

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE
REGULAR SESSION, 2017
FORTY-NINTH DAY

Charleston, West Virginia, Tuesday, March 28, 2017

The Senate met at 11 a.m.

(Senator Carmichael, Mr. President, in the Chair.)

Prayer was offered by the Honorable Charles S. Trump IV, a senator from the fifteenth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael T. Azinger, a senator from the third district.

Pending the reading of the Journal of Monday, March 27, 2017,

At the request of Senator Clements, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2017, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2004—A Bill to repeal §5A-3-49 of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-1-2 of said code; to amend and reenact §5A-3-52 of said code; to amend said code by adding thereto a new article, designated §5A-12-1, §5A-12-2, §5A-12-3, §5A-12-4, §5A-12-5, §5A-12-6, §5A-12-7, §5A-12-8, §5A-12-9, §5A-12-10 and §5A-12-11; to amend and reenact §17A-3-23 of said code; to amend said code by adding thereto three new sections, designated §17A-3-25, §17A-3-26 and §17A-3-27; and to amend and reenact §29B-1-4 of said code, all relating to creating and maintaining a centralized state vehicle inventory system; establishing the Fleet Management Office within the Department of Administration; creating the State Vehicle Title, Registration and Relicensing Project of 2017; requiring reporting by spending units utilizing state vehicles; providing the new article's scope and establishing exemptions; providing for new officers and establishing their powers, duties and responsibilities; defining terms; continuing the Fleet Management Office Fund; requiring the Fleet Management Office to coordinate with other agencies; providing for annual reports of vehicle use by spending units; requiring annual reports to the Governor and the Joint Committee on Government and

Finance; establishing operator requirements and training; providing for enforcement and penalties; providing for notice; requiring legislative compliance audits; providing a deadline date for the expiration of current state vehicle license plates; creating new state vehicle license plates; providing for notice to spending units regarding the expiration of title, registrations and license plates; requiring a standardized naming convention for the title, registration and licensing of all state vehicles; requiring annual renewal of the state vehicle registrations; providing exemptions from reporting for certain undercover vehicles; and authorizing rule making and emergency rule making.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. House Bill 2548—A Bill to amend and reenact §11-16-18 of the Code of West Virginia, 1931, as amended, relating to the use of outside speakers by persons licensed to manufacture, sale, possess for sale, transport or distribute nonintoxicating beer.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2763—A Bill to amend and reenact (18B-19-13 of the Code of West Virginia, 1931, as amended, relating to the approval by the Council for Community and Technical College Education of acquisitions, bequests, donations, construction of new buildings, repairs, renovations or lease payments over the lifetime of the lease which exceed \$1 million, if made or accepted by the institution's research corporation or an affiliated foundation.

Referred to the Committee on Education.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2799—A Bill to amend and reenact §21-6-3 of the Code of West Virginia, 1931, as amended, all relating generally to the issuance of a minor's work permit; prohibiting the superintendent of schools from requiring a physical examination to be included with the application for a minor's work permit unless required by the prospective employer; and removing the requirement that the superintendent of schools certify that the minor personally appeared before him or her prior to the issuance, modification, or rejection of a work permit.

Referred to the Committee on Education.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2850—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-31, relating to product liability actions; limiting product liability action against seller other than the manufacturer of the product except in certain circumstances; defining terms; and providing an effective date.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. House Bill 2869—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-5-15b, relating to providing that certain state employees may be granted a leave of absence with pay while providing assistance as an essential member of an emergency aid provider during a declared state of emergency.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2936—A Bill to repeal §5A-3-10e of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-3-11 of said code, all relating to requiring competitive bidding for all state purchases of commodities, printing and services of \$25,000 or less in cost; repealing the provision for master contracts and approved vendors; requiring purchases to be made at the lowest retail cost for the desired level of quality of the commodities, printing and services; eliminating requirements for written bids for purchases of \$2,500 or less; requiring purchases to be made at the lowest retail price available for the commodities, printing and services at the level of quality sought by the spending unit.

Referred to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2939—A Bill to amend and reenact §15-2-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §15-2E-3 and §15-2E-5 of said code, all relating to the sale of items in the State Police Academy post exchange to the public.

Referred to the Committee on Government Organization; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2966—A Bill to amend and reenact §15-9-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §15-9C-1, §15-9C-2, §15-9C-3, §15-9C-4 and §15-9C-5, all relating to creating the West Virginia Sentencing Commission; establishing the commission as a standing subcommittee of the Governor's committee on crime, delinquency and correction; authorizing commission to seek and utilize funding and grants; setting forth legislative findings; establishing composition and membership of commission; setting forth the powers and duties of the commission; setting forth objectives for the commission; directing commission provide annual assessment and recommendations to the Legislature; and authorizing commission to make additional recommendations to the Legislature.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 3028—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-1-20, relating to the Office of Drug Control Policy; creating the Office of Drug Control Policy; requiring the office to develop a strategic plan; requiring the office to coordinate with other entities; coordinating funding; requiring data sharing; providing emergency rulemaking authority; providing rulemaking authority; creating a plan to add treatment beds; creating a special revenue account; and required reporting.

Referred to the Committee on Health and Human Resources; and then to the Committee on Government Organization.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 3096—A Bill to repeal §8-16-19 of the Code of West Virginia, 1931, as amended; to amend and reenact §16-13A-8 and §16-13A-9 of said code; to amend and reenact §24-1-1b of said code; to amend and reenact §24-2-1, §24-2-3, §24-2-4b and §24-2-11 of said code, all relating to operation and regulation of certain water and sewer utilities owned or operated by political subdivisions of the state by deleting reference to appeals to the Public Service Commission from actions of municipal boards that are not subject to the jurisdiction of the Public Service Commission; relating to the authority of county commissions to modify proposed rates for certain water and sewer utilities and providing for complaints to be filed with the circuit courts pertaining to rates and charges enacted as proposed or as modified or rejected by the county commission and requiring the circuit court to act within 120 days of receipt of the complaint; eliminating the Public Service Commission's authority regarding stormwater utilities; providing time limits for the filing of requests for investigation pertaining to political subdivisions of this state providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more and specifying that the Commission must resolve such investigation requests within 120 days; clarifying the authority of the Public Service Commission to resolve complaints of customers of water and sewer utilities operated by a political subdivision of the state having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more; clarifying the jurisdiction of the Public Service Commission relating to rates for municipal water and/or sewer utilities having less than four thousand five hundred customers or annual combined gross revenues of less than \$3 million; and revising the notice and procedure provisions for construction projects for political subdivisions of this state providing separate or combined water and/or sewer services and having at least four thousand five hundred customers and annual combined gross revenues of \$3 million or more.

Referred to the Committee on Government Organization.

The Senate proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill 562, Relating to civil actions for damages brought against county commissions and municipalities.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 27, 2017;

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 562) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Senate Joint Resolution 4, County Economic Development Amendment.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 24, 2017;

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the resolution (S. J. R. 4) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Ferns, and by unanimous consent, the resolution was advanced to third reading with the right for amendments to be considered on that reading.

The Senate proceeded to the sixth order of business.

Senators Beach, Prezioso, Boso, Stollings, Unger, Rucker, Romano, Plymale and Cline offered the following resolution:

Senate Resolution 55—Designating March 28, 2017, as West Virginia University and West Virginia University Extension Service Day.

Whereas, West Virginia University is the state's first and largest land-grant university, which has been dedicated to serving the citizens of West Virginia for 150 years; and

Whereas, The West Virginia University Extension Service, the primary outreach arm of West Virginia University, is the "front porch" of WVU with an office in each of the state's 55 counties; and

Whereas, The local extension agent experts deliver trusted traditions and progressive solutions to the citizens of West Virginia in the areas of youth development, agriculture, community development and families and health; and

Whereas, West Virginia University Extension Service's 4-H Youth Development Program, the state's largest youth organization, has given more than 75,000 youths the opportunity to expand their horizons through hands-on educational activities and allowed them to acquire new skills through innovative technology; and

Whereas, The Agriculture and Natural Resource unit of West Virginia University Extension Service has assisted small farms and farmers in becoming profitable, sustainable operations; and

Whereas, West Virginia University Extension Service's Family and Community Development efforts have forged strong communities and a better life for all West Virginians; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 28, 2017, as West Virginia University and West Virginia University Extension Service Day; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the President of the West Virginia University, E. Gordon Gee, and to the West Virginia University Extension Service.

At the request of Senator Prezioso, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Prezioso regarding the adoption of Senate Resolution 55 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Beach, Prezioso, Boso, Stollings, Unger, Romano, Plymale and Cline offered the following resolution:

Senate Resolution 56—Congratulating the West Virginia University rifle team for winning the 2017 national championship.

Whereas, West Virginia University's rifle team won their 19th NCAA Championship on March 11, 2017; and

Whereas, This is the rifle team's 5th straight national championship; and

Whereas, The rifle team swept both the air rifle and smallbore titles; and

Whereas, Freshmen team members Morgan Phillips and Milica Babic swept the individual titles; and

Whereas, The rifle team won their 8th straight Great American Rifle Conference Championship on February 25, 2017; and

Whereas, The rifle team finished its season with a perfect 12-0 record, for its 2nd straight undefeated season; and

Whereas, Team member Ginny Thrasher won the first gold medal of the 2016 Rio Summer Olympic Games; and

Whereas, The West Virginia University rifle team is shining example to the people of West Virginia of what can be accomplished with hard work, dedication and commitment; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the West Virginia University rifle team for winning the 2017 national championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia University rifle team.

At the request of Senator Beach, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Beach regarding the adoption of Senate Resolution 56 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Maroney, Stollings, Unger, Plymale and Beach offered the following resolution:

Senate Resolution 57—Recognizing the 200th anniversary of the Sistersville Ferry.

Whereas, Known as the oldest ferry in West Virginia, the Sistersville Ferry has been in continuous operation since 1817; and

Whereas, The Sistersville Ferry is one of four ferries left on the Ohio River, and the only one along the 277-mile stretch of the river on the West Virginia border; and

Whereas, The year 2017 marks the 200th anniversary of the Sistersville Ferry and its continued operation is important to Tyler County's economic and community development as a vital transportation link and tourist attraction; and

Whereas, The Sistersville Ferry is one of Tyler County's and West Virginia's most storied treasures and it is appropriate that we pay tribute to its legacy; and

Resolved by the Senate:

That the Senate hereby recognizes the 200th anniversary of the Sistersville Ferry; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of the Sistersville Ferry.

At the request of Senator Maroney, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Maroney and Clements regarding the adoption of Senate Resolution 57 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Boley, Azinger, Beach, Stollings, Unger and Plymale offered the following resolution:

Senate Resolution 58—Recognizing the centennial year of the main structure at Parkersburg High School.

Whereas, Parkersburg High School is the second-largest populated school in the state of West Virginia and has the largest high school campus in West Virginia; and

Whereas, Founded in 1867, Parkersburg High School was one of the first high schools in West Virginia; and

Whereas, The current building housing Parkersburg High School has a Tudor style architecture with three stories and was built in 1917, making it one of the oldest school buildings in West Virginia; and

Whereas, The year 2017 marks the centennial of the main structure housing Parkersburg High School; and

Whereas, Located in the Parkersburg High School-Washington Avenue Historic District and listed on the National Register of Historical Places, we hereby pay tribute to the legacy of the main structure housing Parkersburg High School; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the centennial year of the main structure at Parkersburg High School; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials from Parkersburg High School.

At the request of Senator Boley, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with and adopted.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senators Boley, Azinger and Beach regarding the adoption of Senate Resolution 58 were ordered printed in the Appendix to the Journal.

On motion of Senator Ferns, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Petitions

Senator Sypolt presented a petition from Claude Swim and numerous West Virginia residents, supporting the Convention of States Project.

Referred to the Committee on the Judiciary.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Com. Sub. for Senate Bill 60, Relating to eligibility and fraud requirements for public assistance.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

Senator Beach moved to table the bill.

The question being on the adoption of Senator Beach's aforesaid motion, and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

The nays were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—21.

Absent: Mullins—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Beach's aforesaid motion had not prevailed.

The question now being "Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 60 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—21.

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—12.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 60) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill 74, Allowing fire departments to charge fees for service calls.

Having been read a third time on Saturday, March 25, 2017, and now coming up in regular order, was reported by the Clerk.

At the request of Senator Boso, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motions of Senators Boso and Romano, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section three-d, line twenty-one, by striking out “\$2,000” and inserting in lieu thereof the words “\$500, or the maximum amount of insurance coverage allowed under any applicable insurance contract, whichever is greater,”.

The bill, as just amended, was again ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 74 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Miller, Palumbo, Plymale, Prezioso, Romano, Smith, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Maynard, Ojeda, Rucker, Stollings and Unger—5.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 74) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill 217, Relating to disclaimers of warranties regarding used manufactured homes.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 217) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 217) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Com. Sub. for Senate Bill 281, Increasing number of limited video lottery machines allowed at retail location.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for Senate Bill 376, Relating generally to Sex Offender Registration Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 376) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Senate Bill 401, Allowing county board of education base employment decisions on individual's qualifications.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Miller, Palumbo, Plymale, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—25.

The nays were: Beach, Facemire, Jeffries, Maynard, Ojeda, Prezioso, Romano and Unger—8.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 401) passed.

On motion of Senator Gaunch, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Senate Bill 401—A Bill to amend and reenact §18A-4-7a of the Code of West Virginia, 1931, as amended, relating to requiring a county board of education to base its decisions on reductions in force on qualifications as set forth in a county board policy; allowing rather than requiring a county board to give consideration to certain factors when adopting the policy that defines which positions are lateral positions; modifying provisions pertaining to requiring the county board to notify professional personnel on the preferred recall list; modifying provisions pertaining to requirement that county boards post notices of openings; modifying provisions applicable to reductions in classroom teaching positions in elementary schools; and removing the requirement that a county board compile, update annually and make available to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

Senator Ferns moved that Engrossed Senate Bill 401 be made effective July 1, 2017, and requested unanimous consent that the roll call used on the passage of the bill be used to make it so effective.

Which consent was not granted, Senator Beach objecting.

Thereafter, Senator Ferns moved that the bill take effect July 1, 2017.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Palumbo, Plymale, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

The nays were: Beach, Facemire, Jeffries, Maynard, Miller, Ojeda, Prezioso, Romano, Stollings, Unger and Woelfel—11.

Absent: Mullins—1.

So, less than two thirds of all the members elected to the Senate having voted in the affirmative, the President declared Senator Ferns' aforestated motion had not prevailed.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Senate Bill 416, Relating to Public-Private Transportation Facilities Act.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Senate Bill 417, Removing financial limitations on number of design-build projects undertaken by DOH.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Senate Bill 421, Increasing amount of authorized federal Grant Anticipation Notes for which DOH may apply.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Senate Bill 504, Defining "special aircraft property".

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Com. Sub. for Senate Bill 576, Providing exception to waste for certain oil and gas development.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, March 27, 2017, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Ferns, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar.

Eng. Senate Bill 578, Relating generally to copies of health care records furnished to patients.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 578) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Com. Sub. for Senate Bill 601, Relating to requirements for making consumer loans.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Ojeda—1.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 601) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Senate Bill 621, Providing certain rules inapplicable after county board of education notifies state board of possible closing or consolidations.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Palumbo, Plymale, Prezioso, Smith, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—24.

The nays were: Beach, Facemire, Jeffries, Maynard, Miller, Ojeda, Romano, Rucker and Stollings—9.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 621) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Palumbo, Plymale, Prezioso, Smith, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—24.

The nays were: Beach, Facemire, Jeffries, Maynard, Miller, Ojeda, Romano, Rucker and Stollings—9.

Absent: Mullins—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 621) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill 630, Establishing Accessibility and Equity in Public Education Enhancement Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 630) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 630) takes effect from passage.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for Senate Bill 634, Relating generally to certain agreements between DHHR and state's medical schools.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 634) passed.

On motion of Senator Takubo, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for Senate Bill 634—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-9a, relating generally to certain agreements between the Department of Health and Human Resources the two largest state universities and the School of Osteopathic Medicine; and exempting such agreements from the requirements of the State Purchasing Division.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Com. Sub. for Senate Bill 647, Relating generally to additional county excise taxes on real property transfer.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, March 27, 2017, for amendments to be received on third reading, was reported by the Clerk.

On motion of Senator Miller, the following amendment to the bill was reported by the Clerk:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

That §11-22-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 22. EXCISE TAX ON PRIVILEGE OF TRANSFERRING REAL PROPERTY.

§11-22-2. Rate of tax; when and by whom payable; additional county tax; additional county tax to fund local economic development.

(a)(1) Every person who delivers, accepts or presents for recording any document, or on whose behalf any document is delivered, accepted or presented for recording, is subject to pay for, and in respect to the transaction or any part thereof, a state excise tax upon the privilege of transferring title to real estate at the rate of \$1.10 for each \$500 value or fraction thereof as represented by the document as defined in section one of this article. The state tax is payable at the time of ~~delivery, acceptance or presenting for recording of the document~~ is delivered, accepted or presented for recording.

(2) In addition to the state excise tax described in this subsection, there is assessed a fee of \$20 upon the privilege of transferring real estate for consideration. The clerk of the county commission shall collect the additional \$20 fee before recording a transfer of title to real estate and shall deposit the moneys from the additional fees into the West Virginia Affordable Housing Trust Fund as provided in article eighteen-d, chapter thirty-one of this code. The moneys collected from this additional fee shall be segregated from other funds in the West Virginia Affordable Housing Trust Fund and shall be accounted for separately. ~~Not No~~ No more than ten percent of ~~these additional moneys~~ the fee may be expended by the West Virginia Affordable Housing Trust Fund to defray actual administrative and operating costs and expenses ~~actually incurred by the West Virginia Affordable Housing Trust Fund~~. The Housing Development Fund, as fiscal agent of the West Virginia Affordable Housing Trust Fund, shall publish on its website a monthly ~~on the Internet site~~ an accounting of all revenue deposited into the fund ~~during the that~~ month and a full disclosure of all expenditures from the fund, including the group receiving funds, ~~their~~ its location and any ~~contractor awarded the construction contract~~ contracts awarded. Additionally, the West Virginia Affordable Housing Trust Fund is to provide an annual report to the Joint Committee on Government and Finance before December 1, ~~2007, and of each year thereafter~~.

(b)(1) ~~Effective January 1, 1968, and thereafter, there is imposed an~~ An additional county excise tax is imposed for the privilege of transferring title to real estate at the rate of 55 cents for each \$500 value or fraction thereof as represented by ~~such~~ the document as defined in section one of this article, ~~which county tax shall be~~. It is payable at the time of delivery, acceptance or presenting for recording of such the document is delivered, accepted or presented for recording.: ~~Provided, That after July 1, 1989, the~~

(2) The county may increase ~~said~~ the excise tax to an amount equal to the state excise tax. The additional tax ~~hereby imposed~~ is declared to be a county tax and to be used for county purposes. Provided, however, That, except as otherwise authorized in subsection (c) of this section and article twelve, chapter eight-a of this code, only one such state tax and one such county tax shall be paid on any one document and ~~shall be~~ collected in the county where the document is first admitted to record. ~~and the~~ The tax shall be paid by the grantor ~~therein~~ unless the grantee accepts the document without ~~such~~ the tax having been paid, in which event ~~such~~ the tax shall be paid by the grantee. ~~Provided further, That on~~ On any transfer of real property from a trustee or a county clerk transferring real estate sold for taxes, ~~such~~ the tax shall be paid by the grantee. The county excise tax imposed ~~under~~ by this section may not be increased in any county unless the increase is approved by a majority vote of the members of the county commission ~~of such county~~. Any county commission intending to increase the excise tax ~~imposed in its county~~ shall publish a notice of its intention to increase ~~such~~ the tax not less than thirty days nor more than sixty days prior to the meeting at which ~~such~~ the increase will be considered. ~~such~~ The notice is to be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall ~~be~~ include the county in which ~~such~~ the county commission is located.

(c) In addition to the taxes imposed by this article and article twelve, chapter eight-a of this code, any county commission of a county with an economic development corporation or authority, including without limitation, a development authority established under article twelve, chapter seven of this code operating within the county that participates in the certified development community program pursuant to article two, chapter five-b of this code, may impose an additional county excise tax for the privilege of transferring title to real estate at a rate of no more than \$1.10 for each \$500 value or fraction thereof, as represented by any document as defined in section one of this article, payable at the time of delivery, acceptance or presentation for recording of the document. The additional tax imposed pursuant to this subdivision is to be used exclusively for the purposes of funding the operations, programs or activities of the local economic development corporation or authority.

Following discussion,

The question being on the adoption of Senator Miller's amendment to the bill, the same was put and prevailed.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 647 was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 647 pass?"

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Azinger, Hall, Karnes, Maynard and Takubo—5.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 647) passed.

On motion of Senator Miller, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for Senate Bill 647—A Bill to amend and reenact §11-22-2 of the Code of West Virginia, 1931, as amended, relating generally to additional county excise taxes on the privilege of transferring real property; authorizing an additional county excise tax in a county with an economic development corporation or authority under certain circumstances; setting forth the maximum amount of the additional excise tax; requiring that the additional tax be used exclusively for funding the operations, programs or activities of the local economic development corporation or authority; and making stylistic cleanup throughout the section to update certain archaic language.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Senate Bill 686, Exempting facilities governed by DHHR that provide direct patient care.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 686) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2001, Relating to ethics and transparency in government.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Monday, March 27, 2017, for amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

On page two, following the enacting section, by striking out the remainder of the bill and inserting in lieu thereof the following:

CHAPTER 6B. PUBLIC OFFICERS AND EMPLOYEES; ETHICS; CONFLICTS OF INTEREST; FINANCIAL DISCLOSURE.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.

§6B-2-1. West Virginia Ethics Commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

(a) The West Virginia Ethics Commission is continued. The members of the commission shall be appointed by the Governor with the advice and consent of the Senate.

(b) No person may be appointed to the commission or continue to serve as a member of the commission who:

(1) Holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions;

(2) Is a candidate for any political office;

(3) Is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the commission; or

(4) Holds any political party office or participates in a campaign relating to a referendum or other ballot issue: *Provided*, That a member may contribute to a political campaign.

(c) Commencing July 1, 2014, the Ethics Commission shall consist of the following nine members, appointed with staggered terms:

(1) One member who served as a member of the West Virginia Legislature;

(2) One member who served as an elected or appointed county official;

(3) One member who served as an elected or appointed municipal official;

(4) One member who served as an elected county school board member;

(5) One member from a rural area; and

(6) Four citizen members.

(d) Any Commission member in office on June 30, 2014, who meets one of the categories for membership set out in subsection (c) of this section, may be reappointed. No more than five members of the Commission shall be of the same political party and no more than ~~four~~ two members shall be from the same ~~congressional~~ state senatorial district.

(e) After the initial staggered terms, the term of office for a Commission member is five years. No member shall serve more than two consecutive full or partial terms. No person may be reappointed to the commission until at least two years have elapsed after the completion of the second consecutive term. A member may continue to serve until a successor has been appointed and qualified.

(f) All appointments shall be made by the Governor in a timely manner so as not to create a vacancy for longer than sixty days.

(g) Each member must be a resident of this state during the appointment term.

(h) Five members of the commission constitutes a quorum.

(i) Each member of the commission shall take and subscribe to the oath or affirmation required pursuant to section five, article IV of the Constitution of West Virginia.

(j) A member may be removed by the Governor for substantial neglect of duty, gross misconduct in office or a violation of this chapter, after written notice and opportunity for reply.

(k) The commission, as appointed on July 1, 2014, shall meet before August 1, 2014, at a time and place to be determined by the Governor, who shall designate a member to preside at

that meeting until a chairperson is elected. At the first meeting, the commission shall elect a chairperson and any other officers as are necessary. The commission shall within ninety days after the first meeting adopt rules for its procedures. The commission may use the rules in place on July 1, 2014, until those rules are amended or revoked.

(l) Members of the commission 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 portion thereof engaged in the discharge of official duties: *Provided*, That to be eligible for compensation and expense reimbursement, the member must participate in a meeting or adjudicatory session: *Provided, however*, That the member is not eligible for expense reimbursement if he or she does not attend a meeting or adjudicatory session in person.

(m) The commission shall appoint an executive director to assist the commission in carrying out its functions in accordance with commission rules and with applicable law. The executive director shall be paid a salary fixed by the commission or as otherwise provided by law. The commission shall appoint and discharge counsel and employees and shall fix the compensation of employees and prescribe their duties. Counsel to the commission shall advise the commission on all legal matters and on the instruction of the commission may commence appropriate civil actions: *Provided*, That no counsel shall both advise the commission and act in a representative capacity in any proceeding.

(n) The commission may delegate authority to the chairperson or the executive director to act in the name of the commission between meetings of the commission, except that the commission shall not delegate the power to hold hearings and determine violations to the chairperson or the executive director.

(o) The principal office of the commission shall be in the seat of government, but it or its designated subcommittees may meet and exercise its power at any other place in the state. Meetings of the commission shall be public unless:

(1) They are required to be private by the provisions of this chapter relating to confidentiality;
or

(2) They involve discussions of commission personnel, planned or ongoing litigation, and planned or ongoing investigations.

(p) Meetings of the commission shall be upon the call of the chairperson and may be conducted by telephonic or other electronic conferencing means: *Provided*, That ~~telephone or other electronic conferencing, and voting are not permitted~~ when the commission is acting as a hearing board under this article, or when the Probable Cause Review Board meets to receive an oral response as authorized by this article, members may not participate or vote by telephonic means: *Provided, however*, That participation and voting may be permitted if the member attends and participates via video conferencing that allows the witness and the member to observe and communicate with one another. Members shall be given notice of meetings held by telephone or other electronic conferencing in the same manner as meetings at which the members are required to attend in person. Telephone or other electronic conferences shall be electronically recorded and the recordings shall be retained by the commission in accordance with its record retention policy.

§6B-2-2. Same – General powers and duties.

(a) The commission shall propose rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code, to carry out the purposes of this article.

(b) The commission may initiate or receive complaints and make investigations, as provided in section four of this article, and upon complaint by an individual of an alleged violation of this ~~article~~ chapter by a public official or public employee, refer the complaint to the Review Board as provided in section two-a of this article. Any person charged with a violation of this chapter is entitled to the administrative hearing process contained in section four of this article.

(c) The commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the commission's duties or exercise of its powers, including its duties and powers of investigation.

(d) The commission shall, in addition to its other duties:

(1) Prescribe forms for reports, statements, notices and other documents required by law;

(2) Prepare and publish manuals and guides explaining the duties of individuals covered by this law; and giving instructions and public information materials to facilitate compliance with, and enforcement of, this act; and

(3) Provide assistance to agencies, officials and employees in administering the provisions of this act.

(e) The commission may:

(1) Prepare reports and studies to advance the purpose of the law;

(2) Contract for any services which cannot satisfactorily be performed by its employees;

(3) Require the Attorney General to provide legal advice without charge to the commission;

(4) Employ additional legal counsel;

(5) Request appropriate agencies of state to provide any professional assistance the commission may require in the discharge of its duties: *Provided*, That the commission shall reimburse any agency other than the Attorney General the cost of providing assistance; and

(6) Share otherwise confidential documents, materials or information with appropriate agencies of state government, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or information.

§6B-2-2a. Probable Cause Review Board.

(a) There is hereby established a Probable Cause Review Board that shall conduct hearings investigations to determine whether there is probable cause to believe that a violation of the West Virginia Governmental Ethics Act has occurred. ~~and, if so, to refer that investigation to the Ethics Commission~~ The Review Board is an autonomous board, not under the direction or control of the Ethics Commission. The Review Board will review complaints received or initiated by the Ethics

Commission to make a threshold determination of whether probable cause exists to believe that a violation of the West Virginia Governmental Ethics Act has occurred.

(b) The Governor, by and with the advice and consent of the Senate, shall appoint three persons as members of the Review Board, each of whom shall be a resident and citizen of the state. Each member of the Review Board shall hold office until his or her successor has been appointed and qualified. At least one member of the board must be an attorney licensed by the State of West Virginia and no more than two members can belong to the same political party. The members of the Review Board shall be appointed for overlapping terms of two years, except that the original appointments shall be for terms of one, two and three years, respectively. Any member whose term expires may be reappointed by the Governor. In the event a Review Board member is unable to complete his or her term, the Governor shall appoint a person with similar qualification to complete that term. Each Review Board member shall receive the same compensation and expense reimbursement as provided to Ethics Commission members pursuant to section one of this article. These and all other costs incurred by the Review Board shall be paid from the budget of the Ethics Commission.

(c) No person may be appointed to the Review Board or continue to serve as a member of the Review Board who holds elected or appointed office under the government of the United States, the State of West Virginia or any of its political subdivisions, or who is a candidate for any of such offices, or who is a registered lobbyist, or who is otherwise subject to the provisions of this chapter other than by reason of his or her appointment to or service on the Review Board. A Review Board member may contribute to a political campaign, but no member shall hold any political party office or participate in a campaign relating to a referendum or other ballot issue.

(d) Members of the Review Board may recuse themselves from a particular case upon their own motion, with the approval of the Review Board, and shall recuse themselves, for good cause shown, upon motion of a party. The remaining members of the Review Board may, by majority vote, select a temporary member to replace a recused member: *Provided*, That the temporary member selected to replace a recused member shall be a person who meets all requirements for appointment provided by subsection (c), section two-a of this article, and whose political affiliation is the same as the recused member.

(e) The Ethics Commission shall propose, for approval by the Review Board, any procedural and interpretative rules governing the operation of the Review Board. The commission shall propose these rules pursuant to article three, chapter twenty-nine-a of the code.

(f) The Ethics Commission shall provide staffing and a location for the Review Board to conduct hearings. The Ethics Commission is authorized to employ and assign the necessary professional and clerical staff to assist the Review Board in the performance of its duties and commission staff shall, as the commission deems appropriate, also serve as staff to the Review Board. All investigations and proceedings of the Review Board are deemed confidential as provided in section four of this article and members of the Review Board are bound to the same confidentiality requirements applicable to the Ethics Commission pursuant to this article.

(g) The Review Board may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of books, papers, records or other evidence needed for the performance of the Review Board's duties.

(h) Upon decision by the Review Board that probable cause exists to believe that a violation of this chapter has occurred, commission staff shall send notice to the commission members of the Review Board's finding. After an ethics complaint has been submitted to the Review Board in accordance with section four of this article, the commission may take no further action until it receives the Review Board's probable cause finding.

§6B-2-3a. Complaints.

(a) The commission may commence an investigation, pursuant to section four of this article, on the filing of a complaint duly verified by oath or affirmation, by any person.

(b) The commission may order the executive director to prepare a complaint, upon a majority affirmative vote of its members, if it receives or discovers credible information which, if true, would merit an inquiry into whether a violation of this ~~article~~ chapter has occurred.

(c) (1) No complaint may be accepted or initiated by the commission against a public official or public employee during the sixty days before a primary or general election at which the public official or public employees is a candidate for elective office.

(2) If a complaint is pending against a public official or public employee who is also a candidate for public office, then the commission shall stay the processing of the complaint for the sixty-day time period preceding the primary election or general election, or both, unless the candidate waives the stay in writing. If the commission receives a written waiver of the stay at least sixty days prior to the election, and if the Review Board has not yet ruled whether probable cause exists to believe there has been a violation of the Ethics Act, then the Review Board will process the complaint and make a probable cause determination at least thirty days prior to the election: *Provided, That*, the stay provisions of this subdivision do not apply to complaints which have already been adjudicated by the commission and are pending on appeal.

(3) For purposes of this subsection, any provisions of this chapter setting time periods for initiating a complaint or for performing any other action are considered tolled until after the election at which the public official or public employee candidate stands for elective office.

§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.

(a) Upon the filing of a complaint, the executive director of the commission or his or her designee shall, within three working days, acknowledge the receipt of the complaint by first-class mail unless the complaint was initiated by the commission or the complainant or his or her representative personally filed the complaint with the commission and was given a receipt or other acknowledgment evidencing the filing of the complaint. No political party or officer, employee or agent of a political party acting in his or her official capacity may file a complaint for a violation of this chapter with the commission. Nothing in this section prohibits a private citizen, acting in that capacity, from filing a verified complaint with the commission under this section. Within fourteen days after the receipt of a complaint, the executive director shall refer the complaint to the Review Board created pursuant to section two-a of this article.

(b) Upon the referral of a complaint by the executive director pursuant to subsection (a) of this section, the Review Board shall determine whether the allegations of the complaint, if taken as true, would constitute a violation of law upon which the commission could properly act under the provisions of this chapter. If the complaint is determined by a majority vote of the Review Board to be insufficient in this regard, the Review Board shall dismiss the complaint.

(c) Upon a finding by the Review Board that the complaint is sufficient, the executive director shall give notice of a pending investigation to the complainant, if any, and to the respondent. The notice of investigation shall be mailed to the parties and, in the case of the respondent, shall be mailed as certified mail, return receipt requested, marked "Addressee only, personal and confidential". The notice shall describe the conduct of the respondent which is alleged to violate the law and a copy of the complaint shall be appended to the notice mailed to the respondent. Each notice of investigation shall inform the respondent that the purpose of the investigation is to determine whether probable cause exists to believe that a violation of law has occurred which may subject the respondent to administrative sanctions by the commission, criminal prosecution by the state, or civil liability. The notice shall further inform the respondent that he or she has a right to appear before the Review Board and that he or she may respond in writing to the commission within thirty days after the receipt of the notice, but that no fact or allegation shall be taken as admitted by a failure or refusal to timely respond.

(d) Within the forty-five day period following the mailing of a notice of investigation, the Review Board shall proceed to consider: (1) The allegations raised in the complaint; (2) any timely received written response of the respondent; and (3) any other competent evidence gathered by or submitted to the ~~commission~~ Review Board which has a proper bearing on the issue of probable cause. A respondent may appear before the Review Board and make an oral response to the complaint. The commission shall promulgate rules prescribing the manner in which a respondent may present his or her oral response. The commission and Review Board may ask a respondent to disclose specific amounts received from a source and request other detailed information not otherwise required to be set forth in a statement or report filed under the provisions of this chapter if the information sought is considered to be probative as to the issues raised by a complaint or an investigation initiated by the commission. Any information thus received shall be confidential except as provided by subsection (f) of this section. If a person asked to provide information fails or refuses to furnish the information to the commission or Review Board, the commission or Review Board may exercise ~~its~~ their subpoena power as provided in this chapter and any subpoena issued by the commission or Review Board shall have the same force and effect as a subpoena issued by a circuit court of this state. Enforcement of any subpoena may be had upon application to a circuit court of the county in which the Review Board is conducting an investigation through the issuance of a rule or an attachment against the respondent as in cases of contempt.

(e) Unless consented to by both the respondent and complainant, or unless the commission makes a good cause determination in writing the investigation and a determination as to probable cause shall not exceed eighteen months.

(f) (1) All investigations, complaints, reports, records, proceedings and other information received by the commission or Review Board and related to complaints made to the commission or investigations conducted by the commission or Review Board pursuant to this section, including the identity of the complainant or respondent, are confidential and may not be knowingly and improperly disclosed by any current or former member or employee of the commission or the Review Board except as follows:

(A) Once there has been a finding that probable cause exists to believe that a respondent has violated the provisions of this chapter and the respondent has been served by the commission with a copy of the Review Board's order and the statement of charges prepared pursuant to the provisions of subsection (h) of this section, the complaint and all reports, records, nonprivileged and nondeliberative material introduced at any probable cause hearing held pursuant to the complaint cease to be confidential.

(B) After a finding of probable cause, any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records and nondeliberative materials introduced into evidence at the hearing, as well as the commission's orders, are not confidential.

(C) The commission may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint and the identity of the complainant shall be disclosed to a person named as respondent immediately upon the respondent's request.

(E) Where the commission is otherwise required by the provisions of this chapter to disclose information or to proceed in such a manner that disclosure is necessary and required to fulfill those requirements.

(4) (2) If, in a specific case, the commission finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the commission shall order that all or a portion of the information communicated to the commission to cause an investigation and all allegations of ethical misconduct or criminal acts contained in a complaint shall be confidential and the person providing the information or filing a complaint shall be bound to confidentiality until further order of the commission.

(g) If the members of the Review Board fail to find probable cause, the proceedings shall be dismissed by the commission in an order signed by the members of the Review Board. Copies of the order of dismissal shall be sent to the complainant and served upon the respondent forthwith. If the Review Board decides by a unanimous vote that there is probable cause to believe that a violation under this chapter has occurred, the members of the Review Board shall sign an order directing the commission staff to prepare a statement of charges and assign the matter for hearing to the commission or a hearing examiner as the commission may subsequently direct. The commission shall then schedule a hearing, to be held within ninety days after the date of the order, to determine the truth or falsity of the charges. The commission's review of the evidence presented shall be de novo. For the purpose of this section, service of process upon the respondent is obtained at the time the respondent or the respondent's agent physically receives the process, regardless of whether the service of process is in person or by certified mail.

(h) At least eighty days prior to the date of the hearing, the commission shall serve the respondent by certified mail, return receipt requested, with the statement of charges and a notice of hearing setting forth the date, time and place for the hearing. The scheduled hearing may be continued only upon a showing of good cause by the respondent or under other circumstances as the commission, by legislative rule, directs.

(i) The commission may sit as a hearing board to adjudicate the case or may permit an assigned hearing examiner employed by the commission to preside at the taking of evidence. The commission shall, by legislative rule, establish the general qualifications for hearing examiners. The legislative rule shall also contain provisions which ensure that the functions of a hearing examiner will be conducted in an impartial manner and describe the circumstances and procedures for disqualification of hearing examiners.

(j) A member of the commission or a hearing examiner presiding at a hearing may:

(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony and establish a record;

(2) Rule on offers of proof and receive relevant evidence;

(3) Take depositions or have depositions taken when the ends of justice will be served;

(4) Regulate the course of the hearing;

(5) Hold conferences for the settlement or simplification of issues by consent of the parties;

(6) Dispose of procedural requests or similar matters;

(7) Accept stipulated agreements;

(8) Take other action authorized by the Ethics Commission consistent with the provisions of this chapter.

(k) With respect to allegations of a violation under this chapter, the complainant has the burden of proof. The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before the commission or a hearing examiner. The commission shall, by rule, regulate the conduct of hearings so as to provide full procedural due process to a respondent. Hearings before a hearing examiner shall be recorded electronically. When requested by either of the parties, the presiding officer shall order a transcript, verified by oath or affirmation, of each hearing held and so recorded. In the discretion of the commission, a record of the proceedings may be made by a certified court reporter. Unless otherwise ordered by the commission, the cost of preparing a transcript shall be paid by the party requesting the transcript. Upon a showing of indigency, the commission may provide a transcript without charge. Within fifteen days following the hearing, either party may submit to the hearing examiner that party's proposed findings of fact. The hearing examiner shall thereafter prepare his or her own proposed findings of fact and make copies of the findings available to the parties. The hearing examiner shall then submit the entire record to the commission for final decision.

(l) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, and the proposed findings of fact of the hearing examiner and the parties, constitute the exclusive record for decision by the commission, unless by leave of the commission a party is permitted to submit additional documentary evidence or take and file depositions or otherwise exercise discovery.

(m) The commission shall set a time and place for the hearing of arguments by the complainant and respondent, or their respective representatives, and shall notify the parties thereof. Briefs may be filed by the parties in accordance with procedural rules promulgated by the commission. The commission shall issue a final decision in writing within forty-five days of the receipt of the entire record of a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by the commission acting as a hearing board in lieu of a hearing examiner, within twenty-one days following the close of the evidence.

(n) A decision on the truth or falsity of the charges against the respondent and a decision to impose sanctions must be approved by at least ~~seven~~ six members of the commission.

(o) Members of the commission shall recuse themselves from a particular case upon their own motion with the approval of the commission or for good cause shown upon motion of a party. The remaining members of the commission may, by majority vote, select a temporary member to replace a recused member: *Provided*, That the temporary member selected to replace a recused member shall be a person of the same status or category, provided by subsection ~~(b)~~ (c), section one of this article, as the recused member.

(p) Except for statements made in the course of official duties to explain commission procedures, no member or employee or former member or employee of the commission may make any public or nonpublic comment about any proceeding previously or currently before the commission. Any member or employee or former member or employee of the commission who violates this subsection is subject to the penalties contained in subsection ~~(e)~~ (d), section ten of this article. In addition, violation of this subsection by a current member or employee of the commission is grounds for immediate removal from office or termination of employment.

(q) A complainant may be assisted by a member of the commission staff assigned by the commission after a determination of probable cause.

(r) No employee of the commission assigned to prosecute a complaint may participate in the commission deliberations or communicate with commission members or the public concerning the merits of a complaint.

(s) (1) If the commission finds by clear and convincing evidence that the facts alleged in the complaint are true and constitute a material violation of this ~~article~~ chapter, it may impose one or more of the following sanctions:

(A) Public reprimand;

(B) Cease and desist orders;

(C) Orders of restitution for money, things of value, or services taken or received in violation of this chapter;

(D) Fines not to exceed \$5,000 per violation; or

(E) Reimbursement to the commission for the actual costs of investigating and prosecuting a violation. Any reimbursement ordered by the commission for its costs under this paragraph shall be collected by the commission and deposited into the special revenue account created pursuant to section six, article one of this chapter.

(2) In addition to imposing the above-specified sanctions, the commission may recommend to the appropriate governmental body that a respondent be terminated from employment or removed from office.

(3) The commission may institute civil proceedings in the circuit court of the county in which a violation occurred for the enforcement of sanctions.

(t) At any stage of the proceedings under this section, the commission may enter into a conciliation agreement with a respondent if the agreement is deemed by a majority of the members of the commission to be in the best interest of the state and the respondent. Any conciliation agreement must be disclosed to the public: *Provided*, That negotiations leading to a

conciliation agreement, as well as information obtained by the commission during the negotiations, shall remain confidential except as may be otherwise set forth in the agreement.

(u) Decisions of the commission involving the issuance of sanctions may be appealed to the circuit court of Kanawha County, only by the respondent and only upon the grounds set forth in section four, article five, chapter twenty-nine-a of this code.

(v) (1) Any person who in good faith files a verified complaint or any person, official or agency who gives credible information resulting in a formal complaint filed by commission staff is immune from any civil liability that otherwise might result by reason of such actions.

(2) If the commission determines, by clear and convincing evidence, that a person filed a complaint or provided information which resulted in an investigation knowing that the material statements in the complaint or the investigation request or the information provided were not true; filed an unsubstantiated complaint or request for an investigation in reckless disregard of the truth or falsity of the statements contained therein; or filed one or more unsubstantiated complaints which constituted abuse of process, the commission shall:

(A) Order the complainant or informant to reimburse the respondent for his or her reasonable costs;

(B) Order the complainant or informant to reimburse the respondent for his or her reasonable attorney fees; and

(C) Order the complainant or informant to reimburse the commission for the actual costs of its investigation. In addition, the commission may decline to process any further complaints brought by the complainant, the initiator of the investigation or the informant.

(3) The sanctions authorized in this subsection are not exclusive and do not preclude any other remedies or rights of action the respondent may have against the complainant or informant under the law.

(w) (1) If at any stage in the proceedings under this section it appears to a Review Board, a hearing examiner or the commission that there is credible information or evidence that the respondent may have committed a criminal violation, the matter shall be referred to the full commission for its consideration. If, by a vote of two-thirds of the members of the full commission, it is determined that probable cause exists to believe a criminal violation has occurred, the commission shall refer the matter to the appropriate county prosecuting attorney having jurisdiction for a criminal investigation and possible prosecution. Deliberations of the commission with regard to referring a matter for criminal investigation by a prosecuting attorney shall be private and confidential. Notwithstanding any other provision of this article, once a referral for criminal investigation is made under the provisions of this subsection, the ethics proceedings shall be held in abeyance until action on the referred matter is concluded. If the referral of the matter to the prosecuting attorney results in a criminal conviction of the respondent, the commission may resume its investigation or prosecution of the ethics violation, but may not impose a fine as a sanction if a violation is found to have occurred.

(2) If fewer than two-thirds of the full commission determine that a criminal violation has occurred, the commission shall remand the matter to the Review Board, the hearing examiner or the commission itself as a hearing board, as the case may be, for further proceedings under this article.

(x) The provisions of this section shall apply to violations of this chapter occurring after September 30, 1989, and within one year before the filing of a complaint: *Provided*, That the applicable statute of limitations for violations which occur on or after July 1, 2005, is two years after the date on which the alleged violation occurred: *Provided, however*, That the applicable statute of limitations for violations which occur on or after July 1, 2016, is five years after the date on which the alleged violation occurred.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) *Persons subject to section.* — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part time, in state, county, municipal governments and their respective boards, agencies, departments and commissions and in any other regional or local governmental agency, including county school boards.

(b) *Use of public office for private gain.* — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in de minimis private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: *Provided*, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or

anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: Provided, That as used in this subdivision, "employment or working conditions" shall only apply to government employment: Provided, however, That government employment includes only those governmental entities specified in subsection (a) of this section.

(c) *Gifts.* — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within thirty days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's participation and which assist this and other State Legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence and integrity of Legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among State Legislatures;

(C) Representing the states and their Legislatures in the American federal system of government;

(D) Improving the operations and management of State Legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between State Legislatures in the United States and Legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative

organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

“This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, and with the Secretary of State and are available for public review.”

(7) Upon written notice to the commission, any member of the board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the Secretary of State for publication in the State Register as provided in article two of chapter twenty-nine-a of the code and with the commission, copies of letters, brochures and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the board of Public Works shall contain the following disclaimer: “This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature’s Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review.” Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in section two, article four of chapter five-a of this code.

(d) *Interests in public contracts.* --

(1) In addition to the provisions of section fifteen, article ten, chapter sixty-one of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection 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 state, county, municipality, county school board or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) *Confidential information.* — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) *Prohibited representation.* — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: *Provided*, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) *Limitation on practice before a board, agency, commission or department.* — Except as otherwise provided in section three, four or five, article two, chapter eight-a of this code: (1) No

elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

- (A) A contested case involving an administrative sanction, action or refusal to act;
- (B) To support or oppose a proposed rule;
- (C) To support or contest the issuance or denial of a license or permit;
- (D) A rate-making proceeding; and
- (E) To influence the expenditure of public funds.

(2) As used in this subsection, “represent” includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person’s education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) *Employment by regulated persons and vendors.* — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term “employment” includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; “seek employment” includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and “subordinate” includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall by legislative rule establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) *Members of the Legislature required to vote.* — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) *Limitations on voting.* --

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past twelve months: *Provided*, That this limitation only applies if the total amount of the loan or loans exceeds \$15,000.

~~(C) A personnel matter involving the public official's spouse or relative;~~

~~(C) The employment or working conditions of the public official's relative or person with whom the public official resides.~~

~~(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit: *Provided*, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit; *Provided, however*, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official's, or his or her immediate family member's, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.~~

~~(H) (2) A public official may vote:~~

~~(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or~~

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than \$10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

(k) Limitations on participation in licensing and rate-making proceedings. — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation or association in which the public official or employee or his or her immediate family owns or controls more than ten percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined in section three, article one of this chapter, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than ten percent, has sold goods or services totaling more than \$1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to article three, eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one or thirty-one, chapter thirty of this code.

(l) Certain compensation prohibited. — (1) A public employee may not receive additional compensation from another publicly-funded state, county or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once

every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) *Certain expenses prohibited.* — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter twenty-nine-a of this code, define further exemptions from this section as necessary or appropriate.

§6B-2-6. Financial disclosure statement; filing requirements.

(a) The financial disclosure statement shall be filed on February 1 of each calendar year to cover the period of the preceding calendar year, except insofar as may be otherwise provided herein. The following persons must file the financial disclosure statement required by this section with the Ethics Commission:

(1) All elected officials in this state, including, but not limited to, all persons elected statewide, all county elected officials, municipal elected officials in municipalities which have, by ordinance, opted to be covered by the disclosure provisions of this section, all members of the several county or district boards of education and all county or district school board superintendents;

(2) All members of state boards, commissions and agencies appointed by the Governor; and

(3) Secretaries of departments, commissioners, deputy commissioners, assistant commissioners, directors, deputy directors, assistant directors, department heads, deputy department heads and assistant department heads.

A person who is required to file a financial disclosure statement under this section by virtue of becoming an elected or appointed public official whose office is described in subdivision (1), (2) or (3) of this subsection, and who assumes the office less than ten days before a filing date established herein or who assumes the office after the filing date, shall file a financial disclosure statement for the previous twelve months no later than thirty days after the date on which the person assumes the duties of the office, unless the person has filed a financial disclosure statement with the commission during the twelve-month period before he or she assumed office.

(b) A candidate for public office shall file a financial disclosure statement for the previous calendar year with the state Ethics Commission no later than ten days after he or she files a certificate of ~~candidacy but in all circumstances, not later than ten days prior to the election, announcement,~~ announcement, unless he or she has previously filed a financial disclosure statement with the state Ethics Commission ~~during~~ for the previous calendar year.

The Ethics Commission shall file a duplicate copy of the financial disclosure statement required in this section in the following offices within ten days of the receipt of the candidate's statement of disclosure:

(1) Municipal candidates in municipalities which have opted, by ordinance, to be covered by the disclosure provisions of this section, in the office of the clerk of the municipality in which the candidate is seeking office;

(2) Legislative candidates in single county districts and candidates for a county office or county school board in the office of the clerk of the county commission of the county in which the candidate is seeking office;

(3) Legislative candidates from multi-county districts and congressional candidates in the office of the clerk of the county commission of the county of the candidate's residence.

After a ninety-day period following any election, the clerks who receive the financial disclosure statements of candidates may destroy or dispose of those statements filed by candidates who were unsuccessful in the election.

(c) No candidate for public office may maintain his or her place on a ballot and no public official may take the oath of office or enter or continue upon his or her duties or receive compensation from public funds unless he or she has filed a financial disclosure statement with the state Ethics Commission as required by the provisions of this section.

(d) The Ethics Commission may, upon request of any person required to file a financial disclosure statement, and for good cause shown, extend the deadline for filing such statement for

a reasonable period of time: *Provided*, That no extension of time shall be granted to a candidate who has not filed a financial disclosure statement for the preceding filing period.

(e) No person shall fail to file a statement required by this section.

(f) No person shall knowingly file a materially false statement that is required to be filed under this section.

(g) The Ethics Commission shall publish either on the Internet or by printed document made available to the public, a list of all persons who have violated any Ethics Commission's financial disclosure statement filing deadline.

(h) The Ethics Commission shall, in addition to making all financial disclosure statements available for inspection upon request:

(1) Publish on the internet all financial disclosure statements filed by members of the Legislature and candidates for legislative office, elected members of the executive department and candidates for the offices that constitute the executive department, and members of the Supreme Court of Appeals and candidates for the Supreme Court of Appeals, commencing with those reports filed on or after January 1, 2012; and

(2) Publish on the Internet all financial disclosure statements filed by any other person required to file such financial disclosure statements, as the commission determines resources are available to permit the Ethics Commission to make such publication on the Internet. The commission shall redact financial disclosure statements published on the Internet to exclude from publication personal information such as signatures, home addresses and mobile and home telephone numbers.

§6B-2-10. Violations and penalties.

(a) Any person who violates the provisions of subsection (e), (f) or (g), section five of this article or violates the provisions of subdivision (1), subsection ~~(e)~~ (f), section four of this article is guilty of a misdemeanor and, upon conviction, shall be confined in jail for a period not to exceed six months or shall be fined not more than \$1,000, or both. A member or employee of the commission or the Review Board convicted of violating said subdivision is subject to immediate removal from office or discharge from employment.

(b) Any person who violates the provisions of subsection (f), section six of this article by willfully and knowingly filing a false financial statement or knowingly and willfully concealing a material fact in filing the statement is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000, or confined in jail not more than one year, or both.

(c) Any person who knowingly fails or refuses to file a financial statement required by section six of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) If any commission member or staff knowingly violates subsection ~~(e)~~ (d), section four of this article, such person, upon conviction thereof, shall be guilty of a misdemeanor and, shall be fined not less than \$100 nor more than \$1,000.

(e) Any person who violates the provisions of subdivision (2), subsection ~~(e)~~ (f), section four of this article by knowingly and willfully disclosing any information made confidential by an order of the commission is subject to administrative sanction by the commission as provided in subsection ~~(f)~~ (s) of said section.

(f) Any person who knowingly gives false or misleading material information to the commission or who induces or procures another person to give false or misleading material information to the commission is subject to administrative sanction by the commission as provided in subsection ~~(f)~~ (s), section four of this article.

CHAPTER 6D. PUBLIC CONTRACTS.

ARTICLE 1. DISCLOSURE OF INTERESTED PARTIES.

§6D-1-1. Definitions.

For purposes of this article:

(a) "Applicable contract" means a contract of a state agency that has an actual or estimated value of at least \$100,000: *Provided*, That this shall include a series of related contracts or orders in which the cumulative total exceeds \$100,000.

(b) "Business entity" means any entity recognized by law through which business is conducted, including a sole proprietorship, partnership or corporation.

(c) "Disclosure" shall mean a form prescribed and approved by the Ethics Commission pursuant to section three of this article.

(d) "Interested party" or "Interested parties" means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically sub-contractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: *Provided*, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: *Provided, however*, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract.

(e) "State agency" means a board, commission, office, department, or other agency in the executive, judicial or legislative branch of state government, including publicly funded institutions of higher education: *Provided*, That for purposes of this article, the West Virginia Investment Management Board shall not be deemed a state agency nor subject to the requirements of this article.

§6D-1-2. Disclosure of interested parties to a public contract; supplemental disclosure.

(a) A state agency may not enter into 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 no later than when the contract is submitted to the state agency for signature and approval by the state agency: *Provided*, That this provision does not require submission of a disclosure pursuant to this article as part of a bid for the contract.

(c) Within thirty 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.

§6D-1-3. Filing with Ethics Commission.

(a) The disclosure of interested parties must be submitted on a form prescribed and approved by the Ethics Commission that includes:

(1) A list of each interested party to the contract that is known or reasonably anticipated by the contracting business entity; and

(2) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

(b) Not later than the fifteenth day after the date the state agency receives an initial or supplemental disclosure of interested parties required under this section, the state agency shall submit a copy of the disclosure to the Ethics Commission.

(c) The Ethics Commission shall make copies of the disclosures received from state agencies publicly available. To the extent possible under existing technology or upon obtaining sufficient technology, the Ethics Commission shall post copies of the disclosures on the commission's website.

On motion of Senator Weld, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2001) was reported by the Clerk and considered simultaneously:

On page thirty-eight, after section three, by adding thereto a new section, designated section four, to read as follows:

§6D-1-4. Higher Education Compliance.

(a) The provisions of section two and three of this article do not apply to applicable contracts of a state institution of higher education, as defined in section two, article one, chapter eighteen-b, if the state institution of higher education complies with the requirements of this section and has a policy in place that provides as follows:

(1) For business entities that are not registered to do business with the State of West Virginia, at the time of registration of a business entity seeking to enter into an applicable contract with a state institution of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contracts are executed;

(2) For business entities that are already registered to do business with the State of West Virginia, and a business entity is seeking to enter into an applicable contract with a state institution

of higher education, the state institution of higher education requires the business entity to disclose in writing the interested parties of the business entity before any applicable contract is executed;

(3) Business entities are required to update any changes to the list of interested parties of the business entity on a periodic basis; and

(4) The disclosures required by this section are made in writing, by an authorized agent under oath and under penalty of perjury.

(b) The state institution of higher education shall provide a report to the ethics commission on or before December 31 of each year listing all business entities that received more than one-hundred thousand dollars from the institution of higher education during the previous fiscal year, with an accompanying list of interested parties provided by each such business entity.

(c) For purposes of this section, the term "interested parties" shall not include any sub-contractors receiving less than \$50,000 under an applicable contract.;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all to read as follows:.

Following discussion,

The question being on the adoption of Senator Weld's amendments to the Judiciary committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended.

Following discussion,

The question being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2001), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2001) passed.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the unreported Judiciary committee amendment to the title of the bill was withdrawn.

On motion of Senator Weld, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2001—A Bill to amend and reenact §6B-2-1, §6B-2-2, §6B-2-2a, §6B-2-3a, §6B-2-4, §6B-2-5, §6B-2-6 and §6B-2-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new chapter, designated §6D-1-1, §6D-1-2, §6D-1-3 and §6D-1-4, all relating to ethics and transparency in government generally; providing that no more than two members of the Ethics Commission shall be from the same state senatorial district; providing for the disclosure of interested parties to a government contract with an actual or estimated value of at least \$100,000; defining terms; prohibiting contracting with a state agency unless business entity submits disclosure of interested parties; requiring submission of supplemental disclosure within thirty days of completion or termination of the contract; providing exceptions to the disclosure requirement for certain contracts; requiring the Ethics Commission create disclosure form; specifying contents to be included in the disclosure form; requiring state agencies to submit completed forms to the Ethics Commission; requiring the Ethics Commission to make disclosures publicly available; requiring the Ethics Commission to post disclosures on the commission website when technologically able; providing certain exceptions for state institutions of higher education; providing that state institutions of higher education are excepted if they comply with certain requirements and adopt certain policies; providing that institutions of higher education shall provide the ethics Commission a listing of business entities that received more than one hundred thousand dollars from the institution of higher education; providing a definition of interested parties; authorizing members of the Ethics Commission and members of the Probable Cause Review Board to participate and vote via video conferencing; clarifying and expanding the violations in which a complaint may be referred to the Probable Cause Review Board; clarifying that the Probable Cause Review Board conducts investigations and not hearings to determine probable cause; clarifying and expanding the violations in which a complaint may be initiated by the Ethics Commission; clarifying that the Probable Cause Review Board is the entity to receive evidence bearing on the issue of probable cause; clarifying that the commission and review board may ask a respondent to disclose specific amounts received from a source and request other detailed information; clarifying that both the Ethics Commission and the Probable Cause Review Board have subpoena power; clarifying that confidentiality provisions apply to both the commission and the review board; specifying that at least six members of the Ethics Commission approve of a decision on the truth or falsity of the charges against a respondent and a decision to impose sanctions; clarifying and expanding the violations in which sanctions may be imposed by the Ethics Commission; prohibiting a public official or public employee from showing favoritism or granting patronage in the employment or working conditions of his or her relative or a person with whom he or she resides; eliminating the voting prohibition on personnel matters involving a public official's spouse or relative; prohibiting public officials, except certain members of the Legislature, from voting on the employment or working conditions of the public official's relative or person with whom the public official resides; prohibiting public officials, except certain members of the Legislature, from voting on the appropriation of moneys or award of contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a

compensated officer or board member of, the nonprofit; providing that a public official shall publicly disclose his or her relationship prior to the vote if he, she or an immediate family member is an uncompensated officer or board member of the nonprofit; providing that a public official's recusal shall be reflected in the meeting minutes; clarifying the timeframe in which a candidate for public office must file a financial disclosure statement and providing an exception to filing such a financial disclosure statement if the candidate has previously filed a statement for the previous calendar year; and amending statutory cross-references to reflect proper reference to other statutes.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Eng. Com. Sub. for House Bill 2506, Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 2506 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Maroney, Maynard, Plymale, Rucker, Smith, Swope, Takubo, Trump, Weld and Carmichael (Mr. President)—20.

The nays were: Beach, Facemire, Jeffries, Mann, Miller, Ojeda, Palumbo, Prezioso, Romano, Stollings, Sypolt, Unger and Woelfel—13.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2506) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. House Bill 2774, Defining special aircraft property.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed House Bill 2774 pass?"

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—31.

The nays were: Gaunch and Palumbo—2.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2774) passed with its title.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate.

Eng. Com. Sub. for House Bill 2868, Relating generally to Uniform Unclaimed Property Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Mullins—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2868) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2868—A Bill to amend and reenact §36-8-2 of the Code of West Virginia, 1931, as amended, relating generally to Uniform Unclaimed Property Act; clarifying that presumed abandoned property in the form of amounts owed by an insurer on a life or endowment insurance policy or an annuity that has matured or terminated, and obligations related thereto, are guided by policies, requirements and interpretations of the Insurance Commissioner; and providing that amendments have no force and effect on pending litigation.

Ordered, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Pending announcement of a minority party caucus,

On motion of Senator Ferns, the Senate recessed until 2:45 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the ninth order of business.

Com. Sub. for Com. Sub. for Senate Bill 38, Creating 5-year tax credit for new businesses locating on post-mine sites.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Stollings, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page two, section three, lines eleven through thirteen, by striking out all of subdivision (1) and inserting in lieu thereof a new subdivision, designated subdivision (1), to read as follows:

(1) Corporation net income taxes. — Any credit is first applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year.;

On page two, section three, line fourteen, after the word “taxes. —” by inserting the words “After application of subdivision (1) of this subsection, any unused credit is next applied as follows:”;

And,

On page two, section three, line eighteen, by striking out the words “subdivisions (1) and (2)” and inserting in lieu thereof the words “subdivision (1)”.

The bill (Com. Sub. for Com. Sub. for S. B. 38), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 40, Requiring inclusion of protocols for response to after-school emergencies in school crisis response plans.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 57, Continuing personal income tax adjustment for certain retirees.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 238, Increasing tax credits allowed for rehabilitation of certified historic structures.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 282, Directing Office of Administrative Hearings to amend current legislative rule relating to appeal procedures.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 286, Relating to grandparents’ visitation rights.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 293, Providing increase in annual salary of employees in Division of Corrections.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Hall, the following amendment to the bill was reported by the Clerk and adopted:

On page one, section eleven-d, line fourteen, after the word “Auditor” by changing the period to a colon and by striking out the remainder of the section and inserting in lieu thereof the following proviso: *Provided*, That from funds appropriated by the Legislature, beginning on July 1, 2017,

the commissioner shall increase the annual salary of each employee of the Division of Corrections by \$2,008.

The bill (S. B. 293), as amended, was then ordered to engrossment and third reading.

Senate Bill 294, Relating to Community Sustainability Investment Pilot Program.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 333, Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 343, Relating to transportation network companies.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 369, Permitting surface owners purchase mineral interests when interest becomes tax lien.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §11A-3-19, §11A-3-21, §11A-3-52, §11A-3-54 and §11A-3-56 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and to amend said code by adding thereto four new sections, designated §11A-3-23a, §11A-3-23b, §11A-3-58a and §11A-3-58b, all to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-19. What purchaser must do before the deed can be secured.

(a) At any time after October 31 of the year following the sheriff's sale, and on or before December 31 of the same year, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate subject to the tax lien or liens purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the State Auditor to prepare and serve the notice as provided in sections twenty-one and twenty-two of this article;

(2) When the real property subject to the tax lien is classified as Class II property, provide the State Auditor with the physical mailing address of the property that is subject to the tax lien or liens purchased;

(3) Provide the State Auditor with a list of any additional expenses incurred after January 1 of the year following the sheriff's sale for the preparation of the list of those to be served with notice to redeem including proof of the additional expenses in the form of receipts or other evidence of reasonable legal expenses incurred for the services of any attorney who has performed an examination of the title to the real estate and rendered written documentation used in the preparation of the list of those to be served with the notice to redeem.

(4) Deposit with the State Auditor a sum sufficient to cover the costs of preparing and serving the notice;

(5) Present the purchaser's certificate of sale, or order of the county commission where the certificate has been lost or wrongfully withheld from the owner, to the State Auditor;

(6) If the interest in real estate subject to the tax lien includes minerals, but not an interest in the surface, except an interest for the purpose of developing the minerals, the list shall include the last known name and mailing address of the taxpayer who receives a tax ticket for the surface tract that lie above the mineral tract subject to the tax lien; and

(7) If the interest in real estate subject to the tax lien includes surface, but not an interest in the minerals, the list shall include the last known name and mailing address of the taxpayer who receives a tax ticket for the mineral property underlying the surface property subject to the tax lien.

If the purchaser fails to meet these requirements, he or she shall lose all the benefits of his or her purchase.

(b) If the person requesting preparation and service of the notice is an assignee of the purchaser, he or she shall, at the time of the request, file with the State Auditor a written assignment to him or her of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

(c) Whenever any certificate given by the sheriff for a tax lien on any land, or interest in the land sold for delinquent taxes, or any assignment of the lien is lost or wrongfully withheld from the rightful owner of the land and the land or interest has not been redeemed, the county commission may receive evidence of the loss or wrongful detention and, upon satisfactory proof of that fact, may cause a certificate of the proof and finding, properly attested by the State Auditor, to be delivered to the rightful claimant and a record of the certificate shall be duly made by the county clerk in the recorded proceedings of the commission.

(d) No deed to a subsequent bona fide purchaser for value from the purchaser, or an owner substituted for the purchaser, may be set aside for failure of the purchaser to comply with this section.

§11A-3-21. Notice to redeem.

(a) Whenever the provisions of section nineteen of this article have been complied with, the State Auditor shall prepare a notice in form or effect as follows:

To _____.

You will take notice that _____, the purchaser (or _____, the assignee, heir or devisee of _____, the purchaser) of the tax lien(s) on the following real estate, _____, (here describe the real estate for which the tax lien(s) thereon were sold) located in _____, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was returned delinquent in the name of _____, and for which the tax lien(s) thereon was sold by the sheriff of _____ County at the sale for delinquent taxes made on the _____ day of _____, 20____, has requested that you be notified that a deed for such real estate will be made to him or her on or after April 1, 20 ____, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay to redeem on the last day, March 31, will be as follows:

Amount equal to the taxes, interest, and charges due on the date of sale, with interest to March 31, 20 _____ \$_____.

Amount of subsequent years taxes paid on the property, since the sale, with interest to March 31, 20 ____ \$_____.

Amount paid for title examination and preparation of list of those to be served, and for preparation and service of the notice with interest from January 1, 20 (insert year) following the sheriff's sale to March 31, 20 _____ \$_____.

Amount paid for other statutory costs (describe) _____ \$_____.

Total \$_____.

You may redeem at any time before March 31, 20 _____, by paying the above total less any unearned interest.

NOTE: If you have received this notice because you are the owner of an interest in the surface overlaying a mineral interest that was returned delinquent, or an owner of a mineral interest underlying a surface tract that was returned delinquent, you may pay the clerk the amount identified above, plus a nonrefundable \$20 administrative fee, before March 31, 20 ____ . If you pay the amount identified above and the property is later redeemed by the owner or a person with a right to redeem, that amount you paid, less the administrative fee, will be refunded to you. If you pay the amount identified above and the property is not redeemed by the owner or a person with a right to redeem, you will be substituted for the purchaser of the tax lien and you may proceed to obtain a deed for the delinquent property. If you and one or more additional surface owners or mineral owners each pay the amount identified above, the surface owners or mineral owners who have made payment shall submit, by April 1, 20 ____, an agreement dividing the real estate according to your proportionate ownership or any other method or formula agreed to among all of you. If an agreement is not filed, the clerk shall refund the moneys tendered by the surface owners or mineral owners, less the administrative fees, and none of you will be substituted for the purchaser of the tax lien.

Given under my hand this _____ day of _____, 20 _____.

State Auditor, State of West Virginia

(b) The State Auditor for his or her service in preparing the notice shall receive a fee of \$40 \$50 for the original and \$2 for each copy required. Any additional costs which must be expended for publication, or service of the notice in the manner provided for serving process commencing a civil action, or for service of process by certified mail, shall be charged by the State Auditor. All costs provided by this section shall be included as redemption costs and included in the notice described in this section.

§11A-3-23a. Surface owner substitution for purchaser.

(a) If the interest in real estate subject to the tax lien includes minerals, but not an interest in the surface, except an interest for the purpose of developing the minerals, then prior to March 31 of the year following the sale, the surface owner of the surface tract overlying the mineral property subject to the tax lien being sold may pay the clerk: (1) the amount that would be required for redemption pursuant to section twenty-three of this article; (2) the lesser of either the amount required for redemption pursuant to section twenty-three of this article or \$3,000; and (3) a nonrefundable \$20 administrative fee. Upon payment, the clerk shall issue the surface owner a certificate of substitution and send a copy to the purchaser. If more than one surface owner makes this payment to the clerk, the clerk shall issue each a certificate of substitution and send copies of the certificates of substitution to the other substituted surface owners in addition to the purchaser.

(b) If the property is redeemed by the owner or a person with a right to redeem, the clerk shall refund the moneys paid by the surface owner, less the administrative fees.

(c) If the property is not redeemed by the owner or a person with a right to redeem, and if only one surface owner has received a certificate of substitution, then the clerk shall send the amount paid by the surface owner to the purchaser, less the \$20 administrative fee, and record the certificate of substitution. That surface owner enjoys the full rights and duties of the purchaser.

(d) If more than one surface owner pays the clerk the appropriate amount, the surface owners shall submit an agreement dividing the property according to their proportionate shares of ownership in the overlying surface, or another mutually agreeable method or formula approved by all of them, by April 1 of the year following the tax sale. No deed may be issued before April 1 of the year following the tax sale. Unless otherwise provided by written agreement between the substituted surface owners, each surface owner's interest in the delinquent mineral property shall be equal to their pro rata share of surface acreage overlying the delinquent mineral property: *Provided*, That if more than one owner of an undivided interest in the same tract pays the clerk the appropriate amount, his or her share shall be the total acreage of the undivided tract divided by the number of owners of the tract who have also paid the clerk: *Provided, however*, That the clerk shall refund that portion of moneys which exceeds the amount required for substitution in subsection (a) of this section according to the substituted surface owners' proportionate interest in the delinquent mineral property. If an agreement is filed, then the clerk shall make an amended certificate dividing the property according to their respective interests and refund any remaining moneys paid by them according to their agreed interests. If no agreement is filed, the clerk shall refund the moneys paid by the surface owners, less the \$20 administrative fees, and the original purchaser is returned to his or her original position.

§11A-3-23b. Mineral owner substitution for purchaser.

(a) If the interest in real estate subject to the tax lien includes surface property, but not an interest in the underlying minerals, then prior to March 31 of the year following the sale, the owner

of the mineral tract underlying the surface property subject to the tax lien being sold may pay the clerk: (1) the amount that would be required for redemption pursuant to section twenty-three of this article; (2) the lesser of either the amount required for redemption pursuant to section twenty-three of this article or \$3,000; and (3) a nonrefundable \$20 administrative fee. Upon payment, the clerk shall issue the mineral owner a certificate of substitution and send a copy to the purchaser. If more than one mineral owner makes this payment to the clerk, the clerk shall issue each a certificate of substitution and send copies of the certificates of substitution to the other substituted mineral owners in addition to the purchaser.

(b) If the property is redeemed by the owner or a person with a right to redeem, the clerk shall refund the moneys paid by the mineral owner, less the administrative fees.

(c) If the property is not redeemed by the owner or a person with a right to redeem, and if only one mineral owner has received a certificate of substitution, then the clerk shall send the amount paid by the mineral owner to the purchaser, less the \$20 administrative fee, and record the certificate of substitution. That mineral owner enjoys the full rights and duties of the purchaser.

(d) If more than one mineral owner pays the clerk the appropriate amount, the mineral owners shall submit an agreement dividing the surface property according to their proportionate shares of ownership in the underlying minerals, or another mutually agreeable method or formula approved by all of them, by April 1 of the year following the tax sale. No deed may be issued before April 1 of the year following the tax sale. Unless otherwise provided by written agreement between the substituted mineral owners, each mineral owner's interest in the delinquent surface property shall be equal to their pro rata share of mineral acreage underlying the delinquent surface property: *Provided*, That if more than one owner of an undivided interest in the same tract pays the clerk the appropriate amount, his or her share shall be the total acreage of the undivided tract divided by the number of owners of the tract who have also paid the clerk: *Provided, however*, That the clerk shall refund that portion of moneys which exceeds the amount required for substitution in subsection (a) of this section according to the substituted mineral owners' proportionate interest in the delinquent surface property. If an agreement is filed, then the clerk shall make an amended certificate dividing the property according to their respective interests and refund any remaining moneys paid by them according to their agreed interests. If no agreement is filed, the clerk shall refund the moneys paid by the mineral owners, less the \$20 administrative fees, and the original purchaser is returned to his or her original position.

§11A-3-52. What purchaser must do before ~~he can secure~~ securing a deed.

(a) Within forty-five days following the approval of the sale by the Auditor pursuant to section fifty-one of this article, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the deputy commissioner to prepare and serve the notice as provided in sections fifty-four and fifty-five of this article;

(2) When the real property subject to the tax lien was classified as Class II property, provide the deputy commissioner with the actual mailing address of the property that is subject to the tax lien or liens purchased; ~~and~~

(3) Deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the costs of preparing and serving the notice;

(4) If the interest in real estate subject to the tax lien includes minerals, but not an interest in the surface, except an interest for the purpose of developing the minerals, the list shall include the last known name and mailing address of the taxpayer who receives a tax ticket for the surface tract that lie above the mineral tract subject to the tax lien; and

(5) If the interest in real estate subject to the tax lien includes surface, but not an interest in the minerals, the list shall include the last known name and mailing address of the taxpayer who receives a tax ticket for the mineral property underlying the surface property subject to the tax lien.

(b) If the purchaser fails to fulfill the requirements set forth in ~~paragraph~~ subsection (a) of this section, the purchaser shall lose all the benefits of his or her purchase.

(c) After the requirements of ~~paragraph~~ subsection (a) of this section have been satisfied, the deputy commissioner may then sell the property in the same manner as he or she sells lands which have been offered for sale at public auction but which remain unsold after such auction, as provided in section forty-eight of this article.

(d) If the person requesting preparation and service of the notice is an assignee of the purchaser, he or she shall, at the time of the request, file with the deputy commissioner a written assignment to him or her of the purchaser's rights, executed, acknowledged and certified in the manner required to make a valid deed.

(e) No deed to a subsequent bona fide purchaser for value from the purchaser, or an owner substituted for the purchaser, may be set aside for failure of the purchaser to comply with this section.

§11A-3-54. Notice to redeem.

Whenever ~~the provisions of~~ section fifty-two of this article ~~have~~ has been complied with, the deputy commissioner shall thereupon prepare a notice in form or effect as follows:

To _____

You will take notice that _____, the purchaser (or _____, the assignee, heir or devisee of _____, the purchaser) of the following real estate, _____, (here describe the real estate sold) located in _____, (here name the city, town or village in which the real estate is situated or, if not within a city, town or village, give the district and a general description) which was _____ (here put whether the property was returned delinquent or nonentered) in the name of _____, and was sold by the deputy commissioner of delinquent and nonentered lands of _____ County at the sale for delinquent taxes (or nonentry) on the _____ day of _____, ~~19 20~~, has requested that you be notified that a deed for such real estate will be made to him or her on or after the _____ day of _____, ~~19 20~~, as provided by law, unless before that day you redeem such real estate. The amount you will have to pay to redeem on the _____ day of _____, ~~19 20~~, will be as follows:

Amount equal to the taxes, interest and charges due on the date of sale, with interest to _____\$ _____

Amount of taxes paid on the property, since the sale, with interest to _____
.....\$ _____

Amount paid for title examination and preparation of list of those to be served, and for
preparation and service of the notice with interest to _____\$ _____

Amount paid for other statutory costs (describe)

_____ \$ _____

Total \$ _____

You may redeem at any time before _____ by paying the above total less any
unearned interest.

NOTE: If you have received this notice because you are the owner of an interest in the surface
overlaying a mineral interest that was returned delinquent, or an owner of a mineral interest
underlying a surface tract that was returned delinquent, you may pay the clerk the amount
identified above, plus a nonrefundable \$20 administrative fee, before March 31, 20 _____. If you pay
the amount identified above and the property is later redeemed by the owner or a person with a
right to redeem, that amount you paid, less the administrative fee, will be refunded to you. If you
pay the amount identified above and the property is not redeemed by the owner or a person with
a right to redeem, you will be substituted for the purchaser of the tax lien and you may proceed
to obtain a deed for the delinquent property. If you and one or more additional surface owners or
mineral owners each pay the amount identified above, the surface owners or mineral owners who
have made payment shall submit, by April 1, 20 ____, an agreement dividing the real estate
according to your proportionate ownership or any other method or formula agreed to among all of
you. If an agreement is not filed, the clerk shall refund the moneys tendered by the surface owners
or mineral owners, less the administrative fees, and none of you will be substituted for the
purchaser of the tax lien.

Given under my hand this _____ day of _____, 19 20_____.

_____ Deputy Commissioner of Delinquent and Nonentered
Lands

_____ County,

State of West Virginia

_____ County,

State of West Virginia

The deputy commissioner for his or her service in preparing the notice shall receive a fee of
~~\$10~~ \$50 for the original and \$2 for each copy required. Any costs which must be expended in
addition thereto for publication, or service of such notice in the manner provided for serving
process commencing a civil action, or for service of process by certified mail, shall be charged by
the deputy commissioner. All costs provided by this section shall be included as redemption costs
and included in the notice described ~~herein~~.

§11A-3-56. Redemption from purchase; receipt; list of redemptions; lien; lien of person redeeming interest of another; record.

(a) After the sale of any tax lien on any real estate pursuant to section forty-five or forty-eight of this article, the owner of, or any other person who was entitled to pay the taxes on, any real estate for which a tax lien thereon was purchased by an individual, may redeem at any time before a tax deed is issued therefor. In order to redeem, he must pay to the deputy commissioner the following amounts: (1) An amount equal to the taxes, interest and charges due on the date of the sale, with interest thereon at the rate of one percent per month from the date of sale; (2) all other taxes thereon, which have since been paid by the purchaser, his heirs or assigns, with interest at the rate of one percent per month from the date of payment; (3) such reasonable additional expenses as may have been incurred in preparing the list of those to be served with notice to redeem, and any title examination incident thereto, with interest at the rate of one percent per month from the date of payment, but the amount he shall be required to pay, excluding said interest, for such expenses incurred for the preparation of the list of those to be served with notice to redeem required by section fifty-two of this article, and any title examination incident thereto, ~~shall not exceed two hundred dollars~~; (4) all additional statutory costs paid by the purchaser; and (5) the deputy commissioner's fee and commission as provided by section sixty-six of this article. Where the deputy commissioner has not received from the purchaser satisfactory proof of the expenses incurred in preparing the notice to redeem, and any examination of title incident thereto, in the form of receipts or other evidence thereof, the person redeeming shall pay the deputy commissioner the sum of two hundred dollars plus interest thereon at the rate of one percent per month from the date of the sale for disposition pursuant to the provisions of sections fifty-seven, fifty-eight and sixty-four of this article. Upon payment to the deputy commissioner of those and any other unpaid statutory charges required by this article, and of any unpaid expenses incurred by the sheriff, the auditor and the deputy commissioner in the exercise of their duties pursuant to this article, the deputy commissioner shall prepare an original and five copies of the receipt for the payment and shall note on said receipts that the property has been redeemed. The original of such receipt shall be given to the person redeeming. The deputy commissioner shall retain a copy of the receipt and forward one copy each to the sheriff, assessor, the auditor and the clerk of the county commission. The clerk shall endorse on the receipt the fact and time of such filing and note the fact of redemption on his record of delinquent lands.

(b) Any person who, by reason of the fact that no provision is made for partial redemption of the tax lien on real estate purchased by an individual, is compelled in order to protect himself to redeem the tax lien on all of such real estate when it belongs, in whole or in part, to some other person, shall have a lien on the interest of such other person for the amount paid to redeem such interest. He shall lose his right to the lien, however, unless within thirty days after payment he shall file with the clerk of the county commission his claim in writing against the owner of such interest, together with the receipt provided for in this section. The clerk shall docket the claim on the judgment lien docket in his office and properly index the same. Such lien may be enforced as other judgment liens are enforced.

§11A-3-58a. Surface owner substitution for purchaser.

(a) If the interest in real estate subject to the tax lien includes minerals, but not an interest in the surface, except an interest for the purpose of developing the minerals, then within thirty days after notices to redeem have been served, or an attempt of personal service has been made, the notices have been mailed or, if necessary, published in accordance with section fifty-five of this article, following the deputy commissioner's sale, a surface owner whose surface lies above the delinquent mineral property may pay to the deputy commissioner: (1) the amount that would be

required for redemption pursuant to section twenty-three of this article; (2) the lesser of either the amount required for redemption pursuant to section twenty-three of this article or \$3,000; and (3) a nonrefundable \$20 administrative fee. Upon payment, the deputy commissioner shall issue the surface owner a certificate of substitution and send a copy to the purchaser. If more than one surface owner makes this payment to the deputy commissioner, the deputy commissioner shall issue each a certificate of substitution and send copies of the certificates of substitution to the other substituted surface owners in addition to the purchaser.

(b) If the property is redeemed by the owner or a person with a right to redeem, the deputy commissioner shall refund the moneys paid by the surface owner, less the administrative fees.

(c) If the property is not redeemed by the owner or a person with a right to redeem, and if only one surface owner has received a certificate of substitution, then the deputy commissioner shall send the amount paid by the surface owner to the purchaser, less the \$20 administrative fee, and record the certificate of substitution. That surface owner enjoys the full rights and duties of the purchaser.

(d) If more than one surface owner pays the deputy commissioner the appropriate amount, the surface owners shall submit an agreement dividing the property according to their proportionate shares of ownership in the overlying surface, or another mutually agreeable method or formula approved by all of them, by April 1 of the year following the tax sale. No deed may be issued before April 1 of the year following the tax sale. Unless otherwise provided by written agreement between the substituted surface owners, each surface owner's interest in the delinquent mineral property shall be equal to their pro rata share of surface acreage overlying the delinquent mineral property: *Provided*, That if more than one owner of an undivided interest in the same tract pays the deputy commissioner the appropriate amount, his or her share shall be the total acreage of the undivided tract divided by the number of owners of the tract who have also paid the deputy commissioner: *Provided, however*, That the deputy commissioner shall refund that portion of moneys which exceeds the amount required for substitution in subsection (a) of this section according to the substituted surface owners' proportionate interest in the delinquent mineral property. If an agreement is filed, then the deputy commissioner shall make an amended certificate dividing the property according to their respective interests and refund any remaining moneys paid by them according to their agreed interests. If no agreement is filed, the deputy commissioner shall refund the moneys paid by the surface owners, less the \$20 administrative fees, and the original purchaser is returned to his or her original position.

§11A-3-58b. Mineral owner substitution for purchaser.

(a) If the interest in real estate subject to the tax lien includes surface property, but not an interest in the underlying minerals, then within thirty days after notices to redeem have been served, or an attempt of personal service has been made, the notices have been mailed or, if necessary, published in accordance with section fifty-five of this article, following the deputy commissioner's sale, a mineral owner whose mineral property underlays the delinquent surface property may pay to the deputy commissioner: (1) the amount that would be required for redemption pursuant to section twenty-three of this article; (2) the lesser of either the amount required for redemption pursuant to section twenty-three of this article or \$3,000; and (3) a nonrefundable \$20 administrative fee. Upon payment, the deputy commissioner shall issue the mineral owner a certificate of substitution and send a copy to the purchaser. If more than one mineral owner makes this payment to the deputy commissioner, the deputy commissioner shall issue each a certificate of substitution and send copies of the certificates of substitution to the other substituted mineral owners in addition to the purchaser.

(b) If the property is redeemed by the owner or a person with a right to redeem, the deputy commissioner shall refund the moneys paid by the mineral owner, less the administrative fees.

(c) If the property is not redeemed by the owner or a person with a right to redeem, and if only one mineral owner has received a certificate of substitution, then the deputy commissioner shall send the amount paid by the mineral owner to the purchaser, less the \$20 administrative fee, and record the certificate of substitution. That substituted mineral owner enjoys the full rights and duties of the purchaser.

(d) If more than one mineral owner pays the deputy commissioner the appropriate amount, the mineral owners shall submit an agreement dividing the surface property according to their proportionate shares of ownership in the underlying mineral property, or another mutually agreeable method or formula approved by all of them, by April 1 of the year following the tax sale. No deed may be issued before April 1 of the year following the tax sale. Unless otherwise provided by written agreement between the substituted mineral owners, each mineral owner's interest in the delinquent surface property shall be equal to their pro rata share of mineral acreage underlying the delinquent surface property: *Provided*, That if more than one owner of an undivided interest in the same tract pays the deputy commissioner the appropriate amount, his or her share shall be the total acreage of the undivided tract divided by the number of owners of the tract who have also paid the deputy commissioner: *Provided, however*, That the deputy commissioner shall refund that portion of moneys which exceeds the amount required for substitution in subsection (a) of this section according to the substituted mineral owners' proportionate interest in the delinquent surface property. If an agreement is filed, then the deputy commissioner shall make an amended certificate dividing the property according to their respective interests and refund any remaining moneys paid by them according to their agreed interests. If no agreement is filed, the deputy commissioner shall refund the moneys paid by the mineral owners, less the \$20 administrative fees, and the original purchaser is returned to his or her original position.

The bill (Com. Sub. for S. B. 369), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 375, Relating to rate and measure of severance taxes on certain natural resources.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 399, Prohibiting political subdivisions from enacting local ordinances regulating benefits employers provide to employees.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Weld, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section three, line seven, after the word "subdivision" by inserting the following: and is not intended to prohibit a political subdivision from adopting, enforcing or administering an ordinance, regulation, local policy, local resolution or other legal requirement applicable to its own employees regarding any of the specific areas described in subsections (a) through (g) thereof.

The bill (Com. Sub. for Com. Sub. for S. B. 399), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 402, Relating to covenants not to compete between physicians and hospitals.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 406, Relating to generic drug products.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 409, Relating generally to 2017 Tax Reform Act.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Ferns, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's second reading calendar, following consideration of Committee Substitute for Senate Bill 576, already placed in that position.

Com. Sub. for Senate Bill 446, Authorizing Governor issue executive orders to furlough state employees.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 465, Relating to medical professional liability.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 469, Prohibiting waste of game animals, birds or fish.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 482, Relating generally to WV Parkways Authority.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 484, Relating generally to taxation.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Ferns, the following amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §11-13X-4 and §11-13X-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15-3, §11-15-8 and §11-15-9 of said code be amended and reenacted; that §11-15A-2 of said code be amended and reenacted; that §11-16-13 of said code be amended and reenacted; that §11-17-3 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-19A-1, §11-19A-2, §11-19A-3, §11-19A-4, §11-19A-5, §11-19A-6, §11-19A-7, §11-19A-8, §11-19A-9, §11-19A-10, §11-19A-11, and §11-19A-12; that said code be amended by adding thereto a new section, designated §11-21-4g, that said code be amended by adding thereto a new section, designated §11-21-97; and that said code be amended by adding thereto a new article, designated §11-28-1, §11-28-2, §11-28-3, §11-28-4, §11-28-5, §11-28-6, §11-28-7, §11-28-8, §11-28-9, §11-28-10, §11-28-11, §11-28-12, §11-28-13, §11-28-14 and §11-28-15, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-4. Creation of the tax credit.

(a) An eligible company may apply for, and the Tax Commissioner shall allow, a nonrefundable tax credit in an amount equal to the percentage specified in section five of this article of:

(1) Direct production expenditures incurred in West Virginia that are directly attributable to the production in West Virginia of a qualified project and that occur in West Virginia or with a West Virginia vendor; and

(2) Postproduction expenditures incurred in West Virginia that are:

(A) Directly attributable to the production of a qualified project;

(B) For services performed in West Virginia.

(b) Expenditures utilized by an eligible company for purposes of calculating the tax credit authorized by this article shall in no event be utilized by the eligible company for the purpose calculating or qualifying investment for claiming the economic opportunity tax credit authorized by article thirteen-q of this chapter or the manufacturing investment tax credit authorized by article thirteen-s of this chapter.

(c) Elimination of the West Virginia Film Industry Investment Act. – The tax credit allowed by this article shall be eliminated on and after July 1, 2017: Provided, That any taxpayer who was entitled to take the credit provided for by this article prior to July 1, 2017, shall continue to be eligible to claim such credit subject to the limitations set forth in section eight of this article.

§11-13X-13. Effective date.

(a) The credit allowed by this article shall be allowed upon eligible expenditures occurring after December 31, 2007 but prior to July 1, 2017, in accordance with the termination of the West Virginia Film Industry Investment Act set forth in section four of this article.

(b) The amendments to this article enacted in the year 2009 shall apply to all taxable years beginning after December 31, 2007, and shall apply with retroactive effect with relation to taxable years beginning prior to the date of passage of such amendments.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.

(a) *Vendor to collect.* – For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax as provided under this article and article fifteen-b of this chapter, and shall pay the amount of tax to the Tax Commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

(b) *Amount of tax.* –~~The general consumer sales and service tax imposed by this article shall be at the rate of six cents on the dollar percent of the sales price of sales tangible personal property, custom software or taxable services purchased, excluding gasoline and special fuel sales, which remain taxable at the rate of five cents percent: on the dollar of sales~~ Provided, That on and after July 1, 2017, the tax imposed by this article shall be six and one-quarter percent of the purchase price, excluding sales of motor fuels, which remain taxable at the rate of five percent of the average wholesale selling price of motor fuel: *Provided, however,* That this increase in the rate of tax adopted pursuant to the reenactment of this section during the 2017 Regular Session of the Legislature shall expire on June 30, 2020, so long as the balance of funds as of June 30, 2019, in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B, established in section twenty, article two, chapter eleven-b of this code equals or exceeds fifteen percent of the general revenue fund budgeted for the fiscal year commencing on July 1, 2019.

(c) *Calculation tax on fractional parts of a dollar until January 1, 2004.* – There shall be no tax on sales where the monetary consideration is 5¢ or less. The amount of the tax shall be computed as follows:

- ~~(1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.~~
- ~~(2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.~~
- ~~(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.~~
- ~~(4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.~~
- ~~(5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.~~
- ~~(6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.~~

~~(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢; 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33, both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67,~~

~~both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to \$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall be calculated as provided in subsection (d) of this subsection and this subsection (c) does not apply to sales made after December 31, 2003.~~

~~(d) (c) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* – Beginning January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.~~

~~(e) (d) *No aggregation of separate sales transactions, exception for coin-operated devices.* – Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though the sales are aggregated in the billing or payment therefor. Notwithstanding any other provision of this article, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.~~

~~(f) (e) *Rate of tax on certain mobile homes.* – Notwithstanding any provision of this article to the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six percent of fifty percent of the sales price: *Provided*, That on and after July 1, 2017, notwithstanding any provision of this article to the contrary, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six and one-quarter percent of fifty percent of the sales price: *Provided*, however, That should the rate of tax imposed in subsection (b) of this section revert to six percent as of a specified date, the tax imposed on sales of certain mobile homes shall similarly revert to six percent of fifty percent of the sales price.~~

~~(g) (f) *Construction; custom software.* – After December 31, 2003, whenever Whenever the words “tangible personal property” or “property” appear in this article, the same shall also include the words “custom software”.~~

~~(h) (g) *Computation of tax on sales of gasoline and special fuel.* – The method of computation of tax provided in this section does not apply to sales of gasoline and special fuel.~~

~~(h) Notwithstanding any provision of this code to the contrary, on and after July 1, 2017, when the words “six percent” appear in this article or article fifteen of this chapter they shall mean the rate of the tax specified in subsection (b) of this section.~~

§11-15-8. Furnishing of services included; exception.

The provisions of this article apply not only to selling tangible personal property and custom software, but also to the furnishing of all services, except professional and personal services, and except those services furnished by businesses subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission: *Provided*, That on July 1, 2017, the furnishing of professional services are subject to the tax imposed under this article, with the exception of professional services rendered by acupuncturists, audiologists, certified registered nurse anesthetists, chiropractors, dentists, licensed occupational therapists, licensed physical therapists,

ophthalmologists, optometrists, osteopathic physicians and surgeons, pharmacists, physical therapists, physicians, physicians' assistants, podiatrists, psychiatrists, psychoanalysts, psychologists, registered professional nurses, school psychologists, speech pathologists, and other professional medical practitioners designated by the commissioner, with the exception of veterinarians.

§11-15-9. Exemptions.

(a) Exemptions for which exemption certificate may be issued. – A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia Department of Education and the Arts, the ~~Board of Trustees of the University System of West Virginia or the board of directors for colleges located in this State~~ Higher Education Policy Commission or the Council for Community and Technical College Education for universities and colleges located in this state;

(3) Sales of property or services to this State, its institutions or subdivisions, governmental units, institutions or subdivisions of other states: *Provided*, That the law of the other state provides the same exemption to governmental units or subdivisions of this State and to the United States, including agencies of federal, state or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by section four, article three, chapter seventeen-a of this code or like tax;

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under article twelve of this chapter, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

(A) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(B) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this State where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions or membership fees;

(D) An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America or the YMCA Indian Guide/Princess Program and the local affiliates thereof, which is organized and operated exclusively for charitable purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term "support" includes, but is not limited to:

(I) Gifts, grants, contributions or membership fees;

(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state or local tax or any similar benefit;

(ii) The term "charitable contribution" means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term "membership fee" does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel which are taxable as provided in article fourteen-c of this chapter;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale or delivered by the owner of the property or by his or her representative for the owner's account, the sale, transfer, offer for sale or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: *Provided*, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation pursuant to article three, chapter twenty-nine-a of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: *Provided*, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: *Provided, however*, That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: *Provided*, That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: *Provided, however*, That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes. The amendment to this subdivision shall apply to sales made after December 31, 2003;

(12) Sales of radio and television broadcasting time, internet advertising, preprinted advertising circulars and newspaper and outdoor advertising space for the advertisement of goods or services-;

(13) Sales and services performed by day care centers;

(14) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fundraisers sponsored by a corporation or organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any twelve-month period and “limited duration” means no more than eighty-four consecutive hours: Provided, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than eighty-four consecutive hours at a time, which are held no more than eighteen times in a twelve-month period for the purposes of this subdivision are considered “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character”;

(15) Sales of property or services to a school which has approval from the ~~Board of Trustees of the University System of West Virginia or the Board of Directors of the State College System~~ Higher Education Policy Commission or the Council for Community and Technical College Education to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as provided in sections eighteen and eighteen-b of this article and article fourteen-c of this chapter;

(16) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the state Lottery Commission, under the provisions of article twenty-two], chapter twenty-nine of this code;

(17) Leases of motor vehicles titled pursuant to the provisions of article three, chapter seventeen-a of this code to lessees for a period of thirty or more consecutive days;

(18) Notwithstanding the provisions of section eighteen or eighteen-b of this article or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the Tax Commissioner pursuant to rules which are promulgated after being proposed for legislative approval in accordance with chapter twenty-nine-a of this code by the Tax Commissioner;

(19) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U.S.C. §§ 2011, *et seq.*, as amended, or with drafts issued through the West Virginia special supplement food program for women, infants and children codified in 42 U.S.C. §§ 1786;

(20) Sales of tickets for activities sponsored by elementary and secondary schools located within this State;

(21) Sales of electronic data processing services and related software: *Provided*, That, for the purposes of this subdivision, “electronic data processing services” means:

(A) The processing of another's data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and

(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;

(22) Tuition charged for attending educational summer camps;

(23) Dispensing of services performed by one corporation, partnership or limited liability company for another corporation, partnership or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company;

(24) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in

carrying out those functions and activities: *Provided*, That purchases made by the organizations are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(25) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters or other school or athletic booster organizations supporting activities for grades kindergarten through twelve and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases made by the organizations are not exempt as a purchase for resale;

(26) Charges for room and meals by fraternities and sororities to their members: *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

(27) Sales of or charges for the transportation of passengers in interstate commerce;

(28) Sales of tangible personal property or services to any person which this State is prohibited from taxing under the laws of the United States or under the constitution of this State;

(29) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or article fifteen-a of this chapter pursuant to the provision of any other chapter of this code;

(30) Charges for the services of opening and closing a burial lot;

(31) Sales of livestock, poultry or other farm products in their original state by the producer of the livestock, poultry or other farm products or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

(32) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;

(33) Sales of aircraft repair, remodeling and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental entity,

as part of the repair, remodeling or maintenance service and sales of machinery, tools or equipment directly used or consumed exclusively in the repair, remodeling or maintenance of aircraft, aircraft engines or aircraft component parts for a certificated or licensed carrier of persons or property or for a governmental entity;

(34) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;

(35) Sales of services by individuals who babysit for a profit: *Provided*, That the gross receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 dollars in a taxable year;

(36) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

(37) Commissions received by a manufacturer's representative;

(38) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire or other means of interstate commerce, for use by the client outside the State of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews and other data collection methods commonly used for quantitative and qualitative opinion research studies;

(39) Sales of property or services to persons within the State when those sales are for the purposes of the production of value-added products: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies and materials directly used or consumed by those persons engaged solely in the production of value-added products: *Provided*, however, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term "value-added product" means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

- (D) Wool into fabric;
- (E) Raw hides into semifinished or finished leather products;
- (F) Milk into cheese;
- (G) Fruits or vegetables into a dried, canned or frozen product;
- (H) Feeder cattle into commonly accepted slaughter weights;
- (I) Aquatic animals into a dried, canned, cooked or frozen product; and
- (J) Poultry into a dried, canned, cooked or frozen product;

(40) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility or any other business location in this State in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed \$3,000 dollars: *Provided*, That nothing contained herein may be construed to deprive private social gatherings, weddings or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows or any video or audio taped presentations or the sale or leasing of video or audio tapes, air shows or any other public meeting, display or show other than those specified herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a legislative rule pursuant to article three, chapter twenty-nine-a of this code establishing definitions

and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

(41) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment or transportation taxable under this article: *Provided*, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment or transportation taxable under this article for which a separate or separately stated charge is not

made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

(42) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks or circuit clerks in the normal course of local government operations;

(43) Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled *Wonderful West Virginia* and by the Division of Culture and History of the magazine currently entitled *Goldenseal* and the journal currently entitled *West Virginia History*;

(44) Sales of soap to be used at car wash facilities;

(45) Commissions received by a travel agency from an out-of-state vendor;

(46) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

(47) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

(48) Lodging franchise fees, including royalties, marketing fees, reservation system fees or other fees assessed after December 1, 1997, that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement; and

(49) Sales of the regulation size United States flag and the regulation size West Virginia flag for display.

(b) *Refundable exemptions.* — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in section nine-d of this article, give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: Provided, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: *Provided*, That sales of gasoline and special fuel are taxable;

(4) Sales and services, fire-fighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State of West Virginia: *Provided*, That sales of gasoline and special fuel are taxable;

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to or incorporated by the organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter or an emergency children and youth shelter if the shelter is owned, managed, developed or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended; ~~and~~

~~(6) Sales of construction and maintenance materials acquired by a second party for use in the construction or maintenance of a highway project: *Provided*, That in lieu of any refund or credit to the person that paid the tax imposed by this article, the Tax Commissioner shall pay to the Division of Highways for deposit into the State Road Fund of the state reimbursement for the tax in the amount estimated under the provisions of this subdivision: *Provided*, however, That by the fifteenth day of June of each fiscal year, the division shall provide to the Tax Department an itemized listing of highways projects with the amount of funds expended for highway construction and maintenance. The Commissioner of Highways shall request reimbursement of the tax based on an estimate that forty percent of the total gross funds expended by the agency during the fiscal period were for the acquisition of materials used for highway construction and maintenance. The amount of the reimbursement shall be calculated at six percent of the forty percent.~~

(c) *Effective date.* — The amendment to subsection (b) of this section enacted in 2017 shall take effect May 1, 2017, and shall be construed to prohibit all future transfers to the State Road Fund established in the State Treasury pursuant to section fifty-two, article six of the Constitution, under this section of taxes imposed by this article and article fifteen-a of this chapter.

ARTICLE 15A. USE TAX.

§11-15A-2. Imposition of tax; ~~six percent tax rate~~; inclusion of services as taxable; transition rules; allocation of tax and transfers.

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property, custom software or taxable services, to be collected and paid as provided in this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property or taxable services, except as otherwise provided in this article: *Provided*, That on and after July 1, 2017, the tax imposed by this article shall be collected and paid, as provided in this article or

article fifteen-b of this chapter, at the rate of six and one-quarter percent of the purchase price of the tangible personal property, custom software or taxable services, except as otherwise provided in this article: *Provided, however,* That the one-half percent increase in the tax on the purchase price adopted pursuant to the reenactment of this section during the 2017 Regular Session of the Legislature shall expire on June 30, 2020, so long as the balance of funds as of June 30, 2019, in the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B, established in section twenty, article two, chapter eleven-b of this code equals or exceeds fifteen percent of the general revenue fund budgeted for the fiscal year commencing on July 1, 2019.

(b) *Calculation of tax on fractional parts of a dollar.* – The tax computation under subsection (a) of this section shall be carried to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(c) “Taxable services,” for the purposes of this article, means services of the nature that are subject to the tax imposed by article fifteen of this chapter. In this article, wherever the words “tangible personal property” or “property” appear, the same shall include the words “or taxable services,” where the context so requires.

(d) Use tax is hereby imposed upon every person using tangible personal property, custom software or taxable service within this state. That person’s liability is not extinguished until the tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the Tax Commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(e) Purchases of tangible personal property or taxable services made for the government of the United States or any of its agencies by ultimate consumers is subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject to use tax when sold, if the industrial materials and equipment would not be subject to use taxes if sold outside of the state for use in West Virginia.

(f) This article does not apply to purchases made by counties or municipal corporations.

(g) Notwithstanding any provisions of this code to the contrary, on and after July 1, 2017, when the words “six percent” appear in subsection (c), section ten of this article, those words shall mean “a percentage equal to the use tax rate” specified in subsection (a) of this section.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-13. Barrel tax on nonintoxicating beer.

(a) There is hereby levied and imposed, in addition to the license taxes provided for in this article, a tax of \$5.50 on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state: *Provided, That on and after July 1, 2017, the tax imposed by this section shall be \$8.00*

on each barrel of thirty-one gallons and in like ratio on each part barrel of nonintoxicating beer manufactured in this state for sale within this state, whether contained or sold in barrels, bottles or other containers, and a like tax is hereby levied and imposed upon all nonintoxicating beer manufactured outside of this state and brought into this state for sale within this state; but no nonintoxicating beer manufactured, sold or distributed in this state is subject to more than one barrel tax. The brewer manufacturing or producing nonintoxicating beer within this state for sale within this state shall pay the barrel tax on such nonintoxicating beer, and, except as provided otherwise, the distributor who is the original consignee of nonintoxicating beer manufactured or produced outside of this state, or who brings such nonintoxicating beer into this state, shall pay the barrel tax on such nonintoxicating beer manufactured or produced outside of this state: *Provided*, That the barrel tax imposed by this section shall not apply to nonintoxicating beer manufactured by a brewpub.

(b) On or before the tenth day of each month during the license period, every brewer or operator of a brewpub who manufactures or produces nonintoxicating beer within this state shall file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax Commissioner, stating its total sales, or in the case of a brewpub, its total estimated production of nonintoxicating beer within this state during that month, and at the same time shall pay the tax levied by this article on such production. On or before the tenth day of each month during the license period, every distributor who is the original consignee of nonintoxicating beer manufactured or produced outside this state or who brings such beer into this state for sale shall file a report in writing, under oath, to the Tax Commissioner, in the form prescribed by the Tax Commissioner, stating its total estimated purchases of such nonintoxicating beer during that month, and at the same time shall pay the tax thereon levied by this article for such estimated monthly purchase: *Provided*, That the Tax Commissioner may allow, or require, a brewer who manufactures or produces nonintoxicating beer outside this state to file the required report and pay the required tax on behalf of its distributor or distributors. Any brewer or distributor or operator of a brewpub who files a report under this subsection may adjust its monthly estimated sales or purchases or production report or reports by filing amended reports by the twenty-fifth day of the reporting month.

(c) Every brewer or distributor or operator of a brewpub who files a report under subsection (b) of this section shall file a final monthly report of said sales or purchases or production, in a form and at a time prescribed by the Tax Commissioner, stating actual nonintoxicating beer sales, purchases, or production and other information which the Tax Commissioner may require, and shall include a remittance for any barrel tax owed for actual sales or purchases or production made in excess of the amount estimated for that month.

(d) Any brewer or distributor or operator of a brewpub who files a report pursuant to subsection (b) of this section reflecting an underestimation of twenty-five percent or more of actual sales or purchases or production of nonintoxicating beer as shown by the report filed pursuant to subsection (c) of this section shall be assessed a penalty of one percent of the total taxes due in such prior month.

(e) Brewers and distributors and operators of brewpubs shall keep all records which relate to the sale or purchase in this state of nonintoxicating beer for a period of three years unless written approval for earlier disposal is granted by the Tax Commissioner.

(f) Brewpubs shall keep such records as required by the federal government and may, in lieu of the recordkeeping and reporting requirements contained in subsections (a) through (e) of this section, file copies of the federal reports contemporaneously with the Tax Commissioner at the

time of such filings with the federal government. The filing of duplicate copies of the federal reports with the State Tax Commissioner shall be deemed as compliance with subsections (a) through (e) of this section.

ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.

§11-17-3. Levy of tax; ratio; dedication of proceeds.

(a) *Tax on cigarettes and tobacco products other than cigarettes.* — For the purpose of providing revenue for the General Revenue Fund of the state, an excise tax is hereby levied and imposed on sales of cigarettes and tobacco products other than cigarettes.

(b) *Tax rate on cigarettes.* — Effective May 1, 2003, the excise tax rate levied and imposed on the sale of cigarettes is 55 cents on each twenty cigarettes or in like ratio on any part thereof: Provided, That on and after July 1, 2016, the excise tax rate levied and imposed on the sale of cigarettes is \$1.20 on each twenty cigarettes or in like ratio on any part thereof: Provided, however, That on and after July 1, 2017, the excise tax rate levied and imposed on the sale of cigarettes is \$1.70 on each twenty cigarettes or in like ratio on any part thereof. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate equal to seven percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided*, That on and after July 1, 2016, the excise tax rate levied and imposed on the sales or use of tobacco products other than cigarettes is at the rate equal to twelve percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(d) *Effective date of amendments.* — Amendments to this section enacted in the year 2003 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016. Amendments to this section enacted in the year 2016 apply in determining tax imposed under this article effective on and after July 1, 2016. Amendments to this section enacted in the year 2017 apply in determining tax imposed by this article on and after July 1, 2017.

ARTICLE 19A. SUGAR SWEETENED BEVERAGE TAX. §11-19A-1. Legislative findings.

The Legislative finds and declares:

(1) Our nation, our state, and our communities face a major public health crisis. Diabetes, obesity, and tooth decay have been on the rise for decades. No segment of our population has escaped these epidemics, but the children of low-income families continue to be disproportionately affected.

(2) While there is no single cause for the rise in diabetes, obesity and tooth decay, there is significant evidence of the link between the consumption of sugary drinks and the incidence of diabetes, obesity, and tooth decay.

(3) Sugary drinks such as sugary soft drinks, energy drinks, sweetened coffees and teas, and sport drinks offer little or no nutritional value, but large quantities of added sugar. A single 20-ounce bottle of soda, for example, typically contains the equivalent of approximately 16 teaspoons of sugar.

(4) Hundreds of millions of dollars have been spent by manufacturers of sugary soft drink products in an ongoing massive campaign that particularly targets children. The resulting impact on consumption should not be surprising. The average American now drinks nearly 50 gallons of sugary drinks a year.

(5) This level of consumption has had tragic impacts on community health. Type 2 Diabetes – previously only seen among adults – is now increasingly seen among children. If the current obesity trends are not reversed, it is predicted that one in three children will develop type 2 diabetes in their lifetimes.

(6) Childhood obesity has more than doubled in children and tripled in adolescents in the past 30 years.

(7) Tooth decay, while not as life threatening as diabetes or obesity, still has a meaningful impact, especially on children. Tooth decay is the most common childhood disease in West Virginia. Children who frequently or excessively consume beverages high in sugar are at increased risk for tooth decay. Dental problems are a major cause of missed school days and poor school performance as well as pain, infection, and tooth loss.

§11-19A-2. Purpose and intent.

(a) Based on the findings set forth in section one of this article, the purpose of this article is to diminish the human and economic costs of diseases associated with the consumption of sugary drinks by discouraging their distribution and consumption in West Virginia through a tax. The purpose of this article is to impose an excise tax on sugary soft drink products to be paid at the time of their first distribution in this State.

(b) This article is not enacted to regulate the distribution of soft drink products.

(c) This article imposes an excise tax on the distribution of sugar-sweetened soft drink products such as high-calorie, low-nutrition products, like soda, energy drinks, and presweetened coffees and teas, as well as the added caloric sweeteners used to produce these sugar-sweetened beverages, such as the premade syrup used to make fountain drinks. Certain drinks containing sugar are exempted, including infant formula, milk products, and natural fruit and vegetable juice.

§11-19A-3. Definitions.

As used in this article, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

(a) “Added caloric sweetener.”

(1) “Added caloric sweetener” means any substance or combination of substances that meets all of the following four criteria:

(A) Is suitable for human consumption;

(B) Adds calories to the diet of consumed;

(C) Is perceived as sweet when consumed: and

(D) Is used for making, mixing, or compounding sugar-sweetened beverages by combining the substance or substances with one or more other ingredients including, without limitation, water, ice, powder, coffee, tea, fruit juice, vegetable juice, or carbonation or other gas.

(2) An added caloric sweetener may take any form, including but not limited to a liquid, syrup, and power, whether or not frozen.

(3) "Added caloric sweetener" includes, without limitation, sucrose, fructose, glucose, other sugars, and high fructose corn syrup, but does not include a substance that exclusively contains natural, concentrated, or reconstituted fruit or vegetable juice or any combination thereof.

(b) "Alcoholic beverage" means any beverage subject to regulation under chapter sixty of this code.

(c) "Beverage for medical use" means a beverage suitable for human consumption and manufactured for use as an oral nutritional therapy for persons who cannot absorb or metabolize dietary nutrients from food or beverages, or for use as an oral rehydration electrolyte solution for infants and children formulated to prevent or treat dehydration due to illness. "Beverage for medical use" does not include drinks commonly referred to as "sports drinks" or any other common names that are derivations thereof.

(d) "Bottled sugary soft drinks" includes any and all nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Doctor Pepper, root beer, carbonated water, orangeade, lemonade, fruit juice, when any plain or carbonated water, flavoring, or syrup is added, or any and all preparations commonly referred to as "soft drinks" of whatever kind, which are closed and sealed in glass, paper, metal cans, plastic or any other type of container, envelope, box, package, bottle or can, whether manufactured with or without the use of any syrup. The term "bottled sugary soft drinks" does not include fluid milk, natural undiluted fruit juice or vegetable juice, or soft drinks marketed as diet soft drinks.

(e) "Dealer" means any person engaged in the business of selling sugar-sweetened beverage for retail sale within the State, including but not limited to restaurants; retail stores; street vendors; owners and operators of vending machines; and distributors who engage in making retail sales.

(f) "Distributor" means any person who manufactures, bottles, produces or purchases for sale to retail dealers any bottled sugary soft drink product.

(g) "Milk" means natural liquid milk, regardless of animal source or butterfat content, natural milk concentrate, whether or not reconstituted, regardless of animal source or butterfat content, or dehydrated natural milk, whether or not reconstituted and regardless of animal source or butterfat content, and plant-based milk substitutes, that are marketed as milk, such as soy milk and almond milk.

(h) "Natural undiluted fruit juice" means the liquid resulting from the pressing of fruit without sweetener being added, or the liquid resulting from the reconstitution of natural fruit juice

concentrate by the restoration of water to dehydrated natural fruit juice without sweetener being added.

(i) "Natural undiluted vegetable juice" means the liquid resulting from the pressing of vegetables without sweetener being added or the liquid resulting from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice without sweetener being added.

(j) "Person" means an individual, partnership, limited liability company, corporation, trust, business trust, other business entity, government, receiver, trustee, syndicate, social club, fraternal organization, estate, and association or any other group or combination acting as a unit.

(k) "Retail dealer" includes every person other than a wholesale dealer mixing, making, compounding or manufacturing any drink from a soft drink syrup or powder base, or a person selling such syrup or powder.

(l) "Simple syrup" means the making, mixing, compounding or manufacturing, by dissolving sugar and water or any other mixtures that will create simple syrup to which may or may not be added concentrates or extracts.

(m) "Soft drink syrups and powders" includes the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit milk or any other produce suitable to make a soft drink, among such syrups being such products as Coca Cola syrup, chero cola syrup, Pepsi Cola syrup, Doctor Pepper syrup, root beer syrup, nu-grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepares syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purchaser to mix with water or other liquids or other ingredients to make a sugary soft drink product: *Provided*, That soft drinks syrups and powders include only those products with any form of caloric sugar based sweetener.

(n) "Sugar-sweetened soft drink" means any beverage intended for human consumption to which one or more added caloric sweeteners has been added and that contains at least two calories per fluid ounce.

(o) "Sugar-sweetened beverages"

(1) Sugar-sweetened beverage includes:

(A) Any non-alcoholic beverage that lists as an ingredient any form of caloric sugar-based sweetener, including, but not limited to, sucrose, glucose or high fructose corn syrup; or

(B) Any non-alcoholic syrup or other concentrate that is intended to be used in the preparation of a beverage and that lists as an ingredient any form of caloric sugar-based sweetener, including, but not limited to, sucrose, glucose or high fructose corn syrup; or

(2) Notwithstanding subdivision (1), above, "sugar-sweetened beverages" does not include:

(A) Any product advertised and sold as baby formula.

(B) Any beverage that meets the statutory definition of “medical food” under the Orphan Drug Act, 21 U.S.C. §360ee(b)(6), as amended before enactment of this article in 2017.

(C) Any product, more than fifty percent (50%) of which, by volume, is milk.

(D) Any product that consists of undiluted natural fruit juice or natural vegetable juice, or a combination of the two formulated or compounded by someone other than the customer.

(F) Unsweetened drinks to which a purchaser can add, or can request that a seller add, sugar, at the point of sale.

(G) “Nonintoxicating beer” or “nonintoxicating craft beer” as defined in article sixteen of this chapter.

(H) An alcoholic beverage subject to regulation under chapter sixty of this code.

(I) Any beverage for medical use.

(J) Any liquid advertised and sold for use for weight reduction as a meal replacement.

(K) Soft drinks product sweetened by any form of artificial sugar substitute, including stevia, aspartame, sucralose, neotame, acesulfame potassium (Ace-K), saccharin, and advantame.

§11-19A-4. Excise tax on bottled sugary soft drinks, syrups and dry mixtures; disposition thereof.

(a) In addition to the tax imposed in article nineteen of this chapter and to provide revenue for the General Revenue Fund, an excise tax is hereby levied and imposed on and after July 1, 2017, upon the-sale, use, handling or distribution of all bottled sugary soft drinks, all sugary soft drink syrups, and all sugary soft drink powders whether manufactured within or without this state, as follows:

(1) On each bottled sugary soft drink, a tax of one cent per ounce or fraction thereof contained therein.

(2) On each gallon of sugary soft drink syrup, a tax of \$13.52, and in like ratio on each part gallon thereof, or on each four liters of soft drink syrup a tax of \$14.27, and in like ratio on each part four liters thereof.

(3) On each ounce by weight of sugary soft drinks dry mixture or fraction thereof used for making soft drinks, a tax of 17 cents per ounce, or fraction thereof, or a tax of 17 cents per 28.35 grams, or fraction thereof.

(b) Any person manufacturing or producing within this state any bottled soft drink or soft drink syrup for sale within this state and any distributor, wholesale dealer or retail dealer or any other person who is the original consignee of any bottled soft drink or soft drink syrup, dry mix or powder manufactured or produced outside this state, or who brings such drinks or syrups into this state, shall be liable for the excise tax imposed by this article. The excise tax imposed by this article shall not be collected more than once in respect to any bottled sugary soft drink or sugary soft drink syrup, dry mix or powder that is manufactured, sold, used or distributed in this state.

(c) This tax shall be paid upon the first non-exempt distribution of a sugary soft drink product in this State. To the extent that there is a chain of distribution within this State involving more than one distributor, the tax shall be levied on and paid by the first distributor subject to the jurisdiction of this State. To the extent the tax is not paid as set forth above for any reason, it shall be payable on subsequent distributions and by subsequent distributors: *Provided*, That that the distribution of a sugary soft drink product may not be taxed more than once by this State.

(d) All taxes collected by the Tax Commissioner under the provisions of this article, less refunds and such costs of administration as are hereinafter provided for, shall be paid by the Commissioner into the General Revenue Fund of this State.

§11-19-5. Due date of reports; additional reports; payment of tax; extension of time.

(a) Every person subject to the tax imposed by this article shall on or before the fifteenth day of each month make and file with the Tax Commissioner a report of the person's operations for the preceding month to verify liability for tax under this article and pay the amount of tax due under this article. This report shall be in a form prescribed by the Tax Commissioner. Forms shall be filed electronically and taxes paid electronically when rules of the Tax Commissioner require electronic filing or electronic payment.

(b) The Tax Commissioner may by fifteen days' written notice require the filing of such additional reports as the Commissioner deems necessary to verify a person's liability under this article.

(c) Upon written application setting forth good cause, the Tax Commissioner may extend the time for filing reports or additional reports under this section on such terms and conditions as the Commissioner may require.

§11-19 A-6. General procedure and administration.

Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter shall apply to the tax imposed by this article nineteen with like effect as if said act were applicable only to the tax imposed by this article nineteen and were set forth in extension this article nineteen.

§11-19A-7. Enforcement powers.

(a) Any employee or agent of the Tax Commissioner, so designated by the tax commissioner, shall have all the lawful powers delegated to members of the department of public safety to enforce the provisions of this article in any county or municipality in this state.

(b) The employee shall execute a bond with security in the sum of thirty-five hundred dollars, payable to the state of West Virginia conditioned for the faithful performance of his duties, as such, and such bond shall be approved as to form by the attorney general, and the same shall be filed with the secretary of state and preserved in his office.

(c) The West Virginia State Police or any county sheriff or sheriff's deputy is, upon request of the tax commissioner, hereby authorized and required to assist in the enforcement of the provisions of this article.

§11-19A-8. Penalties; crimes.

Any person who violates any of the provisions of this article or any lawful rule promulgated by the Tax Commissioner for this article under the authority of article ten of this chapter for the violation of which no other penalty is provided by law, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

§11-19A-9. Seizure and sale of sugary bottled soft drinks, sugary soft drink powders and sugary soft drink syrups by Tax Commissioner; forfeiture; collection of tax.

Whenever the Tax Commissioner or any of the Commissioner's duly authorized agents shall discover any sugary bottled soft drinks, sugary soft drink syrups or sugary soft drink powders or dry mix, subject to tax as provided by this article and upon which the tax has not been paid as required by this article, the Tax Commissioner or his duly authorized agent is hereby authorized and empowered forthwith to seize and take possession of such sugary bottled soft drinks, sugary soft drink syrups or sugary soft drink powders, which shall thereupon be deemed to be forfeited to the State, and the Tax Commissioner shall within a reasonable time thereafter sell such forfeited soft drink products; and from the proceeds of such sale shall collect the tax and interest due thereon, together with a penalty of fifty percent of the tax due and the cost incurred in such proceedings, and pay the balance, if any, to the person in whose possession such sugary soft products were found: Provided, That such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided in this article for violation of any provision of this article. The sale shall be made in the county where most convenient and economical. Notice of the sale shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the seizure was made and the county wherein the sale is to take place. Notice shall be published at least five days prior to the sale. All moneys collected under the provisions of this section shall be paid into the State General Revenue Fund and treated as other taxes collected under this article.

§11-19A-10. Certain tax-not-paid sugary soft drink products declared contraband.

(a) Whenever the Tax Commissioner or any of the Commissioner's authorized deputies, agents or employees, or any law-enforcement officer in this state, discovers any sugary soft drink product subject to the tax imposed by this article, and upon which the tax has not been paid, as required by this article, the sugary soft drink products shall thereupon be considered to be contraband, and the Tax Commissioner, or the Commissioner's authorized deputy, agent or employee, or any law-enforcement officer in this state, may immediately seize and take possession of the sugary soft drink products without a warrant, and the sugary soft drink products and related property shall be forfeited to the State as provided in article seven, chapter sixty-a of this code.

(b) Seizure of contraband shall not be considered to relieve any person from fine or imprisonment, as provided in section seven of this article, for any of the offenses set forth in said section.

§11-19A-11. Vending machines; presence of tax-not-paid sugary soft drink products.

(a) If tax-not-paid sugary soft drink products are found in any vending machine, both the tax-not-paid sugary soft drink products and the vending machine are contraband goods within the

meaning of article seven, chapter sixty-a of this code, and may be seized by the Tax Commissioner, at the discretion of the Tax Commissioner, or the Tax Commissioner 's authorized deputies, agents or employees, or any law-enforcement officer in this state, without a warrant. The provision of article seven, chapter sixty-a of this code apply to the seizure and disposition of the contraband.

(b) Seizure and sale of the contraband shall not relieve the owner of the property from any action by the Tax Commissioner for violations of any other sections of this article.

§11-19A-12. Severability.

If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

ARTICLE 21. PERSONAL INCOME TAX

§11-21-4g. Temporary additional tax on certain resident individuals.

(a) Temporary additional tax on certain resident individuals. – For the tax year beginning on and after January 1, 2017, but not on or after January 1, 2018, there is hereby imposed on resident individuals a tax in addition to the tax imposed by section four-e of this article, determined as follows:

| <u>Income exceeds:</u> | <u>The additional tax imposed is:</u> |
|------------------------|---------------------------------------|
| <u>\$200,000</u> | <u>\$500</u> |
| <u>\$250,000</u> | <u>\$750</u> |
| <u>Over</u> | |
| <u>\$333,000</u> | <u>\$1,000</u> |

(b) The additional tax imposed by this section shall not apply to tax years beginning on and after January 1, 2018.

§11-21-97. Personal income tax study.

(a) Creation of West Virginia Personal Income Tax Study Commission. – Effective July 1, 2017, there is hereby created a commission to be known as the West Virginia Personal Income Tax Study Commission (the "Commission") consisting of the following members:

(1) The Governor of the State of West Virginia, or his designee;

(2) Three (3) nonvoting members of the State Senate, designated by the Senate President;

(3) Three (3) nonvoting members of the House of Delegates, designated by the Speaker of the House of Delegates;

(4) The Secretary of the West Virginia Department of Revenue (the “Secretary of Revenue”), or a designee;

(5) The Director of the West Virginia State Budget Office (the “Director of the State Budget Office”);

(6) The Commissioner of the West Virginia State Tax Department (the “Tax Commissioner”), or a designee;

(7) Two (2) representatives from the academic community who have extensive experience in studying the state’s taxation system; and

(8) Such other members as may hereafter be named by the Governor.

(b) *Personal income tax study.* – The commission shall study the feasibility of eliminating the West Virginia personal income tax and shall file a report with the Governor and the West Virginia State Legislature on or before December 1, 2018. The report shall recommend proposed amendments to the tax imposed under this article and shall include recommended legislation. The commission in its report shall examine the feasibility and fiscal implications eliminating the state personal income tax would have on affected governmental entities.

(c) The commission shall hold regular meetings, which meetings shall be scheduled and presided over by the chairperson designated by the Governor among the members of the Commission.

(d) The Commission may establish such subcommittees as it deems necessary and convenient to carry out the provisions of this section no later than December 1, 2018.

(e) *Disclosure and confidentiality.* –

(1) Witnesses, experts, government officials, consultants, and private or public sector representatives who provide data, information or statistics to the Office of the Governor, the Secretary of Revenue, the Director of the State Budget Office, or the Tax Commissioner or others engaged in the study mandated by this section shall not be treated as being subject to the confidentiality restrictions of section five-d, article ten of this chapter and shall not be treated as subject to the confidentiality requirements of subsection (e) of this section, solely by reason of having provided information to the study.

(2) Notwithstanding any provision of this code to the contrary, the Office of the Governor, the Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others engaged in the study mandated by this section, may share financial information and other data disclosed under this section, with each other, and with any employees of state agencies providing support services to the commission in conducting the study. It is unlawful for the Office of the Governor, Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others engaged in the study mandated by this section, including employees of the Office of the Governor, the Secretary of Revenue, employees of the Director of the State Budget Office, and employees of the Tax Commissioner to disclose to any person not conducting the study any financial information and other data disclosed under this section.

(3) Notwithstanding any provision of this code to the contrary, it is unlawful for the Office of the Governor, the Secretary of Revenue, the Director of the State Budget Office, the Tax

Commissioner or others engaged in the study mandated by this section, including employees of the Office of the Governor, employees of the Secretary of Revenue, employees of the Director of the State Budget Office, and employees of the Tax Commissioner to disclose to any person not conducting the study, any financial information and other data disclosed under this section. Such disclosure shall be a violation of the tax information confidentiality provisions of section five-d, article ten of this chapter.

(4) Financial information and other data disclosed to the Office of the Governor, the Secretary of Revenue, the Director of the State Budget Office, the Tax Commissioner or others engaged in the study mandated by this section, including employees of the Office of the Governor, employees of the Secretary of Revenue, employees of the Director of the State Budget Office, and employees of the Tax Commissioner shall have all of the confidentiality protections given to a “return” under section five-d of article ten of this chapter and any disclosure not authorized by that section, or this section, shall be subject to all of the penalties provided for unlawful disclosure of a “return.”

(5) Nothing in this section may be construed as prohibiting the publication or release of statistics so classified as to prevent the identification of a particular person or entity.

(6) Financial information and other data disclosed to the members of the commission under the provisions of this section shall be considered confidential and exempt from article one, chapter twenty-nine-b of this code.

(e) All members of the commission shall serve without salary.

(f) Staff support and facilitation for the commission shall be provided by the West Virginia Department of Revenue.

(g) The commission shall report the status of its efforts under this section and any proposed legislation to the Governor no later than December 1, 2018.

ARTICLE 28. COMMERCIAL ACTIVITY TAX.

§11-28-1. Imposition of privilege tax.

There is hereby levied and shall be collected an annual privilege tax on persons conducting any business or commercial activities in this state, in the amount of seventy-five one thousandths of one percent of the gross income of the business as defined by this article.

§11-28-2. Definitions.

(a) *General.* – When used in this article, words defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) *Definitions:*

(1) “Banking business” or “financial organization” shall mean any bank, banking association, trust company, industrial loan company, small loan company or licensee, building and loan association, savings and loan association, finance company, investment company, investment broker or dealer, and any other similar business organization whose assets consist primarily of

intangible personal property and whose gross income consists primarily of dividends, interest and other charges derived from the use of money or credit.

(2) "Business" includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, either direct or indirect. "Business" does not include a casual sale by a person who is not engaged in the business of selling the type of property involved in such casual sale. "Business" includes the production of natural resources or manufactured products which are used or consumed by the producer or manufacturer and includes the activities of a banking business or financial organization.

(3) (A) "Gross income" means the gross receipts of the taxpayer, other than a banking or financial business, received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce or sales and the value proceeding or accruing from the sale of tangible property (real or personal), or service, or both, all receipts from the investment of the capital of the business, including rentals, royalties, fees, reimbursed costs or expenses or other emoluments however designated and including all interest, carrying charges, fees or other like income, however denominated, derived by the taxpayer from repetitive carrying of accounts, in the regular course and conduct of its business, and extension of credit in connection with the sale of any tangible personal property or service, and without any deductions on account of the cost of property sold, the cost of materials used, labor costs, taxes, royalties paid in cash or in kind or otherwise, interest or discount paid or any other expenses whatsoever: *Provided*, That gross income shall not include contributions to capital.

(B) (i) "Gross income of a banking or financial business" means the gross income received from interest, premiums, discounts, dividends, service fees or charges, commissions, fines, rents from real or tangible personal property, however denominated, royalties, charges for bookkeeping or data processing, receipts from check sales, charges or fees, and receipts from the sale of tangible personal property.

(ii) "Gross income of a banking or financial business" does not include:

(I) Interest received on the obligations of the United States, its agencies and instrumentalities,

(II) Interest received on the obligations of this state, or any political subdivision of this state, or

(III) Interest received on investments or loans primarily secured by first mortgages or deeds of trust on residential property occupied by nontransients; however, all interest derived from these activities shall be reported on the return of a person taxable under the provisions of this section.

(C) "Gross proceeds of sales" means the value, whether in money or other property, proceeding from the sale of tangible property, without any deduction for the cost of property sold or expenses of any kind: *Provided*, That bad debts shall be allowed as a deduction except that the amount of any bad debt recovery shall be included in gross proceeds of sale.

(D) The terms "gross income" and "gross proceeds of sales" do not include:

(i) Cash discounts allowed and taken on sales;

(ii) The proceeds of sale of goods, wares or merchandise returned by customers when the sale price is refunded either in cash or by credit;

(iii) The amount allowed as "trade-in value" for any article accepted as part payment for any article sold;

(iv) Excise taxes imposed by this state; or

(v) Money or other property received or held by a professional person for the sole use and benefit of a client or another person or money received by the taxpayer on behalf of a bank or other financial institution for the repayment of a debt of another.

(4) "Person" or "company," herein used interchangeably, includes any individual, firm, copartnership, partnership, limited liability company, joint adventure, association, corporation, trust or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(5) "Sale," "sales" or "selling" means any transfer of the ownership of or title to property, whether for money or in exchange for other property.

(6) "Selling at wholesale" or "wholesale sales" means and includes:

(A) Sales of any tangible personal property for the purpose of resale in the form of tangible personal property;

(B) Sales of machinery, supplies or materials which are to be directly consumed or used by the purchaser in the conduct of any business or activity which is subject to the tax imposed by this article; and

(C) Sales of any tangible personal property to the United States of America, its agencies and instrumentalities or to the State of West Virginia, its institutions or political subdivisions.

(7) "Service business or calling" means all activities engaged in by a person for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible property, but does not include the services rendered by an employee to his or her employer. This term includes, but is not limited to:

(A) Persons engaged in manufacturing, compounding or preparing for sale, profit or commercial use, articles, substances or commodities which are owned by another or others;

(B) Persons engaged as independent contractors in producing natural resource products which are owned by another or others, as personal property, immediately after the same are severed, extracted, reduced to possession and produced;

(C) The repetitive carrying of accounts, in the regular course and conduct of business, and extension of credit in connection with the sale of any tangible personal property or service.

(8) "Taxpayer" means any person liable for the tax imposed by this article;

(9) "Tax year" or "taxable year" means the calendar year, unless permission is obtained from the Tax Commissioner to use the taxpayer's fiscal year as the tax period;

(10) "Electronic filing" or "e-filing" means filing using electronic technology such as computer modem, magnetic media, optical disk, facsimile machine, telephone or other technology approved by the Tax Commissioner, in such manner as he or she deems acceptable. Any return required to be filed electronically under this article may contain an electronic signature, if a signature is required.

§11-28-3. Rules for determining measure of tax.

(a) If any person liable for the tax ships or transports its products or any part thereof out of the state without making sale of such products, the value of the products in the condition or form in which they exist immediately before transportation out of the state shall be the basis for the assessment of the tax. The tax commissioner may prescribe rules for ascertaining such value.

(b) In determining value, however, of sales between affiliated companies or persons, or under other circumstances where the relation between the buyer and seller is such that the gross proceeds from the sale do not reflect the true value of the subject matter of the sale, the tax commissioner may prescribe rules for determining the value on which the privilege tax shall be levied, corresponding as nearly as possible to the gross proceeds from the sale of products where no common interest exists between the buyer and seller but the circumstances and conditions are otherwise similar.

(c) Upon every person engaging or continuing within this state in the business of manufacturing, compounding or preparing for sale, profit, or commercial use, either directly or through the activity of others in whole or in part, any article or articles, substance or substances, commodity or commodities, or newspaper publishing (including all gross income or proceeds of sale from circulation and advertising), the measure of this tax is the value of the entire product manufactured, compounded or prepared in the state for sale, profit or commercial use, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

(d) In those instances in which the same person partially manufactures, compounds or prepares products within this state and partially manufactures, compounds or prepares such products outside of this state, the measure of the tax shall be that proportion of the sale price of the product that the payroll cost of manufacturing within this state bears to the entire payroll cost of manufacturing the product; or, at the option of the taxpayer, the measure of his or her tax under this section shall be the proportion of the sales value of the articles that the cost of operations in West Virginia bears to the full cost of manufacture of the articles.

§11-28-4. Exemptions.

The provisions of this article do not apply to:

(a) Insurance companies which pay the State of West Virginia a tax on premiums. However, this exemption does not apply to portions of the gross income of insurance companies received for the use of real property, other than property in this state in which the insurance company maintains its office or offices, whether that income is in the form of rentals or royalties;

(b) Nonprofit cemetery companies organized and operated for the exclusive benefit of their members;

(c) Fraternal societies, organizations and associations organized and operated for the exclusive benefit of their members and not for profit. This exemption does not apply to gross

income arising from the sale of alcoholic liquor, food and related services of such fraternal societies, organizations and associations which are licensed as private clubs under the provisions of article seven, chapter sixty of this code, except that funds derived from the licensed charitable gaming activities of such organizations are exempt;

(d) Corporations, associations and societies organized and operated exclusively for religious or charitable purposes: *Provided*, That this exemption does not apply to gross income derived from engaging in unrelated business activity as defined for federal income tax purposes;

(e) Production credit associations, organized under the provisions of the federal "Farm Credit Act of 1933"; or

(f) Any credit union organized under the provisions of chapter thirty-one or any other chapter of this code: Except, that the exemptions of this section shall not apply to corporations or cooperative associations organized under the provisions of article four, chapter nineteen of this code.

§11-28-5. Computation of tax; payment.

The tax imposed by this article is due and payable as follows:

(a) For taxpayers whose estimated tax under this article exceeds \$1,000 per month, the tax shall be due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued. Each such taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which it is liable for the preceding month and submit it with a remittance in the form prescribed by the Tax Commissioner, of the amount of tax to the office of the commissioner.

(b) For taxpayers whose estimated tax under this article does not exceed \$1,000 per month, the tax shall be due and payable in quarterly installments within one month from the expiration of each quarter in which the tax accrued. Each such taxpayer shall, within one month from the expiration of each quarter, make out an estimate of the tax for which he or she is liable for such quarter, sign the same and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax to the office of the commissioner.

(c) When the total tax for which any person is liable under this article does not exceed \$200 in any year, the taxpayer may pay the same quarterly as described in subsection (b) of this section or, with the consent in writing of the Tax Commissioner, at the end of the month next following the close of the tax year.

(d) The Tax Commissioner may require the return and payment for periods of shorter duration than those prescribed above if it is deemed necessary to ensure payment of the tax.

(e) The forms shall be filed electronically, in accordance with the procedures set forth in the Tax Commissioner's rule on use and acceptance of electronic records. Any taxpayer required to file and pay electronically who fails to do so, shall be required to pay a money penalty in an amount equal to five percent of the tax due.

§11-28-6. Return and remittance by taxpayer.

On or before the expiration of one month after the end of the tax year, each taxpayer shall make a return for the entire tax year showing the gross proceeds of sales or gross income of business, trade or calling, and compute the amount of tax chargeable in accordance with the provisions of this article and deduct the amount of monthly or quarterly payments (as hereinbefore provided), if any, and transmit with its report a remittance in the form prescribed by the Tax Commissioner covering the residue of the tax chargeable against the taxpayer to the office of the Tax Commissioner; such return shall be signed by the taxpayer if made by an individual, or by the president, vice president, secretary or treasurer of a corporation if made on behalf of a corporation. If made on behalf of a partnership, joint adventure, association, trust, or any other group or combination acting as a unit, any individual delegated by such firm, copartnership, joint adventure, association, trust or any other group or combination acting as a unit shall sign the return on behalf of the taxpayer. The Tax Commissioner may extend the time for making the annual return on the application of any taxpayer and grant such reasonable additional time within which to make the same, for good cause shown. Annual returns must be filed, and payments remitted, electronically, as provided in section four of this article, unless the taxpayer first obtains a waiver in writing from the Tax Commissioner.

§11-28-7. Tax year.

The assessment of taxes and the returns required under the provisions of this article shall be on a calendar year basis, unless permission is obtained from the Tax Commissioner to use the taxpayer's fiscal year as the tax period.

§11-28-8. Tax cumulative.

The tax imposed by this article is in addition to all other licenses and taxes levied by law as a condition precedent to engaging in any business, trade or calling in this state. A person exercising a privilege taxable under this article, subject to the payment of all licenses and charges which are condition precedent to exercising the privilege taxed, may exercise the privilege for the current tax year upon the condition that he or she shall pay the tax accruing under this article.

§11-28-9. Receivership or insolvency proceedings.

In the event a business subject to the tax imposed by this article is being operated in connection with a receivership or insolvency proceeding, the court under whose direction the business is operated shall, by the entry of a proper order in the cause, make provision for the regular payment of the taxes imposed by this article as they become due.

§11-28-10. Priority in distribution in receivership, etc.; personal liability of administrator.

In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, all taxes due and unpaid under this article shall be paid from the first money available for distribution in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any person charged with the administration of an estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

§11-28-11. Credit for taxes paid.

(a) A credit shall be allowed against the tax imposed by this article for the following taxes paid to the State of West Virginia:

(1) The severance and business privilege tax imposed by article thirteen-a of this chapter.

(2) The health care provider tax imposed by article twenty-seven of this chapter.

(3) The acute care hospital tax imposed by article twenty-seven of this chapter.

(4) The business and occupation tax imposed by article thirteen of this chapter.

(b) No credit may be taken for the following taxes paid within this state:

(1) The municipal business and occupation tax imposed by a municipality pursuant to article thirteen, chapter eight of this code.

(2) The municipal public utilities tax imposed by a municipality pursuant to article thirteen, chapter eight of this code.

(c) In no case may the credit allowed under this section reduce a taxpayer's liability for the tax imposed by this article below zero dollars.

(d) No unused credit under this section may be carried forward or carried back to another tax year.

§11-28-12. Offenses; penalties.

It shall be unlawful for any person to refuse to make the return required by section six of this article; or to make any false or fraudulent return or false statement in any return, with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this article; or for any person to aid or abet another in any attempt to evade the payment of the tax, or any part thereof, imposed by this article; or for the president, vice president, secretary or treasurer of any corporation to make or permit to be made for any corporation or association any false return, or any false statement in any return required in this article, with the intent to evade the payment of any tax hereunder. Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, on conviction thereof, shall be fined not more than \$10,000 or imprisoned not exceeding one year in the regional jail or punished by both fine and imprisonment, at the discretion of the court, within the limitations aforesaid. In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of false swearing, and, on conviction thereof, shall be punished in the manner provided by law. Any corporation for which a false return, or a return containing a false statement, as aforesaid, shall be made, shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$10,000. The circuit and criminal courts of the county in which the offender resides, or, if a corporation, in which it carries on business, shall have concurrent jurisdiction to enforce this section.

§11-28-13. Severability; effective date.

(a) Severability – If any provision of this article or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect,

impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(b) *Effective date* – The provisions of this article take effect July 1, 2017 and shall apply to gross income from business activity engaged in, on or after that date.

§11-28-14. Termination date; short taxable years for taxpayers on calendar or fiscal year and cash or accrual accounting methods.

(a) Each and every provision of this article is repealed for all tax periods beginning on and after July 1, 2020: *Provided*, That the provisions of this article shall remain in effect on and after July 1, 2020, so long as the combined balance of funds as of June 30, 2019, or any subsequent June 30, in the Revenue Fund Shortfall Reserve Fund and the Revenue Fund Shortfall Reserve Fund - Part B established in section twenty, article two, chapter eleven-b of this code is less than fifteen percent of the General Revenue Fund budgeted for the fiscal year of the state commencing July 1, 2019 or any fiscal year commencing thereafter. However, tax liabilities, if any, arising for taxable years or portions thereof ending prior to a July 1 termination date shall be determined, administered, assessed and collected as if the taxes imposed by this article had terminated; and the rights and duties of the taxpayer and the State of West Virginia shall be fully and completely preserved.

(b) Persons who are calendar year taxpayers under this article shall file their annual return for the calendar year of the termination date, on or before July 31 of that calendar year, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the Tax Commissioner.

(c) Persons who are fiscal year taxpayers shall similarly file an annual return on or before July 31 of the termination year, for their short taxable year which ended June 30 of that year, and remit the amount of any taxes shown thereon to be due, unless an extension of time for filing is authorized by the Tax Commissioner.

(d) Persons who keep their records using the accrual method of accounting shall file their annual return for the full or short taxable year ending June 30 of the termination year, computing their tax liability under that method of accounting. A taxpayer shall file an amended return for the termination year and pay any additional taxes due within thirty days after determining that gross income was under-reported on the annual return.

(e) Persons who keep their records using the cash method of accounting may file their annual return for the full or short taxable year ending June 30 of the termination year, computing their tax liability under the cash method of accounting: *Provided*, That the taxpayer shall file a supplemental return for the termination year within one month after the close of each calendar quarter during each ensuing year in which the taxpayer receives gross income for any activity or portion thereof completed prior to July 1 of the termination year, and pay any additional taxes shown on the supplemental return to be due. The purpose of this requirement is to minimize the advantage or disadvantage associated with the different methods of accounting when the commercial activity tax is repealed.

§11-28-15. General procedure and administration.

Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten of this chapter, and the “West Virginia Tax Crimes and Penalties Act” set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said acts were applicable only to the tax imposed by this article and were set forth in extenso in this article.

Following extended discussion,

Senator Plymale arose to a point of order that the debate had now digressed to a discussion of the Honorable Jim Justice, Governor of West Virginia, and not to the adoption of the amendment in question.

Which point of order, the President ruled not well taken.

The question being on the adoption of Senator Ferns’ amendment to the bill (Com. Sub. for S. B. 484), and on this question, Senator Blair demanded the yeas and nays.

The roll being taken, the yeas were: None.

The nays were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

Absent: Maroney and Mullins—2.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Ferns’ amendment to the bill rejected.

The bill (Com. Sub. for S. B. 484) was then ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 501, Relating to WV Economic Development Authority.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 507, Allowing pharmacists inform customers about lower cost alternatives to prescribed drugs.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 515, Relating to parole requirements for hearings and release.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 521, Relating generally to Public Defender Services.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Romano, the following amendment to the bill was reported by the Clerk:

On page five, section eight, line twenty-five, after the word “of” by inserting the words “subdivision (5), subsection (b),”.

The question being on the adoption of Senator Romano’s amendment to the bill, and on this question, Senator Trump demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maynard, Miller, Ojeda, Palumbo, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Maroney, Mullins and Plymale—3.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Romano’s amendment to the bill adopted.

The bill (Com. Sub. for Com. Sub. for S. B. 521), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 526, Requiring mandatory insurance coverage for inherited enzymatic disorders.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 534, Relating to incentives for consolidating local governments.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 549, Allowing individuals at least 21 or older operate or ride motorcycle without helmet.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That §17C-15-44 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 15. EQUIPMENT.

§17C-15-44. Safety equipment and requirements for motorcyclists, motorcycles, motor-driven cycles and mopeds; ~~motorcycle safety standards and education committee; exemptions; rules.~~

(a) ~~Except as provided in subsection (f) of this section, No no person shall may~~ operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing securely fastened on his or her head by either a neck or chin strap a protective helmet designed to deflect blows, resist penetration and spread impact forces. Any helmet worn by an operator or passenger shall meet the current performance specifications established by the American National Standards Institute Standard, Z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Safety Standards for Protective Headgear for Vehicle Users.

(b) No person ~~shall may~~ operate or be a passenger on any motorcycle or motor-driven cycle unless the person is wearing safety, shatter-resistant eyeglasses (excluding contact lenses), or ~~eyegoggles eye goggles~~ or face shield that complies with the performance specifications established by the American National Standards Institute for Head, Eye and Respiratory Protection, Z 2.1. In addition, if any motorcycle, motor-driven cycle or moped is equipped with a windshield or windscreen, the windshield or windscreen shall be constructed of safety, shatter-resistant material that complies with the performance specifications established by Department of Transportation Federal Motor Vehicle Safety Standard No. 205 and American National Standards Institute, Safety Glazing Materials for Glazing Motor Vehicles Operated on Land Highways, Standard Z 26.1.

(c) No person ~~shall may~~ operate a motorcycle, motor-driven cycle or moped on which the handlebars or grips are more than fifteen inches higher than the uppermost part of the operator's seat when the seat is not depressed in any manner.

(d) A person operating a motorcycle, motor-driven cycle or moped shall ride in a seated position facing forward and only upon a permanent operator's seat attached to the vehicle. No operator ~~shall may~~ carry any other person nor ~~shall may~~ any other person ride on the vehicle unless the vehicle is designed to carry more than one person, in which event a passenger may ride behind the operator upon the permanent operator's seat if it is designed for two persons, or upon another seat firmly attached to the vehicle to the rear of the operator's seat and equipped with footrests designed and located for use by the passenger or in a sidecar firmly attached to the vehicle. No person ~~shall may~~ ride side saddle on a seat. An operator may carry as many passengers as there are seats and footrests to accommodate those passengers. Additional passengers may be carried in a factory produced sidecar provided that there is one passenger per seat. Passengers riding in a sidecar shall be restrained by safety belts.

(e) Every motorcycle, motor-driven cycle and moped shall be equipped with a rearview mirror affixed to the handlebars or fairings and adjusted so that the operator ~~shall have has~~ a clear view of the road and condition of traffic behind him or her for a distance of at least two hundred feet.

~~(f) There is hereby created a six member motorcycle safety and education committee consisting of: The Superintendent of the State Police or a designee; the Commissioner of Motor Vehicles or a designee; the Director of the West Virginia Safety Council or a designee; a licensed motorcycle operator; an owner of a motorcycle dealership; and a supplier of aftermarket nonfranchised motorcycle supplies. The nongovernmental representatives shall be appointed by the Governor with the advice and consent of the Senate, shall serve without compensation, and the terms shall be for three years, except that as to the members first appointed, one shall be appointed for a term of one year, one shall be appointed for a term of two years and one shall be appointed for a term of three years. Members may be reappointed to the committee.~~

~~The committee shall continue to exist pursuant to the provisions of article ten, chapter four of this code until July 1, 1999, to allow for the completion of a preliminary performance review by the joint committee on government operations.~~

~~The committee is hereby authorized to recommend to the Superintendent of public safety types and makes of protective helmets, eye protection devices and equipment offered for sale, purchased or used by any person. The committee is authorized to make recommendations to the Commissioner of Motor Vehicles regarding the use of the moneys in the Motorcycle Safety Fund created under section seven, article one-d, chapter seventeen-b of this code.~~

(f) A person twenty-one years of age or older operating or riding on a motorcycle, as applicable, is not required to wear a helmet on his or her head if he or she:

(1) Has had a motorcycle license or a motorcycle endorsement on his or her operator's or chauffeur's license for at least five years or the person passes a motorcycle safety education program conducted under article one-d, chapter seventeen-b of this code;

(2) Has in effect medical payments insurance coverage payable if he or she is involved in a motorcycle accident regardless of fault, in the minimum amount of \$15,000 or the maximum amount available from such person's insurance company, whichever is less; and

(3) Has in effect self-funded or self-purchased accident and sickness insurance, as that term is defined in subsection (b), section ten, article one, chapter thirty-three of this code, for which the total premium is either paid by the motorcycle operator or rider, his or her employer, or a combination of both the motorcycle operator and employer: *Provided*, That insurance for which the motorcycle operator or rider's spouse or other family member pays the premium shall satisfy the provisions of this subdivision.

(g) The commissioner may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code as needed to implement subsection (f) of this section, including any method a motorcycle operator or rider may use to prove he or she is eligible to operate or ride a motorcycle without a helmet.

(h) Any person who rides or operates a motorcycle without wearing a helmet and who fails to meet the eligibility requirements set forth in subdivisions (2) or (3), subsection (f) of this section is guilty of a misdemeanor. For a first conviction, the person shall be fined not less than \$100 nor more than \$500. For a second conviction, the person shall be fined not less than \$100 nor more than \$1000 or be imprisoned for not more than fifteen days, or both fined and imprisoned.

(i) Notwithstanding any provision of this code to the contrary, a person with a valid driver's license who is operating an autocycle, as defined in section sixty-nine, article one of this chapter, is exempt from the provisions of this section.

The bill (Com. Sub. for Com. Sub. for S. B. 549), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 563, Relating to Consumer Credit and Protection Act.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 588, Relating to reproduction, distribution and sale of tax maps.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 606, Relating to minimum wage and maximum hours for employees.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 609, Creating additional flexibility for school systems in use of school aid funds.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

On page four, section six-f, lines thirty-three through thirty-eight, by striking out all of subsection (a), and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

(a) Notwithstanding any other provision of code to the contrary, for the 2018 tax year and thereafter, the regular levy rates for county boards of education shall be the sum of the levy rates set forth in subdivisions (1), (2) and (3), section six-c of this article for each class of property, which are: (1) For Class I property, 22.95 cents per \$100; (2) for Class II property, 45.9 cents per \$100; and (3) for Class III and Class IV property, 91.8 cents per \$100: *Provided*, That, annually, county boards of education may decrease their regular levy rates to no lower than the following rates: (1) For Class I property, 19.4 cents per \$100; (2) for Class II property, 38.8 cents per \$100; and (3) for Class III and Class IV property, 77.6 cents per \$100.

The bill (Com. Sub. for S. B. 609), as amended, was then ordered to engrossment and third reading.

Senate Bill 613, Relating to composition of State Fire Commission.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 636, Authorizing State Fire Commission establish program to address problems facing VFDs.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 637, Relating to private club operations requirements.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Senate Bill 656, Relating to Student Data Accessibility, Transparency and Accountability Act.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 664, Removing limitation on amount counties collect on hotel occupancy tax.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 667, Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 687, Relating generally to coal mining, safety and environmental protection.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Miller, the following amendment to the bill was reported by the Clerk:

On page thirty, section seven-b, lines forty-eight and forty-nine, by striking out the words "(i) contains appropriate trophic levels of fish, in streams that have flows sufficient to support fish populations; and (iii) (ii)" and inserting in lieu thereof the words "(i) Supports a balanced aquatic community that is diverse in species composition; (ii) contains appropriate trophic levels of fish, in streams that have flows sufficient to support fish populations; and (iii)".

The question being on the adoption of Senator Miller's amendment to the bill, the same was put and did not prevail.

The bill (S. B. 687), as amended, was then ordered to engrossment and third reading.

Senate Bill 688, Correcting technical error within Solid Waste Management Act.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 689, Relating to payment of small claims by DOH.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 690, Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Senate Bill 691, Relating to off-road vehicles.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Maynard, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section nine, line eighteen, by striking out the word “recreational.”

The bill (S. B. 691), as amended, was then ordered to engrossment and third reading.

Senate Bill 693, Creating WV Uniform Fiduciary Access to Digital Assets Act.

On second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Joint Resolution 6, Roads to Prosperity Amendment of 2017.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Hall, the following amendment to the resolution was reported by the Clerk and adopted:

On page one, line nine, after the word “year” by inserting the words “before July 1, 2022”.

The resolution (Com. Sub. for Com. Sub. for S. J. R 6), as amended, was then ordered to engrossment and third reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate recessed until 6 p.m. today.

Upon expiration of the recess, the Senate reconvened.

The end of today’s second reading calendar having been reached, the Senate returned to the consideration of

Com. Sub. for Senate Bill 576, Providing exception to waste for certain oil and gas development.

On third reading, coming up in deferred order, with the right having been granted on Saturday, March 25, 2017, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Ferns, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend on third reading remaining in effect.

Consideration of Committee Substitute for Senate Bill 576 having been concluded, the Senate returned to the consideration of

Com. Sub. for Com. Sub. for Senate Bill 409, Relating generally to 2017 Tax Reform Act.

On second reading, coming up in deferred order, was read a second time.

On motion of Senator Karnes, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page twelve, after section twenty-six, by inserting the following:

ARTICLE 13DD. FIXED INCOME CREDIT FOR LOW INCOME SENIOR CITIZENS.

§11-13DD-1. Fixed income credit for low income senior citizens.

For the tax years beginning on and after January 1, 2017, any resident of this state who is a low income senior citizen shall be allowed a credit equal to the adjusted credit amount determined in this article.

§11-13DD-2. Procedure for claiming credit; Limitation of amount paid.

(a) The credit available under this article may be claimed each year, and payment of the same requested by a low-income senior citizen, by filing, within ninety days following the filing of his or her federal income tax return for the year, a claim for credit on forms furnished by the state Tax Commissioner who shall process a requisition for remittance by the State Treasurer of the correct amounts of credit shown on properly completed and filed claims within the same time and according to the same procedures, including the payment of applicable interest, as provided in §11-10-14c of this code for refunds of personal income tax.

(b) No person may receive a credit pursuant to this section in excess of \$200: *Provided*, That any person entitled to the credits against personal income tax authorized in sections twenty-one, twenty-two or twenty-three of article twenty-one of this chapter, may also receive the credits authorized by this article. The maximum amount of the credit authorized by this article shall be reviewed annually by the Legislature to determine if an adjustment is necessary.

(c) Due to the administrative cost of processing, the credit authorized by this section may not be paid if the amount of the credit is determined to be less than \$10.

§11-13DD-3. Definitions.

(a) For the purposes of this article, the term "adjusted credit amount" shall mean the amount which is equal to one percent of the person's adjusted gross income for the year, reduced by four percent of that amount for every one percentage point by which such person's adjusted gross income exceeds one hundred twenty-five percent of the federal poverty guideline applicable to such person as provided in this section.

(b) For the purposes of this article, the term "adjusted gross income" shall have the meaning of that term used in the Internal Revenue Code.

(c) For the purposes of this article, the term "low income" means adjusted gross income for the tax year that is one hundred fifty percent or less of the federal poverty guideline, based upon the number of individuals in the family unit of which the low income senior citizen is a member, all as determined annually by the United States Secretary of Health and Human Services.

(d) For the purposes of this article, the term "low income senior citizen" means a resident of this state whose federal adjusted gross income for the tax year meets the definition of "low income" as defined in this section, and who has attained the age of sixty-five years: *Provided*,

That for all purposes of this article, the term "low income senior citizen" shall also mean and include, as one person, those individuals who file joint federal income tax returns with their spouses, whether one or both such spouses is a low income senior citizen, and whether either or both spouses have attained the age of sixty-five years.

§11-13DD-4. Effective date.

This article shall take effect on January 1, 2017.;

On page thirty-four, section four-g, line nine, after the words "tax is" by striking out the remainder of the bill and inserting in lieu thereof the following:

| | |
|--|---------------------------------------|
| <u>Not over \$20,000</u> | <u>1.85% of the taxable income</u> |
| <u>Over \$20,000 but not over \$35,000</u> | <u>\$370.00 plus 3.65% of excess</u> |
| <u>Over \$35,000</u> | <u>\$917.50 plus 5.45% of excess.</u> |

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by section three of this article on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

| <u>If the West Virginia taxable income is:</u> | <u>The tax is:</u> |
|--|--|
| <u>Not over \$10,000</u> | <u>1.85% of the taxable income</u> |
| <u>Over \$10,000 but not over \$17,500</u> | <u>\$185.00 plus 3.65% of excess</u> |
| <u>Over \$17,500</u> | <u>\$ 458.75 plus 5.45% of excess.</u> |

(c) For the tax years beginning on and after January 1, 2019, the rates of tax imposed by this article, in each of the income brackets shown in subsections (a) and (b) of this section, shall be reduced by one-tenth of one percentage point for each \$50 million by which the actual combined collections of the consumers sales and service tax imposed under article fifteen of this chapter and of the use tax, imposed under article fifteen-a of this chapter, exceed \$1.8 billion for the fiscal year ending six months prior to January 1 of each tax year, until the rates of the tax imposed by this article are each zero percent: *Provided*, That once the rate of the tax imposed by this article has been reduced pursuant to this subsection, that rate shall not again be raised: *Provided*, further, That each and every provision of this article is repealed for all tax periods beginning on and after January 1 of the first year in which the rate of the tax in each of the income brackets shown in subsections (a) and (b) of this section is zero percent: *Provided, however*, That tax liabilities, if any, arising for taxable periods prior to the date the tax is thus repealed, shall be determined, administered, assessed and collected as if the tax imposed by this article had not been repealed, and the rights and duties of taxpayers and the state shall be fully and completely preserved.;

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended: that §11-8-6e be repealed; that §11-8-6f be amended and reenacted; that §11-8-6g be repealed; that a new section be added thereto designated §11-13A-26; that new sections be added thereto designated §11-13EE-1, §11-13EE-2, §11-13EE-3 and §11-13EE-4; that said code be amended by amending and reenacting §11-15-3, §11-15-3a, §11-15-8, §11-15-9 and §11-15A-2, that said code be amended by adding thereto a new section, designated §11-21-4g, all to read as follows:.

The bill (Com. Sub. for Com. Sub. for S. B. 409), as amended, was then ordered to engrossment and third reading.

Following a point of inquiry to the President, with resultant response thereto,

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Eng. Com. Sub. for House Bill 2459, Relating to regulation of health care and the certificate of need process.

Eng. Com. Sub. for House Bill 2679, Relating to the possession of firearms in parks and park facilities.

Eng. Com. Sub. for House Bill 2721, Removing the cost limitation on projects completed by the Division of Highways.

Eng. Com. Sub. for House Bill 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

And,

Eng. House Bill 3106, Relating to increasing the number of limited video lottery terminals.

Without objection, the Senate returned to the third order of business.

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 28, 2017, he had approved **Enr. Committee Substitute for Senate Bill 301**.

The Senate again proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Com. Sub. for Senate Bill 386, Creating WV Medical Cannabis Act.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 25, 2017;

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Ferns, unanimous consent being granted, the bill (Com. Sub. for S. B. 386) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Ferns, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

The Senate proceeded to the eleventh order of business and the introduction of guests.

Pending announcement of a majority party caucus,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Wednesday, March 29, 2017, at 9 a.m.

SENATE CALENDAR

Wednesday, March 29, 2017
9:00 AM

THIRD READING

- Eng. Com. Sub. for Com. Sub. for S. B. 38 - Creating 5-year tax credit for new businesses locating on post-mine sites
- Eng. Com. Sub. for S. B. 40 - Requiring inclusion of protocols for response to after-school emergencies in school crisis response plans
- Eng. Com. Sub. for S. B. 57 - Continuing personal income tax adjustment for certain retirees
- Eng. Com. Sub. for S. B. 238 - Increasing tax credits allowed for rehabilitation of certified historic structures (original similar to HB2416, SB323)
- Eng. Com. Sub. for Com. Sub. for S. B. 281 - Increasing number of limited video lottery machines allowed at retail location
- Eng. S. B. 282 - Directing Office of Administrative Hearings to amend current legislative rule relating to appeal procedures
- Eng. Com. Sub. for S. B. 286 - Relating to grandparents' visitation rights (original similar to HB2547)
- Eng. S. B. 293 - Providing increase in annual salary of employees in Division of Corrections
- Eng. S. B. 294 - Relating to Community Sustainability Investment Pilot Program
- Eng. Com. Sub. for Com. Sub. for S. B. 333 - Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database
- Eng. Com. Sub. for Com. Sub. for S. B. 343 - Relating to transportation network companies
- Eng. Com. Sub. for S. B. 369 - Permitting surface owners purchase mineral interests when interest becomes tax lien - (Com. title amend. pending)
- Eng. Com. Sub. for S. B. 375 - Relating to rate and measure of severance taxes on certain natural resources
- Com. Sub. for S. B. 386 - Creating WV Medical Cannabis Act - (Com. amend. and title amend. pending) - (With right to amend) (original similar to HCR79)
- Eng. Com. Sub. for Com. Sub. for S. B. 399 - Prohibiting political subdivisions from enacting local ordinances regulating benefits employers provide to employees
- Eng. Com. Sub. for S. B. 402 - Relating to covenants not to compete between physicians and hospitals

Eng. Com. Sub. for S. B. 406 - Relating to generic drug products

Eng. Com. Sub. for Com. Sub. for S. B. 409 - Relating generally to 2017 Tax Reform Act

Eng. S. B. 416 - Relating to Public-Private Transportation Facilities Act (original similar to HB2721)

Eng. S. B. 417 - Removing financial limitations on number of design-build projects undertaken by DOH (original similar to HB2722)

Eng. S. B. 421 - Increasing amount of authorized federal Grant Anticipation Notes for which DOH may apply (original similar to HB2878)

Eng. Com. Sub. for S. B. 446 - Authorizing Governor issue executive orders to furlough state employees (original similar to HB2879)

Eng. Com. Sub. for S. B. 465 - Relating to medical professional liability

Eng. Com. Sub. for Com. Sub. for S. B. 469 - Prohibiting waste of game animals, birds or fish

Eng. Com. Sub. for Com. Sub. for S. B. 482 - Relating generally to WV Parkways Authority (original similar to HB2803)

Eng. Com. Sub. for S. B. 484 - Relating generally to taxation (original similar to HB2816)

Eng. Com. Sub. for Com. Sub. for S. B. 501 - Relating to WV Economic Development Authority (original similar to HB3086)

Eng. S. B. 504 - Defining "special aircraft property"

Eng. Com. Sub. for Com. Sub. for S. B. 507 - Allowing pharmacists inform customers about lower cost alternatives to prescribed drugs

Eng. Com. Sub. for S. B. 515 - Relating to parole requirements for hearings and release

Eng. Com. Sub. for Com. Sub. for S. B. 521 - Relating generally to Public Defender Services

Eng. Com. Sub. for Com. Sub. for S. B. 526 - Requiring mandatory insurance coverage for inherited enzymatic disorders

Eng. Com. Sub. for S. B. 534 - Relating to incentives for consolidating local governments

Eng. Com. Sub. for Com. Sub. for S. B. 549 - Allowing individuals at least 21 or older operate or ride motorcycle without helmet - (Com. title amend. pending)

Com. Sub. for S. B. 562 - Relating to civil actions for damages brought against county commissions and municipalities - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for S. B. 563 - Relating to Consumer Credit and Protection Act

Com. Sub. for S. B. 576 - Providing exception to waste for certain oil and gas development - (With right to amend) (original similar to HB3094)

Eng. Com. Sub. for S. B. 588 - Relating to reproduction, distribution and sale of tax maps

Eng. Com. Sub. for S. B. 606 - Relating to minimum wage and maximum hours for employees

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| Eng. Com. Sub. for S. B. 609 - | Creating additional flexibility for school systems in use of school aid funds - (Com. title amend. pending) |
| Eng. S. B. 613 - | Relating to composition of State Fire Commission |
| Eng. Com. Sub. for S. B. 636 - | Authorizing State Fire Commission establish program to address problems facing VFDs |
| Eng. Com. Sub. for S. B. 637 - | Relating to private club operations requirements |
| Eng. Com. Sub. for S. B. 656 - | Relating to Student Data Accessibility, Transparency and Accountability Act |
| Eng. S. B. 664 - | Removing limitation on amount counties collect on hotel occupancy tax |
| Eng. S. B. 667 - | Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner |
| Eng. S. B. 687 - | Relating generally to coal mining, safety and environmental protection (original similar to HB 2506, HB 3029, SB 246, SB 582) |
| Eng. S. B. 688 - | Correcting technical error within Solid Waste Management Act |
| Eng. S. B. 689 - | Relating to payment of small claims by DOH (original similar to HB 2608, HB 2977) |
| Eng. S. B. 690 - | Authorizing WV State Police impose and collect fees for agencies and entities using their facilities (original similar to HB 2149, HB 2316, HB 2507) |
| Eng. S. B. 691 - | All relating to off-road vehicles |
| Eng. S. B. 693 - | Creating WV Uniform Fiduciary Access to Digital Assets Act |
| S. J. R. 4 - | County Economic Development Amendment - (With right to amend) |
| Eng. Com. Sub. for Com. Sub. for S. J. R. 6 - | Roads to Prosperity Amendment of 2017 (original similar to HJR22) |

SECOND READING

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|---------------------------------|--|
| Eng. Com. Sub. for H. B. 2459 - | Relating to regulation of health care and the certificate of need process - (Com. amend. pending) |
| Eng. Com. Sub. for H. B. 2679 - | Relating to the possession of firearms in parks and park facilities - (Com. amend. and title amend. pending) |
| Eng. Com. Sub. for H. B. 2721 - | Removing the cost limitation on projects completed by the Division of Highways |
| Eng. Com. Sub. for H. B. 2722 - | Eliminating the financial limitations on utilizing the design-build program for highway construction |
| Eng. H. B. 3106 - | Relating to increasing the number of limited video lottery terminals |

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2017

Wednesday, March 29, 2017

8:30 a.m.

Transportation & Infrastructure

(Room 451M)