other moneys or funds; as to the rank and priority, if any, of different issues of revenue bonds by the commission or governing boards under this section; as to the maintenance or revision of the amounts of the fees; as to the extent to which swap agreements, as

defined in §13-2G-2 of this code shall be used in connection with the revenue bonds, including such provisions as payment, term, security, default, and remedy provisions as the commission considers necessary or desirable, if any, under which the fees may be reduced; and as to any other matters or provisions which are considered necessary and advisable by the commission or governing boards in the best interests of the state and to enhance the marketability of the revenue bonds.

(k) After the issuance of any revenue bonds, the fees at the state institutions of higher education pledged to the payment of the revenue bonds may not be reduced as long as any of the revenue bonds are outstanding and unpaid except under the terms, provisions and conditions contained in the resolution, trust agreement or other proceedings under which the revenue bonds were issued. The revenue bonds are and constitute negotiable instruments under the Uniform Commercial Code of this state; together with the interest thereon, be exempt from all taxation by the State of West Virginia, or by any county, school district, municipality, or political subdivision thereof; and the revenue bonds may not be considered to be obligations or debts of the state and the credit or taxing power of the state may not be pledged therefor, but the revenue bonds shall be payable only from the revenue pledged therefor as provided in this section.

(l) Additional revenue bonds may be issued by the commission or governing boards pursuant to this section and financed by additional revenues or funds dedicated from other sources. The special revenue fund in the State Treasury known as the Community and Technical College Capital Improvement Fund into which shall be deposited the amounts specified in §29-22-18(j) of this code is continued. All amounts deposited in the fund shall be pledged to the repayment of the principal, interest and redemption premium, if any, on any revenue bonds or refunding revenue bonds authorized by the commission for community and technical college capital improvements or used by the council on a cash basis as provided under §29-22-18(j)(4) of this code for community and technical college capital improvements or capital projects.

(m) Funding of systemwide and campus-specific revenue bonds under any other section of this code is continued and authorized pursuant to the terms of this section. Revenues of any state institution of higher education pledged to the repayment of any revenue bonds issued pursuant to this code shall remain pledged.

(n) Any revenue bonds for state institutions of higher education proposed to be issued under this section or other sections of this code first must be approved by the Governor and:

(1) Approved by the governing board for revenue bonds issued by the exempted schools;

(2) Confirmed by the commission, for revenue bonds issued by institutions under the jurisdiction of the commission, or

(3) Approved by the council and the commission, for revenue bonds issued by institutions under the jurisdiction of the council.

(o) Revenue bonds issued pursuant to this code may be issued by the commission or governing boards, either singly or jointly.

(p) Fees pledged for repayment of revenue bonds issued under this section or §18-12B-1 *et seq.* of this code prior to or after the effective date of this section shall be transferred to the commission in a manner prescribed by the commission. The commission may transfer funds from the accounts of institutions pledged for the repayment of revenue bonds issued prior to the effective date of this section or issued subsequently by the commission upon the request of institutions, if an institution fails to transfer the pledged revenues to the commission in a timely manner.

(q) Effective July 1, 2004, the capital and auxiliary capital fees authorized by this section and §18B-10-1 of this code are in lieu of any other fees set out in this code for capital and auxiliary capital projects to benefit public higher education institutions. Notwithstanding any other provisions of this code to the contrary, in the event any capital, tuition, registration, or auxiliary fees are pledged to the payment of any revenue bonds issued pursuant to any general bond resolutions of the commission, any of its

predecessors or any institution, adopted prior to the effective date of this section, the fees shall remain in effect in amounts not less than the amounts in effect as of that date, until the revenue bonds payable from any of the fees have been paid or the pledge of the fees is otherwise legally discharged.

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CHAPTER 149

**(Com. Sub. for H. B. 4008 - By Delegates Ellington, Statler,
Criss, Householder, Smith, Gearhart, Espinosa, Hanna,
Horst, Bridges, and Rohrbach)**

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18B-1-1f of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-1B-4 of said code, all relating to powers and duties of the Higher Education Policy Commission generally; establishing additional criteria for a state college or university to be considered exempt from the requirement that the commission approve the establishment of new programs on their own campuses for programs incentivized within the funding formula established herein; directing the Higher Education Policy Commission, in conjunction with the West Virginia Council for Community and Technical College Education, to propose rules to establish a funding formula model governing its appropriation request to the Legislature regarding distribution of general revenue to the state's institutions of higher education; setting forth parameters for the formula and minimum requirements for the rule; revising and removing certain related commission powers and duties; requiring interim chancellor to meet all criteria required of the chancellor; clarifying the commission and council's responsibilities, in conjunction with the West Virginia Network, to support systemwide technology needs; revising provisions for rulemaking regarding transfers of credits and obtaining academic credit or advanced placement standing based on experience; authorizing commission to promulgate rules, and exercise powers and duties, governing student loans, scholarships, state aid as provided in Chapter 18C of the code; removing requirements to provide education about certain

disease; and making non-substantive technical cleanup corrections and clarifying changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1f. STATE COLLEGE AND UNIVERSITY EXEMPTION STATUS.

(a) The Legislature finds that:

(1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling certain goals can be incentivized through the accountability and autonomy associated with exemption status for state colleges and universities based on meeting certain criteria; and

(2) Leading higher education authorities in the nation identify common, key performance indicators as an important measure of institutional effectiveness, including, but not limited to, enrollment benchmarks, fiscal benchmarks, and student success benchmarks.

(b) The following definitions apply to terms used in this section:

(1) “Administratively exempted schools” means state colleges and universities:

(A) That achieve and maintain three out of five of the following:

(i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

(ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

(iii) Credit head count enrollment: A three-year credit head count enrollment increase, or a decrease of not more than five percent over the same period;

(iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved; and

(v) Composite Financial Index: A Composite Financial Index of not less than one as reported in the college and university's audited financial statements; or

(B) Whose governing board requests a review by the chancellor of any special circumstances and the commission grants administratively exempted status based on those special circumstances as verified by the chancellor after his or her review.

(2) "Composite Financial Index" means the benchmarking tool used by the Higher Learning Commission as a financial indicator and developed specifically for the higher education industry and is a combination of several different ratios, each of which is comprised of data that, when analyzed further, can provide insight into an institution's financial health and inform decision-making processes;

(3) "Credit headcount enrollment" means the total number of unique students, but not counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall, spring, and summer terms in a given academic year at a specific institution;

(4) "Days of cash reserved" means the audited end of fiscal year cash balance, multiplied by 365, and then divided by the audited total expenses less depreciation, and less other post employment benefit and pension liability expenses;

(5) "Graduation rates" means the proportion of first time in college students who obtain a bachelor's degree within six years, as further defined by and reported to the commission;

(6) "Retention rates" means the proportion of first-time, fall term, full-time freshmen students who are in continuing enrollment in the fall term of the next succeeding year; and

(7) "State college and university" shall have the same meaning as provided in §18B-1-2 of this code.

(c) Any state college and university may apply to the commission for designation as an administratively exempted school. The commission shall make its determination as to whether to grant or deny exemption designation based on the definition of administratively exempted school. The commission shall propose rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this section and that addresses loss of an administratively exempted designation. The rule shall at least include the following:

(1) After the first year an administratively exempted school fails to meet three of the five criteria under the definition of administratively exempted schools, the commission may advise the institution on strategies that may be implemented in order to meet three of the five criteria before the following year;

(2) An institution may not lose its designation as an administratively exempted school until it has failed to meet three of the five criteria under the definition of administratively exempted schools for two consecutive years;

(3) If an institution is administratively exempt based on special circumstances, the commission may revoke the administratively exempted status of a state college and university if it determines that the special circumstance that the state college and university's administratively exempted status is based on no longer exists; and

(4) The commission shall provide notice to the institution at least 30 days before revoking the institution's administratively exempted status.

(d) Notwithstanding any other provision of this code to the contrary:

(1) West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine, which are statutorily exempted schools under §18B-1-2 of this code, are institutions of

unique characteristics and their continuing inclusion as a statutorily exempted school is confirmed; and

(2) No other state institution of higher education maintains exempted school status pursuant to any other provision of this code except any exempted school status designated by the commission pursuant to this section: *Provided*, That notwithstanding any provision of this section to the contrary, any college or university shall be exempt from the requirement that the commission approve the establishment of new four-year programs on their own campuses for programs incentivized within the funding formula established in §18B-1B-4 of this code if the state appropriation to that school is less than 40 percent of their operating expenses for three consecutive years.

(e) Notwithstanding any other provision of this code to the contrary, any state college and university that applies and is designated by the commission as an administratively exempted school is exempt from the following:

(1) The required approval of capital projects to ensure that capital projects and facility needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

(2) The development and approval of institutional mission definitions pursuant to §18B-1B-4(a)(34) of this code;

(3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

(4) The rules providing guidance to the governing boards in filling vacancies in the office of the president pursuant to §18B-1B-6(d) of this code;

(5) The commission's rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following the procedures for adoption of rules provided for in this code;

(6) The required approval of capital improvement projects exceeding \$3 million pursuant to §18B-19-6 of this code;

(7) The required approval of lease-purchase agreements for capital improvements and equipment of \$1.5 million or greater pursuant to §18B-19-11 of this code; and

(8) The required approval of real estate transactions, lease purchase, and new building construction exceeding \$1 million pursuant to §18B-19-13 of this code.

(g) Not later than the January interims of each year, the commission shall submit a report to the Legislative Oversight Commission on Education Accountability relating to the administratively exempted schools eligibility criteria established by this section, providing the data for each of the three preceding years, as available, and the three-year average thereof, for each of the state institutions of higher education under its jurisdiction. The commission shall share the report with the institutions.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of Higher Education Policy Commission.

(a) The primary responsibility of the commission is to provide shared services in a cost-effective manner upon request to the state colleges and universities, the West Virginia Council for Community and Technical College Education, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this chapter, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm, or approve certain actions undertaken by governing boards, as delineated in this chapter; and assist in the development of policy that will achieve the goals, objectives and priorities found in §18B-1-1a and §18B-1D-1 of this code. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical

College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop and advance the public policy agenda pursuant to §18B-1D-1 *et seq.* of this code to address major challenges facing the state, including, but not limited to, the goals, objectives, and priorities established in this chapter

(2) In conjunction with the council, propose emergency and legislative rules in accordance with §29A-3A-1 and §18B-1-6 of this code to establish a performance-based funding formula model the commission and council shall use, beginning in the fiscal year 2024 budget cycle, in developing their annual budget requests to ensure the fair and equitable distribution and use of public funds among the state's institutions of higher education, including the statutorily and administratively exempted schools. This funding formula model shall advance the goals of the state's postsecondary education system by emphasizing outcomes focused on student success and institutional mission achievement. The formula shall include a range of variables that shall be weighted in a manner that corresponds to each institution's mission and provides incentives for productivity improvements consistent with the goal of strengthening the state's economy and workforce by developing the most competitive and capable graduates in the nation. The rule shall, at a minimum:

(A) Establish a set of objective performance metrics that reflect and support the state's higher education goals and priorities and the methodology by which those metrics shall be used in the allocation of state funds;

(B) Ensure that a portion of each institution's base appropriation is allocated based on outcomes achieved over a defined period of time;

(C) Incentivize postsecondary program offerings that align with the state's higher education and workforce development priorities; and

(D) Establish safeguards to ensure stability of the funding formula model including, but not limited to, providing for periodic reviews of and revision to the performance metrics and funding methodology in addition to accounting for inflation;

(3) In collaboration with the council and the governing boards:

(A) Building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature, the Governor, the governing boards, and the State Board of Education and local school districts to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Assisting governing boards in carrying out their duty effectively to govern the individual institutions of higher education;

(4) Serve as a point of contact to state policymakers:

(A) The Governor for the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(5) Upon request, provide shared services to a state institution of higher education;

(6) Administer scholarship and grant programs as provided for in this code;

(7) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to §18B-1D-7 of this code;

(8) Establish a formal process for recommending capital investment needs and for determining priorities for state colleges and universities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to §18B-19-1 *et seq.* of this code;

(9) Except the statutorily and administratively exempted schools, develop standards and evaluate governing board requests for capital project financing in accordance with §18B-19-1 *et seq.* of this code;

(10) Except the statutorily and administratively exempted schools, ensure that governing boards manage capital projects and facilities needs effectively, including review and approval of capital projects, in accordance with §18B-19-1 *et seq.* of this code;

(11) Acquire legal services as considered necessary, including representation of the commission, the governing boards, employees, and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(12) Employ a chancellor, and any interim chancellor employed shall meet all criteria required of the chancellor, pursuant to §18B-1B-5 of this code;

(13) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with §18B-4-1 *et seq.* of this code;

(14) Provide suitable offices in Kanawha County for the chancellor, vice chancellors, and other staff;

(15) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, except the statutorily exempted schools, as proposed by the governing boards. The governing boards, except the governing boards of the statutorily exempted schools, must obtain approval from the

commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package: *Provided*, That the commission shall receive notice, but need not approve or confirm, an increase in the compensation of an institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;

(16) Assist and facilitate the work of the institutions to implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(17) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the state superintendent of schools;

(18) Jointly with the council and in conjunction with the West Virginia Network, support systemwide technology needs through leveraged consortium purchasing, software, database and networking support, and other services including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, and promoting access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, providing services to business and industry, and increasing the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission, and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(19) Propose rules in accordance with §29A-3A-1, *et seq.* and §18B-1-6 of this code to ensure that, within sound academic policy, a student may transfer and apply toward the requirements of any postsecondary credential the maximum number of credits earned at any regionally accredited in-state or out-of-state institution of higher education in a manner that minimizes the need to repeat courses or incur additional costs. This requirement applies to transfer processes for all levels of postsecondary programs delivered at community and technical colleges, baccalaureate-degree-granting institutions, and graduate-degree-granting institutions;

(20) Propose rules in accordance with §29A-3A-1, *et seq.* and §18B-1-6 of this code to develop a program through which a student who has gained knowledge and skills through employment, participation in education, and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education;

(21) Seek out and attend regional, national, and international meetings and forums on education and workforce development-related topics as, in the commission's discretion, are critical for the performance of their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 *et seq.* of this code;

(22) Promulgate and implement a rule for governing boards and institutions to follow when considering capital projects pursuant to §18B-19-1 *et seq.* of this code, which rule shall provide

for appropriate deference to the value judgments of governing boards and may not apply to the statutorily or administratively exempted schools;

(23) Submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction including the statutorily and administratively exempted schools. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council's jurisdiction. The commission annually shall submit the proposed allocations based on the funding formula model required by subdivision (a)(2) of this section;

(24) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning, or severe sensory disabilities;

(25) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules necessary or expedient to fulfill the purposes of this chapter and Chapter 18C of this code;

(26) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

(27) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(28) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the statutorily and

administratively exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

(C) Consideration of charges to out-of-state students; and

(D) Such other policies as the commission and council consider appropriate;

(29) Notwithstanding any other provision of this code to the contrary sell, lease, convey, or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-1 *et seq.* of this code;

(30) Policy analysis and research focused on issues affecting institutions of higher education generally or a geographical region thereof;

(31) Development and approval of institutional mission definitions except the statutorily and administratively exempted schools: *Provided*, That the commission may use funds appropriated by the Legislature for incentive funds to influence institutional behavior in ways that are consistent with public priorities, including the statutorily and administratively exempted schools;

(32) Academic program review and approval for governing boards under its jurisdiction, except the statutorily and administratively exempted schools. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission's authority to review and approve academic programs for the statutorily and administratively exempted schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: *Provided*, That West Virginia University and the West Virginia

University Institute of Technology are subject to the commission's authority as provided in §18B-1C-2 of this code.

(B) In reviewing and approving academic programs, the commission shall focus on the following policy concerns:

(i) New programs may not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;

(ii) New programs which require significant additional expense investments for implementation may not be implemented unless the institution demonstrates that:

(I) The expenses shall be addressed by effective reallocations of existing institutional resources; or

(II) The expenses can be legitimately spread out over future years and shall be covered by reasonably anticipated additional net revenues from new enrollments;

(iii) A new undergraduate program which is significantly similar to an existing program already in the geographic service area may not be implemented unless the institution requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: *Provided*, That the academic programs of the statutorily and administratively exempted schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

(C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the

institution. The institution may refile the request for approval with the commission to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the request meets the required format, the commission shall either approve or disapprove the request for the new program. The commission may not withhold approval unreasonably.

(33) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

(34) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(35) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(36) Developing and distributing information, assessment, accountability and personnel systems for state colleges and universities, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(37) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in §18B-1-2 of this code;

(38) Developing, facilitating, and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(39) (A) For all governing boards under its jurisdiction, except for the statutorily exempted schools, the commission shall review

institutional operating budgets, review, and approve capital budgets, and distribute incentive and performance-based funds.

(B) For the governing boards of the statutorily exempted schools, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission's comments, if any, shall be made part of the governing board's minute record and shall be filed with the Legislative Oversight Commission on Education Accountability;

(40) May provide information, research, and recommendations to state colleges and universities relating to programs and vocations with employment rates greater than 90 percent within six months post-graduation; and

(41) May provide information, research, and recommendations to state colleges and universities on coordinating with the West Virginia State Board of Education about complimentary programs.

(b) In addition to the powers and duties provided in this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this chapter and Chapter 18C of this code: *Provided*, That the provisions of this subsection may not be construed to shift management authority from the governing boards to the commission.

(c) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that either of the following conditions exist:

(1) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(2) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

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CHAPTER 150

**(Com. Sub. for H. B. 4021 - By Delegates Horst, Clark, Tully,
Toney, Longanacre, Thompson, Doyle, Bridges, Evans,
Walker and Mazzocchi)**

[Passed March 11, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §18C-3-1 of the Code of West Virginia, 1931, as amended, relating to the Medical Student Loan Program; defining terms; establishing programs at certain schools, authorizing medical schools to make loans; authorizing the use of special revolving funds for program use; establishing eligibility requirements; setting maximum loan amount; requiring an agreement for persons participating; requiring persons participating to select service commitment area; providing for cancellation of loan if person satisfies the obligations of the service agreement; establishing repayment obligation for those participants who do not satisfy commitment obligation; creating procedure for person to request working less than full-time; and establishing school reporting requirements.

Be it enacted by the Legislature of West Virginia:

§18C-3-1. Medical Student Loan Program; establishment; administration; eligibility; loan repayment and collection; required report.

(a) Definitions. – As used in this section, unless the context in which the term used clearly requires a different meaning:

“Approved service commitment area” means a location in West Virginia that is both a federally designated geographic, population, or facility-based health professions shortage area and

in a medical specialty in which there is a shortage of physicians, as determined by the state's Department of Health and Human Resources, at the time the loan was issued.

“Medical schools” means the Marshall University School of Medicine, the West Virginia University School of Medicine, and the West Virginia School of Osteopathic Medicine.

“Person” means the recipient of a medical student loan issued in accordance with the provisions of this section by a medical school as defined herein.

“West Virginia residents” means persons who are citizens or legal residents of the United States and have resided in West Virginia for at least one year immediately preceding the date of application for a medical student loan.

(b) There are hereby established the medical student loan program at the Marshall University School of Medicine, the West Virginia University School of Medicine, and the West Virginia School of Osteopathic Medicine.

(c) Subject to the availability of funds as established in §18C-3-1(d) of this code, the medical schools may make medical student loans in accordance with the provisions of this section to students enrolled in or admitted to their respective medical schools in a course of instruction leading to the degree of doctor of medicine or doctor of osteopathy who enter into a written medical student loan agreement with the medical school in accordance with §18C-3-1(i) of this code. The number of awards shall be determined by the availability of funds in this program at each school in any given academic year; *Provided*, That the availability of funds does not require the medical schools to issue or renew medical student loans.

(d) There are hereby continued the special revolving fund accounts at the Marshall University School of Medicine, the West Virginia University School of Medicine, and the West Virginia School of Osteopathic Medicine, which shall be used to carry out the purposes of this section.

(1) The funds shall consist of all moneys currently on deposit in such accounts or which are due or become due for deposit into such accounts as obligations made under the previous enactment of this section; those funds provided for medical education pursuant to the provisions of §18B-10-4 of this code; appropriations provided by the Legislature; repayment of any loans made under this section; amounts provided by medical associations, hospitals, or other medical provider organizations in this state, or by political subdivisions of the state, under an agreement which requires the recipient to practice his or her health profession in this state or in the political subdivision providing the funds for a predetermined period of time and in such capacity as set forth in the agreement; and any other amounts which may be available from external sources.

(2) All expenditures from the medical schools' medical student loan repayment funds shall be for medical student loans issued in accordance with the terms of this section and for the medical schools' expenses incurred in administering their respective medical student loan programs.

(3) These funds shall operate as special funds whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall remain in the medical schools' funds and be available for expenditure in succeeding fiscal years.

(e) In order to be eligible for a medical student loan as provided in this section, the person applying therefor shall meet the following minimum requirements:

(1) Full-time enrollment in a medical school in a program leading to the degree of doctor of medicine or doctor of osteopathy: *Provided*, That the person has not previously obtained such a degree;

(2) Demonstrated financial need as determined by the medical schools' individual financial aid offices;

(3) Demonstrated credit-worthiness by not being in default of any previous student loan or medical student loan issued by any lender; and

(4) United States citizenship as either born or naturalized.

(f) Medical student loans shall be awarded on a priority basis first to qualified applicants who are West Virginia residents at the time of entry into the medical school, and second to qualified applicants who are not West Virginia residents at the time of entry into the medical school.

(g) In order to be eligible for renewal of a medical student loan as provided in this section, the person applying therefor shall meet the minimum requirements established in §18C-3-1(e) of this code, as well as maintain good academic standing and make satisfactory progress toward degree completion in accordance with the issuing medical school's policy for awarding Title IV financial aid funds.

(h) Each medical student loan issued by a medical school shall be made pursuant to the provisions of this section and shall provide to the recipient of the medical student loan a maximum annual amount of \$10,000. The medical school and the person may renew the medical student loan annually for a period not to exceed four years: *Provided*, That the person is eligible for such renewal in accordance with §18C-3-1(g) of this code.

(i) Each medical student loan issued by a medical school shall be memorialized in a written medical student loan agreement, which shall require, at a minimum, that the person receiving the loan:

(1) Complete the required course of instruction and receive the degree of doctor or medicine (M.D.) or doctor of osteopathy (D.O.);

(2) Apply for and obtain a license to practice medicine in West Virginia;

(3) Engage in the full-time practice of medicine for a period of 12 months within an approved service commitment area;

(4) Commence the full-time practice of medicine within nine months after completion of an approved post-graduate residency training program and licensure in an approved service commitment area and continue full-time practice in the approved service commitment area for a consecutive period of months equal to the total number of months for which the medical student loan was provided;

(5) Agree that the service commitment for each agreement entered into under the provisions of this section is in addition to any other service commitment contained in any other agreement the person has entered or may enter into for the purpose of obtaining any other financial aid;

(6) Maintain records and make reports to the issuing medical school to document the person's satisfaction of the obligations under the agreement to engage in the full-time practice of medicine in an approved service commitment area and to continue the full-time practice of medicine in the approved service commitment area for a consecutive period of months equal to the total number of months the student received the medical student loan. Persons practicing in a federally designated population-based health professions shortage area shall provide documentation that more than 50 percent of their service is provided to the designated population; and

(7) Upon failure to satisfy the requirements of the agreement that the person engage in the full-time practice of medicine within an approved service commitment area for the required period of time under the medical student loan agreement, the person receiving a medical student loan pursuant to the provisions of this section shall repay amounts to his or her issuing medical school in accordance with the provisions of §18C-3-1(k) of this code.

(j) Upon the selection of an approved service commitment area for the purpose of satisfying a service obligation under a medical student loan agreement entered into pursuant to the provisions of this section, the person so selecting shall inform the issuing medical school of the service area selected. Such person may serve all or part of the commitment in the approved service commitment

area initially selected or in a different approved service commitment area: *Provided*, That the person notifies his or her issuing medical school of his or her change of approved service commitment areas. Service in any such service commitment area shall be deemed to be continuous for the purpose of satisfying the medical student loan agreement.

(k) Upon the person's presentation of the report required by subdivision (i)(6) of this section to the issuing medical school evidencing his or her satisfaction of the terms of the medical student loan agreement provided for herein, the issuing medical school shall cancel \$10,000 of the outstanding loan for every twelve full consecutive months of service as required in the agreement.

(l) Upon the failure of any person to satisfy the obligation to engage in the full-time practice of medicine within an approved service commitment area of this state for the required period of time under any medical student loan agreement, such person shall repay to his or her issuing medical school an amount equal to the total of the amount of money received by the person pursuant to the medical student loan agreement plus annual interest at a rate of 9.5 percent from the date the person first received the medical student loan. For any such repayment, the following provisions shall apply:

(1) The person shall repay an amount totaling the entire amount to be repaid under all medical student loan agreements for which such obligations are not satisfied, including all amounts of interest at the rate prescribed. The repayment shall be made either in a lump sum or in not more than 12 equal monthly installment payments.

(2) All installment payments shall commence six months after the date of the action or circumstance that causes the person's failure to satisfy the obligations of the medical student loan agreement, as determined by the issuing medical school based upon the circumstances of each individual case. In all cases, if an installment payment becomes 91 days overdue, the entire amount outstanding shall become immediately due and payable, including all amounts of interest at the rate prescribed.

(3) If a person becomes in default of his or her medical student loan repayment obligations, the medical school shall make all reasonable efforts to collect the debt, in accordance with the provisions of §14-1-1 *et seq.* of this code.

(m) If, during the time a person is satisfying the service requirement of a medical student loan agreement, such person desires to engage in less than the full-time practice of medicine within an approved service commitment area and remain in satisfaction of the service requirement, such person may apply to the medical school that issued the medical student loan for permission to engage in less than the full-time practice of medicine. Upon a finding of exceptional circumstances made by the medical school that issued the medical student loan, the medical school may authorize the person to engage in less than the full-time practice of medicine within an approved service commitment area for the remaining required period of time under the medical student loan agreement and for an additional period of time that shall be equal to the length of time originally required multiplied by two; *Provided*, That in no event shall such person be allowed to practice medicine less than half-time.

(n) By July 31 each year, each medical school shall prepare and submit a report on the operations of their respective medical student loan programs to the commission for inclusion in the commission's data publication and reporting required by §18C-1-1(f) of this code. At a minimum, this report shall include the following information:

(1) The number of medical student loans awarded during the preceding academic year;

(2) The total amount of medical student loans awarded;

(3) The total amount of any unexpended moneys remaining in their medical student loan funds at the end of the fiscal year;

(4) The rate of default on the repayment of previously awarded loans during the previous fiscal year;

(5) The number of doctors practicing medicine in the state in accordance with their service obligations; and

(6) The total amount of medical student loans cancelled in accordance with subsection (k) of this section.

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CHAPTER 151

**(H. B. 4264 - By Delegates Boggs, Queen, Westfall, Hanshaw
(Mr. Speaker), Pethtel, Evans, J. Kelly and Kimble)**

[Passed February 22, 2022; in effect from passage.]
[Approved by the Governor on February 23, 2022.]

AN ACT to amend and reenact §18B-2A-6 of the Code of West Virginia, 1931, as amended, relating to designating Glenville State College a university, having met eligibility requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-6. University status for public baccalaureate institutions of higher education.

(a) The purpose of this section is to redesignate certain existing public baccalaureate institutions as universities and to provide a mechanism for other public baccalaureate institutions to become universities. The change in name is based on each institution's ability to meet minimum standards developed and adopted by the commission.

(b) Each governing board of a public baccalaureate institution is authorized to make changes which would further its eligibility to attain university status:

(1) If the college meets the eligibility requirements established by the commission to attain university status and if the commission grants university status, then the governing board shall determine the effective date on which the public baccalaureate institution becomes a university; and

(2) On and after the effective date designated by the governing board, the baccalaureate institution shall be designated a university.

(c) Concord college, Fairmont state college, Shepherd college and West Virginia state college, having met the eligibility requirements established by the commission to attain university status, are hereby designated as universities on the effective date of this section.

(d) Glenville state college having met the eligibility requirements established by the commission to attain university status, is hereby designated as a university on the effective date of the amendment of this section.

(e) An institution may not request or seek additional state appropriations as a result of the redesignation provided for in this section. No consequences, including the need to meet future accreditation requirements in order to maintain university status, which arise as a result of designating an existing state college as a university, provide sufficient justification for an institution to request or in any way seek additional state funds.

(f) Notwithstanding any provision of this code to the contrary, Marshall university and West Virginia University are, and remain, the only research and doctoral degree-granting public institutions of higher education in this state.

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CHAPTER 152

(H. B. 4291 - By Delegate Ellington)

[Passed March 7, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding the Research Trust Fund Program and Annual Reauthorization of Degree-Granting Institutions; and authorizing legislative rules for the Council for Community and Technical College Education regarding Business, Occupational, and Trade Schools, Annual Reauthorization of Degree-Granting Institutions, and West Virginia Invests Grant Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. LEGISLATIVE RULES.

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

(a) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program rule), is authorized.

(b) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (West Virginia Engineering, Science, and Technology Scholarship Program rule), is authorized.

(c) The legislative rule filed in the State Register on October 15, 2004, relating to the Higher Education Policy Commission (Medical Education Fee and Medical Student Loan Program rule), is authorized.

(d) The legislative rule filed in the State Register on October 27, 2005, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(e) The legislative rule filed in the State Register on August 23, 2006, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(f) The legislative rule filed in the State Register on January 4, 2008, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(g) The legislative rule filed in the State Register on August 25, 2008, relating to the Higher Education Policy Commission (Research Trust Program), is authorized.

(h) The legislative rule filed in the State Register on January 8, 2009, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(i) The legislative rule filed in the State Register on September 10, 2008, relating to the Higher Education Policy Commission (Medical Student Loan Program), is authorized, with the following amendment:

On page two, subsection 5.1, following the words “financial aid office” by inserting a new subdivision 5.1.3 to read as follows: “United States citizenship or legal immigrant status while actively pursuing United States citizenship.”.

(j) The legislative rule filed in the State Register on December 1, 2008, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(k) The legislative rule filed in the State Register on January 26, 2009, relating to the Higher Education Policy Commission (Accountability System), is authorized.

(l) The legislative rule filed in the State Register on May 20, 2009, relating to the Higher Education Policy Commission (Energy and Water Savings Revolving Loan Fund Program), is authorized.

(m) The legislative rule filed in the State Register on January 27, 2010, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(n) The legislative rule filed in the State Register on December 8, 2010, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized, with the following amendment:

On page 28, subsection 9.1.b, following the words “Good cause shall consist of” by inserting the words “any one or more of the following”.

(o) The legislative rule filed in the State Register on December 12, 2011, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(p) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (authorization of degree-granting institutions), is authorized.

(q) The legislative rule filed in the State Register on August 10, 2012, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(r) The legislative rule filed in the State Register on March 20, 2013, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(s) The legislative rule filed in the State Register on January 24, 2014, relating to the Higher Education Policy Commission (Capital Project Management), is authorized.

(t) The legislative rule filed in the State Register on April 4, 2014, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(u) The legislative rule filed in the State Register on August 4, 2014, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(v) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Underwood-Smith Teacher Scholarship Program), is authorized.

(w) The legislative rule filed in the State Register on October 28, 2015, relating to the Higher Education Policy Commission (Nursing Scholarship Program), is authorized.

(x) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (West Virginia Higher Education Grant Program), is authorized.

(y) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence - PROMISE), is authorized.

(z) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (Research Trust Fund Program), is authorized.

(aa) The legislative rule filed in the State Register on December 20, 2016, relating to the Higher Education Policy Commission (annual reauthorization of degree-granting institutions), is authorized.

(bb) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Tuition and Fee Policy), is authorized.

(cc) The legislative rule filed in the State Register on January 16, 2018, relating to the Higher Education Policy Commission (Human Resources Administration), is authorized.

(dd) The legislative rule filed in the State Register on January 22, 2018, relating to the Higher Education Policy Commission (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision 4.2.d.5., to read as follows: “Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: “Facility utilization rates will be an important factor in prioritizing capital projects across the systems.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: “Institutions with overall net asset values and capacity utilization rates that exceed, or equal thresholds set annually by the Commission and Council are the presumptive priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category.”; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: “A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the

Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.”.

(ee) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Acceptance of Advanced Placement Credit), is repealed.

(ff) The legislative rule filed in the State Register on January 22, 2019, relating to the Higher Education Policy Commission (Human Resources Administration), is repealed.

(gg) The legislative rule filed in the State Register on August 28, 2018, relating to the Higher Education Policy Commission (Guidelines for Governing Boards in Employing and Evaluating Presidents), is authorized.

(hh) The legislative rule filed in the State Register on August 7, 2018, relating to the Higher Education Policy Commission (Providing Real Opportunities for Maximizing In-state Student Excellence (PROMISE) Scholarship Program), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.a. and inserting in lieu thereof a new subdivision 2.1.a., to read as follows: “Must complete high school graduation requirements at a West Virginia public, private or home school unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and”;

On page one, subsection 2.1, by striking out all of subdivision 2.1.b. and inserting in lieu thereof a new subdivision 2.1.b., to read as follows: ”Must complete at least one half of the credits required for high school graduation through attendance at a public, private or home school in this state, unless he or she qualified as a military dependent under Section 5 of this rule, or has commuted to an out-of-state school pursuant to Section 6 of this rule; and”;

On page one, subdivision 2.1.c., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”;

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Must have attained a cumulative grade point average of at least 3.0 on a 4.0 scale, based on county board grading policies, in both core courses and overall coursework required for graduation by the State Board of Education, while enrolled in a public or private high school. If home-schooled pursuant to the exemption allowed by W.Va. Code §18-8-1 as documented by the county school board system, the applicant must have completed in both the 11th and 12th grades the required core and elective coursework necessary to prepare students for success in postsecondary education at the associate and baccalaureate levels by attaining a cumulative grade point average of at least 3.0 on a 4.0 grading scale in both core courses and overall coursework as determined by the Commission; and”;

On page one, subsection 2.1, subdivision 2.1.f., preceding the words “have resided in West Virginia”, by striking out the word “Must” and inserting in lieu thereof the words “The applicant and his or her parent or legal guardian must”;

On page one, subdivision 2.1.f., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”;

On page one, subdivision 2.1.f., by striking out the words “Section 6” and inserting in lieu thereof the words “Section 5”;

On page two, subsection 2.4., by striking out the words “Section 10.7 or 10.8” and inserting in lieu thereof the words “Section 9.7 or 9.8”;

On page two, subsection 2.5, by striking out the words “Section 8” and inserting in lieu thereof the words “Section 7”;

On page two, subsection 2.5, by striking out the words “Section 10” and inserting in lieu thereof the words “Section 9”;

On page two, by striking out all of section 3 and renumbering the remaining sections accordingly;

On page three, subsection 4.4, by striking out the words “Section 14” and inserting in lieu thereof the words “Section 13”;

On page five-six, subsection 10.6, by striking out the words “Section 10.3” and inserting in lieu thereof the words “Section 9.3”;

On page six, subsection 10.6, by striking out the words “Section 10.2” and inserting in lieu thereof the words “Section 9.2”;

On page six, subsection 10.9.c., by striking out the words “Section 5” and inserting in lieu thereof the words “Section 4”; and

On page eight, subsection 15.1.b., by striking out the words “Section 11.1” and inserting in lieu thereof the words “Section 10.1”.

(ii) The legislative rule filed in the State Register on September 30, 2019, relating to the Higher Education Policy Commission (Higher Education Accountability System) is authorized.

(jj) The legislative rule filed in the State Register on November 5, 2019, relating to the Higher Education Policy Commission (Underwood-Smith Teaching Scholars Program and Teacher Education Loan Repayment Program) is authorized.

(kk) The legislative rule filed in the State Register on October 4, 2019, relating to the Higher Education Policy Commission (Accountability System) is repealed.

(ll) The legislative rule filed in the State Register on July 29, 2020, relating to the Higher Education Policy Commission (Mental Health Loan Repayment Program) is authorized, with the following amendments:

On page one, subdivision, 3.1.b., after the words “family therapist,” by inserting the words “psychiatric mental health nurse practitioner,”;

On page two, subsection 6.1, by striking out the words “at least” and inserting in lieu thereof the words “up to”; and

On page three, subsection 9.1, after the words “family therapists,” by inserting the words “psychiatric mental health nurse practitioners,”.

(mm) The legislative rule filed in the State Register on March 11, 2021, relating to the Higher Education Policy Commission (Administrative Exemption) is authorized.

(nn) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher Education Policy Commission (Research Trust Fund Program) is authorized.

(oo) The legislative rule filed in the State Register on May 5, 2021, relating to the Higher Education Policy Commission (Annual Reauthorization of Degree-Granting Institutions) is authorized.

§18B-17-3. Authorizing rules of the Council for Community and Technical College Education.

(a) The legislative rule filed in the State Register on September 29, 2004, relating to the West Virginia Council for Community and Technical College Education (Performance Indicators) is authorized.

(b) The legislative rule filed in the State Register on October 13, 2005, relating to the West Virginia Council for Community and Technical College Education (Authorization of Degree-Granting Institutions), is authorized.

(c) The legislative rule filed in the State Register on October 30, 2006, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program), is authorized.

(d) The legislative rule filed in the State Register on December 4, 2008, relating to the West Virginia Council for Community and Technical College Education (Employing and Evaluating Presidents), is authorized.

(e) The legislative rule filed in the State Register on December 23, 2008, relating to the West Virginia Council for Community and Technical College Education (Performance Indicators), is authorized.

(f) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Finance), is authorized.

(g) The legislative rule filed in the State Register on February 5, 2009, relating to the West Virginia Council for Community and Technical College Education (Accountability System), is authorized.

(h) The legislative rule filed in the State Register on June 15, 2011, relating to the West Virginia Council for Community and Technical College Education (Workforce Development Initiative Program), is authorized.

(i) The legislative rule filed in the State Register on October 26, 2011, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(j) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (Authorization of Degree-Granting Institutions), is authorized.

(k) The legislative rule filed in the State Register on October 17, 2012, relating to the West Virginia Council for Community and Technical College Education (Annual Reauthorization of Degree-Granting Institutions), is authorized.

(l) The legislative rule filed in the State Register on March 21, 2013, relating to the West Virginia Council for Community and

Technical College Education (Human Resources Administration), is authorized.

(m) The legislative rule filed in the State Register on August 21, 2012, relating to the West Virginia Council for Community and Technical College Education (West Virginia EDGE Program), is authorized.

(n) The legislative rule filed in the State Register on January 28, 2014, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized.

(o) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (annual reauthorization of degree-granting institutions), is authorized.

(p) The legislative rule filed in the State Register on January 18, 2017, relating to the West Virginia Council for Community and Technical College Education (Business, Occupational, and Trade Schools), is authorized.

(q) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is authorized.

(r) The legislative rule filed in the State Register on January 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Capital Project Management), is authorized, with the following amendments:

On page one, subsection 2.1, by striking out all of subdivision 2.1.d. and inserting in lieu thereof a new subdivision 2.1.d., to read as follows: “Efficient use of existing classroom and other space by institutions, while maintaining an appropriate deference to the value judgments of the institutional governing boards.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.5. and inserting in lieu thereof a new subdivision

4.2.d.5., to read as follows: “Funding will be prioritized for each institution in accordance with institutional plans confirmed by the Commission or approved by the Council.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.6. and inserting in lieu thereof a new subdivision 4.2.d.6., to read as follows: “Facility utilization rates will be an important factor in prioritizing capital projects across the systems.”;

On page seven, subsection 4.2, by striking out all of subdivision 4.2.d.7. and inserting in lieu thereof a new subdivision 4.2.d.7., to read as follows: “Institutions with overall net asset values and capacity utilization rates that exceed or equal thresholds set annually by the Commission and Council are the presumptive priority for new facilities. If these projects do not replace an existing facility, they would be included in the Program Improvement category.”; and

On pages 10-11, section 5, by striking out all of subdivision 5.6. and inserting in lieu thereof a new subdivision 5.6., to read as follows: “A governing board may not implement a campus development plan or plan update that has not been confirmed by the Commission or approved by the Council, as appropriate. The purchase of any property for the construction of a facility that is not included in the campus development plan creates an update to the campus development plan that must be confirmed by the Commission or approved by the Council, as appropriate, prior to its purchase. In the case of institutions governed by the Council, this provision applies equally to property acquired by any means, whether by purchase or otherwise.”

(s) The legislative rule filed in the State Register on July 2, 2018, relating to the West Virginia Council for Community and Technical College Education (Tuition and Fees), is authorized.

(t) The legislative rule filed in the State Register on September 26, 2018, relating to the West Virginia Council for Community and Technical College Education (Acceptance of Advanced Placement Credit), is repealed.

(u) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (Initial Authorization of Degree-Granting Institutions), is authorized.

(v) The legislative rule filed in the State Register on November 20, 2018, relating to the West Virginia Council for Community and Technical College Education (Workforce Development: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants), is authorized.

(w) The legislative rule filed in the State Register on January 25, 2019, relating to the West Virginia Council for Community and Technical College Education (Human Resources Administration), is repealed.

(x) The legislative rule filed in the State Register on June 3, 2019, relating to the West Virginia Council for Community and Technical College Education (West Virginia Invests Grant Program) is authorized.

(y) The legislative rule filed in the State Register on April 27, 2021 (Business, Occupational, and Trade Schools) is authorized.

(z) The legislative rule filed in the State Register on April 27, 2021 (Annual Reauthorization of Degree-Granting Institutions) is authorized.

(aa) The legislative rule filed in the State Register on November 10, 2021 (West Virginia Invests Grant Program) is authorized.



CHAPTER 153

**(H. B. 4355 - By Delegates Linville, Ellington, Keaton,
Haynes, Kimble, Hanna, Maynard, and Wamsley)**

[Passed March 12, 2022; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to higher education course materials and digital courseware; defining terms; modifying requirements for recommendations by an educational materials affordability committee to the higher education institution governing board; removing obsolete language; changing the term textbook to course material; modifying information that is required to be included in the listing of course materials required or assigned for any course offered at an institution; requiring institution to disclose to a student enrolled at the institution any charges for course materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term; imposing requirements on institutions in instances where the required course materials or digital courseware has not been selected prior to a student's enrollment or if a change to the course materials or digital courseware required would cause an increased charge to the student; imposing requirements on institutions in instances where certain charges are assessed based on the cost of required or recommended course material or access to digital courseware for a certain course or course section in which the student is enrolled; imposing requirements on institutions in instances where certain charges are assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on certain other basis; allowing an institution to enter into an agreement between the institution and an entity

under which the institution assesses on the entity's behalf or allows the entity to assess a charge; allows an institution to enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a certain described charge to students enrolled at the institution under certain conditions; making the agreement a public record; prohibiting an institution from denying or entering into an agreement with another entity that would permit the entity to deny, a student access to certain educational materials on the student's refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the student's use of the educational materials; and providing that section cannot be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED
AT STATE INSTITUTIONS OF HIGHER EDUCATION.**

§18B-10-14. Bookstores.

(a) Definitions: The following words when used in this section have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) "Digital Courseware" means a system of educational content and software designed to support the delivery of all or part of a particular course. The term does not include a learning management platform or any other software system designed to provide support for courses generally;

(2) "Course material" means a textbook, supplemental material, or open educational resource; and

(3) "Open Education Resource Materials" has the meaning assigned in §10-1-14a of this code.

(b) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell course materials, educational materials, books, stationery, and other school and office supplies generally carried in college bookstores.

(c) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore, a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses.

(d) Each governing board shall establish, or if already established, continue, an educational materials affordability committee consisting of faculty, students, administrators and bookstore representatives and the committee shall make recommendations to the governing board to:

(1) Encourage bookstores operated at institutions under its jurisdiction minimize the costs to students of purchasing educational materials;

(2) Encourage course instructors to select appropriate, high quality course educational materials;

(3) Encourage the use of previous or older versions of basic educational materials to the extent those older versions are available and less costly to students and remain relevant, high quality educational materials with up-to-date information and content;

(4) Require the repurchase and resale of educational materials on an institutional basis;

(5) Encourage the use of certain basic educational materials for a reasonable number of years;

(6) Encourage the use of emerging technologies, such as electronic textbooks, online textbooks, print-on-demand services, and other open resource materials; and

(7) Prohibit employees from profiteering by requiring the purchase of one-time use materials (such as worksheets) or receiving payment or other consideration as an inducement to require students to purchase course materials.

(e) An employee of a governing board:

(1) May not:

(A) Receive a payment, loan, subscription, advance, deposit of money, service, benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific course material for coursework or instruction; or

(B) Require for any course a course material that includes his or her own writing or work if the course material incorporates either detachable worksheets or workbook-style pages intended to be written on or removed from the course material. This provision does not prohibit an employee from requiring as a supplement to course materials any workbook or similar material which is published independently from the course material; and

(2) May receive:

(A) Sample copies, instructor's copies and instructional material which are not to be sold; and

(B) Royalties or other compensation from sales of course materials that include the employee's own writing or work.

(f) A governing board shall provide to students a listing of course materials required or assigned for any course offered at the institution.

(1) The listing shall be prominently posted:

(A) In a central location at the institution;

(B) In any campus bookstore; and

(C) On the institution's website.

(2) The list shall include for each textbook the International Standard Book Number (ISBN), the edition number and any other relevant information.

(3) The list shall include whether the course material is an open educational resource material, and whether all educational materials required for the course or course section are generally available at no cost and without limitation to all students enrolled in the course or course section.

(4) The list shall include any associated fee or charge, such as a technology cost, library use cost, or printing or publication fee.

(5) If the student will be charged for the course material or for access to digital courseware for a course by the institution or another entity on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, the list shall include the disclosures required under subsections (g)-(j) of this section.

(6) An institution shall post a course material to the listing when the adoption process is complete and, for course materials that comes at a cost to the student, when the course material is designated for order by the bookstore.

(g) An institution shall disclose to a student enrolled at the institution as provided by this section any charges for course materials or access to digital courseware assessed by the institution or another entity to the student on the student's enrollment in a course, course section, or program or in the institution for the applicable semester or term, regardless of how the charge is assessed on an opt-in, opt-out, or compulsory basis. This subsection does not apply to a charge assessed for a purchase initiated by the student separately from the enrollment process at the institution, such as the purchase of course materials at a bookstore that may be charged to the student's account at the institution.

(h) If the required course materials or digital courseware have not been selected prior to a student's enrollment in a course or

course section such that the requirements of subsection (g) are not met, or if a change to the course materials or digital courseware required would cause an increased charge to the student, the institution shall:

(1) Provide individual notice to each student affected of the new or increased charges, including all of the information required under subsection (g);

(2) Provide each student affected with the opportunity to withdraw from the course or course section, or change to a different course or course section, without penalty; and

(3) Only assess the new or increased charge to a student if that student affirmatively opts in to accepting the charge for that specific course or course section.

(i) For a charge described by subsection (g) that is assessed based on the cost of required or recommended course materials or access to digital courseware for a certain course or course section in which the student is enrolled, the institution shall:

(1) In the listing required under subsection (f), state or provide an internet website link to:

(A) The full amount of the charge;

(B) If the charge is for a course material in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student's use of the course material or digital courseware; and

(C) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(2) Itemize the charge separately from any other charges assessed for the course or course section in the institution's billing to the student.

(j) For a charge described by subsection (g) that is assessed on the basis of the number of semester credit hours or the equivalent or the number of courses in which the student is enrolled or on any other basis not described by subsection (i), the institution shall:

(1) Include the amount of the charge in the institution's tuition or fees under §18B-10-1 of this code;

(2) In a prominent location in any written or electronic agreement authorizing the charge, disclose:

(A) If the charge is for course materials in a primarily electronic format or for access to digital courseware, the terms under which the publisher of the course material or digital courseware collects and uses student data obtained through a student's use of the course material or digital courseware; and

(B) Any provision that allows the student to opt in or opt out of the charge or the collection or use of the student's data; and

(3) Not assess the charge to a student for a course or course section for which all required educational materials are generally available at no cost in at least one form to the student, such as:

(A) An open educational resource material;

(B) Digital materials available at no cost through a multi-user license held by the institution's library; or

(C) Other lawfully made materials available to the public at no cost and without limitation to all students enrolled in the course or course section.

(k) An institution may enter into an agreement between the institution and an entity under which the institution assesses on the entity's behalf or allows the entity to assess a charge described by subsection (g) to students enrolled at the institution only if:

(1) The institution's educational materials affordability committee established under subsection (d) determines the

agreement to be consistent with the goals enumerated in subsection (d);

(2) The governing board of the institution adopts a policy that provides that:

(A) The institution's refund policy would apply with respect to the charges assessed to a student if the student withdraws from the course or course section; and

(B) A student may opt out of the charge at any time during a period beginning no later than when the student enrolls in the course or course section or takes any other action triggering the assessment of the charge, and ending no earlier than the last day to withdraw from the course without penalty;

(3) The agreement does not provide for a penalty or charge added to price of materials provided under the agreement based on failing to meet a target or quota for a number or percentage of:

(A) Students to whom the charge is assessed; or

(B) Courses or course sections for which the charge is assessed; and

(4) The agreement prohibits the entity from engaging in, or authorizing third parties to engage in, the sale, disclosure, licensing, use, retention, or other exploitation of any data collected under the agreement, including but not limited to personally identifiable information, location data, anonymized data, and any materials derived therefrom, except as expressly authorized, in each case, in the agreement: *Provided*, That this subsection shall not apply to the disclosure of information to a government entity or scholarship entity in order to be reimbursed for the distribution of course materials to a student using financial aid subsidies for course materials.

(l) An agreement authorized under subsection (k) is a public record under chapter 29B of this code.

(m) An institution may not deny, or enter into an agreement with another entity that would permit the entity to deny, a student access to educational materials for which the student has been, or would otherwise be, automatically charged under subsection (g) based on the student's refusal or failure to agree to the sale, disclosure, licensing, use, retention, or other exploitation of any data pertaining to the student that would be obtained through the student's use of the educational materials.

(n) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in §12-2-2 of this code. Subject to the approval of the Governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

(o) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

(p) Each governing board shall promulgate a rule in accordance with the provisions of §18B-1-6 of this code to implement the provisions of this section

(q) This section applies to course material sales and bookstores supported by an institution's auxiliary services and those operated by a private contractor.

(r) This section may not be construed to affect any authority granted to a faculty member by an institution to select course materials for courses taught by the faculty member.

●

CHAPTER 154

**(Com. Sub. for Com. Sub. for S. B. 247 - By Senators Weld,
Sypolt, Grady, Smith, Stollings, Maroney, Baldwin, Romano,
Lindsay, Woelfel, Takubo, Plymale, and Jeffries)**

[Passed March 12, 2022; in effect 90 days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§9-5-29, relating to certified community behavioral health clinics; providing that the state Medicaid agency shall develop, seek approval of, and implement a Medicaid state plan amendment as necessary and appropriate to effectuate a system of Certified Community Behavioral Health Clinics; providing that a state certification system for Certified Community Behavioral Health Clinics shall be developed; setting forth state certification requirements; providing parties eligible to apply for certification as a Certified Community Behavioral Health Clinic; and providing that participation in the Certified Community Behavioral Health Clinic program is voluntary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

†§9-5-29. Certified community behavioral health clinics.

(a) The Bureau for Medical Services shall develop, seek approval of, and implement a Medicaid state plan amendment as necessary and appropriate to effectuate a system of certified community behavioral health clinics (CCBHCs).

†NOTE: S. B. 419 (Chapter 156), which passed prior to this act, also created a new Section 29. Therefore, this has been redesignated as Section 30 for the code.

(b) The Bureau for Medical Services, in partnership with the Department of Health and Human Resources' Bureau for Behavioral Health, shall establish a state certification system for CCBHCs in accordance with the following requirements:

(1) To the fullest extent practicable, the CCBHC system shall be consistent with the demonstration program established by Section 223 of the Protecting Access to Medicare Act of 2014 (P.L. 113-93, 42 U.S.C. 1396a note), as amended.

(2) Standards and methodologies for a prospective payment system shall be established to reimburse each CCBHC under the state Medicaid program on a predetermined, fixed amount per day for covered services rendered to each Medicaid beneficiary.

(3) A quality incentive payment system shall be established for those CCBHCs which achieve specific thresholds on performance metrics identified by the Bureau for Medical Services. Such quality incentive payments shall be in addition to the bundled prospective daily rate.

(4) The prospective payment rate for each CCBHC shall be adjusted tri-annually by the Medicare Economic Index as defined in Section 223 of Protecting Access to Medicare Act of 2014. In addition, the prospective payment rate shall allow for modifications based upon a change in scope for an individual CCBHC. Rate adjustments can be made upon request by the provider.

(5) Criteria shall be established to certify a facility as a CCBHC which, at a minimum, shall require each CCBHC to offer directly, or indirectly through formal referral relationships with other providers, the following services:

(A) Crisis mental health services, including 24-hour mobile crisis teams, emergency crisis intervention services, and crisis stabilization;

(B) Screening, assessment, and diagnosis, including risk assessment;

(C) Patient-centered treatment planning or similar processes, including risk assessment and crisis planning;

(D) Outpatient clinic primary care screening and monitoring of key health indicators and health risk;

(E) Targeted case management;

(F) Psychiatric rehabilitation services;

(G) Peer support and counselor services;

(H) Family support services; and

(I) Community-based mental health services, including mental health services for members of the armed forces and veterans.

(c) All nonprofit comprehensive community mental health centers, comprehensive intellectual disability facilities, as established by §27-2A-1 of this code, and all other providers set forth in the Medicaid state plan amendment shall be eligible to apply for certification as a CCBHC.

(d) The Bureau for Medical Services, in partnership with the Department of Health and Human Resources' Bureau for Behavioral Health, shall establish any other procedures and standards as may be necessary for an eligible facility to apply for certification, become certified, and remain certified as a CCBHC, as set forth in the legislative rule developed pursuant to this section.

(e) The participation of any eligible facility in the CCBHC system shall be strictly voluntary. Nothing in this section shall require a facility that is eligible for certification as a CCBHC to apply for such certification.

●

CHAPTER 155

(Com. Sub. for S. B. 274 - By Senators Trump and Woelfel)

[Passed March 10, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended, relating to requiring the secretary of the Department of Health and Human Resources to allocate Child Protective Services workers by the Bureau of Social Services' district annually; and reporting this allocation process to the Legislative Oversight Commission on Health and Human Resources Accountability annually.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. COMMISSIONER OF HEALTH AND HUMAN SERVICES; POWERS, DUTIES, AND RESPONSIBILITIES GENERALLY.

§9-2-6. Powers of secretary.

(a) Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the secretary, in addition to all other powers, duties, and responsibilities granted and assigned to that office in this chapter and elsewhere by law, may:

(1) Promulgate, amend, revise, and rescind department rules respecting the organization and government of the department and the execution and administration of those powers, duties, and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(2) Promulgate, amend, revise, and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules, and policies, but not inconsistent with state law: *Provided*, That rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of §16-2E-1 *et seq.* of this code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-7 of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by §30-15-7 of this code.

(3) Obtain by purchase or lease grounds, buildings, office, or other space, equipment, facilities, and services as may be necessary for the execution and administration of those powers, duties, and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(4) Sign and execute in the name of the state by the Department of Health and Human Resources any contract or agreement with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships, or individuals: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed.

(5) Sign and execute a contract to implement professional health care, managed care, actuarial and health care-related monitoring, quality review/utilization, claims processing, and independent professional consultant contracts for the Medicaid program: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed: *Provided, however*, That a contract awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains in full force and effect and the secretary retains sole authority to review, approve, and issue changes to contracts issued under the former purchasing process, and is responsible for challenges, disputes, protests, and legal actions related to such contracts.

(6) Establish such special funds as may be required by the federal Social Security Act, as amended, or by any other Act or

Acts of Congress, in order for this state to take full advantage of the benefits and provisions thereof relating to the federal-state assistance and federal assistance programs administered by the department and to make payments into and disbursements out of any such special fund or funds in accordance with the requirements of the federal Social Security Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the Department of Health and Human Resources, through the secretary, is hereby authorized to accept any and all gifts or grants, whether in money, land, services, or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund may revert to the general revenue funds of this state. No expenses incurred pursuant to this special fund may be a charge against the general funds of this state.

(7) Establish within the department an Office of Inspector General for the purpose of conducting and supervising investigations, performing inspections, evaluations, and review, and providing quality control for the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, inspection, evaluation, review, or other activity oversight of public integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General.

(8) Provide at department expense a program of continuing professional, technical, and specialized instruction for the personnel of the department.

(9) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects, and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in moving his or her household furniture, effects, and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee may be paid more frequently than once in 12 months or for any movement other than from one place of employment in this state to another place of employment in this state.

(10) Establish a program to provide reimbursement to employees of the department whose items of personal property, as defined by the department by policy, are damaged during the course of employment or other work-related activity as a result of aggressive behavior by a client or patient receiving services from the department: *Provided*, That the reimbursement is limited to a maximum amount of \$250 per claim.

(11) Establish and maintain such institutions as are necessary for the temporary care, maintenance, and training of children and other persons.

(12) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance, and federal assistance, and which are not inconsistent with state law.

(13) Organize within the department a board of review, consisting of a chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance, and federal

assistance, the board of review to have such powers of a review nature and such additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance.

(14) Provide by rules review and appeal procedures within the Department of Health and Human Resources as may be required by applicable federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, and as will provide applicants for, and recipients of, all classes of welfare assistance an opportunity to be heard by the board of review, a member thereof, or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance.

(15) Provide by rules, consistent with requirements of applicable federal laws and rules, application forms and application procedures for the various classes of public assistance.

(16) Provide locations for making applications for the various classes of public assistance.

(17) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of public assistance.

(18) Delegate to the personnel of the department all powers and duties vested in the secretary, except the power and authority to sign contracts and agreements.

(19) Make such reports in such form and containing such information as may be required by applicable federal laws and rules respecting federal-state assistance and federal assistance.

(20) Invoke any legal, equitable, or special remedies for the enforcement of the provisions of this chapter.

(21) Require a provider, subgrantee, or other entity performing services on behalf of the department to comply with all applicable laws, rules, and written procedures pertaining to the program for which the entity is providing or coordinating services, including,

but not limited to, policy manuals, statements of work, program instructions, or other similar agreements. When submitting a claim for payment, the entity shall certify that it has complied with all material conditions for payment. Knowingly and intentionally submitting a claim or billing for services performed in material violation of any law, rule, policy, or other written agreement shall constitute fraud and the agreement for provision of services shall terminate. The entity shall be required to repay the department for any payment under the program for which the provider was not entitled, regardless of whether the incorrect payment was the result of department error, fraud, or other cause. A demand for repayment or termination of agreement for provision of services shall be subject to the due process procedures pursuant to §29A-5-1 *et seq.* of this code. The provisions of this subsection do not apply to fraud in the Medicaid program.

(22) Develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud. The secretary shall submit a report containing the pilot program's results and recommendations to the Joint Committee on Government and Finance no later than December 31, 2020.

(b) The secretary shall annually allocate Child Protective Services workers by districts of the Bureau for Social Services and report the allocation process to the Legislative Oversight Commission on Health and Human Resources Accountability by July 1 each year.

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CHAPTER 156

**(Com. Sub. for S. B. 419 - By Senators Weld, Woelfel,
Lindsay, Romano, Stollings, and Plymale)**

[Passed March 7, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 30, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-29, relating to the Department of Health and Human Resources entering into contracts with managed care organizations that allow payments based upon performance-based metrics; evaluating the impact that post-discharge planning and the provision of wraparound services has on the outcomes of substance use disorder in three years post-substance use disorder residential treatment; requiring the Bureau for Medical services to seek an amendment to existing waivers from the Centers for Medicare and Medicaid Services; creating advisory committee; setting terms of performance based contract; and required reporting.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-29. Payments to substance use disorder residential treatment facilities based upon performance-based outcomes.

(a) For purposes of this section:

(1) “Department” means the Department of Health and Human Resources.

(2) “Evidence-based” means a program or practice that is cost-effective and includes at least two randomized or statistically

controlled evaluations that have demonstrated improved outcomes for its intended populations.

(3) “MCOs” means Medicaid managed care organizations.

(4) “Performance-based contracting” means structuring all aspects of the service contract around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes and linking payment for services to contractor performance.

(5) “Promising practice” means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(6) “Research-based” means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(b) Within three months of effective date, Bureau for Medical Services shall seek an amendment to an existing waiver or waivers from the Centers for Medicare and Medicaid Services to support the pilot program. Within 90 days of Centers for Medicare and Medicaid Services approval, Bureau for Medical Services shall enter into contracts with the MCOs wherein, at a minimum, 15 percent of substance use disorder residential treatment contracts for facilities providing substance use disorder treatment services are paid based upon performance-based measures.

(c) The department’s contracts with the MCOs shall be developed and implemented in a manner that complies with the applicable provisions of this code and are exempt from §5A-3-1 *et seq.* of this code.

(d) The MCOs shall contract with substance use disorder residential treatment facilities and allow substance use disorder treatment facilities the option to be paid based upon performance-based metrics. Substance use disorder residential treatment facilities that opt for performance-based contracting shall including the following:

(1) The use of programs that are evidence-based, research-based, and supported by promising practices, in providing services to patient population, including fidelity and quality assurance provisions.

(2) The substance use disorder residential treatment facility shall develop a robust post-treatment planning program, including, but not limited to, connecting the patient population to community-based supports, otherwise known as wraparound services, to include, but not be limited to, designation of a patient navigator to assist each discharged patient with linkage to medical, substance use, and psychological treatment services; assistance with job placement; weekly communication regarding status for up to three years; and assistance with housing and transportation.

(3) The department shall create an advisory committee that includes representatives from the Office of Drug Control Policy, the Bureau for Behavioral Health, the Bureau for Medical Services, and the MCO to develop the performance-based metrics for which payment is based that shall include, but are not limited to, the following:

(A) Whether patient is drug free, 30 days post discharge, six months post discharge, one-year post-discharge, two years post-discharge, and three years post-discharge;

(B) Whether patient is employed, 30 days post discharge, six months post discharge, one-year post-discharge, two years post-discharge, and three years post-discharge;

(C) Whether patient has housing, 30 days post discharge, six months post discharge, and one-year post-discharge;

(D) Whether substance use disorder residential treatment facility has arranged medical, substance use, psychological services, or other community-based supports for the patient and whether the patient attended, 30 days post discharge, six months post discharge, one-year post-discharge, two years post-discharge, and three years post-discharge;

(E) Whether the patient has transportation 30 days post-discharge; and

(F) Whether patient has relapsed and needed any additional substance use disorder treatment, 30 days post discharge, six months post discharge, one-year post-discharge, two years post-discharge, and three years post discharge.

(G) A managed care organization does not have an obligation to provide any of the information specified in this section regarding a patient if that patient ceases to be an enrolled member of that particular MCO.

(e) The substance use disorder residential treatment facility shall report the performance-based metrics to the Office of Drug Control Policy on the first of every month.

(f) For the three years of implementation of performance-based contracting, the MCO may transfer risk for the provision of services to the substance use disorder residential treatment facility only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the MCO may develop a shared saving methodology through which the substance use disorder residential treatment facility shall receive a defined share of any savings that result from improved performance.

(g) The department shall hire a full-time employee who will actively monitor the substance use disorder residential treatment facility's compliance with required reporting, monitor contracts executed under this section, and support the advisory committee in determining the best practices and refinement of this pilot.

(h) The advisory committee shall evaluate this pilot program annually for effectiveness, adjust metrics as indicated to improve quality outcomes, and assess the pilot for continuation.

(i) The pilot program shall terminate in three years, unless it is recommended for continued evaluation based upon metrics that indicate the effectiveness of this program.

(j) The department shall conduct actuarial analysis of the pilot program annually and submit this report together with a detailed report of the overall performance of the pilot program, including but not limited to, any performance-based metrics added in the fiscal year, and a recommendation regarding the effectiveness of the program to the Legislative Oversight Commission on Health and Human Resources Accountability by January 15, 2023, and annually thereafter throughout the term of the pilot program.

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CHAPTER 157

**(S. B. 1 - By Senators Blair (Mr. President), Baldwin, Jeffries,
Stollings, Hamilton, Lindsay, Woodrum, Plymale, and
Takubo)**

[Passed March 12, 2022; in effect from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-61-1, §33-61-2, §33-61-3, §33-61-4, §33-61-5, §33-61-6, §33-61-7, §33-61-8, §33-61-9, and §33-61-10, all relating to creating the Mining Mutual Insurance Company; providing for the scope of the company; providing for findings and a purpose for the company; creating definitions; laying out the authorization for the company, as well as establishing requirements and limitations for the company; providing for governance and organization of the company; providing for management and administration of the company; creating an application for licensure with the company and establishing the authority of the commissioner; providing for initial capital and surplus; authorizing types of coverage and definition discretionary participation in the company; and setting forth applicable law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 61. MINING MUTUAL INSURANCE COMPANY.

§33-61-1. Scope.

This article applies only to the Mining Mutual Insurance Company created pursuant to this article.

§33-61-2. Findings and purpose.

(a) The Legislature finds that:

(1) There has been a nationwide downturn in the coal mining industry which was especially difficult in West Virginia;

(2) Coal mining permit holders across the state have faced economic circumstances that forced many of them into difficult financial situations;

(3) Insolvent permit holders may be unable to continue operations, thus jeopardizing their ability to properly reclaim lands as required under §22-3-1 *et seq.* of this code;

(4) Any shortfall would be paid from the state's Special Reclamation Fund which could become strained if the coal industry and/ or reclamation surety bond providers would experience unforeseen circumstances;

(5) An increase in bonding amounts would cause undue financial hardships and coal mining permit holders in West Virginia may find it increasingly difficult to comply with the financial assurance provisions of §22-3-1 *et seq.* of this code;

(6) The difficulty or impossibility of obtaining private performance bonds on reasonable economic terms may result in challenges for operators to receive new coal-mining permits;

(7) Having a robust guarantee of proper reclamation of mining operations is of utmost importance to the citizens of West Virginia;

(8) A mechanism is needed for an alternative provider in the state's current coal mining bonding system to provide for additional coverage and further bolster an efficient and effective method of complying with the reclamation requirements and the financial assurance provisions of §22-3-1 *et seq.* of this code;

(9) A state assisted mutual insurance company or a similar entity has proven to be a successful mechanism in West Virginia for helping stabilize certain insurance markets such as medical professional liability and worker compensation;

(10) There is a substantial public interest in creating a method to provide an enhanced mining reclamation performance bond insurance market in this state;

(11) The state currently funds reclamation at former coal-mining sites, where the bond has been forfeited, through a combination of bond proceeds and, if needed, moneys from the Special Reclamation Fund as approved by the Surface Mining Control and Reclamation Act;

(12) There is substantial public benefit in maintaining a stable self-sufficient entity which can be a source of performance bond insurance coverage for permit holders in this state;

(13) A stable, financially viable insurer in the private sector will provide a continuing source of insurance funds to accomplish reclamation as needed to protect the environment of the state; and

(14) Because the public will greatly benefit from the formation of a Mining Mutual Insurance Company, state efforts to encourage and support the formation of such an entity, including providing a loan of the entity's initial capital, is in the clear public interest.

(b) The purpose of this article is to create a mechanism for the formation of a mining mutual insurance company that will provide:

(1) An option for mining permit holders to obtain performance bond insurance that is available and affordable; and

(2) Assure that reclamation will occur in a timely and predictable fashion in those instances where a permit holder fails to perform under the terms of the permit issued pursuant to §22-3-1 *et seq.* of this code.

§33-61-3. Definitions.

For purposes of this article, the term:

“Commissioner” means the Insurance Commissioner as provided in §33-2-1 of this code.

“Company” means the Mining Mutual Insurance Company created pursuant to the terms of this article.

“Operator” has the same meaning as provided in §22-3-3 of this code and means any person who is granted or who should obtain a permit to engage in any activity covered by §22-3-1, *et seq.* of this code and any rule promulgated pursuant thereto and includes any person who engages in surface mining or surface mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

§33-61-4. Authorization for creation of company; requirements and limitations.

(a) A Mining Mutual Insurance Company may be created as a domestic, private, nonstock corporation in this state. The company shall remain for the duration of its existence a domestic mutual insurance company owned by its policyholders and may not be converted into a stock corporation or any other entity not owned by its policyholders.

(b) For the duration of its existence, the company shall not be considered a department, unit, agency, or instrumentality of this state for any purpose. All debts, claims, obligations, and liabilities of the company, whenever incurred, are the debts, claims, obligations, and liabilities of the company only and not of this state or of any department, unit, agency, instrumentality, officer, or employee of this state.

(c) The moneys of the company shall not be considered part of the General Revenue Fund of the state. The debts, claims, obligations, and liabilities of the company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The company is not subject to provisions of §6-9A-1 *et seq.* of this code or the provisions of §29B-1-1, *et seq.* of this code.

(e) All premiums collected by the company are subject to the premium taxes, additional premium taxes, additional fire and

casualty insurance premium taxes and surcharges contained in §33-3-14, §33-3-14a, §33-3-14d, and §33-3-33 of this code to the extent applicable.

§33-61-5. Governance and organization.

(a) The company shall initially be governed by a provisional board of directors consisting of five directors. The provisional board shall act as the incorporators of the company and shall prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and all of the provisions of this code. The provisional board of directors shall be appointed as follows:

(1) The chair shall be appointed by the Governor. The chair shall be an individual with at least five years' experience as a CEO and board member of a mutual insurance company.

(2) One member of the board shall be selected by the Secretary of the Department of Environmental Protection. This provisional board member shall have extensive experience in environmental management and shall have at least five years' experience in coal mine reclamation.

(3) One member of the provisional board shall be selected by the Insurance Commissioner. This provisional board member shall have insurance experience and shall have served at least five years as an officer of a board of directors of a mutual insurance company.

(4) One member of the provisional board shall be selected by the President of the Senate. This provisional board member shall have experience in coal mine operations, reclamation, and land management.

(5) One member of the provisional board shall be selected by the Speaker of the House of Delegates. This provisional board member shall have experience in coal mine operations, reclamation, and land management.

(b) Upon the filing of the company's articles of incorporation and bylaws, the directors and officers of the company are to be

chosen in accordance with such articles of incorporation and bylaws: *Provided*, That the company's articles of incorporation and bylaws shall specifically state that the terms of boards members shall be as follows: (1) Two members shall be for a term of four years; (2) one member shall be for a term of three years; (3) one member shall be for a term of two years; and (4) one member shall be for a term of one year. Thereafter, the directors shall serve staggered terms of four years. If additional directors are added to the board as provided in the company's bylaws, the term shall be for four years.

§33-61-6. Management and administration of the company.

(a) If the company's board of directors determines that the affairs of the company may be administered suitably and efficiently, the company may enter into a contract with a licensed insurer, licensed health service plan, insurance service organization, third-party administrator, insurance brokerage firm or other firm or company with suitable qualifications and experience to administer some or all of the affairs of the company, subject to the continuing direction of the board of directors as required by the articles of incorporation and bylaws of the company, and the contract. All such contracts shall be awarded by competitive bidding.

(b) The company shall file a true copy of the contract with the commissioner.

§33-61-7. Application for license; authority of commissioner.

(a) As soon as practical, the company established pursuant to the provisions of this article shall file its corporate charter and bylaws with the commissioner and apply for a license to transact insurance in this state. Notwithstanding any other provision of this code, the commissioner shall act on the documents within 15 days of the filing by the company.

(b) The Legislature authorizes the commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company,

notwithstanding the provisions of §33-3-5b of this code. The commissioner has the sole discretion to determine the capital and surplus funds of the company and to monitor the economic viability of the company during its initial operation and duration on not less than a monthly basis. The company shall furnish the commissioner with all information and cooperate in all respects necessary for the commissioner to perform the duties set forth in this section and in other provisions of this chapter, including annual audited financial statements required by §33-33-1 *et seq.* of this code and fidelity bond coverage for each of the directors of the company.

(c) Subject to the provisions of subsection (d) of this section, the commissioner may waive other requirements imposed on mutual insurance companies by the provisions of this chapter as the commissioner determines is necessary to enable the company to begin issuing performance bonds in this state at the earliest possible date.

(d) Within 40 months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in §33-3-5b of this code.

§33-61-8. Initial capital and surplus.

(a) There is hereby created in the State Treasury a special revenue account designated as the Department of Environmental Protection Mining Mutual Insurance Company Fund solely for the purpose of receiving moneys transferred from various funds at the Department of Environmental Protection.

(b) As soon as practical, but within 30 days of the effective date of this act, the Treasurer shall, with the full cooperation of the Department of Environmental Protection, cause the transfer of \$50,000,000 from such funds as the Secretary of the Department of Environmental Protection shall specify into the Department of Environmental Protection Mining Mutual Insurance Company Fund: *Provided*, That the funds shall not be transferred from the existing Special Reclamation Fund.

(c) As soon as practical, but within 30 days of the transfer described in subsection (b) of this section, the Treasurer shall cause the funds in the Department of Environmental Protection Mining Mutual Insurance Company Fund as described in subsection (b) of this section to be transferred to the Mining Mutual to be used as initial capital and surplus in the form of a Surplus Note. These funds shall be deemed a noninterest loan and shall be paid back as credits as reclamation activities are accomplished.

(d) As soon as practical, but within 30 days of gaining any necessary approvals, including specific approval of the Insurance Commissioner, the Treasurer shall, with the full cooperation of the Department of Environmental Protection, cause the transfer of such other funds as may, from time to time, be needed for capital by the Mining Mutual Insurance Company from such funds as the Secretary of the Department of Environmental Protection shall specify into the Department of Environmental Protection Mining Mutual Insurance Company Fund: *Provided*, That the funds shall not be transferred from the existing Special Reclamation Fund. Such funds may or may not be from special grants or other funding mechanisms from the federal government.

(e) As soon as practical, but within 30 days of the transfer described in subsection (d) of this section, the Treasurer shall cause the funds in the Department of Environmental Protection Mining Mutual Insurance Company Fund as described in subsection (d) of this section to be transferred to the Mining Mutual to be used as capital and surplus in the form of a Surplus Note. These funds shall be deemed a noninterest loan and shall be paid back as credits as reclamation activities are accomplished.

§33-61-9. Types of coverage authorized; discretionary participation.

(a) Upon approval by the commissioner for a license to transact insurance in this state, the company may issue nonassessable policies of performance bonds.

(b) Operators may procure nonassessable policies of performance bonds from the company or other allowable providers to satisfy the requirements of §22-3-11 of this code.

(c) Nothing in this article shall require compulsory participation in purchasing bonds from the company by operators.

§33-61-10. Applicable law.

To the extent applicable, and when not in conflict with the provisions of this article, the provisions of chapters 31, 31D, 31E, and 33 of this code apply to the company created pursuant to the provisions of this article. If a provision of this article and another provision of this code are in conflict, the provision of this article controls.

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CHAPTER 158

(Com. Sub. for S. B. 568 - By Senator Roberts)

[Passed March 12, 2022; in effect 90 days from passage.]

[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-16-3c; to amend said code by adding thereto a new section, designated §33-24-6a; to amend said code by adding thereto a new section, designated §33-25-10a; and to amend said code by adding thereto a new section, designated §33-25A-7b, all relating to health insurance loss ratio information; defining term; and requiring disclosure of loss ratio information upon request.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3c. Loss ratio.

If an insurer considers a loss ratio at the time of renewal of a policy, the insurer shall, upon request of an insured, provide the loss ratio and the components of the loss ratio calculation to the insured no more than 90 days but no less than 60 days before the renewal date of the policy. For purposes of this section, “loss ratio” means the total losses paid out in medical claims divided by the total earned premiums.

Medical claims do not include dental only or vision only coverage.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,
MEDICAL SERVICE CORPORATIONS, DENTAL
SERVICE CORPORATIONS, AND HEALTH SERVICE
CORPORATIONS.**

§33-24-6a. Loss ratio.

If a corporation utilizes a group's loss ratio as a rating factor at the time of renewal of a policy, plan, or contract, the corporation shall, upon request of an insured or subscriber, provide the loss ratio and the components of the loss ratio calculation to the insured or subscriber no more than 90 days but no less than 60 days before the renewal date of the policy, plan, or contract. For purposes of this section, "loss ratio" means the total losses paid out in medical claims divided by the total earned premiums: *Provided*, That that the requirements of this section do not apply to a dental service corporation as that term is defined in this article.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-10a. Loss ratio.

If a corporation considers a loss ratio at the time of renewal of a policy, plan, or contract, the corporation shall, upon request of a subscriber, provide the loss ratio and the components of the loss ratio calculation to the subscriber no more than 90 days but no less than 60 days before the renewal date of the policy, plan, or contract. For purposes of this section, "loss ratio" means the total losses paid out in medical claims divided by the total earned premiums.

Medical claims do not include dental only or vision only coverage.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION
ACT.**

§33-25A-7b. Loss ratio.

If a health maintenance organization considers a loss ratio at the time of renewal of a policy, plan, or contract, the health maintenance organization shall, upon request of a subscriber,

provide the loss ratio and the components of the loss ratio calculation to the subscriber no more than 90 days but no less than 60 days before the renewal date of the policy, plan, or contract. For purposes of this section, “loss ratio” means the total losses paid out in medical claims divided by the total earned premiums: *Provided, However*, that medical claims do not include dental only or vision only coverage. For purposes of this section, “subscriber” does not include a subscriber or beneficiary of any policy, plan, or contract approved by the Bureau of Medical Services of the Department of Health and Human Resources and entered into by a health maintenance organization with Medicaid or the Children’s Health Insurance Program.

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CHAPTER 159

(Com. Sub. for H. B. 4112 - By Delegates Rohrbach, D. Jeffries, Tully, Pack, G. Ward, Bates, Worrell, Rowan, Forsht, Mallow, and Jennings)

[Passed March 12, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 30, 2022.]

AN ACT to amend and reenact §33-51-3, §33-51-8, §33-51-9, and §33-51-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-51-13, all relating to the regulation of pharmacy benefit managers; defining terms; updating terminology; prohibiting a pharmacy benefit manager from limiting a consumer's access to prescription drugs through the designation of specialty drugs; prohibiting a pharmacy benefit manager from placing certain requirements or restrictions on a pharmacist or pharmacy; updating requirements placed upon 340B entities; clarifying how drug acquisition cost is to be calculated; requiring pharmacy benefit managers to disclose any sub-networks for specialty drugs to the Insurance Commissioner; prohibiting a pharmacy benefit manager from limiting network access; providing clarification regarding assessment of fees related to adjudication of claims; providing clarification regarding criteria for requirements of methodologies; requiring notice of contract changes; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.

§33-51-3. Definitions.

For purposes of this article:

“340B entity” means an entity participating in the federal 340B drug discount program, as described in 42 U.S.C. § 256b, including its pharmacy or pharmacies, or any pharmacy or pharmacies, contracted with the participating entity to dispense drugs purchased through such program.

“Affiliate” means a pharmacy, pharmacist, or pharmacy technician which, either directly or indirectly through one or more intermediaries: (A) Has an investment or ownership interest in a pharmacy benefits manager licensed under this chapter; (B) shares common ownership with a pharmacy benefits manager licensed under this chapter; or (C) has an investor or ownership interest holder which is a pharmacy benefits manager licensed under this article.

“Auditing entity” means a person or company that performs a pharmacy audit, including a pharmacy benefits manager, managed care organization, or third-party administrator.

“Business day” means any day of the week excluding Saturday, Sunday, and any legal holiday as set forth in §2-2-1 of this code.

“Claim level information” means data submitted by a pharmacy, required by a payor, or claims processor to adjudicate a claim.

“Covered individual” means a member, participant, enrollee, or beneficiary of a health benefit plan who is provided health care service coverage by a health benefit plan, including a dependent or other person provided health coverage through the policy or contract of a covered individual.

“Extrapolation” means the practice of inferring a frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors on any portion of claims submitted, based on the frequency of dollar amount of overpayments, underpayments, nonvalid claims, or other errors actually measured in a sample of claims.

“Defined cost sharing” means a deductible payment or coinsurance amount imposed on an enrollee for a covered prescription drug under the enrollee’s health plan.

“Health benefit plan” or “health plan” means a policy, contract, certificate, or agreement entered into, offered, or issued by a health care payor to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

“Health care payor” or “payor” means a health insurance company, a health maintenance organization, a hospital, medical, or dental corporation, a health care corporation, an entity that provides, administers, or manages a self-funded health benefit plan, including a governmental plan, or any other payor that provides prescription drug coverages, including a workers’ compensation insurer. Health care payor does not include an insurer that provides coverage under a policy of casualty or property insurance.

“Health care provider” has the same meaning as defined in §33-41-2 of this code.

“Health insurance policy” means a policy, subscriber contract, certificate, or plan that provides prescription drug coverage. The term includes both comprehensive and limited benefit health insurance policies.

“Insurance commissioner” or “commissioner” has the same meaning as defined in §33-1-5 of this code.

“Network” means a pharmacy or group of pharmacies that agree to provide prescription services to covered individuals on behalf of a health benefit plan in exchange for payment for its services by a pharmacy benefits manager or pharmacy services administration organization. The term includes a pharmacy that generally dispenses outpatient prescriptions to covered individuals or dispenses particular types of prescriptions, provides pharmacy services to particular types of covered individuals or dispenses prescriptions in particular health care settings, including networks of specialty, institutional or long-term care facilities.

“Maximum allowable cost” means the per unit amount that a pharmacy benefits manager reimburses a pharmacist for a prescription drug, excluding dispensing fees and copayments, coinsurance, or other cost-sharing charges, if any.

“National average drug acquisition cost” means the monthly survey of retail pharmacies conducted by the federal Centers for Medicare and Medicaid Services to determine average acquisition cost for Medicaid covered outpatient drugs.

“Nonproprietary drug” means a drug containing any quantity of any controlled substance or any drug which is required by any applicable federal or state law to be dispensed only by prescription.

“Pharmacist” means an individual licensed by the West Virginia Board of Pharmacy to engage in the practice of pharmacy.

“Pharmacy” means any place within this state where drugs are dispensed and pharmacist care is provided.

“Pharmacy audit” means an audit, conducted by or on behalf of an auditing entity of any records of a pharmacy for prescription or nonproprietary drugs dispensed by a pharmacy to a covered individual.

“Pharmacy benefits management” means the performance of any of the following:

(1) The procurement of prescription drugs at a negotiated contracted rate for dispensation within the state of West Virginia to covered individuals;

(2) The administration or management of prescription drug benefits provided by a health benefit plan for the benefit of covered individuals;

(3) The administration of pharmacy benefits, including:

(A) Operating a mail-service pharmacy;

(B) Claims processing;

(C) Managing a retail pharmacy network;

(D) Paying claims to a pharmacy for prescription drugs dispensed to covered individuals via retail or mail-order pharmacy;

(E) Developing and managing a clinical formulary including utilization management and quality assurance programs;

(F) Rebate contracting administration; and

(G) Managing a patient compliance, therapeutic intervention, and generic substitution program.

“Pharmacy benefits manager” means a person, business, or other entity that performs pharmacy benefits management for health benefit plans;

“Pharmacy record” means any record stored electronically or as a hard copy by a pharmacy that relates to the provision of prescription or nonproprietary drugs or pharmacy services or other component of pharmacist care that is included in the practice of pharmacy.

“Pharmacy services administration organization” means any entity that contracts with a pharmacy to assist with payor interactions and that may provide a variety of other administrative services, including contracting with pharmacy benefits managers on behalf of pharmacies and managing pharmacies’ claims payments from payors.

“Point-of-sale fee” means all or a portion of a drug reimbursement to a pharmacy or other dispenser withheld at the time of adjudication of a claim for any reason.

“Rebate” means any and all payments that accrue to a pharmacy benefits manager or its health plan client, directly or indirectly, from a pharmaceutical manufacturer, including, but not limited to, discounts, administration fees, credits, incentives, or penalties associated directly or indirectly in any way with claims administered on behalf of a health plan client. The term “rebate”

does not include any discount or payment that may be provided to or made to any 340B entity through such program.

“Retroactive fee” means all or a portion of a drug reimbursement to a pharmacy or other dispenser recouped or reduced following adjudication of a claim for any reason, except as otherwise permissible as described in this article.

“Specialty drug” means a drug used to treat chronic and complex, or rare medical conditions and requiring special handling or administration, provider care coordination, or patient education that cannot be provided by a non-specialty pharmacy or pharmacist.

§33-51-8. Licensure of pharmacy benefit managers.

(a) A person or organization may not establish or operate as a pharmacy benefits manager in the state of West Virginia without first obtaining a license from the Insurance Commissioner pursuant to this section: *Provided*, That a pharmacy benefit manager registered pursuant to §33-51-7 of this code may continue to do business in the state until the Insurance Commissioner has completed the legislative rule as set forth in § 33-51-10 of this code: *Provided, however*, That additionally the pharmacy benefit manager shall submit an application within six months of completion of the final rule. The Insurance Commissioner shall make an application form available on its publicly accessible internet website that includes a request for the following information:

(1) The identity, address, and telephone number of the applicant;

(2) The name, business address, and telephone number of the contact person for the applicant;

(3) When applicable, the federal employer identification number for the applicant; and

(4) Any other information the Insurance Commissioner considers necessary and appropriate to establish the qualifications

to receive a license as a pharmacy benefit manager to complete the licensure process, as set forth by legislative rule promulgated by the Insurance Commissioner pursuant to §33-51-10 of this code.

(b) *Term and fee.* —

(1) The term of licensure shall be two years from the date of issuance.

(2) The Insurance Commissioner shall determine the amount of the initial application fee and the renewal application fee for the registration. The fee shall be submitted by the applicant with an application for registration. An initial application fee is nonrefundable. A renewal application fee shall be returned if the renewal of the registration is not granted.

(3) The amount of the initial application fees and renewal application fees must be sufficient to fund the Insurance Commissioner's duties in relation to his/her responsibilities under this section, but a single fee may not exceed \$10,000.

(4) Each application for a license, and subsequent renewal for a license, shall be accompanied by evidence of financial responsibility in an amount of \$1 million.

(c) *Licensure.* —

(1) The Insurance Commissioner shall propose legislative rules, in accordance with §33-51-10 of this code, establishing the licensing, fees, application, financial standards, and reporting requirements of pharmacy benefit managers.

(2) Upon receipt of a completed application, evidence of financial responsibility, and fee, the Insurance Commissioner shall make a review of each applicant and shall issue a license if the applicant is qualified in accordance with the provisions of this section and the rules promulgated by the Insurance Commissioner pursuant to this section. The commissioner may require additional information or submissions from an applicant and may obtain any documents or information reasonably necessary to verify the information contained in the application.

(3) The license may be in paper or electronic form, is nontransferable, and shall prominently list the expiration date of the license.

(d) *Network adequacy.* —

(1) A pharmacy benefit manager's network shall be reasonably adequate, shall provide for convenient patient access to pharmacies within a reasonable distance from a patient's residence and shall not be comprised only of mail-order benefits but must have a mix of mail-order benefits and physical stores in this state.

(2) A pharmacy benefit manager shall provide a pharmacy benefit manager's network report describing the pharmacy benefit manager's network and the mix of mail-order to physical stores in this state in a time and manner required by rule issued by the Insurance Commissioner pursuant to this section. A pharmacy benefit manager's network report shall include a detailed description of any separate, sub-networks for specialty drugs.

(3) Failure to provide a timely report may result in the suspension or revocation of a pharmacy benefit manager's license by the Insurance Commissioner.

(4) A pharmacy benefit manager may not require a pharmacy or pharmacist, as a condition for participating in the pharmacy benefit manager's network, to obtain or maintain accreditation, certification, or credentialing that is inconsistent with, more stringent than, or in addition to state requirements for licensure or other relevant federal or state standards.

(e) *Enforcement.* —

(1) The Insurance Commissioner shall enforce this section and may examine or audit the books and records of a pharmacy benefit manager providing pharmacy benefits management to determine if the pharmacy benefit manager is in compliance with this section: *Provided*, That any information or data acquired during the examination or audit is considered proprietary and confidential and exempt from disclosure under the West Virginia Freedom of Information Act pursuant to §29B-1-4(a)(1) of this code.

(2) The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code regulating pharmacy benefit managers in a manner consistent with this chapter. Rules adopted pursuant to this section shall set forth penalties or fines, including, without limitation, monetary fines, suspension of licensure, and revocation of licensure for violations of this chapter and the rules adopted pursuant to this section.

§33-51-9. Regulation of pharmacy benefit managers.

(a) A pharmacy, a pharmacist, and a pharmacy technician shall have the right to provide a covered individual with information related to lower cost alternatives and cost share for the covered individual to assist health care consumers in making informed decisions. Neither a pharmacy, a pharmacist, nor a pharmacy technician may be penalized by a pharmacy benefit manager for discussing information in this section or for selling a lower cost alternative to a covered individual, if one is available, without using a health insurance policy.

(b) A pharmacy benefit manager may not collect from a pharmacy, a pharmacist, or a pharmacy technician a cost share charged to a covered individual that exceeds the total submitted charges by the pharmacy or pharmacist to the pharmacy benefit manager.

(c) A pharmacy benefit manager that reimburses a 340B entity for drugs that are subject to an agreement under 42 U.S.C. § 256b shall not reimburse the 340B entity for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies similar in prescription volume that are not 340B entities, and shall not assess any fee, charge-back, or other adjustment upon the 340B entity on the basis that the 340B entity participates in the program set forth in 42 U.S.C. §256b. For purposes of this subsection, the term “other adjustment” includes placing any additional requirements, restrictions, or unnecessary burdens upon the 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do not participate in the 340B program, including affiliate pharmacies of the pharmacy

benefit manager, and further includes but is not limited to requiring a claim for a drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug: *Provided*, That nothing in this subsection shall be construed to prohibit the Medicaid program or a Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from preventing duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this subsection are applicable to the West Virginia Public Employees Insurance Agency.

(d) With respect to a patient eligible to receive drugs subject to an agreement under 42 U.S.C. § 256b, a pharmacy benefit manager shall not discriminate against a 340B entity in a manner that prevents or interferes with the patient's choice to receive such drugs from the 340B entity: *Provided*, That this section, does not apply to the state Medicaid program when Medicaid is providing reimbursement for covered outpatient drugs, as that term is defined in 42 U.S.C. § 1396r-8(k), on a fee-for-service basis: *Provided, however*, That this subsection does apply to a Medicaid-managed care organization as described in 42 U.S.C. § 1396b(m). For purposes of this subsection, it shall be considered a discriminatory practice that prevents or interferes with a patient's choice to receive drugs at a 340B entity if a pharmacy benefit manager places additional requirements, restrictions or unnecessary burdens upon a 340B entity that results in administrative costs or fees to the 340B entity that are not placed upon other pharmacies that do not participate in the 340B program, including affiliate pharmacies of the pharmacy benefit manager or any other third-party, and further includes but is not limited to requiring a claim for a drug to include a modifier or be processed or resubmitted to indicate that the drug is a 340B drug: *Provided further*, That nothing in this subsection shall be construed to prohibit the Medicaid program or a Medicaid managed care organization as described in 42 U.S.C. § 1396b(m) from preventing duplicate discounts as described in 42 U.S.C. 256b(a)(5)(A)(i). The provisions of this subsection are applicable to the West Virginia Public Employees Insurance Agency.

(e) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy

service in an amount less than the national average drug acquisition cost for the prescription drug or pharmacy service at the time the drug is administered or dispensed, plus a professional dispensing fee of \$10.49: *Provided*, That if the national average drug acquisition cost is not available at the time a drug is administered or dispensed, a pharmacy benefit manager may not reimburse in an amount that is less than the wholesale acquisition cost of the drug, as defined in 42 U.S.C. § 1395w-3a(c)(6)(B), plus a professional dispensing fee of \$10.49.

(f) A pharmacy benefit manager may not reimburse a pharmacy or pharmacist for a prescription drug or pharmacy service in an amount less than the amount the pharmacy benefit manager reimburses itself or an affiliate for the same prescription drug or pharmacy service.

(g) The commissioner may order reimbursement to an insured, pharmacy, or dispenser who has incurred a monetary loss as a result of a violation of this article or legislative rules implemented pursuant to this article.

(h) (1) Any methodologies utilized by a pharmacy benefits manager in connection with reimbursement shall be filed with the commissioner at the time of initial licensure and at any time thereafter that the methodology is changed by the pharmacy benefit manager for use in determining maximum allowable cost appeals. The methodologies are not subject to disclosure and shall be treated as confidential and exempt from disclosure under the West Virginia Freedom of Information Act §29B-1-4(a)(1) of this code. The filed methodologies shall comply with the provisions of §33-51-9(e) of this code, and a pharmacy benefits manager shall not enter into a contract with a pharmacy that provides for reimbursement methodology not permissible under the provisions of §33-51-9(e) of this code.

(2) For purposes of complying with the provisions of §33-51-9(e) of this code, a pharmacy benefits manager shall utilize the most recently published monthly national average drug acquisition cost as a point of reference for the ingredient drug product

component of a pharmacy's reimbursement for drugs appearing on the national average drug acquisition cost list; and,

(i) A pharmacy benefits manager may not:

(1) Discriminate in reimbursement, assess any fees or adjustments, or exclude a pharmacy from the pharmacy benefit manager's network on the basis that the pharmacy dispenses drugs subject to an agreement under 42 U.S.C. § 256b; or

(2) Engage in any practice that:

(A) In any way bases pharmacy reimbursement for a drug on patient outcomes, scores, or metrics. This does not prohibit pharmacy reimbursement for pharmacy care, including dispensing fees from being based on patient outcomes, scores, or metrics so long as the patient outcomes, scores, or metrics are disclosed to and agreed to by the pharmacy in advance;

(B) Includes imposing a point-of-sale fee or retroactive fee; or

(C) Derives any revenue from a pharmacy or insured in connection with performing pharmacy benefits management services: *Provided*, That this may not be construed to prohibit pharmacy benefits managers from processing deductibles or copayments as have been approved by a covered individual's health benefit plan.

(j) A pharmacy benefits manager shall offer a health plan the option of charging such health plan the same price for a prescription drug as it pays a pharmacy for the prescription drug: *Provided*, That a pharmacy benefits manager shall charge a health benefit plan administered by or on behalf of the state or a political subdivision of the state, the same price for a prescription drug as it pays a pharmacy for the prescription drug.

(k) A covered individual's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100 percent of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Any rebate

over and above the defined cost sharing would then be passed on to the health plan to reduce premiums. Nothing precludes an insurer from decreasing a covered individual's defined cost sharing by an amount greater than what is previously stated. The commissioner may propose a legislative rule or by policy effectuate the provisions of this subsection.

§33-51-11. Freedom of consumer choice for pharmacy.

(a) A pharmacy benefits manager, may not:

(1) Prohibit or limit any covered individual from selecting a pharmacy or pharmacist of his or her choice who has agreed to participate in the health benefit plan according to the terms offered by the health benefit plan;

(2) Deny a pharmacy or pharmacist the right to participate as a contract provider under the policy or plan if the pharmacy or pharmacist agrees to provide pharmacy services, including, but not limited to, prescription drugs, that meet the terms and requirements set forth by the health benefit plan and agrees to the terms of reimbursement set forth by the insurer;

(3) Impose upon a pharmacy or pharmacist, as a condition of participation in a health benefit plan network, any course of study, accreditation, certification, or credentialing that is inconsistent with, more stringent than, or in addition to state requirements for licensure or certification as provided for in the §30-5-1 *et seq.* and legislative rules of the Board of Pharmacy.

(4) Impose upon a beneficiary of pharmacy services under a health benefit plan any copayment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or copayment level under the health benefit plan when receiving services from a contract provider;

(5) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice among those pharmacies or pharmacists who have agreed to participate in the plan according to the terms offered by the insurer. Monetary advantage or penalty includes higher copayment, a reduction in

reimbursement for services, or promotion of one participating pharmacy over another by these methods;

(6) Reduce allowable reimbursement for pharmacy services to a beneficiary under a health benefit plan because the beneficiary selects a pharmacy of his or her choice, so long as that pharmacy has enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area;

(7) Prohibit or otherwise limit a beneficiary's access to prescription drugs from a pharmacy or pharmacist enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area by unreasonably designating the covered prescription drug as a specialty drug. Any beneficiary or pharmacy impacted by an alleged violation of this subsection may file a complaint with the Insurance Commissioner, who shall, in consultation with the West Virginia Board of Pharmacy, make a determination as to whether the covered prescription drug meets the definition of a specialty drug;

(8) Limit a beneficiary's access to specialty drugs;

(9) Require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy; or

(10) Impose upon a beneficiary any copayment, amount of reimbursement, number of days of a drug supply for which reimbursement will be allowed, or any other payment or condition relating to purchasing pharmacy services from any pharmacy, including prescription drugs, that are more costly or more restrictive than that which would be imposed upon the beneficiary if such services were purchased from a mail-order pharmacy or any other pharmacy that is willing to provide the same services or products for the same cost and copayment as any mail order service.

(b) If a health benefit plan providing reimbursement to West Virginia residents for prescription drugs restricts pharmacy participation, the health benefit plan shall notify, in writing, all

pharmacies within the geographical coverage area of the health benefit plan, and offer to the pharmacies the opportunity to participate in the health benefit plan at least 60 days prior to the effective date of the plan. All pharmacies in the geographical coverage area of the plan shall be eligible to participate under identical reimbursement terms for providing pharmacy services, including prescription drugs. Participating pharmacies shall be entitled to 30 business days effective date notice for any subsequent contract amendment or provider manual change by a health benefit plan or a pharmacy benefit manager. The health benefit plan shall, through reasonable means, on a timely basis and on regular intervals, inform the beneficiaries of the plan of the names and locations of pharmacies that are participating in the plan as providers of pharmacy services and prescription drugs. Additionally, participating pharmacies shall be entitled to announce their participation to their customers through a means acceptable to the pharmacy and the health benefit plan. The pharmacy notification provisions of this section shall not apply when an individual or group is enrolled, but when the plan enters a particular county of the state.

(c) The Insurance Commissioner shall not approve any pharmacy benefits manager or health benefit plan providing pharmaceutical services which do not conform to this section.

(d) Any covered individual or pharmacy injured by a violation of this section may maintain a cause of action to enjoin the continuance of any such violation.

(e) This section shall apply to all pharmacy benefits managers and health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of West Virginia. This section shall not apply to any entity that has its own facility, employs or contracts with physicians, pharmacists, nurses, and other health care personnel, and that dispenses prescription drugs from its own pharmacy to its employees and dependents enrolled in its health benefit plan; but this section shall apply to an entity otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services.

§33-51-13. Effective date.

Notwithstanding any other effective date to the contrary, the amendments to this article enacted during the 2022 regular legislative session shall apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after January 1, 2023.



CHAPTER 160

(Com. Sub. for H. B. 4295 - By Delegates Westfall, Espinosa and Hott)

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-20b; to amend and reenact §33-2-23 of said code; and to amend and reenact §33-3-14 and §33-3-14a of said code, all relating to the State Office of the National Flood Insurance Program; transferring the State Office of the National Flood Insurance Program from the Offices of the Insurance Commissioner to the Division of Emergency Management; authorizing the Director of the Division of Emergency Management to employ staff for the State Office of the National Flood Insurance Program; granting rule-making authority to the Division of Emergency Management; providing that state-owned property in any nonparticipating community shall be governed by rules proposed by the Division of Emergency Management; requiring the State Office of the National Flood Insurance Program and floodplain managers to develop a strategic plan to meet goals and objectives, which shall be reviewed and approved by the State Resiliency Officer and State Resiliency Board; requiring the State Office of the National Flood Insurance Program to establish floodplain management guidelines in special hazard areas which are in conformity with federal regulations; providing the State Office of the National Flood Insurance Program shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; transferring the assets of the State Office of the National Flood Insurance Program from the Offices of the Insurance Commissioner to the Division of Emergency Management; deleting obsolete language

concerning temporary tax dedication to the tobacco settlement account; providing that private market flood insurance premium taxes be treated like federal flood insurance premium taxes; correcting terminology; clarifying that the additional premium tax applies to flood insurance premiums; and requiring the State Treasurer to distribute funds from the flood insurance tax fund to finance the operations and responsibilities of the State Office of the National Flood Insurance Program and for subgrants.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-20b. Continuation of the State Office of the National Flood Insurance Program; transfer to the Division of Emergency Management; funding; responsibilities.

(a) The Legislature, finding that the National Flood Insurance Program is a voluntary federal program under which federal flood insurance is made available to participating communities and is of vital importance to the citizens of West Virginia, does hereby continue the State Office of the National Flood Insurance Program. Effective July 1, 2022, the State Office of the National Flood Insurance Program shall transfer from the Offices of the Insurance Commissioner to the Division of Emergency Management established pursuant to §15-5-3 of this code. The Division of Emergency Management shall provide office space, equipment, and supplies for the State Office of the National Flood Insurance Program, which shall be funded, in part, from the special revenue fund established in §33-3-14(c) of this code.

(b) The State Office of the National Flood Insurance Program shall issue guidance and instructions as necessary to administer the program effectively. The State Office of the National Flood Insurance Program shall offer and conduct training as required by §15-5-20a of this code and adopt adequate land use and

development criteria that are consistent with the minimum standards established by the National Flood Insurance Program. The State Office of the National Flood Insurance Program shall be under the supervision of the Director of the Division of Emergency Management who shall employ staff as needed to operate the program.

(c) The Director of the Division of Emergency Management may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code as necessary to administer the State Office of the National Flood Insurance Program and any of the program's responsibilities. Any state-owned property located in a non-participating local community shall be governed by rules proposed by the Director of the Division of Emergency Management.

(d) The State Office of the National Flood Insurance Program, in consultation with the Director of the Division of Emergency Management, and with the assistance of floodplain managers around the state, shall develop and publish a strategic plan to establish shared goals, define a path to meet those goals, and shall invite other governmental units to adopt these goals and objectives. The strategic plan shall be initially presented by the Director of the Division of Emergency Management to the State Resiliency Officer and to the State Resiliency Office Board who shall review and approve the strategic plan, and that plan shall be so presented and approved no less than biannually thereafter. The strategic plan shall be made available to the public.

(e) The State Office of the National Flood Insurance Program shall establish floodplain management guidelines for any state property in special hazard areas which, at a minimum, satisfy the criteria set forth in 44 CFR §§60.3, 60.4, and 60.5 (2022).

(f) Notwithstanding any other provision of this code to the contrary, the State Office of the National Flood Insurance Program shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-23. Transfer of assets of the State Office of the National Flood Insurance Program.

Effective July 1, 2022, the assets of the State Office of the National Flood Insurance Program, which Office has been transferred to the Division of Emergency Management pursuant to §15-5-20b of this code, are hereby assigned and transferred to the Division of Emergency Management. The Director of the Division of Emergency Management may decline certain assets from being transferred pursuant to this section if he or she believes the assets are unnecessary for the proper operation of the State Office of the National Flood Insurance Program.

ARTICLE 3. LICENSING, FEES AND TAXATION OF INSURERS.

§33-3-14. Annual financial statement and premium tax return; remittance by insurer of premium tax, less certain deductions; special revenue funds created.

(a) Every insurer transacting insurance in West Virginia shall file with the commissioner, on or before March 1, each year, a financial statement made under oath of its president or secretary and on a form prescribed by the commissioner. The insurer shall also, on or before March 1 of each year subject to the provisions of §33-3-14c of this code, under the oath of its president or secretary, make a premium tax return for the previous calendar year on a form prescribed by the commissioner showing the gross amount of direct premiums, whether designated as a premium or by some other name, collected, and received by it during the previous calendar year on policies covering risks resident, located, or to be performed in this state and compute the amount of premium tax chargeable to it in accordance with the provisions of this article, deducting the amount of quarterly payments as required to be made pursuant to the provisions of §33-3-14c of this code, if any, less any adjustments to the gross amount of the direct premiums made

during the calendar year, if any, and transmit with the return to the commissioner a remittance in full for the tax due. The tax is the sum equal to two percent of the taxable premium and also includes any additional tax due under §33-3-14a of this code. All taxes, except those received on write your own federal flood insurance premium taxes or private market flood insurance premium taxes, received by the commissioner shall be paid into the insurance tax fund created in §33-3-14(b) of this code.

(b) There is created in the State Treasury a special revenue fund, administered by the treasurer, designated the “insurance tax fund”. This fund is not part of the General Revenue Fund of the state. It consists of all amounts deposited in the fund pursuant to §33-3-14(a), §33-3-14a, §33-3-15, and §33-3-17 of this code, any appropriations to the fund, all interest earned from investment of the fund, and any gifts, grants, or contributions received by the fund: *Provided*, That this subsection shall not apply to funds received on federal flood insurance premium taxes or private market flood insurance premium taxes, which are subject to §33-3-14(c) of this code. The treasurer shall, no later than the last business day of each month, transfer amounts from the insurance tax fund to the General Revenue Fund that the treasurer determines are not necessary for making premium tax refunds under this article or §33-43-1 *et seq.* of this code.

(c) There is created in the State Treasury a special revenue fund, administered by the treasurer, designated the “flood insurance tax fund”. This fund is not part of the General Revenue Fund of the state. All taxes collected pursuant to §33-3-14(a) of this code from federal flood insurance policy premium taxes or private market flood insurance premium taxes shall be deposited into the flood insurance tax fund. The flood insurance tax fund shall contain collections, any appropriations to the fund, and any gifts, grants, and contributions received. The Treasurer shall distribute funds from the flood insurance tax fund for the operations and responsibilities of the State Office of the National Flood Insurance Program, as provided in §15-5-20b of this code, for activities that promote and enhance floodplain management issues, and for subgrants to local units of government and other eligible entities

after full consideration of the recommendations of the Division of Emergency Management.

§33-3-14a. Additional premium tax.

For the purpose of providing additional revenue for the state General Revenue Fund, there is hereby levied and imposed, in addition to the taxes imposed by §33-3-14 of this code, an additional premium tax equal to one percent of taxable premiums. Except as otherwise provided in this section, all provisions of this article relating to the levy, imposition, and collection of the regular premium tax imposed by §33-3-14 of this code shall be applicable to the levy, imposition, and collection of the additional tax imposed by this section. All moneys received from the additional tax imposed by this section, less deductions allowed by this article or §33-43-1 *et seq.* of this code for refunds and for costs of administration, shall be received by the commissioner and shall be paid by him or her into the State Treasury in accordance with §33-3-14(b) of this code for the benefit of the General Revenue Fund: *Provided*, That moneys received pursuant to this section pertaining to federal flood insurance policy premium taxes or private market flood insurance premium taxes shall be deposited and distributed in accordance with §33-3-14(c) of this code.

CHAPTER 161

(H. B. 4649 - By Delegate Rohrbach)

[Passed March 8, 2022; in effect ninety days from passage.]
[Approved by the Governor on March 28, 2022.]

AN ACT to repeal §5-16B-6b, §5-16B-6c, and §5-16B-6e of the Code of West Virginia, 1931, as amended; and to amend and reenact §5-16B-1, §5-16B-2, §5-16B-3, §5-16B-4, §5-16B-5, §5-16B-6, §5-16B-6a, §5-16B-6d, §5-16B-8, §5-16B-9, and §5-16B-10 of said code, all relating to the operation of the West Virginia Children's Health Insurance Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE PROGRAM.

§5-16B-1. Expansion of health care coverage to children; continuation of program; legislative directives.

(a) It is the intent of the Legislature to expand access to health services for eligible children and to pay for this coverage by using private, state, and federal funds to purchase those services or purchase insurance coverage for those services. To achieve this intention, the West Virginia Children's Health Insurance Program heretofore created shall be continued and administered by the Department of Health and Human Resources, in accordance with the provisions of this article and the applicable provisions of Title XXI of the Social Security Act of 1997: *Provided*, That on and after July 1, 2022, the agencies, boards and programs including all of the allied, advisory, affiliated, or related entities and funds associated with the Children's Health Insurance Program and Children's Health Insurance Agency, shall be incorporated in and administered as a part of the Bureau for Medical Services, a

division within the Department of Health and Human Resources. Participation in the program may be made available to families of eligible children, subject to eligibility criteria and processes to be established, which does not create an entitlement to coverage in any person. Nothing in this article requires any appropriation of State General Revenue Funds for the payment of any benefit provided in this article. If this article conflicts with the requirements of federal law, federal law governs.

(b) In developing a Children's Health Insurance Program that operates with the highest degree of simplicity and governmental efficiency, the director shall avoid duplicating functions available in existing agencies and may enter into interagency agreements for the performance of specific tasks or duties at a specific or maximum contract price.

(c) In developing benefit plans, the director may consider any cost savings, administrative efficiency, or other benefit to be gained by considering existing contracts for services with state health plans and negotiating modifications of those contracts to meet the needs of the program.

(d) In order to enroll as many eligible children as possible in the program created by this article and to expedite the effective date of their health insurance coverage, the director shall develop and implement a plan whereby applications for enrollment may be taken at any primary care center or other health care provider, as determined by the director, and transmitted electronically to the program's offices for eligibility screening and other necessary processing. The director may use any funds available to the agency in the development and implementation of the plan, including grant funds or other private or public moneys.

§5-16B-2. Definitions.

As used in this article, unless the context clearly requires a different meaning:

“Agency” means the Children's Health Insurance Agency, a division within the Bureau for Medical Services.

“Board” means the Children’s Health Insurance Program Advisory Board.

“Commissioner” means the Commissioner of the Bureau for Medical Services appointed by the Secretary of the Department of Health and Human Resources.

“Director” means the deputy commissioner within the Bureau for Medical Services who has responsibility for the operation and oversight of the Children’s Health Insurance Agency.

“Essential community health service provider” means a health care provider that:

(1) Has historically served medically needy or medically indigent patients and demonstrates a commitment to serve low-income and medically indigent populations which constitute a significant portion of its patient population or, in the case of a sole community provider, serves medically indigent patients within its medical capability; and

(2) Either waives service fees or charges fees based on a sliding scale and does not restrict access or services because of a client’s financial limitations. Essential community health service provider includes, but is not limited to, community mental health centers, school health clinics, primary care centers, pediatric health clinics or rural health clinics.

“Program” means the West Virginia Children’s Health Insurance Program.

§5-16B-3. Reporting requirements.

(a) Annually on January 1, the director shall report to the Governor and the Legislature regarding the number of children enrolled in the program; the average annual cost per child per program; the estimated number of remaining uninsured children; and the outreach activities for the previous year. The report shall include any information that can be obtained regarding the prior insurance and health status of the children enrolled in programs created pursuant to this article. The report shall include information

regarding the cost, quality, and effectiveness of the health care delivered to enrollees of this program; satisfaction surveys; and health status improvement indicators. The agency, in conjunction with other state health and insurance agencies, shall develop indicators designed to measure the quality and effectiveness of children's health programs, which information shall be included in the annual report.

(b) On a quarterly basis, the director shall provide reports to the Legislative Oversight Commission on Health and Human Resources Accountability on the number of children served, including the number of newly enrolled children for the reporting period and current projections for future enrollees; outreach efforts and programs; statistical profiles of the families served and health status indicators of covered children; the average annual cost of coverage per child; the total cost of children served by provider type, service type, and contract type; outcome measures for children served; reductions in uncompensated care; performance with respect to the financial plan; and any other information as the Legislative Oversight Commission on Health and Human Resources Accountability may require.

§5-16B-4. Children's health policy advisory board created; qualifications and removal of members; powers; duties; meetings; and compensation.

(a) There is hereby created the West Virginia children's health insurance advisory board, which shall consist of the director of the Public Employees Insurance Agency, the secretary of the Department of Health and Human Resources, or his or her designee, and six citizen members appointed by the Governor, one of whom shall represent children's interests and one of whom shall be a certified public accountant, to assume the duties of the office immediately upon appointment. A member of the Senate, as appointed by the Senate President and a member of the House of Delegates, as appointed by the Speaker of the House of Delegates, shall serve as *ex officio* members. All appointments shall be for terms of three years, except that an appointment to fill a vacancy shall be for the unexpired term only: *Provided*, That the citizen members appointed prior to July 1, 2022, shall serve for the

remainder of his or her term of appointment and be deemed a member of the advisory board. Three of the citizen members shall have at least a bachelor's degree and experience in the administration or design of public or private employee or group benefit programs and the children's representative shall have experience that demonstrates knowledge in the health, educational, and social needs of children. No more than three citizen members may be members of the same political party and no board member may represent or have a pecuniary interest in an entity reasonably expected to compete for contracts under this article. Members of the board shall assume the duties of the office immediately upon appointment. The director of the agency shall serve as the chairperson of the board. Vacancies in the board shall be filled in the same manner as the original appointment.

(b) The purpose of the advisory board is to present recommendations and alternatives for the design of the annual plans and to advise the director with respect to other actions necessary to be undertaken in furtherance of this article.

(c) The board shall meet by the call of the director.

(d) Each member of the advisory board shall receive reimbursement for reasonable and necessary travel expenses for each day actually served in attendance at meetings of the board in accordance with the state's travel rules. Requisitions for the expenses shall be accompanied by an itemized statement, which shall be filed with the auditor and preserved as a public record.

§5-16B-5. Director of the Children's Health Insurance Program; qualifications; powers and duties.

(a) The commissioner shall appoint an individual in the classified service as a deputy commissioner to serve as the director who shall be responsible for the implementation, administration, and management of the Children's Health Insurance Program created under this article. The director shall have at least a bachelor's degree and a minimum of three years' experience in health insurance administration.

(b) The director shall employ any administrative, technical, and clerical employees that are required for the proper administration of the program and for the work of the board.

(c) The director is responsible for the administration and management of the program and may make all rules necessary to effectuate the provisions of this article. Nothing in this article may be construed as limiting the director's otherwise lawful authority to manage the program on a day-to-day basis.

(d) The director may execute any contracts that are necessary to effectuate the provisions of this article. The provisions of §5A-3-1 *et seq.* of this code, relating to the division of purchasing of the department of finance and administration, may not apply to any contracts for any health insurance coverage, health services, or professional services authorized to be executed under the provisions of this article: *Provided*, That before entering into any contract, the director shall invite competitive bids from all qualified entities and shall deal directly with those entities in presenting specifications and receiving quotations for bid purposes. The director shall award those contracts on a competitive basis taking into account the experience of the offering agency, corporation, insurance company, or service organization. Before any proposal to provide benefits or coverage under the plan is selected, the offering agency, corporation, insurance company, or service organization shall provide assurances of utilization of essential community health service providers to the greatest extent practicable. In evaluating these factors, the director may employ the services of independent, professional consultants. The director shall then award the contracts on a competitive basis.

(e) The director shall issue requests for proposals on a regional or statewide basis from essential community health service providers for defined portions of services under the children's health insurance plan and shall, to the greatest extent practicable, either contract directly with, or require participating providers to contract with, essential community health service providers to provide the services under the plan.

(f) The director may require reinsurance of primary contracts, as contemplated in the provisions of §33-4-15 and §33-4-15a of this code.

§5-16B-6. Financial plans requirements.

(a) *Benefit plan design.* — All financial plans required by this section shall establish: (1) the design of a benefit plan or plans; (2) the maximum levels of reimbursement to categories of health care providers; (3) any cost containment measures for implementation during the applicable fiscal year; and (4) the types and levels of cost to families of covered children. To the extent compatible with simplicity of administration, fiscal stability, and other goals of the program established in this article, the financial plans may provide for different levels of costs based on ability to pay.

(b) *Annual plans.* — The director shall review implementation of the current financial plan in light of actual experience and shall prepare an annual financial plan for each ensuing fiscal year. The director shall solicit comments in writing from interested and affected persons. The agency shall submit its final, approved financial plan, subject to the actuarial requirements of this article, to the Legislature no later than September 1, preceding the fiscal year. The financial plan for a fiscal year becomes effective and shall be implemented by the director on July 1, of that fiscal year. Annual plans developed pursuant to this subsection are subject to the provisions of subsection (a) of this section and the following guidelines:

(1) The aggregate actuarial value of the plan established as the benchmark plan should be considered as a targeted maximum or limitation in developing the benefits package;

(2) All estimated program and administrative costs, including incurred but not reported claims, may not exceed 90 percent of the funding available to the program for the applicable fiscal year; and

(3) The state's interest in achieving health care services for all its children at less than 200 percent of the federal poverty guideline

shall take precedence over enhancing the benefits available under this program.

(c) The provisions of §29A-1-1 *et seq.* of this code do not apply to the preparation, approval and implementation of the financial plans required by this section.

(d) The director shall review implementation of the current financial plan each quarter and, using actuarial data, shall make those modifications to the plan that are necessary to ensure its fiscal stability and effectiveness of service. The director may not increase the types and levels of cost to families of covered children during the quarterly review except in the event of a true emergency. The agency may not expand the population of children to whom the program is made available except in its annual plan: *Provided*, That upon the effective date of this article, the director may expand coverage to any child eligible under the provisions of Title XXI of the Social Security Act of 1997: *Provided, however*, That the agency shall implement cost-sharing provisions for children who may qualify for the expanded coverage and whose family income exceeds 150 percent of the federal poverty guideline. The cost-sharing provisions may be imposed through any one or a combination of the following: enrollment fees, premiums, copayments, and deductibles.

(e) The agency may develop and implement programs that provide for family coverage or employer subsidies, or both, within the limits authorized by the provisions of Title XXI of the Social Security Act of 1997 or the federal regulations promulgated thereunder: *Provided*, That any family health insurance coverage offered by or through the program shall be structured so that the agency assumes no financial risk.

§5-16B-6a. Required coverage for patient cost of clinical trials and autism spectrum disorder treatment.

Health insurance provided by the program, including coverage provided through a contract with a managed care corporation, shall include coverage of: (i) The patient cost of clinical trials, to the same extent as such coverage is mandated for the public employees

insurance program by §5-16-7d and §5-16-7e of this code; and (ii) the diagnosis, evaluation and treatment of autism spectrum disorders for individuals ages 18 months to 18 years, to the same extent as such coverage is mandated for the public employees insurance program by §5-16-7(a)(8) of this code.

§5-16B-6b. Definitions.

[Repealed.]

§5-16B-6c. Modified benefit plan for children of families of low income between two hundred and three hundred percent of the poverty level.

[Repealed.]

§5-16B-6d. Modified benefit plan implementation.

(a) Upon approval by the Centers for Medicare and Medicaid Services, the agency shall implement a benefit plan for uninsured children of families with income between 200 and 300 percent of the federal poverty level.

(b) The benefit plans offered pursuant to this section shall include services determined to be appropriate for children but may vary from those currently offered by the agency.

(c) The agency shall structure the benefit plans for this expansion to include premiums, coinsurance or copays, and deductibles. The agency shall develop the cost-sharing features in such a manner as to keep the program fiscally stable without creating a barrier to enrollment. The features may include different cost-sharing features within this group based upon the percentage of the federal poverty level.

All provisions of §5-16B-1 *et seq.* of this code are applicable to this expansion unless expressly addressed in §5-16B-6d of this code.

(d) Nothing in §5-16B-6d of this code may be construed to require any appropriation of state general revenue funds for the payment of any benefit provided pursuant to this section, except

for the state appropriation used to match the federal financial participation funds. In the event that federal funds are no longer authorized for participation by individuals eligible at income levels above 200 percent, the director shall take immediate steps to terminate the expansion provided for in this section and notify all enrollees of the termination. If federal appropriations decrease for the programs created pursuant to Title XXI of the Social Security Act of 1997, the director shall make those decreases in this expansion program before making changes to the programs created for those children whose family income is less than 200 percent of the federal poverty level.

§5-16B-6e. Coverage for treatment of autism spectrum disorders.

[Repealed.]

§5-16B-8. Termination and reauthorization.

The program established in this article abrogates and has no further force and effect, without further action by the Legislature, upon the occurrence of any of the following:

(a) The date of entry of a final judgment or order by a court of competent jurisdiction which disallows the program;

(b) The effective date of any reduction in annual federal funding levels below the amounts allocated or projected, or both, in Title XXI of the Social Security Act of 1997;

(c) The effective date of any federal rule or regulation negating the purposes or effect of this article; or

(d) For purposes of subsections (b) and (c) of this section, if a later effective date for reduction or negation is specified, that date shall control.

§5-16B-9. Public-private partnerships.

The director may work in conjunction with a nonprofit corporation organized pursuant to the corporate laws of the state, structured to permit qualification pursuant to section 501(c) of the Internal Revenue Code for purposes of assisting the children's

health program and funded from sources other than the state or federal government.

§5-16B-10. Assignment of rights; right of subrogation by children's health insurance agency to the rights of recipients of medical assistance; rules as to effect of subrogation.

(a) *Definitions.* — As used in this section, unless the context otherwise requires:

“Bureau” means the Bureau for Medical Services.

“Department” means the West Virginia Department of Health and Human Resources, or its contracted designee.

“Recipient” means a person who applies for and receives assistance under the Children's Health Insurance Program.

“Secretary” means the Secretary of the Department of Health and Human Resources.

“Third-party” means an individual or entity that is alleged to be liable to pay all or part of the costs of a recipient's medical treatment and medical-related services for personal injury, disease, illness, or disability, as well as any entity including, but not limited to, a business organization, health service organization, insurer, or public or private agency acting by or on behalf of the allegedly liable third-party.

(b) *Assignment of rights.* —

(1) Submission of an application to the children's health insurance agency for medical assistance is, as a matter of law, an assignment of the right of the applicant or his or her legal representative, to recover from third parties past medical expenses paid for by the children's health insurance program. This assignment of rights does not extend to Medicare benefits. At the time the application is made, the children's health insurance agency shall include a statement along with the application that explains

that the applicant has assigned all of his or her rights as provided in this section and the legal implications of making this assignment.

(2) This section does not prevent the recipient or his or her legal representative from maintaining an action for injuries or damages sustained by the recipient against any third party and from including, as part of the compensatory damages sought to be recovered, the amount or amounts of his or her medical expenses.

(3) The department shall be legally subrogated to the rights of the recipient against the third party.

(4) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.

(5) A recipient is considered to have authorized all third parties to release to the department information needed by the department to secure or enforce its rights as assignee under this article.

(c) Notice requirement for claims and civil actions. —

(1) A recipient's legal representative shall provide notice to the department within 60 days of asserting a claim against a third party. If the claim is asserted in a formal civil action, the recipient's legal representative shall notify the department within 60 days of service of the complaint and summons upon the third party by causing a copy of the summons and a copy of the complaint to be served on the department as though it were named a party defendant.

(2) If the recipient has no legal representative and the third party knows or reasonably should know that a recipient has no representation then the third party shall provide notice to the department within 60 days of receipt of a claim or within 30 days of receipt of information or documentation reflecting the recipient is receiving children's health insurance program benefits, whichever is later in time.

(3) In any civil action implicated by this section, the department may file a notice of appearance and shall thereafter

have the right to file and receive pleadings, intervene, and take other action permitted by law.

(4) The department shall provide the recipient and the third party, if the recipient is without legal representation, notice of the amount of the purported subrogation lien within 30 days of receipt of notice of the claim. The department shall provide related supplements in a timely manner, but no later than 15 days after receipt of a request for same.

(d) Notice of settlement requirement. —

(1) A recipient or his or her representative shall notify the department of a settlement with a third party and retain in escrow an amount equal to the amount of the subrogation lien asserted by the department. The notification shall include the amount of the settlement being allocated for past medical expenses paid for by the Medicaid program. Within 30 days of the receipt of any such notice, the department shall notify the recipient of its consent or rejection of the proposed allocation. If the department consents, the recipient or his or her legal representation shall issue payment out of the settlement proceeds in a manner directed by the secretary or his or her designee within 30 days of consent to the proposed allocation.

(2) If the total amount of the settlement is less than the department's subrogation lien, then the settling parties shall obtain the department's consent to the settlement before finalizing the settlement. The department shall advise the parties within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(3) If the department rejects the proposed allocation, the department shall seek a judicial determination within 30 days and provide a detailed itemization of all past medical expenses paid by the department on behalf of the recipient for which the department seeks reimbursement out of the settlement proceeds.

(A) If judicial determination becomes necessary, the trial court is required to hold an evidentiary hearing. The recipient and the department shall be provided ample notice of the same and be given just opportunity to present the necessary evidence, including fact witness and expert witness testimony, to establish the amount to which the department is entitled to be reimbursed pursuant to this section.

(B) The department has the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties was improper. For purposes of appeal, the trial court's decision should be set forth in a detailed order containing the requisite findings of fact and conclusions of law to support its rulings.

(4) Any settlement by a recipient with one or more third parties which would otherwise fully resolve the recipient's claim for an amount collectively not to exceed \$20,000 shall be exempt from the provisions of this section.

(5) Nothing herein prevents a recipient from seeking judicial intervention to resolve any dispute as to allocation prior to effectuating a settlement with a third party.

(e) *Department failure to respond to notice of settlement.* — If the department fails to appropriately respond to a notification of settlement, the amount to which the department is entitled to be paid from the settlement shall be limited to the amount of the settlement the recipient has allocated toward past medical expenses.

(f) *Penalty for failure to notify the department.* — A legal representative acting on behalf of a recipient or third party that fails to comply with the provisions of this section is liable to the department for all reimbursement amounts the department would otherwise have been entitled to collect pursuant to this section but for the failure to comply. Under no circumstances may a *pro se* recipient be penalized for failing to comply with the provisions of this section.

(g) *Miscellaneous provisions relating to trial.* —

(1) Where an action implicated by this section is tried by a jury, the jury may not be informed at any time as to the subrogation lien of the department.

(2) Where an action implicated by this section is tried by judge or jury, the trial judge shall, or in the instance of a jury trial, require that the jury precisely identify the amount of the verdict awarded that represents past medical expenses.

(3) Upon the entry of judgment on the verdict, the court shall direct that upon satisfaction of the judgment any damages awarded for past medical expenses be withheld and paid directly to the department, not to exceed the amount of past medical expenses paid by the department on behalf of the recipient.

(h) *Attorneys' fees.* — Irrespective of whether an action or claim is terminated by judgment or settlement without trial, from the amount required to be paid to the department there shall be deducted the reasonable costs and attorneys' fees attributable to the amount in accordance with and in proportion to the fee arrangement made between the recipient and his or her attorney of record so that the department shall bear the pro-rata share of the reasonable costs and attorneys' fees: *Provided*, That if there is no recovery, the department may under no circumstances be liable for any costs or attorneys' fees expended in the matter.

(i) *Class actions and multiple plaintiff actions not authorized.* — Nothing in this article authorizes the department to institute a class action or multiple plaintiff action against any manufacturer, distributor, or vendor of any product to recover medical care expenditures paid for by the Medicaid program.

(j) *Secretary's authority.* — The secretary or his or her designee may compromise, settle, and execute a release of any claim relating to the department's right of subrogation, in whole or in part.

