

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE
REGULAR SESSION, 2017
FIFTIETH DAY

Charleston, West Virginia, Wednesday, March 29, 2017

The Senate met at 9 a.m.

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

Prayer was offered by Pastor Eric Porterfield, Fifth Avenue Baptist Church, Huntington, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert Karnes, a senator from the eleventh district.

Pending the reading of the Journal of Tuesday, March 28, 2017,

At the request of Senator Sypolt, 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.

At the request of Senator Ferns, and by unanimous consent, the Senate proceeded to the eighth order of business.

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

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 Committee Substitute for Senate Bill 38 pass?"

On the passage of the bill, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Maroney, Maynard, Miller, Mullins, 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: Mann—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. 38) 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 40, Requiring inclusion of protocols for response to after-school emergencies in school crisis response plans.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 40) passed with its title.

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

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 40) takes effect August 1, 2017.

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 57, Continuing personal income tax adjustment for certain retirees.

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, Mullins, Ojeda,

Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 57) 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 238, Increasing tax credits allowed for rehabilitation of certified historic structures.

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 Senate Bill 238 pass?”

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 238) 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 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.

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

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

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, Mullins, Ojeda,

Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 282) 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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 282) 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 286, Relating to grandparents' visitation rights.

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

Pending discussion,

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

At the request of Senator Romano, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

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

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

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

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 Senate Bill 294 pass?”

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 294) 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 333, Requiring all DHHR-licensed facilities access WV Controlled Substances Monitoring Program Database.

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 Committee Substitute for Senate Bill 333 pass?”

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 333) 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 343, Relating to transportation network companies.

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: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda,

Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Azinger and Rucker—2.

Absent: None.

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. 343) 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 369, Permitting surface owners purchase mineral interests when interest becomes tax lien.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Rucker—1.

Absent: None.

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. 369) 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 Senate Bill 369—A Bill to amend and reenact §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; 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 relating to the sale of delinquent surface and mineral properties generally; providing that a purchaser shall provide certain information to the State Auditor in order to secure a deed for the real estate subject to a tax lien purchased; providing that no deed to a bona fide purchaser for value from the purchaser or substituted purchaser may be set aside for purchaser's failure to provide such information; providing additional instructive language to be included in the notice to redeem; providing that the surface owner of the surface tract overlying the mineral property subject to the tax lien being sold may purchase that mineral property under certain circumstances; providing that, upon payment by the surface owner, the clerk or deputy commission, whichever applicable, shall issue a certificate of substitution to the substituted surface owner; providing that the clerk or deputy commission, whichever applicable, shall refund the money paid by the surface owner if the property is redeemed by the mineral owner or a person with a right to redeem; providing that the surface owner enjoys the full rights and duties of the purchaser if the owner or a person with a right to redeem does not redeem and only one surface owner receives a certificate of substitution; providing that surface owners shall submit an agreement dividing the mineral property if more than one surface owners pays the clerk or deputy

commission, whichever applicable, the appropriate amount; providing that the original purchaser is returned to his or her original position if no agreement is filed; providing that the mineral owner of the mineral tract underlying the surface property subject to the tax lien being sold may purchase that surface property under certain circumstances; providing that, upon payment by the mineral owner, the clerk or deputy commission, whichever applicable, shall issue a certificate of substitution to the substituted mineral owner; providing that the clerk or deputy commission, whichever applicable, shall refund the money paid by the mineral owner if the property is redeemed by the surface owner or a person with a right to redeem; providing that the mineral owner enjoys the full rights and duties of the purchaser if the owner or a person with a right to redeem does not redeem and only one mineral owner receives a certificate of substitution; providing that mineral owners shall submit an agreement dividing the surface property if more than one mineral owners pays the clerk or deputy commission, whichever applicable, the appropriate amount; and providing that the original purchaser is returned to his or her original position if no agreement is filed.

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 375, Relating to rate and measure of severance taxes on certain natural resources.

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

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

Com. Sub. for Senate Bill 386, Creating WV Medical Cannabis Act.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Tuesday, March 28, 2017, for amendments to be received on third reading, was reported by the Clerk.

Following points of inquiry to the President, with resultant responses thereto,

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 Engrossed Committee Substitute for Senate Bill 286, already placed in that position.

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

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 Committee Substitute for Senate Bill 399 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

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

Absent: None.

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. 399) 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 402, Relating to covenants not to compete between physicians and hospitals.

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 Senate Bill 402 pass?”

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

The nays were: Ferns, Hall and Weld—3.

Absent: None.

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. 402) 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 406, Relating to generic drug products.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 406) 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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 406) 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 409, Relating generally to 2017 Tax Reform Act.

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

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 409 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—22.

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

Absent: None.

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. 409) passed.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 409—A Bill to amend the Code of West Virginia, 1931, as amended, by repealing §11-8-6e; to amend said code by amending and reenacting §11-8-6f; to amend said code by repealing §11-8-6g; to amend said code by adding thereto a new section, designated §11-13A-26; to amend said code by adding thereto new sections, designated §11-13DD-1, §11-13DD-2, §11-13DD-3 and §11-13DD-4; to amend said code by amending and reenacting §11-15-3, §11-15-3a, §11-15-8, §11-15-9, §11-15A-2; to amend said code by adding thereto a new section, designated §11-21-4g; all relating generally to

the 2017 Tax Reform Act; to the repeal of certain procedures relating to increased tax assessments; to the prospective reduction of the rate of the severance tax on certain production of coal; to providing a refundable credit based on the fixed income of low-income senior citizens; to the increase of the rate of the consumers sales and service tax; to the elimination of certain exemptions from the consumers sales and service tax; to the increase of the rate of the use tax; to the reduction of the rate of the personal income tax and establishing effective dates with respect thereto.

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

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senators Karnes and Ferns regarding the passage of Engrossed Committee Substitute for Committee Substitute for Senate Bill 409 were ordered printed in the Appendix to the Journal.

At the request of Senator Boley, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate then proceeded to the sixth order of business.

Senators Gaunch, Stollings and Boso offered the following resolution:

Senate Concurrent Resolution 49—Requesting the Division of Highways to erect a sign along each side of US Route 60, at the St. Albans bridge near Amandaville in Kanawha County, proclaiming “Home of Ralph Maddox - 1980 NHPA Hall of Fame Inductee”.

Whereas, Ralph Eugen Maddox was born October 23, 1922; and

Whereas, Ralph Maddox won his first Horseshoe Pitching Virginia State Championship in 1934 at the age of twelve years. He is the youngest player to win a state championship ever; and

Whereas, Ralph Maddox was hired at Union Carbide because of his superior fast-pitching softball arm. He, however, pursued his horseshoe career; and

Whereas, Ralph Maddox went on to win 36 state championships and was a member of the Horseshoe Pitchers Association for 69 years. Ralph qualified for the Men’s World Tournament Championship Class 21 times, winning 411 games and a career average of 77.57 % ringers. His high finish was in 1961, he placed 3rd on a 30-5 record and an 80.9 % ringers average. Ralph was one of the 13 famed 80% pitchers in the 1964 World Tournament, placed 9th on 25-10 record while pitching 83.5% ringers; and

Whereas, Sadly, Ralph Maddox passed away on November 13, 2007 following a lengthy illness; and

Whereas, Ralph Maddox having won numerous state and world tournament championships, was inducted into the Horseshoe Hall of Fame in April 1980 and was known as “Mr. Horseshoe”; and

Whereas, It is most fitting that the West Virginia Legislature pay tribute to the accomplishments of Ralph Maddox; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to erect a sign along each side of US Route 60 at the St. Albans bridge near Amandaville, in Kanawha County proclaiming, "Home of Ralph Maddox - 1980 NHSPA Hall of Fame Inductee"; and, be it

Further Resolved, that the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

Which, under the rules, lies over one day.

Senators Smith, Sypolt, Stollings, Plymale, Boso and Unger offered the following resolution:

Senate Resolution 59—Designating March 29, 2017, as Tucker County Day at the Legislature.

Whereas, In the winter of 1949-1950, two members of the Ski Club of Washington, D. C., discovered a substantial snow drift when most of the region was bare; and

Whereas, In February of 1951, the two members returned to ski the drift and skiing in Tucker County was born; and

Whereas, Today, Tucker County is home to two downhill ski areas and one Cross Country Ski Center and endless winter activities for all ages and has established itself as a winter destination; and

Whereas, Tucker County is home to three West Virginia state parks, namely Canaan Valley Resort State Park, Blackwater Falls State Park, and Fairfax Stone State Park, and Monongahela National Forest; and

Whereas, Tucker County enjoys a location within a few hours' drive of most of the population in the eastern United States; and

Whereas, Tucker County is not only a year round outdoor recreation destination, but is now emerging as an art and culture destination; and

Whereas, Tucker County is home to three breweries, the only Cultural District Authority in West Virginia, the Potomac Stone, the newly installed paragliding site at Canaan Valley Resort, the Splash Park in Parsons and soon to be Tucker County Boulder Park; and

Whereas, On the occasion of Tucker County Day at the Legislature, we hereby recognize Tucker County and its citizens for their contributions to the great State of West Virginia; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 29, 2017, as Tucker County Day at the Legislature; and, be it

Further Resolved, That the Senate extends its sincere gratitude and appreciation to the many important contributions the citizens and businesses of Tucker County make in the State of West Virginia; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives from Tucker County.

At the request of Senator Sypolt, 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 Smith regarding the adoption of Senate Resolution 59 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 Plymale, Woelfel, Stollings and Boso offered the following resolution:

Senate Resolution 60—Recognizing the Cabell Midland High School Band for its exceptional accomplishments, dedication and for proudly representing the school, county and state with their talent and fine performances.

Whereas, The Cabell Midland High School Band program has, since its inception in 1994, provided exceptional musical performances; and

Whereas, The band has won 87 Marching Band Grand Championships and 6 Marshall University Tri-State Marching Band Championships; and

Whereas, Its concert bands have earned superior ratings for 22 straight years; and

Whereas, The Cabell Midland High School Jazz Band has twice been named the Marshall University Jazz Festival Honor Band and won a national first place award at the All-American Festival in Orlando; and

Whereas, The band has excelled in-state as the featured band for 11 years at the Joyful Night Program at the State Capitol and is an 8-time winner of the West Virginia Black Walnut Festival Honor Band award; and

Whereas, The band has excelled internationally at the Toronto Music Festival and performed in Canada, the Bahamas, Mexico, and Belize; and

Whereas, The Cabell Midland Marching Knights have been named the West Virginia State Marching Band Invitational State Honor Band for five consecutive years and are the current reigning champions; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the Cabell Midland High School Band for its exceptional accomplishments, dedication and for proudly representing the school, county and state with their talent and fine performances; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Cabell Midland High School Band.

At the request of Senator Plymale, 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 Plymale and Woelfel regarding the adoption of Senate Resolution 60 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 Carmichael (Mr. President), Stollings, Plymale and Boso offered the following resolution:

Senate Resolution 61—Declaring the West Virginia Marching Band Invitational to be the state's official Marching Band Championship event.

Whereas, The VH1 Save The Music Foundation program that places musical instrument in West Virginia public middle schools has increased participation in middle and high school bands; and

Whereas, public high schools of all sizes are enjoying a resurgence in band participation; and

Whereas, Until 2012, there was no statewide marching band championship open to all West Virginia secondary schools; and

Whereas, In that year the West Virginia Division of Culture and History hosted the first West Virginia Marching Band Invitational at Glenville State College; and

Whereas, There were 19 bands in the first competition which has grown to see as many as 37 bands participating at the University of Charleston's Laidley Field; and

Whereas, The invitational may include as many as 2,400 students and 7,000 spectators who enjoy the day in Charleston; and

Whereas, This invitational provides a showcase for the state's high school marching bands; and

Whereas, The students have the opportunity to see the WVU Pride of West Virginia perform; and

Whereas, This event highlights the value of arts education to encourage creativity, talent and self-discipline; therefore, be it

Resolved by the Senate:

That the Senate hereby declares the West Virginia Marching Band Invitational to be the state's official Marching Band Championship event; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials with the West Virginia Marching Band Invitational.

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

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

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Maynard, and by unanimous consent, returned to the second order of business and the introduction of guests.

The Senate again proceeded to the sixth order of business.

Petitions

Senator Miller presented a petition from Harris Sams and numerous West Virginia residents, supporting Senate Bill 251 (*Creating pilot program for school-based mental and behavioral health services for students and families*).

Referred to the Committee on Education.

At the request of Senator Ferns, unanimous consent being granted, the Senate returned 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

Senate Concurrent Resolution 50 (originating in the Committee on the Judiciary)—Urging the Congress of the United States to pass a law to reschedule marijuana from a Schedule I drug to an alternative drug schedule and to authorize state governments to regulate marijuana at their own discretion.

Whereas, Marijuana is currently classified as a Schedule I drug under the United States Controlled Substances Act; and

Whereas, Schedule I drugs are defined as drugs with no currently accepted medical use and a high potential for abuse, placing marijuana on par with heroin, lysergic acid, diethylamide, 3,4-methylenedioxymethamphetamine and methaqualone and signifying that marijuana poses a greater risk for abuse than Schedule II drugs, including cocaine, oxycodone, fentanyl and morphine; and

Whereas, The continued classification of marijuana as a Schedule I drug is inappropriate given the growing domestic and international consensus that marijuana has medicinal value and given marijuana's limited potential for abuse relative to other Schedule I and II drugs; and

Whereas, The medical use of marijuana or cannabis has been studied outside the United States for years and has shown efficacy in treating numerous conditions, including epilepsy, wasting syndrome, chemotherapy-induced nausea, glaucoma, migraine headaches, and chronic pain and/or anxiety; and

Whereas, Twenty-eight states and the District of Columbia have similarly recognized that marijuana has some medicinal value by legalizing the medical use of marijuana. It is estimated that as many as 2.3 million patients have been prescribed marijuana as of March 2017; and

Whereas, Numerous health organizations representing both physicians and patients have also called upon Congress to reschedule marijuana, including the American College of Physicians, the American Academy of Pediatrics, Americans for Safe Access, and the Epilepsy Foundation; and

Whereas, The American Legion, our nation's largest veterans organization representing 2.4 million members, has also joined this growing consensus, calling for increased research on marijuana's potential use for treating post-traumatic stress disorder and traumatic brain injuries in soldiers returning home from Iraq and Afghanistan; and

Whereas, The continued classification of marijuana as a Schedule I drug prevents the scientific and medical community from heeding the call of our veterans, as research institutions are prohibited from examining the potential medical uses of Schedule I drugs; and

Whereas, Marijuana's current classification also puts states in the unacceptable position having to choose between complying with federal law and providing a full complement of medical treatments to their citizens; and

Whereas, In recognition of this dilemma, the Law and Criminal Justice Committee of the National Conference of State Legislatures, which serves the legislatures of all fifty states, called upon Congress to reschedule marijuana and to allow states to regulate marijuana at their own discretion; and

Whereas, By rescheduling marijuana and authorizing states to set their own marijuana policies, Congress would not only allow states to meet the medical needs of their citizens without violating federal law, but Congress would also liberate state governments to become centers of innovation with respect to marijuana policy, exploring different ways to maximize public safety, health and economic development through competing research and regulatory regimes; and

Whereas, Authorizing states to set their own marijuana policy would also remove the threat of federal criminal prosecution and forfeiture for individuals and corporations that are involved in the medical use of marijuana and that have otherwise lawfully complied with their respective state's regulatory regime; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature urges the Congress of the United States to pass legislation to reschedule marijuana from a Schedule I drug to an alternative schedule, thereby allowing doctors to prescribe marijuana and to allow research institutions to experiment with marijuana's potential medical uses; and, be it

Further Resolved, That the Legislature urges the Congress of the United States to amend the Controlled Substances Act explicitly to allow states to set their own marijuana policies without federal interference; and, be it

Further Resolved, That the Legislature urges the President of the United States to sign such legislation; and, be it

Further Resolved, That the Clerk of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Majority Leader of the United States Senate, and to each Senator and Representative from West Virginia in the Congress of the United States.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Trump, unanimous consent being granted, the resolution (S. C. R. 50) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration.

The question being on the adoption of the resolution, the same was put and prevailed.

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

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2329, Prohibiting the production, manufacture or possession of fentanyl.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

On motion of Senator Ferns, the Senate recessed until 12:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and proceeded to the eighth order of business, the next bill coming up in numerical sequence being

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

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

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.

On motion of Senator Unger, the bill was committed to the Committee on Rules.

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.

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

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

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, Clements, Cline, Facemire, Ferns, Hall, Mann, Maroney, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—23.

The nays were: Beach, Boso, Gaunch, Jeffries, Karnes, Maynard, Miller, Romano, Rucker, Smith and Unger—11.

Absent: None.

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. 446) passed with its title.

Senator Ferns moved that Engrossed Committee Substitute for Senate Bill 446 be made effective from passage 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 Unger objecting.

Thereafter, Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Beach, Karnes, Maynard, Romano, Rucker and Unger—6.

Absent: None.

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. 446) 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 465, Relating to medical professional liability.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 465) 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 469, Prohibiting waste of game animals, birds or fish.

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 Committee Substitute for Senate Bill 469 pass?”

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

The nays were: Azinger and Stollings—2.

Absent: None.

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. 469) 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 482, Relating generally to WV Parkways Authority.

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, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Cline, Facemire, Gaunch, Karnes, Maynard, Mullins, Rucker and Unger—8.

Absent: None.

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. 482) passed with its title.

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

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Cline, Facemire, Gaunch, Karnes, Maynard, Mullins, Rucker and Unger—8.

Absent: None.

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 Com. Sub. for S. B. 482) takes effect July 1, 2017.

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 484, Relating generally to taxation.

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: Beach, Blair, Boley, Clements, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Sypolt, Takubo, Trump, Unger, Woelfel and Carmichael (Mr. President)—24.

The nays were: Azinger, Boso, Cline, Gaunch, Karnes, Maynard, Mullins, Rucker, Swope and Weld—10.

Absent: None.

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. 484) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Clements, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Sypolt, Takubo, Trump, Unger, Woelfel and Carmichael (Mr. President)—24.

The nays were: Azinger, Boso, Cline, Gaunch, Karnes, Maynard, Mullins, Rucker, Swope and Weld—10.

Absent: None.

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. 484) takes effect from passage.

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

At the request of Senator Azinger, and by unanimous consent, the Senate returned to the sixth order of business, which agenda includes the making of main motions.

On motion of Senator Azinger, the Senate requested the return from the House of Delegates of

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

Passed by the Senate in earlier proceeding today,

The bill still being in the possession of the Senate,

On motion of Senator Azinger, the Senate reconsidered the vote by which it adopted Senator Ferns' motion that Engrossed Committee Substitute for Committee Substitute for Senate Bill 482 take July 1, 2017.

The vote thereon having been reconsidered,

The question again being on the adoption of Senator Ferns' motion that the bill take effect July 1, 2017.

Thereafter, at the request of Senator Ferns, and by unanimous consent, his foregoing motion was withdrawn.

On motion of Senator Azinger, the Senate reconsidered the vote as to the passage of the bill.

The vote thereon having been reconsidered,

The question again being on the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Clements, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Azinger, Cline, Gaunch, Karnes, Maynard, Mullins, Rucker and Unger—8.

Absent: None.

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. 482) passed with its title.

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

On this question, the yeas were: Beach, Blair, Boley, Boso, Clements, Facemire, Ferns, Hall, Jeffries, Mann, Maroney, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—26.

The nays were: Azinger, Cline, Gaunch, Karnes, Maynard, Mullins, Rucker and Unger—8.

Absent: None.

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 Com. Sub. for S. B. 482) takes effect July 1, 2017.

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

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

Eng. Com. Sub. for Com. Sub. for Senate Bill 501, Relating to WV Economic Development Authority.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Rucker—1.

Absent: None.

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. 501) 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 504, Defining “special aircraft property”.

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Com. Sub. for Com. Sub. for Senate Bill 507, Allowing pharmacists inform customers about lower cost alternatives to prescribed drugs.

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 Committee Substitute for Senate Bill 507 pass?”

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 507) 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 515, Relating to parole requirements for hearings and release.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 515) 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 521, Relating generally to Public Defender Services.

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 Committee Substitute for Senate Bill 521 pass?"

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Mullins, Palumbo, Rucker, Smith, Swope, Sypolt, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—23.

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

Absent: None.

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. 521) 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 526, Requiring mandatory insurance coverage for inherited enzymatic disorders.

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

The nays were: Azinger—1.

Absent: None.

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. 526) 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 534, Relating to incentives for consolidating local governments.

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: Beach, Blair, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Stollings, Swope, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—28.

The nays were: Azinger, Boley, Karnes, Maynard, Smith and Sypolt—6.

Absent: None.

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. 534) 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 549, Allowing individuals at least 21 or older operate or ride motorcycle without helmet.

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

Pending extended discussion,

Senator Plymale moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for Senate Bill 549.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Facemire, Gaunch, Jeffries, Karnes, Maynard, Romano, Rucker, Swope, Sypolt, Trump and Carmichael (Mr. President)—15.

The nays were: Beach, Clements, Cline, Ferns, Hall, Mann, Maroney, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Smith, Stollings, Takubo, Unger, Weld and Woelfel—19.

Absent: None.

So, a majority of all the members present and voting not having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 549) rejected.

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

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Tuesday, March 28, 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 and adopted:

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

That §17-10-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. COUNTY COMMISSIONS; MUNICIPALITIES; GENERAL AUTHORITY AND DUTIES AS TO ROADS, ETC.

§17-10-17. Action for damages occasioned by defective defect in, disrepair, maintenance of, or failure to maintain or repair any road, bridge, street, sidewalk, alleyway, public walkway, etc.

~~Any person who sustains an injury to his person or property by reason of any road or bridge under the control of the county court or any road, bridge, street, alley or sidewalk in any incorporated city, town or village being out of repair due to the negligence of the county court, incorporated city, town or village may recover all damages sustained by him by reason of such injury in an action against the county court, city, town or village in which such road, bridge, street, alley or sidewalk may be, except that such city, town or village shall not be subject to such action unless it is required by charter, general law or ordinance to keep the road, bridge, street, alley or sidewalk therein, at the place where such injury is sustained, in repair. If it is not so required, the action and remedy shall be against the county court. When judgment is obtained against the county court, such court shall at the time of the laying of the next annual levy, levy upon the taxable property of the district in which such injury is sustained a sufficient sum to pay such judgment with interest and costs, and the costs of collecting the same, and when it is obtained against the city, town or village the proper municipal authorities thereof shall lay such levies at the time of levying the next annual levy on the property subject to taxation in such city, town or~~

~~village. In case of a failure by either so to do, or to pay the judgment as required by law, the circuit court of the county for which such county court acts or in which such city, town or village or the major portion of the territory thereof is located shall compel the laying of such levy, or the payment of such judgment, or both, by mandamus.~~

(a) Notwithstanding any other provision of the code to the contrary, beginning on July 1, 2017, all claims or actions against a county commission or municipality seeking damages for injury to person or property for a slip, trip, fall or similar injury as a result of any defect in, disrepair or maintenance of, or failure to maintain or repair, any road, bridge, street, sidewalk, alleyway, stairway or other public walkway or area used for travel, ingress or egress, that is owned, controlled or maintained by a county commission or municipality are subject to the requirements of this section.

(b) Any person who sustains an injury to his or her person or property by reason of a slip, trip, fall or similar injury as a result of any defect in, disrepair or maintenance of, or failure to maintain or repair, any road, bridge, street, sidewalk, alleyway, stairway or other public walkway or area used for travel, ingress or egress, that is owned, controlled or maintained by a county commission or municipality may recover civil damages sustained by him or her by reason of the injury in an action against the county commission or municipality, subject to the following limitations:

(1) The injury directly results from and occurs while employees of the county commission or municipality are physically present at the site performing construction, maintenance, repair or cleaning, but excluding inspection of work being performed, or materials being used, by others, where and when the injury is sustained; or

(2) The injury arises from a defect in, the disrepair or maintenance of, or the failure to maintain or repair, any road, bridge, street, sidewalk, alleyway, stairway or other public walkway or area used for travel, ingress or egress, due to the gross negligence of the county commission or municipality.

(c) With regard to any action arising under this section, the county commission or municipality owes no duty of care to protect against, and is not liable for, dangers that are open and obvious, reasonably apparent, or as well known to the person injured as they are to the county commission or municipality. In its application of the open and obvious doctrine, a court as a matter of law shall appropriately apply the doctrine considering the nature and severity, or lack thereof, of violations of any statute, state rule or municipal ordinance relating to a cause of action.

(d) This section does not diminish or limit the protections afforded to county commissions and municipalities by other provisions of this code, including the immunities granted by article twelve-a, chapter twenty-nine of this code.

There being no further amendments offered,

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

Engrossed Committee Substitute for Senate Bill 562 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda,

Palumbo, Plymale, Prezioso, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—32.

The nays were: Beach and Romano—2.

Absent: None.

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. 562) 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 Senate Bill 562—A Bill to amend and reenact §17-10-17 of the Code of West Virginia, 1931, as amended, relating to civil actions for damages brought against county commissions and municipalities by persons injured by reason of a slip, trip, fall or similar injury resulting from defect, disrepair, maintenance of, or failure to maintain or repair any road, bridge, street, sidewalk, alleyway or public walkway.

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 563, Relating to Consumer Credit and Protection Act.

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 Senate Bill 563 pass?”

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

The nays were: Beach, Facemire, Jeffries, Miller, Ojeda, Prezioso, Romano, Stollings, Sypolt and Unger—10.

Absent: None.

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. 563) passed.

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

Eng. Com. Sub. for Senate Bill 563—A Bill to amend and reenact §46A-2-105, §46A-2-122 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §46A-2-140; to amend and reenact §46A-5-101 and §46A-5-102 of said code; to amend said code by adding thereto a new section, designated §46A-5-108; and to amend and reenact §46A-8-101 of said code, all relating to the Consumer Credit and Protection Act; modifying requirements for contracts allowing for balloon payments; establishing that agreements allowing for balloon payments shall contain certain language in form and

substance substantially similar to existing requirements; modifying and clarifying definitions; excluding attorneys from the definition of “debt collector” under certain circumstances; changing the time period where direct contact with a consumer must cease after receipt of notice of representation from seventy-two hours to three business days; clarifying form of notice to a debt collector of a consumer’s representation by legal counsel; requiring notice of representation to a debt collector be sent by certified mail, return receipt requested; requiring a debt collector to make certain disclosures in all communications with a consumer about debt beyond the statute of limitations for filing a legal action for collection of that debt; establishing that contents of or omissions from a pleading do not provide the basis for a claim of a violation of the Consumer Credit and Protection Act under certain circumstances; establishing exceptions for when a pleading may form the basis of a claim under the Consumer Credit Protection Act; preserving certain common law causes of action; providing for statutes of limitation in foreclosure matters; providing that counterclaims are subject to the appropriate statute of limitations; adopting a right to cure under certain provisions of the Consumer Credit Protection Act; establishing process and procedures for cure offers and responses to cure offers; establishing remedies for cure offers and responses to such offers; tolling the statute of limitations in certain circumstances involving cure offers and responses; addressing admissibility into evidence of cure offers and responses to such offers; addressing awards of attorney fees in certain circumstances involving cure offers and responses to such offers; and providing for applicability and effective dates of these amendments to the Consumer Credit Protection Act.

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

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 Saturday, March 25, 2017, for amendments to be received on third reading, was reported by the Clerk.

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

On page five, section five, lines five through eight, after the word “law,” by striking out the remainder of the section and inserting in lieu thereof the following: “any operator that elects to develop leases jointly pursuant to this section shall pay to the owners of the surface, on a pro rata share, one well pad fee of \$100,000, as indexed to the consumer price index, for each tract of land upon which any portion of the well pad sits.”

On motion of Senator Romano, the following amendment to the bill (Com. Sub. for S. B. 576) was next reported by the Clerk:

On page eight, section nine, line four, after the word “consent” by inserting the words “regardless of whether such surface owner possesses any actual ownership in the mineral interest”.

Following discussion,

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

On motion of Senator Romano, the following amendment to the bill (Com. Sub. for S. B. 576) was next reported by the Clerk:

On page four, section four, lines twelve and thirteen, by striking out the words “a lease bonus payment” and inserting in lieu thereof the words “all lease bonuses and other compensation concerning the mineral interest”.

Following discussion,

The question being on the adoption of Senator Romano’s amendment to the bill, the same was put and did not prevail.

On motion of Senator Romano, the following amendment to the bill (Com. Sub. for S. B. 576) was next reported by the Clerk:

On page five, section six, after the section caption, by inserting a new subsection, designated subsection (a), to read as follows:

(a) In determining the royalty rate where multiple contiguous leases are developed under section five of this chapter, in the absence of specific agreement language to the contrary, each royalty owner shall receive the highest royalty rate contained in the multiple contiguous leases or a fifteen percent royalty rate, whichever is greater. Nothing in this subsection is intended to impact royalties due for wells drilled prior to the effective date of this article.;

And,

By relettering the remaining subsections.

Following discussion,

The question being on the adoption of Senator Romano’s amendment to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Boso, Clements, Facemire, Jeffries, Miller, Ojeda, Palumbo, Prezioso, Romano, Stollings, Takubo, Unger and Woelfel—14.

The nays were: Azinger, Blair, Boley, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Plymale, Smith, Swope, Sypolt, Trump, Weld and Carmichael (Mr. President)—19.

Absent: Rucker—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano’s amendment to the bill rejected.

On motion of Senator Romano, the following amendments to the bill (Com. Sub. for S. B. 576) were next reported by the Clerk and considered simultaneously:

On page five, section four, line twenty-four, after the word “subdivision” by inserting a comma and the words “or for a review by the oil and gas conservation commission, as specified in subsection (b) of this section”;

On page five, section four, lines twenty-six and twenty-seven, by striking out the words “paragraph (A), subdivision (1) of this subsection” and inserting in lieu thereof the words “subsection (b) of this section”;

On page five, section four, line twenty-nine, by striking out the words “paragraph (A), subdivision (1) of this subsection” and inserting in lieu thereof the words “subsection (b) of this section”;

And,

On page five, section four, after line twenty-nine, by inserting a new subsection, designated subsection (b), to read as follows:

(b) (1) For purposes of this section, “oil and gas conservation commission” or “commission” means the commission created in article nine, chapter twenty-two-c of this code.

(2) If a nonconsenting cotenant elects, or is deemed to have elected, for review by the oil and gas conservation commission, the nonconsenting cotenant shall notify the operator in writing of this election within the 45-day period set forth in subsection (a) of this section. The operator shall, within thirty days of the receipt of the nonconsenting cotenant’s election for review by the commission, submit the best and final lease offer and any accompanying documentation to the commission and deliver a copy of all filed documents to the nonconsenting cotenant. The nonconsenting cotenant shall, within thirty days of the receipt of the operator’s filing to the commission, submit any additional documentation to the commission that the nonconsenting cotenant believes to be relevant to the determination. The commission shall set the matter for a hearing within forty-five days of receiving the nonconsenting cotenant’s documentation or, if no such documentation was filed, within seventy-five days of receiving the operator’s documentation. The commission shall provide no less than thirty days’ notice of the hearing date to the nonconsenting cotenant and the operator, and shall allow for rescheduling or continuance if good cause is shown.

(3) At the hearing, all interested parties shall be permitted to present relevant evidence to the determination. Following the hearing, the commission shall determine what is just and reasonable consideration for the nonconsenting cotenant to receive as consideration based on relevant evidence adduced at the hearing and through the filed documentation including, but not limited to, amounts paid or consideration given in arm’s length transactions in the vicinity of the horizontal well unit and within a reasonable time prior to the hearing for transactions of the same nature and involving similar geologic conditions as that transaction being considered by the commission. Under no circumstances may the commission determine that consideration less than that contained in the operator’s best and final lease offer or compensation less than provided in subdivision (1), subsection (a) of this section is just and reasonable. The commission shall, within twenty days of the hearing, enter an order setting forth a determination of just and reasonable compensation for the nonconsenting cotenant.

(4) Within ten days after the commission’s order is entered, any interested party may file exceptions thereto, and demand that the question of the just and reasonable compensation, be ascertained by a jury, in which case a jury of twelve citizens shall be selected and impaneled for the purpose, as juries are selected in civil actions. The cause shall be tried as other causes in such court, except that any member of the oil and gas conservation commission shall not be examined as a witness. The jury, ascertaining the just and reasonable compensation to which the nonconsenting cotenant is entitled, shall be governed by the limitations set forth in subdivision (3)

of this subsection. In the event a demand is made by a party in interest, and the judge deems it reasonably necessary to fairly resolve the matter, the jury shall be taken to view the property, and in such case, the judge presiding at the trial shall go with the jury and shall control the proceedings. All parties have a right to appeal from the jury's decision to the Supreme Court of Appeals of West Virginia.

If no exceptions are filed to the commission's order, and neither party demand a trial by jury as aforesaid, the commission's order is final.

Following discussion,

The question being on the adoption of Senator Romano's amendments to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Jeffries, Miller, Ojeda, Prezioso, Romano, Stollings, Unger and Woelfel—10.

The nays were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Palumbo, Plymale, Smith, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—23.

Absent: Rucker—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendment to the bill rejected.

On motion of Senator Ferns, the following amendments to the bill (Com. Sub. for S. B. 576) were next reported by the Clerk, considered simultaneously, and adopted:

On page one, after the enacting section, by inserting the following:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; ~~Tax Commissioner to develop a uniform reporting form.~~

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than five thousand cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* – (1) The tax imposed in subsection (a) of this section shall be five percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article.

(2) On and after July 1, 2017, the rate of tax on the privilege of severing natural gas for sale, profit, or commercial use shall be:

When the annualized gross value

<u>of natural gas per MCF is:</u>	<u>The rate of tax is:</u>
<u>Under \$2.50:</u>	<u>4%</u>
<u>At least \$2.50 but less than \$4.00:</u>	<u>5%</u>
<u>At least \$4.00 but less than \$6.00:</u>	<u>6%</u>
<u>At least \$6.00 but less than \$8.00:</u>	<u>7%</u>
<u>At least \$8.00 but less than \$10.00:</u>	<u>8%</u>
<u>At least \$10.00 and over:</u>	<u>9%</u>

~~(c) *Tax in addition to other taxes.* — The tax imposed by this section shall apply to all persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.~~

~~(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.~~

~~(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.~~

~~(3) Effective July 1, 2006, this subsection shall have no force or effect.;~~

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section.:

That §11-13A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §37-7-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, §37B-1-8, §37B-1-9 and §37B-1-10, all to read as follows.:

On motion of Senator Clements, the following amendment to the bill (Com. Sub. for S. B. 576) was next reported by the Clerk:

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

That §37-7-2 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 §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, and §37B-1-8 all to read as follows:

CHAPTER 37. WASTE BY COTENANT.

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant.

If a tenant in common, joint tenant, or parcener ~~commit~~ commits waste, he shall be ~~or she is~~ liable to his ~~or her~~ cotenants, jointly or severally, for damages, except as provided for oil and gas development in chapter thirty-seven-b of this code.

CHAPTER 37B. OIL AND GAS COTENANCY.

ARTICLE 1. COTENANCY FOR OIL AND GAS DEVELOPMENT.

§37B-1-1. Short title.

This chapter shall be known as the "Oil and Gas Cotenancy Act."

§37B-1-2. Declaration of public policy; legislative findings.

It is declared to be the public policy of this state and in the public interest to:

(a) Foster, encourage and promote exploration for and development, production, utilization and conservation of oil and gas resources;

(b) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(c) Encourage the maximum recovery of oil and gas;

(d) Safeguard, protect and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her just and equitable share of production from that pool of oil or gas;

(e) Safeguard, protect and enforce the rights of surface owners; and

(f) Protect and enforce the clear provisions of contracts lawfully made.

§37B-1-3. Definitions.

As used in this article, and in the absence of specific contract language to the contrary:

“Operator” means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for that person or for that person and others; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool is the “owner” as to that pool.

“Person” means any individual, corporation, partnership, limited liability company, association, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof.

“Pool” means an underground accumulation of petroleum or gas in a single and separate reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum or gas from one part of the pool affects the reservoir pressure throughout its extent.

“Post-production expense” means an expense or cost subsequent to production including, but not limited to, an expense or cost related to pipelines, surface facilities, telemetry, gathering, dehydration, transportation, fractionation, compression, manufacturing, processing, treating, or marketing of the oil or natural gas or any severance or other taxes of any nature paid on the production thereof.

“Pro-rata share” means the allocation of revenues and costs attributable to the lawful use of a mineral property that is calculated based on the proportion that the net acreage of such ownership interest bears to the total net acreage of jointly developed tracts in a development or production unit that includes, all or part of, that mineral property, if any.

“Royalty owner” means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as defined in this section.

“Unknown and unlocatable interest owner” means a person vested with a present ownership interest in the oil and gas in place in a mineral property whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission, the sheriff, the assessor and the clerk of the circuit court in the county or counties in which the interest is located, and includes unknown heirs, successors and assigns known to be alive;

(B) Diligent inquiry in the vicinity of the owner’s last known place of residence; and

(C) Diligent inquiry to known interest owners in the same tract.

§37B-1-4. Lawful use of mineral property; unknown or unlocatable cotenant; electable interests for non-consenting cotenant.

(a) If, after a reasonable effort to negotiate by the operator with all royalty owners in an oil and gas mineral property, tenants in common, joint tenants or coparceners representing three-fourths of the royalty interest in the oil and gas mineral property consent to a lawful use of the mineral property, then that use is permissible, is not waste and is not a trespass. In that case, the consenting cotenants and their lessees, operators, agents, contractors or assigns, are not liable for damages if they pay non-consenting cotenants in accordance with subdivision (1) and reserve the amounts specified in subdivision (2) in a trust account held for the benefit of unknown and unlocatable interest owners in a state or federally-insured financial institution.

(1) A non-consenting cotenant is entitled to receive, based on his or her election, either:

(A) A production royalty, free of post-production expenses, equal to the highest royalty percentage of his or her consenting cotenants in the same mineral property, and a lease bonus payment equal to the average amount paid to such consenting cotenants calculated on a net mineral acre basis; or

(B) To participate in the development and receive his or her pro-rata share of the revenue and cost equal to his or her share of production attributable to the tract or tracts being developed according to the interest of such non-consenting cotenant, exclusive of any royalty or overriding royalty reserved in any lease, assignments thereof or agreements relating thereto, after the market value of such non-consenting cotenant's share of production, exclusive of such royalty and overriding royalty, equals double the share of such costs payable or charged to the interest of such non-consenting cotenant.

A non-consenting cotenant shall have forty-five days following the operator's written delivery of its best and final lease offer in which to make his or her election for either a production royalty or a revenue share, as specified in paragraph (A) or paragraph (B) of this subdivision. If the non-consenting cotenant fails to deliver a written election to the operator prior to the expiration of such forty-five day period, he or she shall be deemed to have made the election set forth in paragraph (A), subdivision (1) of this subsection.

(2) Unknown and unlocatable interest owners shall be deemed to have made the election set forth in paragraph (A), subdivision (1) of this subsection.

§37B-1-5. Information reporting.

(a) The developing cotenant, his or her lessees, operators, agents, contractors or assigns shall provide the following information to all cotenants receiving production royalties resulting from the development of mineral property pursuant to this chapter;

(1) A name, number or combination of name and number that identifies the lease, property, unit or well or wells for which payment is being made; and the county in which the lease, property or well is located;

(2) Month and year of gas production;

(3) Total barrels of crude oil or number of Mcf, MMBTU or DTH of gas or volume of natural gas liquids produced and sold;

(4) Price received per unit of oil or natural gas produced;

(5) Total amount of severance and other production taxes associated with the volume of oil, natural gas or natural gas liquids produced, and other deductions provided under the terms of the governing lease;

(6) Net value of total proceeds from the sale of oil, natural gas or natural gas liquids from the property less taxes and deductions set forth in subdivision (5) of this subsection;

(7) Interest owner's interest, expressed as a decimal or fraction, in production from the unit or well reported pursuant to subdivision (1) of this subsection;

(8) Interest owner's ratable share of the total value of the proceeds of the sale of oil, natural gas or natural gas liquids prior to the deduction of taxes and other deductions set forth in subdivision (5) of this subsection;

(9) Interest owner's ratable share of the proceeds from the sale of oil, natural gas or natural gas liquids less the interest owner's ratable share of taxes and other deductions set forth in subdivision (5) of this subsection; and

(10) Contact information of the producer of the oil, natural gas or natural gas liquids, including a mailing address and telephone number.

(b) Notwithstanding any of the other provisions of this article, proceeds from production of oil, natural gas or natural gas liquids may be accumulated by the developing cotenant, his or her lessees, operators, agents, contractors or assigns until such time as proceeds attributable to any cotenant exceeds \$100 before making a remittance: *Provided*, That in any event regardless of the amount of money accumulated, the developing cotenant, his or her lessees, operators, agents, contractors or assigns shall remit proceeds attributable to his or her cotenants not less than once annually. All accumulated proceeds shall be paid to the person entitled thereto immediately, or as soon as practicable thereafter, upon cessation of production of oil, natural gas or natural gas liquids at a particular well or upon relinquishment or transfer of the payment responsibility to another party.

(c) All production royalties due and owing to a royalty owner shall be tendered in a timely manner which shall not exceed one hundred-eighty (180) days from the date that a sale of oil, natural gas or natural gas liquids is realized, unless such failure to remit is due to lack of record title in the royalty owner. Failure to remit timely payment shall result in a mandatory additional payment of an interest penalty to be set at the prime rate plus an additional two percent until such payment is made to be compounded semiannually. The prime rate shall be the rate published on the day of the sale of oil, natural gas or natural gas liquids in the Wall Street Journal reflecting the base rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks.

(d) A quarterly report of the volume of oil or natural gas produced from any horizontal well drilled pursuant to this article shall be filed with the Chief of Oil and Gas on a form prescribed by the Secretary of the West Virginia Department of Environmental Protection. All reported data shall be made available to the public through the Office of Oil and Gas's website within a reasonable time after such data is collected. The Secretary has the express authority pursuant to this article, as well as pursuant to the powers enumerated in section two, article six, chapter twenty-two of this code to promulgate rules and to amend the current rules to require timely quarterly reporting of production data as well as to the establish a process for collecting such data.

§37B-1-6. Limitation of liability of non-consenting cotenant.

A non-consenting cotenant shall have no liability for bodily injury, property, damage, or environmental claims arising out of site preparation, mineral extraction, maintenance, reclamation and other operations with respect to minerals produced from the non-consenting cotenant's property.

§37B-1-7. Surface use.

With respect to any tract of mineral property where an interest in the oil and gas in place is owned by a non-consenting cotenant and is developed pursuant to section four of this article, in no event shall drilling be initiated upon, or other surface disturbance occur on, the surface of or above such tract of minerals without the surface owner's consent; *Provided*, That this section shall not require surface use owner consent for tracts of mineral property otherwise subject to an existing surface use agreement or other valid contractual arrangement in which the owner of the surface has granted rights to the operator to use the surface in conjunction with oil and gas operations.

§37B-1-8. Severability.

The provisions of this chapter are severable and accordingly, if any part of this chapter is adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity of the remaining provisions of this chapter.

Following discussion,

The question being on the adoption of Senator Clements' amendment to the bill, the same was put and did not prevail.

There being no further amendments offered,

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

Engrossed Committee Substitute for Senate Bill 576 was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 576 pass?"

On the passage of the bill, the yeas were: Blair, Boso, Clements, Cline, Ferns, Hall, Karnes, Maroney, Maynard, Mullins, Palumbo, Plymale, Prezioso, Swope, Takubo, Trump, Weld, Woelfel and Carmichael (Mr. President)—19.

The nays were: Azinger, Beach, Boley, Facemire, Gaunch, Jeffries, Mann, Miller, Ojeda, Romano, Smith, Stollings, Sypolt and Unger—14.

Absent: Rucker—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. 576) passed.

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

Eng. Com. Sub. for Senate Bill 576—A Bill to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §37-7-2 of said code; and to amend said code by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, §37B-1-8, §37B-1-9 and §37B-1-10, all relating generally to

real property; modifying imposition of tax on privilege of severing natural gas or oil; providing an exception to waste for certain oil and gas development; providing a short title; providing declarations of public policy and legislative findings; providing definitions; providing that consent for the lawful use of the oil and gas mineral property by three fourths of the royalty interests in oil and gas mineral property is permissible, not waste and not trespass; allowing nonconsenting cotenants to elect production royalty interest or a working interest share of production; providing for the joint development of multiple contiguous oil and gas leases by horizontal drilling unless development is expressly prohibited by agreement; limiting jointly developed leases to six hundred forty acres with a ten percent tolerance; requiring any operator that elects to develop leases jointly to pay owners of the surface, on a pro rata share, one well pad fee of \$100,000, as indexed to the consumer price index, for each tract of land upon which any portion of the well pad sits; allowing for a net acreage fractional share royalty interest, free of post-production expenses, for multiple contiguous leases jointly developed; providing for timely payment of royalties and requiring specified information to be remitted with such payments; requiring quarterly reporting of production data to Department of Environmental Protection for horizontal wells drilled pursuant to the provisions herein; providing that cotenants are not liable for damages as a result of the lawful use of oil and gas mineral property; requiring surface use agreements in specified circumstances and preserving common law rights; and providing for severability of provisions.

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 588, Relating to reproduction, distribution and sale of tax maps.

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: Beach, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: Azinger, Facemire and Romano—3.

Absent: Rucker—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. 588) 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 606, Relating to minimum wage and maximum hours for employees.

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

Senator Miller requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43.

The Chair replied that any impact on Senator Miller would be as a member of a class of persons and that he would be required to vote.

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

The nays were: Facemire, Ojeda, Prezioso, Romano and Stollings—5.

Absent: Rucker—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. 606) 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 609, Creating additional flexibility for school systems in use of school aid funds.

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

Pending discussion and a point of inquiry to the President, with resultant response thereto,

(Senator Plymale in the Chair.)

Pending extended discussion,

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

The question being “Shall Engrossed Committee Substitute for Senate Bill 609 pass?”

On the passage of the bill, the yeas were: Blair, Boso, Clements, Cline, Ferns, Gaunch, Hall, Mann, Maroney, Mullins, Rucker, Smith, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—17.

The nays were: Azinger, Beach, Boley, Facemire, Jeffries, Karnes, Maynard, Miller, Ojeda, Palumbo, Plymale, Prezioso, Romano, Stollings, Unger and Woelfel—16.

Absent: Swope—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. 609) passed.

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

Eng. Com. Sub. for Senate Bill 609—A Bill to amend and reenact §11-8-6f and §11-8-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-9A-2, §18-9A-4, §18-9A-5, §18-9A-6a, §18-9A-7, §18-9A-9, §18-9A-10 and §18-9A-11 of said code; and to amend said code by adding thereto a new section, designated §18-9A-25, all relating to public school support;

removing limit on increase in total property tax revenues if the current regular levy rates of the county boards of education were to be imposed; setting the regular levy rates for county boards of education, but allowing the boards to reduce the rates to no lower than certain specified levels; allowing a county board to change its proposed regular levy rates from the original proposed levy rates in its required statement to the Auditor; deleting required periodic legislative review of definition of "net enrollment"; changing term "levies for general current expense purposes" to "maximum levies for general current expense purposes" and modifying the definition to mean ninety percent of the maximum levy rates for county boards of education; determining allowance for fundable professional educators at set ratio, rather than the number employed subject to a limit; providing for determination of allowance for fundable positions in excess of number employed; deleting expired provisions; basing minimum professional instructional personnel required on percent of fundable professional educators or the number employed, whichever is less; providing for prorating professional instructional personnel among participating counties in joint school or program or service; removing penalty for not meeting applicable professional instructional personnel ratio for 2017-2018 school year; deleting expired provisions; deleting required periodic legislative review of density category ratios; determining allowance for fundable service personnel at set ratio, rather than number employed subject to a limit; providing for determination of allowance for fundable positions in excess of number employed; providing for proration of number and allowance of personnel employed in part by state and county funds; adding professional student support personnel allowance to calculation of Teachers Retirement Fund allowance; basing Teachers Retirement Fund allowance on average retirement contribution rate of each county and defining "average rate"; allowing limited portion of funds for bus purchases to be used for facility and equipment repair maintenance and improvement or replacement or other current expense priorities if requested and approved by state superintendent following verification; changing calculation of allowance for current expense from percent allowances for professional and service personnel to county's state average costs per square footage per student for operations and maintenance; basing the allowance to improve instructional programs and instructional technology on the portion of the increase in local share amount for the next school year that is due to an increase in assessed values only; removing authorization for use of instructional improvement funds for implementation and maintenance of the uniform integrated regional computer information system; removing requirement for fully utilizing applicable provisions of allowances for professional and service personnel before using instructional improvement funds for employment; removing restriction limiting use of new instructional improvement funds for employment except for technology system specialists until certain determination made by state superintendent; authorizing use of instructional technology improvement funds for employment of technology system specialists and requiring amount used to be included and justified in strategic technology plan; specifying when certain debt service payments are to be made into School Building Capital Improvement Fund; authorizing use of percentages of allocations for improving instructional programs and improving instructional technology for facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes; requiring amounts used to be included and justified in respective strategic plans; and basing the computation of local share on the maximum levies for general current expense purposes.

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

At the request of Senator Woelfel, and by unanimous consent, the Senate returned to the sixth order of business, which agenda includes the making of main motions.

On motion of Senator Woelfel, the Senate reconsidered the vote by which in earlier proceedings today it passed

Eng. Com. Sub. for Com. Sub. for Senate Bill 521, Relating generally to Public Defender Services.

The vote thereon having been reconsidered,

The question again being on the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Ferns, Gaunch, Hall, Karnes, Mann, Maroney, Maynard, Mullins, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Weld and Carmichael (Mr. President)—23.

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

Absent: None.

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. 521) 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 613, Relating to composition of State Fire Commission.

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

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Eng. Com. Sub. for Senate Bill 636, Authorizing State Fire Commission establish program to address problems facing VFDs.

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 Senate Bill 636 pass?"

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 636) 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 637, Relating to private club operations requirements.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 637) passed with its title.

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

On motion of Senator Ferns, the Senate recessed until 6 p.m.

Upon expiration of the recess, the Senate reconvened and resumed business under the eighth order, the next bill coming up in numerical sequence being

Eng. Com. Sub. for Senate Bill 656, Relating to Student Data Accessibility, Transparency and Accountability 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: 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)—32.

The nays were: None.

Absent: Azinger and Mullins—2.

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. 656) 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 664, Removing limitation on amount counties collect on hotel occupancy tax.

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: Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Mann, Maroney, Maynard, Miller, Ojeda, Palumbo,

Plymale, Prezioso, Romano, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: Karnes and Rucker—2.

Absent: Azinger and Mullins—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 664) 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 667, Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

On third reading, coming up in regular order, was read a third 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 third reading calendar, following consideration of Engrossed Committee Substitute for Senate Bill 375, already placed in that position.

Eng. Senate Bill 687, Relating generally to coal mining, safety and environmental protection.

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 Senate Bill 687 pass?"

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

The nays were: Beach and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 687) passed with its title.

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

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by the closing remarks by Senator Smith as to the passage of Engrossed Senate Bill 687 were ordered printed in the Appendix to the Journal.

Eng. Senate Bill 688, Correcting technical error within Solid Waste Management 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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 688) 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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 688) takes effect from passage.

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

Eng. Senate Bill 689, Relating to payment of small claims by DOH.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 689) passed with its title.

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

On this question, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 689) takes effect July 1, 2017.

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

Eng. Senate Bill 690, Authorizing WV State Police impose and collect fees for agencies and entities using their facilities.

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 690) 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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 690) takes effect from passage.

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

Eng. Senate Bill 691, Relating to off-road vehicles.

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, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: Beach—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 691) 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 693, Creating WV Uniform Fiduciary Access to Digital Assets 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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 693) passed with its title.

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

Senate Joint Resolution 4, County Economic Development Amendment.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 28, 2017, for amendments to be received on third reading, was reported by the Clerk.

There being no amendments offered,

The resolution was ordered to engrossment.

Engrossed Senate Joint Resolution 4 was then read a third time and put upon its adoption.

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

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

Absent: None.

So, two thirds of all the members elected to the Senate not having voted in the affirmative, the President declared the resolution (Eng. S. J. R. 4) rejected.

Following discussion,

On motion of Senator Woelfel, the Senate reconsidered the vote by which it immediately hereinbefore rejected

Eng. Senate Joint Resolution 4, County Economic Development Amendment.

The vote thereon having been reconsidered,

The question now being on the adoption of Engrossed Senate Joint Resolution 4.

Pending discussion,

Senator Beach arose to a point of order that under Senate Rule 55, which states in part “No person, not a member of the Senate, shall, when the Senate is in session, seek in any manner whatsoever, including electronic communications, to influence the vote or opinion of any Senator on any subject of legislative consideration, under penalty of disbarment from the Chamber . . .”, a lobbyist in the gallery was in contravention to the rule as he was lobbying the members during consideration of Engrossed Senate Joint Resolution 4.

Which point of order, the President ruled well taken.

Pending discussion,

The question now being “Shall Engrossed Senate Joint Resolution 4 be adopted?”

On the adoption of the resolution, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. S. J. R. 4) adopted, as follows:

Eng. Senate Joint Resolution 4—Proposing an amendment to the Constitution of the State of West Virginia, amending article X thereof, by adding thereto a new section, designated section one-d, relating to authorizing the Legislature to, by general law, allocate a portion of ad valorem property taxes paid by owners of certain new manufacturing facilities and large capital additions to existing manufacturing facilities located in counties in which county commissions elect to fund infrastructure capital improvements, in whole or in part, using property taxes; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in

the year 2018, which proposed amendment is that article X thereof be amended by adding thereto a new section, designated section one-d, to read as follows:

ARTICLE X. TAXATION AND FINANCE.

§1d. Use of property taxes to finance county economic development.

Any other provision of this Constitution notwithstanding, the Legislature may, by general law, authorize county commissions to allocate and spend a portion of property taxes imposed pursuant to section one, article X of this Constitution, but not including taxes attributable to excess levies and levies for bonded indebtedness, which are paid by owners of new manufacturing facilities in their county that cost more than \$50 million, or by owners of new capital additions to existing manufacturing facilities in their county when the capital addition costs more than \$50 million. The Legislature may, from time to time, increase these thresholds and may impose restrictions and conditions on the use of property taxes allocated pursuant to this section. The property taxes allocated pursuant to this section may be used to pay for infrastructure capital improvements on a pay-as-you go basis and to pay debt service on infrastructure capital improvement bonds. However, when the property taxes are used to pay debt service on infrastructure capital improvement bonds, the bonds may be issued without a vote of the people for a period of not more than thirty years. The allocation of property tax collections paid by a manufacturing facility described in this section ceases thirty years after the first year of the allocation in the county. For purposes of this section, the term "infrastructure capital improvement project" includes the following public facilities or assets that are owned, supported or established by county government or the state at the request of county government: (1) Water treatment, storage and distribution facilities; (2) wastewater collection, conveyance, treatment and disposal facilities; (3) stormwater collection and management facilities; (4) flood control facilities; (5) public primary and secondary school facilities, when owned by the county board of education; (6) public roads, bridges and rights-of-way, when owned by the state; (7) parks and recreational facilities, when owned by the county, a municipality or joint economic development entities; (8) law enforcement, emergency medical, rescue and fire protection facilities; and (9) other infrastructure capital improvement projects as defined by the Legislature.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "County Economic Development Amendment" and the purpose of the proposed amendment is summarized as follows: "To amend the state Constitution to permit the Legislature to allow county commissions to fund county infrastructure projects to promote economic development using property taxes imposed on new manufacturing facilities and capital additions to existing manufacturing facilities when the new facility, or the capital addition, costs more than \$50 million without requiring the Legislature to make local levying body whole for some or all of the revenue foregone during the period of the property taxes are allocated pursuant to this section."

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

Eng. Com. Sub. for Senate Joint Resolution 6, Roads to Prosperity Amendment of 2017.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Joint Resolution 6 be adopted?”

On the adoption of the resolution, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Ferns, Gaunch, Hall, Jeffries, Karnes, Mann, Maroney, Maynard, Miller, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. Com. Sub. for S. J. R. 6) adopted, as follows:

Eng. Com. Sub. for Senate Joint Resolution 6—Proposing an amendment to the Constitution of the State of West Virginia, relating to authorizing the Legislature to issue and sell state bonds not exceeding the aggregate amount of \$1.6 billion to be used for improvement and construction of state roads and bridges; numbering and designating such proposed amendment; authorizing a special election on the ratification or rejection of the amendment to take place in 2017, to be set by the Governor; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at a special election to be held at a date set by the Governor in 2017 and proclaimed in accordance with section three, article eleven, chapter three of the Code of West Virginia, which proposed amendment is to read as follows:

Roads to Prosperity Amendment of 2017.

(a) The Legislature shall have power to authorize the issuing and selling of state bonds not exceeding in the aggregate \$1.6 billion dollars. The proceeds of said bonds are hereby authorized to be issued and sold over a four-year period in the following amounts:

- (1) July 1, 2018, an amount not to exceed \$800 million;
- (2) July 1, 2019, an amount not to exceed \$400 million;
- (3) July 1, 2020, an amount not to exceed \$200 million; and
- (4) July 1, 2021, an amount not to exceed \$200 million.

Any bonds not issued under the provisions of subdivisions (1) through (3), inclusive, of this subsection may be carried forward and issued in any subsequent year before July 1, 2022.

(b) The proceeds of the bonds shall be used and appropriated for the following purposes:

- (1) Matching available federal funds for highway and bridge construction in this state; and

(2) General highway and secondary road and bridge construction or improvements in each of the fifty-five counties.

(c) Any interest that accrues on the issued bonds prior to payment shall only be used for the purposes of the bonds.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered "Amendment No. 1" and designated as the "Roads to Prosperity Amendment of 2017" and the purpose of the proposed amendment is summarized as follows: "To provide for the improvement and construction of safe roads in the state."

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

Thereafter, at the request of Senator Miller, and by unanimous consent, the remarks by Senator Trump regarding the adoption of Engrossed Committee Substitute for Senate Joint Resolution 6 were ordered printed in the Appendix to the Journal.

The end of today's third reading calendar having been reached, the Senate returned of the consideration of

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

On third reading, coming up deferred order, was read a third time.

Pending discussion,

On motion of Senator Ferns, the bill was committed to the Committee on Rules.

Action as to Engrossed Committee Substitute for Senate Bill 375 having been concluded, the Senate proceeded to the consideration of

Eng. Senate Bill 667, Limiting authority of Attorney General to disclose certain information provided by Tax Commissioner.

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was reported by the Clerk.

The question being "Shall Engrossed Senate Bill 667 pass?"

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 667) 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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 667) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2459, Relating to regulation of health care and the certificate of need process.

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

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk:

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

That §16-2D-5f of the Code of West Virginia, 1931, as amended, be repealed; that §16-5F-1; §16-5F-2, §16-5F-3, §16-5F-4, §16-5F-5, §16-5F-6 and §16-5F-7 be repealed; that §16-29B-6, §16-29B-7, §16-29B-9, §16-29B-10, §16-29B-11, §16-29B-17, §16-29B-18, §16-29B-22, §16-29B-23, §16-29B-24, §16-29B-25, §16-25B-27, and §16-29B-29 be repealed; that §16-29I-1, §16-29I-2, §16-29I-3, §16-29I-4, §16-29I-5, §16-29I-6, §16-29I-7, §16-29I-8, §16-29I-9 and §16-29I-10 be repealed; that §5F-1-3a of said code be amended and reenacted; that §6-7-2a of said code be amended and reenacted; that §9-4C-7 and §9-4C-8 of said code be amended and reenacted; that §11-27-9 and §11-27-11 of said code be amended and reenacted; that §16-2D-2, §16-2D-3, §16-2D-4, §16-2D-5, §16-2D-8, §16-2D-9, §16-2D-10, §16-2D-11, §16-2D-13, §16-2D-15 and §16-2D-16 of said code be amended and reenacted; that §16-5B-17 of said code be amended and reenacted; that §16-29B-2, §16-29B-3, §16-29B-5, §16-29B-8, §16-29B-12, §16-29B-26 and §16-29B-28; that said code be amended by adding thereto a new section, designated §16-29B-5a; that said code be amended by adding thereto a new section, designated §16-29B-30; that said code be amended by adding thereto a new section, designated §16-29G-1a; that §16-29G-4 of said code be amended and reenacted; that §21-5F-4 of said code be amended and reenacted; that §33-4A-1, §33-4A-2, §33-4A-3, §33-4A-5, §33-4A-6, and §33-4A-7 of said code be amended and reenacted; and that §33-16D-16 of said code be amended and reenacted, all to read as follows:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-3a. Executive compensation commission.

There is hereby created an executive compensation commission composed of three members, one of whom shall be the secretary of administration, one of whom shall be appointed by the Governor from the names of two or more nominees submitted by the President of the Senate, and one of whom shall be appointed by the Governor from the names of two or more nominees submitted by the Speaker of the House of Delegates. The names of such nominees shall be submitted to the Governor by not later than June 1, 2000, and the appointment of such members shall be made by the Governor by not later than July 1, 2000. The members appointed by the Governor shall have had significant business management experience at the time of their appointment and shall serve without compensation other than reimbursement for their reasonable expenses necessarily incurred in the performance of their commission duties. For the 2001 regular session of the Legislature and every four years thereafter, the commission shall review the compensation for cabinet secretaries and other appointed officers of this state, including, but not limited to, the following: Commissioner, Division of Highways; commissioner, Bureau of Employment Programs; director, Division of Environmental Protection; commissioner, Bureau of Senior Services; director of tourism; commissioner, division of tax; administrator, division of health; commissioner, Division of Corrections; director, Division of Natural Resources; superintendent, state police; administrator, lottery division; director, Public Employees Insurance Agency; administrator, Alcohol Beverage Control Commission; commissioner, Division of Motor Vehicles; director, Division of Personnel; Adjutant General; ~~chairman, Health Care Authority; members, Health Care Authority~~ the Executive Director of the Health Care Authority; director, Division of Rehabilitation Services; executive director, educational broadcasting authority; executive secretary, Library Commission; chairman and members of the Public Service Commission; director of emergency services; administrator, division of human services; executive director, Human Rights Commission; director, division of Veterans Affairs; director, office of miner's health safety and training; commissioner, Division of Banking; commissioner, division of insurance; commissioner, Division of Culture and History; commissioner, Division of Labor; director, Prosecuting Attorneys Institute; director, Board of Risk and Insurance Management; commissioner, oil and gas conservation commission; director, geological and economic survey; executive director, water development authority; executive director, Public Defender Services; director, state rail authority; chairman and members of the Parole Board; members, employment security review board; members, workers' compensation appeal board; chairman, Racing Commission; executive director, women's commission; and director, hospital finance authority.

Following this review, but not later than the twenty-first day of such regular session, the commission shall submit an executive compensation report to the Legislature to include specific recommendations for adjusting the compensation for the officers described in this section. The recommendation may be in the form of a bill to be introduced in each house to amend this section to incorporate the recommended adjustments.

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, \$92,500; Commissioner, Division of Corrections, \$80,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police, \$85,000; Commissioner, Division of Banking, \$75,000; Commissioner, Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission, \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; ~~Chairman, Health Care Authority, \$80,000; members, Health Care Authority, \$70,000~~ Director, Human Rights Commission, \$55,000; Commissioner, Division of Labor, \$70,000; prior to July 1, 2011, Director, Division of Veterans Affairs, \$65,000; Chairperson, Board of Parole, \$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board, \$17,000; and Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, \$95,000: *Provided*, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed \$175,000; Transportation, \$95,000: *Provided, however*, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: *Provided further*, That any officer specified in this subsection whose salary is increased by more than \$5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, \$80,000; Director, Division of Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director, Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director, Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute, \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of Forestry, \$75,000; Director, Division of Juvenile Services, \$80,000; ~~and~~ Executive Director, Regional Jail and Correctional Facility Authority, \$80,000 and Executive Director of the Health Care Authority, \$80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director, Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency Management, \$65,000; and Adjutant General, \$125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER NINE. HUMAN SERVICES.

ARTICLE 4C. HEALTH CARE PROVIDER MEDICAID ENHANCEMENT ACT.

§9-4C-7. Powers and duties.

(a) Each board created pursuant to this article shall:

(1) Develop, recommend and review reimbursement methodology where applicable, and develop and recommend a reasonable provider fee schedule, in relation to its respective provider groups, so that the schedule conforms with federal Medicaid laws and remains within the limits of annual funding available to the single state agency for the Medicaid program. In developing the fee schedule the board may refer to a nationally published regional specific fee schedule, if available, as selected by the secretary in accordance with section eight of this article. The board may consider identified health care priorities in developing its fee schedule to the extent permitted by applicable federal Medicaid laws, and may recommend higher reimbursement rates for basic primary and preventative health care services than for other services. In identifying basic primary and preventative health care services, the board may consider factors, including, but not limited to, services defined and prioritized by the basic services task force of the health care planning commission in its report issued in December of the year 1992; and minimum benefits and coverages for policies of insurance as set forth in section fifteen, article fifteen, chapter thirty-three of this code and section four, article sixteen-c of said chapter and rules of the Insurance Commissioner promulgated thereunder. If the single state agency approves the adjustments to the fee schedule, it shall implement the provider fee schedule;

(2) Review its respective provider fee schedule on a quarterly basis and recommend to the single state agency any adjustments it considers necessary. If the single state agency approves any of the board's recommendations, it shall immediately implement those adjustments and shall report the same to the Joint Committee on Government and Finance on a quarterly basis;

(3) Assist and enhance communications between participating providers and the Department of Health and Human Resources;

(4) Meet and confer with representatives from each specialty area within its respective provider group so that equity in reimbursement increases or decreases may be achieved to the greatest extent possible and when appropriate to meet and confer with other provider boards; and

(5) Appoint a chairperson to preside over all official transactions of the board.

(b) Each board may carry out any other powers and duties as prescribed to it by the secretary.

(c) Nothing in this section gives any board the authority to interfere with the discretion and judgment given to the single state agency that administers the state's Medicaid program. If the single state agency disapproves the recommendations or adjustments to the fee schedule, it is expressly authorized to make any modifications to fee schedules as are necessary to ensure that total financial requirements of the agency for the current fiscal year with respect to the state's Medicaid plan are met and shall report such modifications to the Joint Committee on Government and Finance on a quarterly basis. The purpose of each board is to assist and enhance the role of the single state agency in carrying out its mandate by acting as a means of communication between the health care provider community and the agency.

(d) In addition to the duties specified in subsection (a) of this section, the ambulance service provider Medicaid board shall ~~work with the health care cost review authority to develop a method for regulating rates charged by ambulance services. The health care cost review authority shall report its findings to the Legislature by January 1, 1994. The costs of the report shall be paid by the health care cost review authority. In this capacity only, the chairperson of the health care cost review authority shall serve as an ex officio, nonvoting member of the board~~

(e) On a quarterly basis, the single state agency and the board shall report the status of the fund, any adjustments to the fee schedule and the fee schedule for each health care provider identified in section two of this article to the Joint Committee on Government and Finance.

§9-4C-8. Duties of secretary of Department of Health and Human Resources.

(a) The secretary, or his or her designee, shall serve on each board created pursuant to this article as an ex officio, nonvoting member and shall keep and maintain records for each board.

(b) In relation to outpatient hospital services, the secretary shall ~~cooperate with the health care cost review authority to~~ furnish information needed for reporting purposes. This information includes, but is not limited to, the following:

(1) For each hospital, the amount of payments and related billed charges for hospital outpatient services each month;

(2) The percentage of the state's share of Medicaid program financial obligation from time to time as necessary; and

(3) Any other financial and statistical information necessary ~~for the health care cost review authority to determine the net effect of any cost shift.~~

(c) The secretary shall determine an appropriate resolution for conflicts arising between the various boards.

(d) The secretary shall purchase nationally published fee schedules to be used, if available, as a reference by the Medicaid enhancement boards in developing fee schedules.

CHAPTER 11. TAXATION.

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-9. Imposition of tax on providers of inpatient hospital services.

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of providing inpatient hospital services, there is hereby levied and shall be collected from every person rendering such service an annual broad-based health care related tax: ~~Provided, That a hospital which meets all the requirements of section twenty-one, article twenty-nine b, chapter sixteen of this code and regulations thereunder may change or amend its schedule of rates to the extent necessary to compensate for the tax in accordance with the following procedures:~~

~~(1) The health care cost review authority shall allow a temporary change in a hospital's rates which may be effective immediately upon filing and in advance of review procedures when a hospital files a verified claim that such temporary rate changes are in the public interest, and are necessary to prevent insolvency, to maintain accreditation or for emergency repairs or to relieve undue financial hardship. The verified claim shall state the facts supporting the hospital's position, the amount of increase in rates required to alleviate the situation and shall summarize the overall effect of the rate increase. The claim shall be verified by either the chairman of the hospital's governing body or by the chief executive officer of the hospital.~~

~~(2) Following receipt of the verified claim for temporary relief, the health care cost review authority shall review the claim through its usual procedures and standards; however, this power of review does not affect the hospital's ability to place the temporary rate increase into effect immediately. The review of the hospital's claim shall be for a permanent rate increase and the health care cost review authority may include such other factual information in the review as may be necessary for a permanent rate increase review. As a result of its findings from the permanent review, the health care cost review authority may allow the temporary rate increase to become permanent, to deny any increase at all, to allow a lesser increase, or to allow a greater increase.~~

~~(3) When any change affecting an increase in rates goes into effect before a final order is entered in the proceedings, for whatever reasons, where it deems it necessary and practicable, the health care cost review authority may order the hospital to keep a detailed and accurate account of all amounts received by reason of the increase in rates and the purchasers and third-party payors from whom such amounts were received. At the conclusion of any hearing, appeal or other proceeding, the health care cost review authority may order the hospital to refund with interest to each affected purchaser and/or third-party payor any part of the increase in rates that may be held to be excessive or unreasonable. In the event a refund is not practicable, the hospital shall, under appropriate terms and conditions determined by the health care cost review authority, charge over and amortize by means of a temporary decrease in rates whatever income is realized from that portion of the increase in rates which was subsequently held to be excessive or unreasonable.~~

~~(4) The health care cost review authority, upon a determination that a hospital has overcharged purchasers or charged purchasers at rates not approved by the health care cost review authority or charged rates which were subsequently held to be excessive or unreasonable, may prescribe rebates to purchasers and third-party payors in effect by the aggregate total of the overcharge.~~

~~(5) the rate adjustment provided for in this section is limited to a single adjustment during the initial year of the imposition of the tax provided for in this section.~~

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section shall be two and one-half percent of the gross receipts derived by the taxpayer from furnishing inpatient hospital services in this state.

(c) *Definitions.* —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for inpatient hospital services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: *Provided*, That accrual basis providers shall be allowed to reduce gross receipts by their contractual allowances, to the extent such allowances are included therein, and by bad debts, to the extent the amount of such bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Contractual allowances” means the difference between revenue (gross receipts) at established rates and amounts realizable from third-party payors under contractual agreements.

(3) “Inpatient hospital services” means those services that are inpatient hospital services for purposes of Section 1903(w) of the Social Security Act.

~~(d) *Effective date.* — The tax imposed by this section shall apply to gross receipts received or receivable by providers after May 31, 1993.~~

§11-27-11. Imposition of tax on providers of nursing facility services, other than services of intermediate care facilities for individuals with an intellectual disability.

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of providing nursing facility services, other than those services of intermediate care facilities for individuals with an intellectual disability, there is levied and shall be collected from every person rendering such service an annual broad-based health care-related tax: ~~*Provided*, That hospitals which provide nursing facility services may adjust nursing facility rates to the extent necessary to compensate for the tax: without first obtaining approval from the Health Care Authority *Provided, however*, That the rate adjustment is limited to a single adjustment during the initial year of the imposition of the tax which adjustment is exempt from prospective review by the Health Care Authority and further which is limited to an amount not to exceed the amount of the tax which is levied against the hospital for the provision of nursing facility services pursuant to this section. The Health Care Authority shall retroactively review the rate increases implemented by the hospitals under this section during the regular rate review process. A hospital which fails to meet the criteria established by this section for a rate increase exempt from prospective review is subject to the penalties imposed under article twenty-nine b, chapter sixteen of the code.~~

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five and one-half percent of the gross receipts derived by the taxpayer from furnishing nursing facility services in this state, other than services of intermediate care facilities for individuals with an intellectual disability. ~~This rate shall be increased to five and seventy-two one hundredths percent of the gross receipts received or receivable by providers of nursing facility services on and after October 1, 2015, and shall again be decreased to five and one-half percent of the gross receipts received or receivable by providers of nursing services after June 30, 2016.~~

(c) *Definitions.* —

(1) “Gross receipts” means the amount received or receivable, whether in cash or in kind, from patients, third-party payors and others for nursing facility services furnished by the provider, including retroactive adjustments under reimbursement agreements with third-party payors, without any deduction for any expenses of any kind: Provided, That accrual basis providers are allowed to reduce gross receipts by their bad debts, to the extent the amount of those bad debts was previously included in gross receipts upon which the tax imposed by this section was paid.

(2) “Nursing facility services” means those services that are nursing facility services for purposes of §1903(w) of the Social Security Act.

~~(d) *Effective date.* — The tax imposed by this section applies to gross receipts received or receivable by providers after May 31, 1993.~~

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-2. Definitions.

As used in this article:

(1) “Affected person” means:

(A) The applicant;

(B) An agency or organization representing consumers;

(C) An individual residing within the geographic area but within this state served or to be served by the applicant;

(D) An individual who regularly uses the health care facilities within that geographic area;

(E) A health care facility located within this state which provide services similar to the services of the facility under review and which will be significantly affected by the proposed project;

(F) A health care facility located within this state which, before receipt by the authority of the proposal being reviewed, ~~have~~ has formally indicated an intention to provide similar services within this state in the future;

(G) Third-party payors who reimburse health care facilities within this state; ~~similar to those proposed for services~~ or

~~(H) An agency that establishes rates for health care facilities within this state similar to those proposed; or~~

~~(H)~~ (H) An organization representing health care providers;

(2) “Ambulatory health care facility” means a facility that provides health services to noninstitutionalized and nonhomebound persons on an outpatient basis;

(3) “Ambulatory surgical facility” means a facility not physically attached to a health care facility that provides surgical treatment to patients not requiring hospitalization;

(4) “Applicant” means a person ~~proposing a proposed health service~~ applying for a certificate of need, exemption or determination of review;

(5) “Authority” means the West Virginia Health Care Authority as provided in article twenty-nine-b of this chapter;

(6) “Bed capacity” means the number of beds licensed to a health care facility or the number of adult and pediatric beds permanently staffed and maintained for immediate use by inpatients in patient rooms or wards in an unlicensed facility;

(7) “Behavioral health services” means services provided for the care and treatment of persons with mental illness or developmental disabilities; ~~in an inpatient or outpatient setting~~

(8) “Birthing center” means a short-stay ambulatory health care facility designed for low-risk births following normal uncomplicated pregnancy;

(9) “Campus” means the adjacent grounds and buildings, or grounds and buildings not separated by more than a public right-of-way, of a health care facility;

(10) “Capital expenditure” means:

(A) (i) An expenditure made by or on behalf of a health care facility, which:

~~(i)~~ (I) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or

~~(ii)~~ (II) Is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

~~(B)(i)~~ (ii) (I) Exceeds the expenditure minimum;

~~(ii)~~ (II) Is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or

~~(iii)~~ (III) Is a substantial change to the services of such facility;

~~(C)~~ (B) The transfer of equipment or facilities for less than fair market value if the transfer of the equipment or facilities at fair market value would be subject to review; or

~~(D)~~ (C) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the ~~state agency~~ authority to be a single capital expenditure subject to review. In

making this determination, the ~~state agency~~ authority shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

(11) "Charges" means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;

(12) "Community mental health and intellectual disability facility" means a facility which provides comprehensive services and continuity of care as emergency, outpatient, partial hospitalization, inpatient or consultation and education for individuals with mental illness, intellectual disability;

(13) "Diagnostic imaging" means the use of radiology, ultrasound, mammography,

(14) "Drug and Alcohol Rehabilitation Services" means a medically or psychotherapeutically supervised process for assisting individuals ~~on an inpatient or outpatient basis~~ through the processes of withdrawal from dependency on psychoactive substances;

(15) "Expenditure minimum" means the cost of acquisition, improvement, expansion of any facility, equipment, or services including the cost of any studies, surveys, designs, plans, working drawings, specifications and other activities, including staff effort and consulting at and above \$5 million;

(16) "Health care facility" means a publicly or privately owned facility, agency or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part;

(17) "Health care provider" means a person authorized by law to provide professional health ~~service~~ services in this state to an individual;

(18) "Health services" means clinically related preventive, diagnostic, treatment or rehabilitative services;

(19) "Home health agency" means an organization primarily engaged in providing professional nursing services either directly or through contract arrangements and at least one of the following services:

(A) Home health aide services;

(B) Physical therapy;

(C) Speech therapy;

(D) Occupational therapy;

(E) Nutritional services; or

(F) Medical social services to persons in their place of residence on a part-time or intermittent basis.

(20) "Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of a licensed hospice program which provides palliative and supportive medical and other health services to terminally ill individuals and their families.

(21) "Hospital" means a facility licensed pursuant to the provisions of article five-b of this chapter and any acute care facility operated by the state government, that primarily provides inpatient diagnostic, treatment or rehabilitative services to injured, disabled or sick persons under the supervision of physicians.

(22) "Intermediate care facility" means an institution that provides health-related services to individuals with conditions that require services above the level of room and board, but do not require the degree of services provided in a hospital or skilled-nursing facility.

(23) "Like equipment" means medical equipment in which functional and technological capabilities are similar to the equipment being replaced; and the replacement equipment is to be used for the same or similar diagnostic, therapeutic, or treatment purposes as currently in use; and it does not constitute a substantial change in health service or a proposed health service.

(24) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used for the provision of medical and other health services and costs in excess of the expenditure minimum. This term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs ten and eleven, Section 1861(s) of such act, Title 42 U.S.C. §1395x. In determining whether medical equipment is major medical equipment, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to the acquisition of such equipment shall be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value.

(25) "Medically underserved population" means the population of an area designated by the authority as having a shortage of a specific health service.

(26) "Nonhealth-related project" means a capital expenditure for the benefit of patients, visitors, staff or employees of a health care facility and not directly related to health services offered by the health care facility.

(27) "Offer" means the health care facility holds itself out as capable of providing, or as having the means to provide, specified health services.

(28) "Opioid treatment program" means as that term is defined in article five-y of chapter sixteen.

~~(28)~~ (29) "Person" means an individual, trust, estate, partnership, limited liability corporation, committee, corporation, governing body, association and other organizations such as joint-stock companies and insurance companies, a state or a political subdivision or instrumentality thereof or any legal entity recognized by the state.

~~(29)~~ (30) "Personal care agency" means an entity that provides personal care services approved by the Bureau of Medical Services.

~~(30)~~ (31) "Personal care services" means personal hygiene; dressing; feeding; nutrition; environmental support and health-related tasks provided by a personal care agency.

~~(34)~~ (32) "Physician" means an individual who is licensed practice allopathic medicine by the board of Medicine or licensed to practice osteopathic medicine by the board of Osteopathy to practice in West Virginia-Osteopathic Medicine.

~~(32)~~ (33) "Proposed health service" means any service as described in section eight of this article.

~~(33)~~ (34) "Purchaser" means an individual who is directly or indirectly responsible for payment of patient care services rendered by a health care provider, but does not include third-party payers.

~~(34)~~ (35) "Rates" means charges imposed by a health care facility for health services.

~~(35)~~ (36) "Records" means accounts, books and other data related to health service costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy

~~(36)~~ (37) "Rehabilitation facility" means an inpatient facility licensed in West Virginia operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services.

~~(37)~~ (38) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care facility through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners, including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subdivision "family members" means parents, children, brothers and sisters whether by the whole or half blood, spouse, ancestors and lineal descendants.

(39) "Secretary" means the Secretary of the West Virginia Department of Health and Human Resources;

~~(38)~~ (40) "Skilled nursing facility" means an institution, or a distinct part of an institution, that primarily provides inpatient skilled nursing care and related services, or rehabilitation services, to injured, disabled or sick persons.

~~(39)~~ (41) "Standard" means a health service guideline developed by the authority and instituted under section six.

~~(40)~~ (42) "State health plan" means a document prepared by the authority that sets forth a strategy for future health service needs in ~~the~~ this state.

~~(44)~~ (43) "Substantial change to the bed capacity" of a health care facility means any change, associated with a capital expenditure, that increases or decreases the bed capacity or relocates beds from one physical facility or site to another, but does not include a change by which a health care facility reassigns existing beds. ~~as swing beds between acute care and long-term care categories or a decrease in bed capacity in response to federal rural health initiatives~~

~~(43)~~ (44) “Substantial change to the health services” means:

(A) The addition of a health service offered by or on behalf of the health care facility which was not offered by or on behalf of the facility within the twelve-month period before the month in which the service is was first offered; or

(B) The termination of a health service offered by or on behalf of the facility but does not include the termination of ambulance service, wellness centers or programs, adult day care or respite care by acute care facilities.

(45) “Telehealth” means the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration.

~~(44)~~ (46) “Third-party payor” means an individual, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

~~(45)~~ (47) “To develop” means to undertake those activities which upon their completion will result in the offer of a proposed health service or the incurring of a financial obligation in relation to the offering of such a service.

§16-2D-3. Powers and duties of the authority.

(a) The authority shall:

(1) Administer the certificate of need program;

(2) Review the state health plan, the certificate of need standards, and the cost effectiveness of the certificate of need program and make any amendments and modifications to each that it may deem necessary, no later than September 1, 2017, and biennially thereafter.

(3) Shall adjust the expenditure minimum annually and publish to its website the updated amount on or before December 31, of each year. The expenditure minimum adjustment shall be based on the DRI inflation index. ~~published in the Global Insight DRI/WEFA Health Care Cost Review~~

(4) Create a standing advisory committee to advise and assist in amending the state health plan, the certificate of need standards, and performing the state agencies’ responsibilities.

(b) The authority may:

(1) (A) Order a moratorium upon the offering or development of a health service when criteria and guidelines for evaluating the need for the health service have not yet been adopted or are obsolete or when it determines that the proliferation of the health service may cause an adverse impact on the cost of health services or the health status of the public.

(B) A moratorium shall be declared by a written order which shall detail the circumstances requiring the moratorium. Upon the adoption of criteria for evaluating the need for the health service affected by the moratorium, or one hundred eighty days from the declaration of a moratorium, whichever is less, the moratorium shall be declared to be over and applications for certificates of need are processed pursuant to section eight.

~~(2) Issue grants and loans to financially vulnerable health care facilities located in underserved areas that the authority and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health services.~~

~~(3)~~ (2) Approve an emerging health service or technology for one year.

~~(4)~~ (3) Exempt from certificate of need or annual assessment requirements to financially vulnerable health care facilities located in underserved areas that the state agency and the Office of Community and Rural Health Services determine are collaborating with other providers in the service area to provide cost effective health services.

§16-2D-4. Rule-making Authority Rulemaking.

(a) The authority shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the following:

(1) Information a person shall provide when applying for a certificate of need;

(2) Information a person shall provide when applying for an exemption;

(3) Process for the issuance of grants and loans to financially vulnerable health care facilities located in underserved areas;

~~(4) The required~~ Information a person shall provide in a letter of intent;

(5) Process for an expedited certificate of need;

(6) Determine medically underserved population. The authority may consider unusual local conditions that are a barrier to accessibility or availability of health services. The authority may consider when making its determination of a medically underserved population designated by the federal Secretary of Health and Human Services under Section 330(b)(3) of the Public Health Service Act, as amended, Title 42 U.S.C. §254;

(7) Process to review an approved certificate of need; and

(8) Process to review approved proposed health services for which the expenditure maximum is exceeded or is expected to be exceeded.

~~(b) The authority shall propose emergency rules by December 31, 2016, to effectuate the changes to this article~~

~~(c)~~ (b) All of the authority's rules in effect and not in conflict with the provisions of this article, shall remain in effect until they are amended or rescinded.

§16-2D-5. Fee; special revenue account; administrative fines.

(a) All fees and other moneys, except administrative fines, received by the ~~board~~ authority shall be deposited in a separate special revenue fund in the State Treasury which is continued and shall be known as the "Certificate of Need Program Fund". Expenditures from this fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of

article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

(b) Any amounts received as administrative fines imposed pursuant to this article shall be deposited into the General Revenue Fund of the State Treasury.

§16-2D-8. Proposed health services that require a certificate of need.

(a) Except as provided in sections nine, ten and eleven of this article, the following proposed health services may not be acquired, offered or developed within this state except upon approval of and receipt of a certificate of need as provided by this article:

(1) The construction, development, ~~acquisition~~ or other establishment of a health care facility;

(2) The partial or total closure of a health care facility with which a capital expenditure is associated;

(3) (A) An obligation for a capital expenditure incurred by or on behalf of a health care facility, in excess of the expenditure minimum; or

(B) An obligation for a capital expenditure incurred by a person to acquire a health care facility.

(4) An obligation for a capital expenditure is considered to be incurred by or on behalf of a health care facility:

(i) (A) When a valid contract is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset;

(ii) (B) When the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or

(iii) (C) In the case of donated property, on the date on which the gift is completed under state law.

(5) A substantial change to the bed capacity of a health care facility with which a capital expenditure is associated;

(6) The addition of ventilator services by a hospital;

(7) The elimination of health services previously offered on a regular basis by or on behalf of a health care facility which is associated with a capital expenditure;

(8) (A) A substantial change to the bed capacity or health services offered by or on behalf of a health care facility, whether or not the change is associated with a proposed capital expenditure;

(B) If the change is associated with a previous capital expenditure for which a certificate of need was issued; and

(C) If the change will occur within two years after the date the activity which was associated with the previously approved capital expenditure was undertaken.

(9) The acquisition of major medical equipment;

(10) A substantial change in an approved health service for which a certificate of need is in effect;

(11) An expansion of the service area for hospice or home health agency regardless of the time period in which the expansion is contemplated or made; and

(12) The addition of health services offered by or on behalf of a health care facility which were not offered on a regular basis by or on behalf of the health care facility within the twelve- month period prior to the time the services would be offered.

(b) The following health services are required to obtain a certificate of need regardless of the minimum expenditure:

(1) Constructing, developing, acquiring or establishing of a birthing center;

(2) Providing radiation therapy;

(3) Providing computed tomography;

(4) Providing positron emission tomography;

(5) Providing cardiac surgery;

(6) Providing fixed magnetic resonance imaging;

(7) Providing comprehensive medical rehabilitation;

(8) Establishing an ambulatory care center;

(9) Establishing an ambulatory surgical center;

(10) Providing diagnostic imaging;

(11) Providing cardiac catheterization services;

(12) Constructing, developing, acquiring or establishing of kidney disease treatment centers, including freestanding hemodialysis units;

(13) Providing megavoltage radiation therapy;

(14) Providing surgical services;

(15) Establishing operating rooms;

(16) Adding acute care beds;

(17) Providing intellectual developmental disabilities services;

(18) Providing organ and tissue transplants;

- (19) Establishing an intermediate care facility for individuals with intellectual disabilities;
- (20) Providing inpatient services;
- (21) Providing hospice services;
- (22) Establishing a home health agency; and
- (23) Providing personal care services.

(c) A certificate of need previously approved under this article remains in effect unless revoked by the authority.

§16-2D-9. Health services that cannot be developed.

Notwithstanding section eight and eleven, these health services require a certificate of need but the authority may not issue a certificate of need to:

(1) A health care facility adding intermediate care or skilled nursing beds to its current licensed bed complement, except as provided in subdivision twenty-three, subsection (c), section eleven;

(2) A person developing, constructing or replacing a skilled nursing facility except in the case of facilities designed to replace existing beds in existing facilities that may soon be deemed unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to meet the changing health care delivery system;

(3) Add beds in an intermediate care facility for individuals with an intellectual disability, except that prohibition does not apply to an intermediate care facility for individuals with intellectual disabilities beds approved under the Kanawha County circuit court order of August 3, 1989, civil action number MISC-81-585 issued in the case of E.H. v. Matin, 168 W.V. 248, 284 S.E. 2d 232 (1981); and

(4) An opioid treatment ~~facility~~ or program.

§16-2D-10. Exemptions from certificate of need.

Notwithstanding section eight, a person may provide the following health services without obtaining a certificate of need or applying to the authority for approval:

(1) The creation of a private office of one or more licensed health professionals to practice in this state pursuant to chapter thirty of this code;

(2) Dispensaries and first-aid stations located within business or industrial establishments maintained solely for the use of employees that does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than twenty-four hours;

(3) A place that provides remedial care or treatment of residents or patients conducted only for those who rely solely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any recognized church or religious denomination;

(4) Telehealth;

(5) A facility owned or operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory services or diagnostic imaging to patients regardless of the cost associated with the proposal. To qualify for this exemption seventy-five percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy-five percent of diagnostic imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed. The authority may, at any time, request from the entity information concerning the number of patients who have been provided laboratory services or diagnostic imaging;

(6) Notwithstanding the provisions of section seventeen of this article, any hospital or healthcare facility that holds a valid certificate of need issue pursuant to this article may transfer that certificate of need to a person purchasing that hospital or healthcare facility, or all or substantially all of its assets. Any substantial changes to the capacity of services offered in that hospital or healthcare facility made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article. Any person purchasing a hospital or healthcare facility, or all or substantially all of its assets, that has applied for, or received, a certificate of need prior to the changes made to this article during the 2017 Regular session of the Legislature shall qualify for an exemption from certificate of need; and

(7) The acquisition of a hospital or health care facility.

§16-2D-11. Exemptions from certificate of need which require approval from the authority.

(a) To obtain an exemption under this section a person shall:

(1) File an exemption application;

(2) Pay the \$1,000 application fee; and

(3) Provide a statement detailing which exemption applies and the circumstances justifying the approval of the exemption.

(b) The authority has forty-five days to review the exemption request. The authority may not hold an administrative hearing to review the application. ~~An affected party~~ A person may not file an objection to the request for an exemption. The applicant may request or agree with the authority to a fifteen day extension of the timeframe. If the authority does not approve or deny the application within forty-five days, then the exemption is immediately approved. If the authority denies the approval of the exemption, only the applicant may appeal the authority's decision to the Office of Judges or refile the application with the authority. ~~The Office of Judges shall follow the procedure provided in section sixteen to perform the review~~

(c) Notwithstanding section eight and ten and except as provided in section nine of this article, the Legislature finds that a need exists and these health services are exempt from the certificate of need process:

(1) ~~A computed tomography scanner that is installed in a private office practice where at minimum seventy-five percent of the scans are for the patients of the practice and the fair market value of the installation and purchase is less than \$250,000 for calendar year 2016. The authority shall adjust the dollar amount specified in this subdivision annually and publish an update of the~~

~~amount on or before December 31, of each year. The adjustment of the dollar amount shall be based on the DRI inflation index, published in the Global Insight DRI/WEFA Health Care Cost Review. The authority may at any time request from the private office practice information concerning the number of patients who have been provided scans;~~

The acquisition and utilization of one computed tomography scanner with a purchase price up to \$750,000 that is installed in a private office practice where at minimum seventy-five percent of the scans are performed on the patients of the practice. The private office practice shall obtain and maintain accreditation from the American College of Radiology prior to, and at all times during, the offering of this service. The authority may at any time request from the private office practice information relating to the number of patients who have been provided scans and proof of active and continuous accreditation from the American College of Radiology. If a physician owns or operates a private office practice in more than one location, this exemption shall only apply to the physician's primary place of business. If a physician wants to expand the offering of this service to include more than one computed topography scanner, he or she shall be required to obtain a certificate of need prior to expanding this service. All current certificates of need issued for computed tomography services, with a required percentage threshold of scans to be performed on patients of the practice in excess of seventy-five percent, shall be reduced to seventy-five percent.

(2) (A) A birthing center established by a nonprofit primary care center that has a community board and provides primary care services to people in their community without regard to ability to pay; or

(B) A birthing center established by a nonprofit hospital with less than one hundred licensed acute care beds.

(i) To qualify for this exemption, an applicant shall be located in an area that is underserved with respect to low-risk obstetrical services; and

(ii) Provide a proposed health service area.

(3) (A) A health care facility acquiring major medical equipment, adding health services or obligating a capital expenditure to be used solely for research;

(B) To qualify for this exemption, the health care facility shall show that the acquisition, offering or obligation will not:

(i) Affect the charges of the facility for the provision of medical or other patient care services other than the services which are included in the research;

(ii) Result in a substantial change to the bed capacity of the facility; or

(iii) Result in a substantial change to the health services of the facility.

(C) For purposes of this subdivision, the term "solely for research" includes patient care provided on an occasional and irregular basis and not as part of a research program;

(4) The obligation of a capital expenditure to acquire, either by purchase, lease or comparable arrangement, the real property, equipment or operations of a skilled nursing facility.

(5) Shared health services between two or more hospitals licensed in West Virginia providing health services made available through existing technology that can reasonably be mobile. This exemption does not include providing mobile cardiac catheterization;

(6) The acquisition, development or establishment of a certified interoperable electronic health record or electronic medical record system;

(7) The addition of forensic beds in a health care facility;

(8) A behavioral health service selected by the Department of Health and Human Resources in response to its request for application for services intended to return children currently placed in out-of-state facilities to the state or to prevent placement of children in out-of-state facilities is not subject to a certificate of need;

(9) The replacement of major medical equipment with like equipment, only if the replacement major medical equipment cost is more than the expenditure minimum;

(10) Renovations within a hospital, only if the renovation cost is more than the expenditure minimum. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;

(11) Renovations to a skilled nursing facility;

(12) The construction, development, acquisition or other establishment by a ~~licensed West Virginia~~ hospital of an ambulatory health care facility in the county in which it is located; ~~and in a contiguous county within or outside this state~~

(13) The donation of major medical equipment to replace like equipment for which a certificate of need has been issued and the replacement does not result in a substantial change to health services. This exemption does not include the donation of major medical equipment made to a health care facility by a related organization;

(14) A person providing specialized foster care personal care services to one individual and those services are delivered in the provider's home;

(15) A hospital converting the use of beds except a hospital may not convert a bed to a skilled nursing home bed and conversion of beds may not result in a substantial change to health services provided by the hospital;

(16) The construction, renovation, maintenance or operation of a state owned veterans skilled nursing facilities established pursuant to the provisions of article one-b of this chapter;

(17) ~~A nonprofit community group designated by a county to develop and operate a nursing home bed facility with no more than thirty-six beds in any county in West Virginia that currently is without a skilled nursing facility;~~

To develop and operate a skilled nursing facility with no more than thirty-six beds in a county that currently is without a skilled nursing facility. The beds may not be transferred or sold until the skilled nursing facility has been in operation for at least ten years;

(18) A critical access hospital, designated by the state as a critical access hospital, after meeting all federal eligibility criteria, previously licensed as a hospital and subsequently closed, if it reopens within ten years of its closure;

(19) The establishing of a health care facility or offering of health services for children under one year of age suffering from Neonatal Abstinence Syndrome;

(20) The construction, development, acquisition or other establishment of community mental health and intellectual disability facility;

(21) Providing behavioral health facilities and services;

(22) The construction, development, acquisition or other establishment of kidney disease treatment centers, including freestanding hemodialysis units but only to a medically underserved population;

~~(23) The transfer, or acquisition of intermediate care or skilled nursing beds from an existing health care facility to a nursing home providing intermediate care and skilled nursing services~~ purchase or sale of intermediate care or skilled nursing beds from a skilled nursing facility or a skilled nursing unit of an acute care hospital to a skilled nursing facility providing intermediate care and skilled nursing services. No state agency may deny payment to an acquiring nursing home or place any restrictions on the beds transferred under this subsection. The transferred beds shall retain the same certification status that existed at the nursing home or hospital skilled nursing unit from which they were acquired. If construction is required to place the transferred beds into the acquiring nursing home, the acquiring nursing home has one year from the date of purchase to commence construction;

(24) The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project, only if the nonhealth related project cost is more than the expenditure minimum;

~~(25) A facility owned or operated by one or more health professionals authorized or organized pursuant to chapter thirty or ambulatory health care facility which offers laboratory or imaging services to patients regardless of the cost associated with the proposal. To qualify for this exemption seventy five percent of the laboratory services are for the patients of the practice or ambulatory health care facility of the total laboratory services performed and seventy five percent of imaging services are for the patients of the practice or ambulatory health care facility of the total imaging services performed;~~

~~(26)~~ (25) The construction, development, acquisition or other establishment of an alcohol or drug treatment facility and drug and alcohol treatment services unless the construction, development, acquisition or other establishment is an opioid treatment facility or programs as set forth in subdivision (4) of section nine of this article;

~~(27)~~ (26) Assisted living facilities and services; and

~~(28)~~ (27) The creation, construction, acquisition or expansion of a community-based nonprofit organization with a community board that provides or will provide primary care services to people without regard to ability to pay and receives approval from the Health Resources and Services Administration.

§16-2D-13. Procedures for certificate of need reviews.

(a) An application for a certificate of need shall be submitted to the authority prior to the offering or ~~development~~ developing of a proposed health service.

(b) A person proposing a proposed health service shall:

(1) Submit a letter of intent ten days prior to submitting the certificate of need application. If the tenth day falls on a weekend or holiday, the certificate of need application shall be filled on the next business day. The information required within the letter of intent shall be detailed by the authority in legislative rule;

(2) Submit the appropriate application fee;

(A) Up to \$1,500,000 a fee of \$1,500.00;

(B) From \$1,500,001 to \$ 5,000,000 a fee of \$5,000.00;

(C) From \$5,000,001 to 25,000,000 a fee of \$25,000.00; and

(D) From \$25,000,001 and above a fee of \$35,000.00.

(3) Submit to the Director of the Office of Insurance Consumer Advocacy a copy of the application;

(c) The authority shall determine if the submitted application is complete within ten days of receipt of the application. The authority shall provide written notification to the applicant of this determination. If the authority determines an application to be incomplete, the authority may request additional information from the applicant.

(d) Within five days of receipt of a letter of intent, the authority shall provide notification to the public through a newspaper of general circulation in the area where the health service is being proposed and by placing of copy of the letter of intent on its website. The newspaper notice shall contain a statement that, further information regarding the application is on the authority's web site.

(e) The authority may batch completed applications for review on the fifteenth day of the month or the last day of month in which the application is deemed complete.

(f) When the application is submitted, ten days after filing the letter of intent, the application shall be placed on the authority's website.

(g) An affected party has thirty days starting from the date the application is batched to request the authority hold an administrative hearing.

(1) A hearing order shall be approved by the authority within fifteen days from the last day an affected person may requests an administrative hearing on a certificate of need application.

(2) A hearing shall take place no later than three months from that date the hearing order was approved by the authority.

(3) The authority shall conduct the administrative hearing in accordance with administrative hearing requirements in section twelve, article twenty-nine-b of this chapter and article five, chapter twenty-nine-a of this code.

(4) In the administrative hearing an affected person has the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the public hearing. An affected person may conduct reasonable questioning of persons who make factual allegations relevant to its certificate of need application.

(5) The authority shall maintain a verbatim record of the administrative hearing.

(6) After the commencement of the administrative hearing on the application and before a decision is made with respect to it, there may be no ex parte contacts between:

(A) The applicant for the certificate of need, any person acting on behalf of the applicant or holder of a certificate of need or any person opposed to the issuance of a certificate for the applicant; and

(B) Any person in the authority who exercises any responsibility respecting the application.

(7) The authority may not impose fees to hold the administrative hearing.

(8) The authority shall render a decision within forty-five days of the conclusion of the administrative hearing.

(h) If an administrative hearing is not conducted during the review of an application, the authority shall provide a file closing date five days after an affected party may no longer request an administrative hearing, after which date no other factual information or evidence may be considered in the determination of the application for the certificate of need. A detailed itemization of documents in the authority's file on a proposed health service shall, on request, be made available by the authority at any time before the file closing date.

(i) The extent of additional information received by the authority from the applicant for a certificate of need after a review has begun on the applicant's proposed health service, with respect to the impact on the proposed health service and additional information which is received by the authority from the applicant, may be cause for the authority to determine the application to be a new proposal, subject to a new review cycle.

(j) The authority shall have five days to provide the written status update upon written request by the applicant or an affected person. The status update shall include the findings made in the course of the review and any other appropriate information relating to the review.

(k) (1) The authority shall annually prepare and publish to its website, a status report of each ongoing and completed certificate of need application reviews.

(2) For a status report of an ongoing review, the authority shall include in its report all findings made during the course of the review and any other appropriate information relating to the review.

(3) For a status report of a completed review, the authority shall include in its report all the findings made during the course of the review and its detailed reasoning for its final decision.

(l) The authority shall provide for access by the public to all applications reviewed by the authority and to all other pertinent written materials essential to agency review.

§16-2D-15. Agency Authority to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.

(a) The authority shall render a final decision on an application for a certificate of need in the form of an approval, a denial or an approval with conditions. The final decision with respect to a certificate of need shall be based solely on:

(1) The authority's review conducted in accordance with procedures and criteria in this article and the certificate of need standards; and

(2) The record established in the administrative hearing held with respect to the certificate of need.

(b) Approval with conditions does not give the authority the ability to mandate a health service not proposed by the health care facility. Issuance of a certificate of need or exemption may not be made subject to any condition unless the condition directly relates to criteria in this article, or in the certificate of need standards. Conditions may be imposed upon the operations of the health care facility for not longer than a three-year period.

(c) The authority shall send its decision along with written findings to the person proposing the proposed health service or exemption and shall make it available to others upon request.

(d) In the case of a final decision to approve or approve with conditions a proposal for a proposed health service, the authority shall issue a certificate of need to the person proposing the proposed health service.

(e) The authority shall specify in the certificate of need the maximum amount of capital expenditures which may be obligated. The authority shall adopt legislative rules pursuant to section four to prescribe the method used to determine capital expenditure maximums and a process to review the implementation of an approved certificate of need for a proposed health service for which the capital expenditure maximum is exceeded or is expected to be exceeded.

§16-2D-16. Appeal of certificate of need a decision.

(a) ~~The authority's final decision shall upon request of an affected person be reviewed by the Office of Judges~~ An applicant or an affected person may appeal the authority's final decision in a certificate of need review to the Office of Judges. The request shall be received within thirty days after the date of the authority's decision. The appeal hearing shall commence within thirty days of receipt of the request.

(b) The Office of Judges shall conduct its proceedings in conformance with the West Virginia Rules of Civil Procedure for trial courts of record and the local rules for use in the civil courts of Kanawha County and shall review appeals in accordance with the provisions governing the judicial review of contested administrative cases in article five, chapter twenty-nine-a of this code.

(c) The decision of the Office of Judges shall be made in writing within forty-five days after the conclusion of the hearing.

(d) The written findings of the Office of Judges shall be sent to the person who requested the ~~review~~ appeal, to the person proposing the proposed health service and to the authority, and shall be made available by the authority to others upon request.

(e) The decision of the Office of Judges shall be considered the final decision of the authority; however, the Office of Judges may remand the matter to the authority for further action or consideration.

(f) Upon the entry of a final decision by the Office of Judges, ~~a person adversely~~ an affected ~~by the review~~ person may within thirty days after the date of the decision of the ~~review agency~~ Office of Judges make an appeal in the circuit court of Kanawha County. The decision of the Office of Judges shall be reviewed by the circuit court in accordance with the provisions for the judicial review of administrative decisions contained in article five, chapter twenty-nine-a of this code.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-17. Healthcare-associated infection reporting.

(a) As used in this section, the following words mean:

(1) “Centers for Disease Control and Prevention” or “CDC” means the United States Department of Health and Human Services Centers for Disease Control and Prevention;

(2) “National Healthcare Safety Network” or “NHSN” means the secure Internet-based data collection surveillance system managed by the Division of Healthcare Quality Promotion at the CDC, created by the CDC for accumulating, exchanging and integrating relevant information on infectious adverse events associated with healthcare delivery.

(3) “Hospital” means hospital as that term is defined in subsection-e, section three, article twenty-nine-b, chapter sixteen.

(4) “Healthcare-associated infection” means a localized or systemic condition that results from an adverse reaction to the presence of an infectious agent or a toxin of an infectious agent that was not present or incubating at the time of admission to a hospital.

(5) “Physician” means a person licensed to practice medicine by either the board of Medicine or the board of osteopathy.

(6) “Nurse” means a person licensed in West Virginia as a registered professional nurse in accordance with article seven, chapter thirty.

(b) ~~The West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources is hereby directed to create an Infection Control Advisory Panel whose duty is to provide guidance and oversight in implementing this section. The advisory panel shall consist of the following members:

(1) Two board-certified or board-eligible physicians, affiliated with a West Virginia hospital or medical school, who are active members of the Society for Health Care Epidemiology of America and who have demonstrated an interest in infection control;

(2) One physician who maintains active privileges to practice in at least one West Virginia hospital;

(3) Three infection control practitioners, two of whom are nurses, each certified by the Certification Board of Infection Control and Epidemiology, and each working in the area of infection control. Rural and urban practice must be represented;

(4) A statistician with an advanced degree in medical statistics;

(5) A microbiologist with an advanced degree in clinical microbiology;

(6) The Director of the Division of Disease Surveillance and Disease Control in the Bureau for Public Health or a designee; and

(7) The director of the hospital program in the office of health facilities, licensure and certification in the Bureau for Public Health.

(c) The advisory panel shall:

(1) Provide guidance to hospitals in their collection of healthcare-associated infections;

(2) Provide evidence-based practices in the control and prevention of healthcare associated infections;

(3) Establish reasonable goals to reduce the number of healthcare-associated infections;

(4) Develop plans for analyzing infection-related data from hospitals;

(5) Develop healthcare-associated advisories for hospital distribution;

(6) Review and recommend to the ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources the manner in which the reporting is made available to the public to assure that the public understands the meaning of the report; and

(7) Other duties as identified by the ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources.

(d) Hospitals shall report information on healthcare-associated infections in the manner prescribed by the CDC National Healthcare Safety Network(NHSN). The reporting standard prescribed by the CDC National Healthcare Safety Network(NHSN) ~~as adopted by the West Virginia Health Care Authority~~ shall be the reporting system of the hospitals in West Virginia.

(e) Hospitals who fail to report information on healthcare associated infections in the manner and time frame required by the ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources shall be fined the sum of \$5,000 for each such failure.

(f) The Infection Control Advisory Panel shall provide the results of the collection and analysis of all hospital data to the ~~West Virginia Health Care Authority~~ Secretary of the Department of Health and Human Resources for public availability and the Bureau for Public Health for consideration in their hospital oversight and epidemiology and disease surveillance responsibilities in West Virginia.

(g) Data collected and reported pursuant to this act may not be considered to establish standards of care for any purposes of civil litigation in West Virginia.

~~(h) The West Virginia Health Care Authority shall report no later than January 15 of each year to the Legislative Oversight committee on health and human resources accountability, beginning in the year 2011. This yearly report shall include a summary of the results of the required reporting and the work of the advisory panel~~

~~(i) (h) The West Virginia Health Care Authority Secretary of the Department of Health and Human Resources shall require that all hospitals implement and initiate this reporting requirement no later than July 1, 2009.~~

ARTICLE 29B. HEALTH CARE AUTHORITY.

~~§16-29B-2. Short title.~~

~~This article may be cited as the "West Virginia Health Care Authority".~~

§16-29B-2. Effective Date.

Effective the first day of July, 2017, all powers, duties and functions of the West Virginia Health Care Authority shall be transferred to the West Virginia Department of Health and Human Resources.

§16-29B-3. Definitions.

Definitions of words and terms defined in articles two-d and five-f of this chapter are incorporated in this section unless this section has different definitions.

As used in this article, unless a different meaning clearly appears from the context:

(a) "Authority" means the Health Care Authority created pursuant to the provisions of this article;

(b) "Board" means the five-member board of directors of the West Virginia Health Care Authority;

~~(a) (c) "Charges" means the economic value established for accounting purposes of the goods and services a hospital provides for all classes of purchasers;~~

~~(b) (d) "Class of purchaser" means a group of potential hospital patients with common characteristics affecting the way in which their hospital care is financed. Examples of classes of purchasers are Medicare beneficiaries, welfare recipients, subscribers of corporations established and operated pursuant to article twenty-four, chapter thirty-three of this code, members of health maintenance organizations and other groups as defined by the board authority;~~

~~(c) "Board" means the three-member board of directors of the West Virginia Health Care Authority, an autonomous division within the State Department of Health and Human Resources~~

(e) "Executive Director" or "Director" means the administrative head of the Health Care Authority as set forth in section five-a of this article;

~~(d)~~ (f) "Health care provider" means a person, partnership, corporation, facility, hospital or institution licensed, certified or authorized by law to provide professional health care service in this state to an individual during this individual's medical, remedial, or behavioral health care, treatment or confinement. For purposes of this article, "health care provider" shall not include the private office practice of one or more health care professionals licensed to practice in this state pursuant to the provisions of chapter thirty of this code;

~~(e)~~ (g) "Hospital" means a facility subject to licensure as such under the provisions of article five-b of this chapter, and any acute care facility operated by the state government which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, and does not include state mental health facilities or state long-term care facilities;

~~(f)~~ (h) "Person" means an individual, trust, estate, partnership, committee, corporation, association or other organization such as a joint stock company, a state or political subdivision or instrumentality thereof or any legal entity recognized by the state;

~~(g)~~ (i) "Purchaser" means a consumer of patient care services, a natural person who is directly or indirectly responsible for payment for such patient care services rendered by a health care provider, but does not include third-party payers;

~~(h)~~ (j) "Rates" means all value given or money payable to health care providers for health care services, including fees, charges and cost reimbursements;

~~(i)~~ (k) "Records" means accounts, books and other data related to health care costs at health care facilities subject to the provisions of this article which do not include privileged medical information, individual personal data, confidential information, the disclosure of which is prohibited by other provisions of this code and the laws enacted by the federal government, and information, the disclosure of which would be an invasion of privacy;

(l) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care provider through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subsection family members means brothers and sisters, whether by the whole or half blood, spouse, ancestors and lineal descendants;

(m) "Secretary" means the Secretary of the Department of Health and Human Resources; and

~~(j)~~ (n) "Third-party payor" means any natural person, person, corporation or government entity responsible for payment for patient care services rendered by health care providers.

~~(k) "Related organization" means an organization, whether publicly owned, nonprofit, tax-exempt or for profit, related to a health care provider through common membership, governing bodies, trustees, officers, stock ownership, family members, partners or limited partners including, but not limited to, subsidiaries, foundations, related corporations and joint ventures. For the purposes of this subsection family members shall mean brothers and sisters, whether by the whole or half blood, spouse, ancestors and lineal descendants~~

§16-29B-5. West Virginia Health Care Authority; composition of the board; qualifications; terms; oath; expenses of members; vacancies; appointment of chairman, and meetings of the board.

~~(a)~~ The “West Virginia Health Care Cost Review Authority” is continued as an autonomous a division of the Department of Health and Human Resources and shall be known as the “West Virginia Health Care Authority”, hereinafter referred to as the authority or the board. Any references in this code to the West Virginia Health Care Cost Review Authority means the West Virginia Health Care Authority.

(b) There is created a board of review to serve as the adjudicatory body of the authority and shall conduct all hearings as required in this article, article two-d of this chapter.

~~(a)~~ (1) The board shall consist of three five members, appointed by the Governor, with the advice and consent of the Senate. The board members are not permitted to hold political office in the government of the state either by election or appointment while serving as a member of the board. The board members are not eligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code. The board members shall be citizens and residents of this state.

(2) No more than two three of the board members may be members of the same political party. One board member shall have a background in health care finance or economics, one board member shall have previous employment experience in human services, business administration or substantially related fields, one board member shall have previous experience in the administration of a health care facility, one board member shall have previous experience as a provider of health care services, and one board member shall be a consumer of health services with a demonstrated interest in health care issues.

(3) Each member appointed by the Governor shall serve staggered terms of six years. Any member whose term has expired shall serve until his or her successor has been appointed. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member shall be eligible for reappointment. In cases of vacancy in the office of member, such vacancy shall be filled by the Governor in the same manner as the original appointment.

~~(b)~~ (4) Each board member shall, before entering upon the duties of his or her office, take and subscribe to the oath provided by section five, article IV of the Constitution of the State of West Virginia, which oath shall be filed in the office of the Secretary of State.

(5) The Governor shall designate one of the board members to serve as chairman at the Governor’s will and pleasure. The chairman shall be the chief administrative officer of the board.

(6) The Governor may remove any board member only for incompetency, neglect of duty, gross immorality, malfeasance in office or violation of the provisions of this article. Appointments are for terms of six years, except that an appointment to fill a vacancy shall be for the unexpired term only

~~(e)~~ (7) No person while in the employ of, or holding any official relation to, any hospital or health care provider subject to the provisions of this article, or who has any pecuniary interest in any hospital or health care provider, may serve as a member of the board or as an employee of the board. Nor may any board member be a candidate for or hold public office or be a member of any political committee while acting as a board member; nor may any board member or employee

of the board receive anything of value, either directly or indirectly, from any third-party payor or health care provider. If any of the board members become a candidate for any public office or for membership on any political committee, the Governor shall remove the board member from the board and shall appoint a new board member to fill the vacancy created. No board member or former board member may accept employment with any hospital or health care provider subject to the jurisdiction of the board in violation of the West Virginia governmental ethics act, chapter six-b of this code: *Provided*, That the act ~~shall~~ may not apply to employment accepted after termination of the board.

~~(d)~~ (8) The concurrent judgment of ~~two~~ three of the board members ~~when in session as the board~~ shall be considered the action of the board. A vacancy in the board ~~shall~~ does not affect the right or duty of the remaining board members to function as a board.

(9) Each member of the board shall serve without compensation, but shall receive expense reimbursement for all reasonable and necessary expenses actually incurred in the performance of the duties of the office, in the same amount paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law. No member may be reimbursed for expenses paid by a third party.

§16-29B-5a. Executive Director of the authority; powers and duties.

(a) The Secretary shall appoint an executive director of the authority to supervise and direct the fiscal and administrative matters of the authority. This person shall be qualified by training and experience to direct the operations of the authority. The executive director is ineligible for civil service coverage as provided in section four, article six, chapter twenty-nine of this code and serves at the will and pleasure of the Secretary.

(b) The executive director shall:

(1) Serve on a full-time basis and may not be engaged in any other profession or occupation;

(2) Not hold political office in the government of the state either by election or appointment while serving as executive director;

(3) Shall be a citizen of the United States and shall become a citizen of the state within ninety days of appointment; and

(4) Report to the Secretary.

(c) The executive director has other powers and duties as set forth in this article.

§16-29B-8. Powers generally; budget expenses of the ~~board~~ authority.

~~(a)~~ In addition to the powers granted to the ~~board~~ authority elsewhere in this article, the ~~board~~ authority may:

(1) Adopt, amend and repeal necessary, appropriate and lawful policy guidelines, and in cooperation with the Secretary, propose rules in accordance with article three, chapter twenty-nine-a of this code; ~~Provided, That subsequent amendments and modifications to any rule promulgated pursuant to this article and not exempt from the provisions of article three, chapter twenty-nine-a of this code may be implemented by emergency rule~~

(2) Hold public hearings, conduct investigations and require the filing of information relating to matters affecting the costs of health care services subject to the provisions of this article and may subpoena witnesses, papers, records, documents and all other data in connection therewith. The board may administer oaths or affirmations in any hearing or investigation;

~~(3) Apply for, receive and accept gifts, payments and other funds and advances from the United States, the state or any other governmental body, agency or agencies or from any other private or public corporation or person (with the exception of hospitals subject to the provisions of this article, or associations representing them, doing business in the State of West Virginia, except in accordance with subsection (c) of this section), and enter into agreements with respect thereto, including the undertaking of studies, plans, demonstrations or projects. Any such gifts or payments that may be received or any such agreements that may be entered into shall be used or formulated only so as to pursue legitimate, lawful purposes of the board and shall in no respect inure to the private benefit of a board member, staff member, donor or contracting party;~~

~~(4) Lease, rent, acquire, purchase, own, hold, construct, equip, maintain, operate, sell, encumber and assign rights or dispose of any property, real or personal, consistent with the objectives of the board as set forth in this article: Provided, That such acquisition or purchase of real property or construction of facilities shall be consistent with planning by the state building commissioner and subject to the approval of the Legislature~~

~~(5) Contract and be contracted with and execute all instruments necessary or convenient in carrying out the board's functions and duties; and~~

~~(6)~~ (4) Exercise, subject to limitations or restrictions herein imposed, all other powers which are reasonably necessary or essential to effect the express objectives and purposes of this article.

~~(b) The board shall annually prepare a budget for the next fiscal year for submission to the Governor and the Legislature which shall include all sums necessary to support the activities of the board and its staff~~

~~(c) Each hospital subject to the provisions of this article shall be assessed by the board on a pro rata basis using the net patient revenue, as defined under generally accepted accounting principles, of each hospital as reported under the authority of section eighteen of this article as the measure of the hospital's obligation. The amount of such fee shall be determined by the board except that in no case shall the hospital's obligation exceed one-tenth of one percent of its net patient revenue. Such fees shall be paid on or before the first day of July in each year and shall be paid into the State Treasury and kept as a special revolving fund designated "Health Care Cost Review Fund", with the moneys in such fund being expendable after appropriation by the Legislature for purposes consistent with this article. Any balance remaining in said fund at the end of any fiscal year shall not revert to the treasury, but shall remain in said fund and such moneys shall be expendable after appropriation by the Legislature in ensuing fiscal years.~~

~~(d) Each hospital's assessment shall be treated as an allowable expense by the board.~~

~~(e) The board is empowered to withhold rate approvals certificates of need and rural health system loans and grants if any such fees remain unpaid, unless exempted under subsection (g), section four, article two-d of this chapter.~~

§16-29B-12. Certificate of need hearings; administrative procedures act applicable; hearings examiner; subpoenas.

(a) The board ~~may~~ shall conduct such hearings as it deems necessary for the performance of its functions and shall hold hearings when required by the provisions of this chapter or upon a written demand ~~therefor~~ by a person aggrieved by any act or failure to act by the board regulation or order of the board. All hearings of the board pursuant to this section shall be announced in a timely manner and shall be open to the public ~~except as may be necessary to conduct business of an executive nature~~. In making decisions in the certificate of need process, the board shall be guided by the state health plan approved by the Governor.

(b) All pertinent provisions of article five, chapter twenty-nine-a of this code shall apply to and govern the hearing and administrative procedures in connection with and following the hearing except as specifically stated to the contrary in this article. General counsel for Department of Health and Human Resources or general counsel for the authority shall represent the interest of the authority at all hearings.

(c) Any hearing may be conducted by members of the board or by a hearing examiner appointed by the board for such purpose. ~~Any member~~ The chairperson of the board may issue subpoenas and subpoenas duces tecum which shall be issued and served pursuant to the time, fee and enforcement specifications in section one, article five, chapter twenty-nine-a of this code.

(d) Notwithstanding any other provision of state law, when a hospital alleges that a factual determination made by the board is incorrect, the burden of proof shall be on the hospital to demonstrate that such determination is, in light of the total record, not supported by substantial evidence. The burden of proof remains with the hospital in all cases.

(e) After any hearing, after due deliberation, and in consideration of all the testimony, the evidence and the total record made, the board shall render a decision in writing. The written decision shall be accompanied by findings of fact and conclusions of law as specified in section three, article five, chapter twenty-nine-a of this code, and the copy of the decision and accompanying findings and conclusions shall be served by certified mail, return receipt requested, upon the party demanding the hearing, and upon its attorney of record, if any.

(f) Any interested individual, group or organization shall be recognized as affected parties upon written request from the individual, group or organization. Affected parties shall have the right to bring relevant evidence before the board and testify thereon. Affected parties shall have equal access to records, testimony and evidence before the board and shall have equal access to the expertise of the ~~board's~~ authority's staff. The board authority, with the approval of the secretary, shall have authority to ~~develop~~ propose rules and regulations to administer provisions of this section.

(g) ~~The~~ A decision of the board is final unless reversed, vacated or modified upon judicial review thereof, in accordance with the provisions of section thirteen of this article.

§16-29B-26. Exemptions from state antitrust laws.

(a) Actions of the ~~board~~ authority shall be exempt from antitrust action under state and federal antitrust laws. Any actions of hospitals and health care providers under the ~~board's~~ authority's jurisdiction, when made in compliance with orders, directives, rules, approvals or regulations issued or promulgated by the ~~board~~ authority, shall likewise be exempt.

(b) It is the intention of the Legislature that this chapter shall also immunize cooperative agreements approved and subject to supervision by the authority and activities conducted pursuant thereto from challenge or scrutiny under both state and federal antitrust law: *Provided*, That a cooperative agreement that is not approved and subject to supervision by the authority shall not have such immunity.

§16-29B-28. Review of Cooperative agreements.

(a) *Definitions.* — As used in this section the following terms have the following meanings:

(1) “Academic medical center” means an accredited medical school, one or more faculty practice plans affiliated with the medical school or one or more affiliated hospitals which meet the requirements set forth in 42 C. F. R. 411.355(e).

(2) “Accredited academic hospital” means a hospital or health system that sponsor four or more approved medical education programs.

~~(2)~~ (3) “Cooperative agreement” means an agreement between a qualified hospital which is a member of an academic medical center and one or more other hospitals or other health care providers. The agreement shall provide for the sharing, allocation, consolidation by merger or other combination of assets, or referral of patients, personnel, instructional programs, support services and facilities or medical, diagnostic, or laboratory facilities or procedures or other services traditionally offered by hospitals or other health care providers.

~~(3)~~ (4) “Commercial health plan” means a plan offered by any third party payor that negotiates with a party to a cooperative agreement with respect to patient care services rendered by health care providers.

~~(4)~~ (5) “Health care provider” means the same as that term is defined in section three of this article.

~~(5)~~ (6) “Teaching hospital” means a hospital or medical center that provides clinical education and training to future and current health professionals whose main building or campus is located in the same county as the main campus of a medical school operated by a state university.

~~(6)~~ (7) “Qualified hospital” means a an academic medical center or teaching accredited academic hospital, which meets the requirements of 42 C. F. R. 411.355(e) and which has entered into a cooperative agreement with one or more hospitals or other health care providers but is not a critical access hospital for purposes of this section.

(b) *Findings.* —

(1) The Legislature finds that the state’s schools of medicine, affiliated universities and teaching hospitals are critically important in the training of physicians and other healthcare providers who practice health care in this state. They provide access to healthcare and enhance quality healthcare for the citizens of this state.

(2) A medical education is enhanced when medical students, residents and fellows have access to modern facilities, state of the art equipment and a full range of clinical services and that, in many instances, the accessibility to facilities, equipment and clinical services can be achieved

more economically and efficiently through a cooperative agreement among a ~~teaching~~ qualified hospital and one or more hospitals or other health care providers.

(c) *Legislative purpose.* — The Legislature encourages cooperative agreements if the likely benefits of such agreements outweigh any disadvantages attributable to a reduction in competition. When a cooperative agreement, and the planning and negotiations of cooperative agreements, might be anticompetitive within the meaning and intent of state and federal antitrust laws the Legislature believes it is in the state's best interest to supplant such laws with regulatory approval and oversight by the Health Care Authority as set out in this article. The authority has the power to review, approve or deny cooperative agreements, ascertain that they are beneficial to citizens of the state and to medical education, to ensure compliance with the provisions of the cooperative agreements relative to the commitments made by the qualified hospital and conditions imposed by the Health Care Authority.

(d) *Cooperative Agreements.* —

(1) A qualified hospital ~~which is a member of an academic medical center~~ may negotiate and enter into a cooperative agreement with other hospitals or health care providers in the state:

(A) In order to enhance or preserve medical education opportunities through collaborative efforts and to ensure and maintain the economic viability of medical education in this state and to achieve the goals hereinafter set forth; and

(B) When the likely benefits outweigh any disadvantages attributable to a reduction in competition that may result from the proposed cooperative agreement.

(2) The goal of any cooperative agreement would be to:

(A) Improve access to care;

(B) Advance health status;

(C) Target regional health issues;

(D) Promote technological advancement;

(E) Ensure accountability of the cost of care;

(F) Enhance academic engagement in regional health;

(G) Preserve and improve medical education opportunities;

(H) Strengthen the workforce for health-related careers; and

(I) Improve health entity collaboration and regional integration, where appropriate.

(3) A qualified hospital located in this state may submit an application for approval of a proposed cooperative agreement to the authority. The application shall state in detail the nature of the proposed arrangement including the goals and methods for achieving:

(A) Population health improvement;

- (B) Improved access to health care services;
- (C) Improved quality;
- (D) Cost efficiencies;
- (E) Ensuring affordability of care;
- (F) Enhancing and preserving medical education programs; and
- (G) Supporting the authority's goals and strategic mission, as applicable.

~~(4) (A) If the cooperative agreement involves a combination of hospitals through merger or consolidation or acquisition, the qualified hospital must have been awarded a certificate of need for the project by the authority, as set forth in article two-d of this chapter prior to submitting an application for review of a cooperative agreement.~~

~~(B) (A) In addition to a certificate of need, the authority may also require that an application for review of a cooperative agreement as provided in this section shall be submitted and approved prior to the finalization of the cooperative agreement, if the cooperative agreement involves the merger, consolidation or acquisition of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital, and the authority shall have determined that combination is likely to produce anti-competitive effects due to a reduction of competition. Any such determination shall be communicated to the parties to the cooperative agreement within seven days from approval of a certificate of need for the project.~~

~~(C) (B) In reviewing an application for cooperative agreement, the authority shall give deference to the policy statements of the Federal Trade Commission.~~

~~(D) (C) If an application for a review of a cooperative agreement is not required by the authority, the parties to the agreement may then complete the transaction following a final order by the authority on the certificate of need as set forth in article two-d of this code. The qualified hospital may apply to the authority for approval of the cooperative agreement either before or after the finalization of the cooperative agreement.~~

~~(E) A party who has received a certificate of need prior to the enactment of this provision during the 2016 regular session of the Legislature may apply for approval of a cooperative agreement whether or not the transaction contemplated thereby has been completed.~~

~~(F) The complete record in the certificate of need proceeding shall be part of the record in the proceedings under this section and information submitted by an applicant in the certificate of need proceeding need not be duplicated in proceedings under this section.~~

(e) *Procedure for review of cooperative agreements.* —

(1) Upon receipt of an application, the authority shall determine whether the application is complete. If the authority determines the application is incomplete, it shall notify the applicant in writing of additional items required to complete the application. A copy of the complete application shall be provided by the parties to the Office of the Attorney General simultaneous with the submission to the authority. If an applicant believes the materials submitted contain proprietary information that is required to remain confidential, such information must be clearly identified and

the applicant shall submit duplicate applications, one with full information for the authority's use and one redacted application available for release to the public.

(2) The authority shall upon receipt of a completed application, publish notification of the application on its website as well as provide notice of such application placed in the State Register. The public may submit written comments regarding the application within ten days following publication. Following the close of the written comment period, the authority shall review the application as set forth in this section. Within thirty days of the receipt of a complete application the authority may:

(i) Issue a certificate of approval which shall contain any conditions the authority finds necessary for the approval;

(ii) Deny the application; or

(iii) Order a public hearing if the authority finds it necessary to make an informed decision on the application.

(3) The authority shall issue a written decision within seventy-five days from receipt of the completed application. The authority may request additional information in which case they shall have an additional fifteen days following receipt of the supplemental information to approve or deny the proposed cooperative agreement.

(4) Notice of any hearing shall be sent by certified mail to the applicants and all persons, groups or organizations who have submitted written comments on the proposed cooperative agreement ~~as well as to all persons, groups or organizations designated as affected parties in the certificate of need proceeding.~~ Any individual, group or organization who submitted written comments regarding the application and wishes to present evidence at the public hearing shall request to be recognized as an affected party as set forth in article two-d of this chapter. The hearing shall be held no later than forty-five days after receipt of the application. The authority shall publish notice of the hearing on the authority's website fifteen days prior to the hearing. The authority shall additionally provide timely notice of such hearing in the State Register.

(5) Parties may file a motion for an expedited decision.

(f) *Standards for review of cooperative agreements.* —

(1) In its review of an application for approval of a cooperative agreement submitted pursuant to this section, the authority may consider the proposed cooperative agreement and any supporting documents submitted by the applicant, any written comments submitted by any person and any written or oral comments submitted, or evidence presented, at any public hearing.

(2) The authority shall consult with the Attorney General of this state regarding his or her assessment of whether or not to approve the proposed cooperative agreement.

(3) The authority shall approve a proposed cooperative agreement and issue a certificate of approval if it determines, with the written concurrence of the Attorney General, that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a reduction in competition from the proposed cooperative agreement.

(4) In evaluating the potential benefits of a proposed cooperative agreement, the authority shall consider whether one or more of the following benefits may result from the proposed cooperative agreement:

(A) Enhancement and preservation of existing academic and clinical educational programs;

(B) Enhancement of the quality of hospital and hospital-related care, including mental health services and treatment of substance abuse provided to citizens served by the authority;

(C) Enhancement of population health status consistent with the health goals established by the authority;

(D) Preservation of hospital facilities in geographical proximity to the communities traditionally served by those facilities to ensure access to care;

(E) Gains in the cost-efficiency of services provided by the hospitals involved;

(F) Improvements in the utilization of hospital resources and equipment;

(G) Avoidance of duplication of hospital resources;

(H) Participation in the state Medicaid program; and

(I) Constraints on increases in the total cost of care.

(5) The authority's evaluation of any disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement shall include, but need not be limited to, the following factors:

(A) The extent of any likely adverse impact of the proposed cooperative agreement on the ability of health maintenance organizations, preferred provider organizations, managed health care organizations or other health care payors to negotiate reasonable payment and service arrangements with hospitals, physicians, allied health care professionals or other health care providers;

(B) The extent of any reduction in competition among physicians, allied health professionals, other health care providers or other persons furnishing goods or services to, or in competition with, hospitals that is likely to result directly or indirectly from the proposed cooperative agreement;

(C) The extent of any likely adverse impact on patients in the quality, availability and price of health care services; and

(D) The availability of arrangements that are less restrictive to competition and achieve the same benefits or a more favorable balance of benefits over disadvantages attributable to any reduction in competition likely to result from the proposed cooperative agreement.

(6) (A) After a complete review of the record, including, but not limited to, the factors set out in subsection (e) of this section, any commitments made by the applicant or applicants and any conditions imposed by the authority, if the authority determines that the benefits likely to result from the proposed cooperative agreement outweigh the disadvantages likely to result from a

reduction in competition from the proposed cooperative agreement, the authority shall approve the proposed cooperative agreement.

(B) The authority may reasonably condition approval upon the parties' commitments to:

(i) Achieving improvements in population health;

(ii) Access to health care services;

(iii) Quality and cost efficiencies identified by the parties in support of their application for approval of the proposed cooperative agreement; and

(iv) Any additional commitments made by the parties to the cooperative agreement.

Any conditions set by the authority shall be fully enforceable by the authority. No condition imposed by the authority, however, shall limit or interfere with the right of a hospital to adhere to religious or ethical directives established by its governing board.

(7) The authority's decision to approve or deny an application shall constitute a final order or decision pursuant to the West Virginia Administrative Procedure Act (§ 29A-1-1, *et seq.*). The authority may enforce commitments and conditions imposed by the authority in the circuit court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.

(g) *Enforcement and supervision of cooperative agreements.* — The authority shall enforce and supervise any approved cooperative agreement for compliance.

(1) The authority is authorized to promulgate legislative rules in furtherance of this section. Additionally, the authority shall promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to accomplish the goals of this section. These rules shall include, at a minimum:

(A) An annual report by the parties to a cooperative agreement. This report is required to include:

(i) Information about the extent of the benefits realized and compliance with other terms and conditions of the approval;

(ii) A description of the activities conducted pursuant to the cooperative agreement, including any actions taken in furtherance of commitments made by the parties or terms imposed by the authority as a condition for approval of the cooperative agreement;

(iii) Information relating to price, cost, quality, access to care and population health improvement;

(iv) Disclosure of any reimbursement contract between a party to a cooperative agreement approved pursuant to this section and a commercial health plan or insurer entered into subsequent to the finalization of the cooperative agreement. This shall include the amount, if any, by which an increase in the average rate of reimbursement exceeds, with respect to inpatient services for such year, the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services as published by the Bureau of Labor Statistics for such year and, with

respect to outpatient services, the increase in the Consumer Price Index for all Urban Consumers for hospital outpatient services for such year; and

(v) Any additional information required by the authority to ensure compliance with the cooperative agreement.

(B) If an approved application involves the combination of hospitals, disclosure of the performance of each hospital with respect to a representative sample of quality metrics selected annually by the authority from the most recent quality metrics published by the Centers for Medicare and Medicaid Services. The representative sample shall be published by the authority on its website.

(C) A procedure for a corrective action plan where the average performance score of the parties to the cooperative agreement in any calendar year is below the fiftieth percentile for all United States hospitals with respect to the quality metrics as set forth in (B) of this subsection. The corrective action plan is required to:

(i) Be submitted one hundred twenty days from the commencement of the next calendar year; and

(ii) Provide for a rebate to each commercial health plan or insurer with which they have contracted an amount not in excess of one percent of the amount paid to them by such commercial health plan or insurer for hospital services during such two-year period if in any two consecutive-year period the average performance score is below the fiftieth percentile for all United States hospitals. The amount to be rebated shall be reduced by the amount of any reduction in reimbursement which may be imposed by a commercial health plan or insurer under a quality incentive or awards program in which the hospital is a participant.

(D) A procedure where if the excess above the increase in the Consumer Price Index for all Urban Consumers for hospital inpatient services or hospital outpatient services is two percent or greater the authority may order the rebate of the amount which exceeds the respective indices by two percent or more to all health plans or insurers which paid such excess unless the party provides written justification of such increase satisfactory to the authority taking into account case mix index, outliers and extraordinarily high cost outpatient procedure utilizations.

(E) The ability of the authority to investigate, as needed, to ensure compliance with the cooperative agreement.

(F) The ability of the authority to take appropriate action, including revocation of a certificate of approval, if it determines that:

(i) The parties to the agreement are not complying with the terms of the agreement or the terms and conditions of approval;

(ii) The authority's approval was obtained as a result of an intentional material misrepresentation;

(iii) The parties to the agreement have failed to pay any required fee; or

(iv) The benefits resulting from the approved agreement no longer outweigh the disadvantages attributable to the reduction in competition resulting from the agreement.

(G) If the authority determines the parties to an approved cooperative agreement have engaged in conduct that is contrary to state policy or the public interest, including the failure to take action required by state policy or the public interest, the authority may initiate a proceeding to determine whether to require the parties to refrain from taking such action or requiring the parties to take such action, regardless of whether or not the benefits of the cooperative agreement continue to outweigh its disadvantages. Any determination by the authority shall be final. The authority is specifically authorized to enforce its determination in the circuit court of Kanawha County or the circuit court where the principal place of business of a party to the cooperative agreement is located.

(H) Fees as set forth in subsection (h).

(2) Until the promulgation of the emergency rules, the authority shall monitor and regulate cooperative agreements to ensure that their conduct is in the public interest and shall have the powers set forth in subdivision (1) of this subsection, including the power of enforcement set forth in paragraph (G), subdivision (1) of this subsection.

(h) *Fees.* — The authority may set fees for the approval of a cooperative agreement. These fees shall be for all reasonable and actual costs incurred by the authority in its review and approval of any cooperative agreement pursuant to this section. These fees shall not exceed \$75,000. Additionally, the authority may assess an annual fee not to exceed \$75,000 for the supervision of any cooperative agreement approved pursuant to this section and to support the implementation and administration of the provisions of this section.

(i) *Miscellaneous provisions.* —

(1) (A) An agreement entered into by a hospital party to a cooperative agreement and any state official or state agency imposing certain restrictions on rate increases shall be enforceable in accordance with its terms and may be considered by the authority in determining whether to approve or deny the application. Nothing in this chapter shall undermine the validity of any such agreement between a hospital party and the Attorney General entered before the effective date of this legislation.

(B) At least ninety days prior to the implementation of any increase in rates for inpatient and outpatient hospital services and at least sixty days prior to the execution of any reimbursement agreement with a third party payor, a hospital party to a cooperative agreement involving the combination of two or more hospitals through merger, consolidation or acquisition which has been approved by the authority shall submit any proposed increase in rates for inpatient and outpatient hospital services and any such reimbursement agreement to the Office of the West Virginia Attorney General together with such information concerning costs, patient volume, acuity, payor mix and other data as the Attorney General may request. Should the Attorney General determine that the proposed rates may inappropriately exceed competitive rates for comparable services in the hospital's market area which would result in unwarranted consumer harm or impair consumer access to health care, the Attorney General may request the authority to evaluate the proposed rate increase and to provide its recommendations to the Office of the Attorney General. The Attorney General may approve, reject or modify the proposed rate increase and shall communicate his or her decision to the hospital no later than 30 days prior to the proposed implementation date. The hospital may then only implement the increase approved by the Attorney General. Should the Attorney General determine that a reimbursement agreement with a third party payor includes pricing terms at anti-competitive levels, the Attorney General may

reject the reimbursement agreement and communicate such rejection to the parties thereto together with the rationale therefor in a timely manner.

(2) The authority shall maintain on file all cooperative agreements the authority has approved, including any conditions imposed by the authority.

(3) Any party to a cooperative agreement that terminates its participation in such cooperative agreement shall file a notice of termination with the authority thirty days after termination.

(4) No hospital which is a party to a cooperative agreement for which approval is required pursuant to this section may knowingly bill or charge for health services resulting from, or associated with, such cooperative agreement until approved by the authority. Additionally, no hospital which is a party to a cooperative agreement may knowingly bill or charge for health services resulting from, or associated with, such cooperative agreement for which approval has been revoked or terminated.

(5) By submitting an application for review of a cooperative agreement pursuant to this section, the hospitals or health care providers shall be deemed to have agreed to submit to the regulation and supervision of the authority as provided in this section.

§16-29B-30. Applicability; transition plan.

(a) Notwithstanding any provision of this code to the contrary, effective July 1, 2017, the Health Care Authority shall transfer to the Department of Health and Human Resources. Any and all remaining functions of the Health Care Authority shall transfer at that time to the Department of Health and Human Resources.

(b) The Health Care Authority shall develop and implement a transition plan to transfer all their remaining functions to the Department of Health and Human Resources. The plan shall be submitted in writing to the Joint Committee on Government and Finance, the Governor and the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Administration and the Division of Personnel. This plan shall be submitted no later than June 1, 2017. The plan shall include proposals for the following:

(1) Transition to appropriate entities or destruction of hard and electronic copies of files;

(2) Transfer of all certificate of need matters pending as of July 1, 2017, to the Department of Health and Human Resources.

(3) In consultation with the Department of Administration, discontinuation of use of the current building including termination of any lease or rental agreements, if necessary;

(4) In consultation with the Department of Administration, disposition of all state owned or leased office furniture and equipment, including any state owned vehicles, if necessary;

(5) Closing out and transferring existing budget allocations;

(6) A transition plan developed in conjunction with the Division of Personnel for remaining employees not transferred to other offices within state government;

(7) A plan to repeal all existing legislative rules made unnecessary by the transfer of the Health Care Authority; and

(8) Any other matters which would effectively terminate all functions not transferred to the Department of Health and Human Resources.

(9) Effective July 1, 2017, the state Privacy Office which was created pursuant to Executive Order No. 6-06 and which is currently housed for administrative purposes within the Health Care Authority shall be transferred to the Office of the Governor. Any staffing and funding associated with the state Privacy Office shall, at that time, be so transferred.

(10) Upon the effective date of the changes to this article made during the course of the 2017 Regular Session of the Legislature, any function of the Health Care Authority not otherwise eliminated or transferred shall become a function of the Department of Health and Human Resources.

ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.

§16-29G-1a. Transfer of West Virginia Health Information Network.

(a) As used in this article, the following mean:

(1) "Agreement" means a document that may be entered into between the network board and the corporation;

(2) "Assets" means the tangible and intangible personal property of the network on the transfer date, including all assignable grants, all obligated funds on deposit in the network account, agreements and contracts;

(3) "Corporation" means any nonstock, nonprofit corporation to be established under the chapter thirty-one;

(4) "Network" means the West Virginia Health Information Network; and

(5) "Network account" means the West Virginia Health Information Network Account.

(b) By December 31, 2017, the network board of directors shall transfer the existing network, the associated assets and liabilities to a private nonprofit corporation organized under chapter thirty-one e of this code.

(c) The network board of directors may enter into agreements as they determine are appropriate to implement the transfer. The agreements are exempt from the bidding and public sale requirements, from the approval of contractual agreements by the Department of Administration or the Attorney General and from the requirements of chapter five-a of this code.

(d) The initial corporation board of directors may consist of any current members of the network board of directors. The current appointed network directors shall continue to serve until the transfer is complete. Notwithstanding any other provisions of this code to the contrary, officers and employees of the network may be transferred considered for employment with to the corporation, and any such employment shall be deemed exempt from the requirements and

limitations imposed by section five, article two, chapter six-B and any legislative rules promulgated thereunder.

(e) The corporation shall have all powers afforded to a nonprofit corporation by law and is limited to those powers enumerated in this article.

(f) The corporation shall not be a department, unit, agency or instrumentality of the state.

(g) The corporation is not subject to the provisions of article nine-a, chapter six of this code, Open Government Proceeding; the provisions of article two, chapter six-c of this code, the West Virginia Public Employees Grievance Procedure; the provisions of article six, chapter twenty-nine of this code, Civil Service System; or the provisions of chapter twenty-nine-b of this code, Freedom of Information; article twelve, chapter twenty-nine of this code, State Insurance; article ten, chapter five, of this code, West Virginia Public Employees Retirement Act, or the provisions of article sixteen, chapter five, of this code, West Virginia Public Employees Insurance Act.

(h) The Secretary of the Department of Health and Human Resources may designate the corporation as the state's health information exchange, and shall have the authority to make sole source grants or enter into sole source contracts with the corporation pursuant to section ten-c, article three, chapter five-A of this code.

(i) The Secretary of the Department of Health and Human Resources shall have access to the data free of charge subject to the provisions of applicable state and federal law.

§16-29G-4. Creation of the West Virginia Health Information Network account; authorization of Health Care Authority to expend funds to support the network.

(a) All moneys collected shall be deposited in a special revenue account in the state Treasury known as the West Virginia Health Information Network Account. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2007, expenditures are authorized from collections rather than pursuant to appropriations by the Legislature.

(b) Consistent with section eight, article twenty-nine-b of this chapter, the Health Care Authority's provision of administrative, personnel, technical and other forms of support to the network is necessary to support the activities of the Health Care Authority board and constitutes a legitimate, lawful purpose of the Health Care Authority board. Therefore, the Health Care Authority is hereby authorized to expend funds from its Health Care Cost Review Fund, established under section eight, article twenty-nine-b of this chapter, to support the network's administrative, personnel and technical needs and any other network activities the Health Care Authority deems necessary.

(c) Notwithstanding section ten, article three, chapter twelve of this code, on the transfer date, the encumbered amounts on deposit in the West Virginia Health Information Network Account shall be paid over to the corporation, the account shall be closed and subsection (a) of this section shall be of no further effect."

CHAPTER 21. LABOR.**ARTICLE 5. NURSE OVERTIME AND PATIENT SAFETY ACT.****§21-5F-4. Enforcement; offenses and penalties.**

(a) Pursuant to the powers set forth in article one of this chapter, the Commissioner of Labor is charged with the enforcement of this article. The commissioner shall propose legislative and procedural rules in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish procedures for enforcement of this article. These rules shall include, but are not limited to, provisions to protect due process requirements, a hearings procedure, an appeals procedure, and a notification procedure, including any signs that must be posted by the facility.

(b) Any complaint must be filed with the commissioner regarding an alleged violation of the provisions of this article must be made within thirty days following the occurrence of the incident giving rise to the alleged violation. The commissioner shall keep each complaint anonymous until the commissioner finds that the complaint has merit. The commissioner shall establish a process for notifying a hospital of a complaint.

(c) The administrative penalty for the first violation of this article is a reprimand.

(d) The administrative penalty for the second offense of this article is a reprimand and a fine not to exceed \$500.

(e) The administrative penalty for the third and subsequent offenses is a fine of not less than \$2,500 and not more than \$5,000 for each violation.

(f) To be eligible to be charged of a second offense or third offense under this section, the subsequent offense must occur within twelve months of the prior offense.

(g) ~~(1) All moneys paid as administrative penalties pursuant to this section shall be deposited into the Health Care Cost Review Fund provided by section eight, article twenty-nine-b, chapter sixteen of this code~~ General Revenue Fund.

~~(2) In addition to other purposes for which funds may be expended from the Health Care Cost Review Fund, the West Virginia Health Care Authority shall expend moneys from the fund, in amounts up to but not exceeding amounts received pursuant to subdivision (1) of this subsection, for the following activities in this state:~~

~~(A) Establishment of scholarships in medical schools;~~

~~(B) Establishment of scholarships for nurses training;~~

~~(C) Establishment of scholarships in the public health field;~~

~~(D) Grants to finance research in the field of drug addiction and development of cures therefor;~~

~~(E) Grants to public institutions devoted to the care and treatment of narcotic addicts; and~~

~~(F) Grants for public health research, education and care.~~

CHAPTER 33. INSURANCE.**ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.****§33-4A-1. Definitions.**

(a) "All-payer claims database" or "APCD" means the program authorized by this article that collects, retains, uses and discloses information concerning the claims and administrative expenses of health care payers.

~~(b) "Chair" means the chairperson of the West Virginia Health Care Authority.~~

~~(c)~~ (b) "Commissioner" means the West Virginia Insurance Commissioner.

~~(d)~~ (c) "Data" means the data elements from enrollment and eligibility files, specified types of claims, and reference files for data elements not maintained in formats consistent with national coding standards.

(d) "Executive Director" means the executive director of the West Virginia Health Care Authority.

(e) "Health care payer" means any entity that pays or administers the payment of health insurance claims or medical claims under workers' compensation insurance to providers in this state, including workers' compensation insurers; accident and sickness insurers; nonprofit hospital service corporations, medical service corporations and dental service organizations; nonprofit health service corporations; prepaid limited health service organizations; health maintenance organizations; and government payers, including but not limited to Medicaid, Medicare and the public employees insurance agency; the term also includes any third-party administrator including any pharmacy benefit manager, that administers a fully-funded or self-funded plan:

A "health insurance claim" does not include:

(1) Any claim paid under an individual or group policy providing coverage only for accident, or disability income insurance or any combination thereof; coverage issued as a supplement to liability insurance; liability insurance, including general liability insurance and automobile liability; credit-only insurance; coverage for on-site medical clinics; other similar insurance coverage, which may be specified by rule, under which benefits for medical care are secondary or incidental to other insurance benefits; or

(2) Any of the following if provided under a separate policy, certificate, or contract of insurance: Limited scope dental or vision benefits; benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; coverage for only a specified disease or illness; or hospital indemnity or other fixed indemnity insurance.

"Health insurance claims" shall only include information from Medicare supplemental policies if the same information is obtained with respect to Medicare.

(f) "Personal identifiers" means information relating to an individual member or insured that identifies, or can be used to identify, locate or contact a particular individual member or insured,

including but not limited to the individual's name, street address, social security number, e-mail address and telephone number.

(g) "Secretary" means the Secretary of the West Virginia Department of Health and Human Services.

(h) "Third-party administrator" has the same meaning ascribed to it in section two, article forty-six of this chapter.

§33-4A-2. Establishment and development of an all-payer claims database.

(a) The secretary, commissioner and ~~chair~~ the executive director, collectively referred to herein as the "MOU parties", shall enter into a memorandum of understanding to develop an all-payer claims database program.

(b) The memorandum of understanding shall, at a minimum:

(1) Provide that the commissioner will have primary responsibility for the collection of the data in order to facilitate the efficient administration of state oversight, the secretary will have primary responsibility for the retention of data supplied to the state under its health care oversight function, and the ~~chair~~ executive director will have primary responsibility for the dissemination of the data;

(2) Delineate the MOU parties' roles, describe the process to develop legislative rules required by this article, establish communication processes and a coordination plan, and address vendor relationship management;

(3) Provide for the development of a plan for the financial stability of the APCD, including provision for funding by the MOU parties' agencies; and

(4) Provide for the use of the hospital discharge data collected by the West Virginia Health Care Authority as a tool in the validation of APCD reports.

§33-4A-3. Powers of the commissioner, secretary and ~~chair~~ executive director; exemption from purchasing rules.

(a) The MOU parties may:

(1) Accept gifts, bequests, grants or other funds dedicated to the furtherance of the goals of the APCD;

(2) Select a vendor to handle data collection and processing and such other tasks as deemed appropriate;

(3) Enter into agreements with other states to perform joint administrative operations, share information and assist in the development of multistate efforts to further the goals of this article: *Provided*, That any such agreements must include adequate protections with respect to the confidentiality of the information to be shared and comply with all state and federal laws and regulations;

(4) Enter into memoranda of understanding with other governmental agencies to carry out any of its functions, including contracts with other states to perform joint administrative functions;

(5) Attempt to ensure that the requirements with respect to the reporting of data be standardized so as to minimize the expense to parties subject to similar requirements in other jurisdictions;

(6) Enter into voluntary agreements to obtain data from payers not subject to mandatory reporting under this article; and

(7) Exempt a payer or class of payers from the requirements of this article for cause.

(b) Contracts for professional services for the development and operation of the APCD are not subject to the provisions of article three, chapter five-a of this code relating to the Purchasing Division of the Department of Administration. The award of such contracts shall be subject to a competitive process established by the MOU parties.

(c) The MOU parties shall make an annual report to the Governor, which shall also be filed with the Joint Committee on Government and Finance, summarizing the activities of the APCD in the preceding calendar year.

§33-4A-5. User fees; waiver.

Reasonable user fees may be set in the manner established in legislative rule, for the right to access and use the data available from the APCD. The ~~chair~~ executive director may reduce or waive the fee if he or she determines that the user is unable to pay the scheduled fees and that the user has a viable plan to use the data or information in research of general value to the public health.

§33-4A-6. Enforcement; injunctive relief.

In the event of any violation of this article or any rule adopted thereunder, the commissioner, secretary or ~~chair~~ executive director may seek to enjoin a further violation in the circuit court of Kanawha County. Injunctive relief ordered pursuant to this section may be in addition to any other remedies and enforcement actions available to the commissioner under this chapter.

§33-4A-7. Special revenue account created.

(a) There is hereby created a special revenue account in the State Treasury, designated the West Virginia All-Payer Claims Database Fund, which shall be an interest-bearing account and may be invested in the manner permitted by article six, chapter twelve of this code, with the interest income a proper credit to the fund and which shall not revert to the general revenue, unless otherwise designated in law. The fund shall be overseen by the commissioner, secretary and ~~chair~~ executive director, shall be administered by the commissioner, and shall be used to pay all proper costs incurred in implementing the provisions of this article.

(b) The following funds shall be paid into this account:

(1) Penalties imposed on health care payers pursuant to this article and rules promulgated hereunder;

(2) Funds received from the federal government;

(3) Appropriations from the Legislature; and

(4) All other payments, gifts, grants, bequests or income from any source.

ARTICLE 16D. MARKETING AND RATE PRACTICES FOR SMALL EMPLOYER ACCIDENT AND SICKNESS INSURANCE POLICIES.

§33-16D-16. Authorization of uninsured small group health benefit plans.

(a) Upon filing with and approval by the commissioner, any carrier licensed pursuant to this chapter which accesses a health care provider network to deliver services may offer a health benefit plan and rates associated with the plan to a small employer subject to the conditions of this section and subject to the provisions of this article. The health benefit plan is subject to the following conditions:

(1) The health benefit plan may be offered by the carrier only to small employers which have not had a health benefit plan covering their employees for at least six consecutive months before the effective date of this section. After the passage of six months from the effective date of this section, the health benefit plan under this section may be offered by carriers only to small employers which have not had a health benefit plan covering their employees for twelve consecutive months;

(2) If a small employer covered by a health benefit plan offered pursuant to this section no longer meets the definition of a small employer as a result of an increase in eligible employees, that employer shall remain covered by the health benefit plan until the next annual renewal date;

(3) The small employer shall pay at least fifty percent of its employees' premium amount for individual employee coverage;

(4) The commissioner shall promulgate emergency rules under the provisions of article three, chapter twenty-nine-a of this code on or before September 1, 2004, to place additional restrictions upon the eligibility requirements for health benefit plans authorized by this section in order to prevent manipulation of eligibility criteria by small employers and otherwise implement the provisions of this section;

(5) Carriers must offer the health benefit plans issued pursuant to this section through one of their existing networks of health care providers;

(A) The ~~West Virginia Health Care Authority~~ Insurance Commission shall, on or before May 1, 2004, and each year thereafter, by regular mail, provide a written notice to all known in-state health care providers that:

(i) Informs the health care provider regarding the provisions of this section; and

(ii) Notifies the health care provider that if the health care provider does not give written refusal to the ~~West Virginia Health Care Authority~~ Insurance Commission within thirty days from receipt of the notice or the health care provider has not previously filed a written notice of refusal to participate, the health care provider must participate with and accept the products and provider reimbursements authorized pursuant to this section;

(B) The carrier's network of health care providers, as well as any health care provider which provides health care goods or services to beneficiaries of any departments or divisions of the state, as identified in article twenty-nine-d, chapter sixteen of this code, shall accept the health

care provider reimbursement rates set pursuant to this section unless the health care provider gives written refusal to the ~~West Virginia Health Care Authority~~ Insurance Commission between May 1 and June 1 that the provider will not participate in this program for the next calendar year. Notwithstanding any provision of this code to the contrary, health care providers may not be mandated to participate in this program except under the opt-out provisions of subdivision (5), subsection (a) of this section and therefore the health care provider shall annually have the ability to file with the ~~West Virginia Health Care Authority~~ Insurance Commission written notice that the health care provider will not participate with products issued pursuant to this section. Once a health care provider has filed a notice of refusal with the ~~West Virginia Health Care Authority~~ Insurance Commission, the notice shall remain effective until rescinded by the provider and the provider shall not be required to renew the notice each year;

(C) ~~The West Virginia Health Care Authority~~ Insurance Commission is responsible for receiving the responses, if any, from the health care providers that have elected not to participate and for providing a list to the commissioner of those health care providers that have elected not to participate;

(D) Those health care providers that do not file a notice of refusal shall be considered to have accepted participation in this program and to accept Public Employees Insurance Agency health care provider reimbursement rates for their services as set by this section;

(E) Health care provider reimbursement rates used by the carrier for a health benefit plan offered pursuant to this section shall have no effect on provider rates for other products offered by the carrier and most-favored-nation clauses do not apply to the rates;

(6) With respect to the health benefit plans authorized by this section, the carrier shall reimburse network health care providers at the same health care provider reimbursement rates in effect for the managed care and health maintenance organization plans offered by the West Virginia Public Employees Insurance Agency. Beginning in the year 2004, and in each year thereafter, the health care provider reimbursement rates set under this section may not be lowered from the level of the rates in effect on July 1 of that year for the managed care and health maintenance plans offered by the Public Employees Insurance Agency. While it is the intent of this paragraph to govern rates for plans offered pursuant to this section for annual periods, this subdivision in no way prevents the Public Employees Insurance Agency from making provider reimbursement rate adjustments to Public Employees Insurance Agency plans during the course of each year. If there is a dispute regarding the determination of appropriate rates pursuant to this section, the Director of the Public Employees Insurance Agency shall, in his or her sole discretion, specify the appropriate rate to be applied;

(A) The health care provider reimbursement rates as authorized by this section shall be accepted by the health care provider as payment in full for services or products provided to a person covered by a product authorized by this section;

(B) Except for the health care provider rates authorized under this section, a carrier's payment methodology, including copayments and deductibles and other conditions of coverage, remains unaffected by this section;

(C) The provisions of this section do not require the Public Employees Insurance Agency to give carriers access to the purchasing networks of the Public Employees Insurance Agency. The Public Employees Insurance Agency may enter into agreements with carriers offering health benefit plans under this section to permit the carrier, at its election, to participate in drug

purchasing arrangements pursuant to article sixteen-c, chapter five of this code, including the multistate drug purchasing program. This paragraph provides authorization of the agreements pursuant to section four of said article;

(7) Carriers may not underwrite products authorized by this section more strictly than other small group policies governed by this article;

(8) With respect to health benefit plans authorized by this section, a carrier shall have a minimum anticipated loss ratio of seventy-seven percent to be eligible to make a rate increase request after the first year of providing a health benefit plan under this section;

(9) Products authorized under this section are exempt from the premium taxes assessed under sections fourteen and fourteen-a, article three of this chapter;

(10) A carrier may elect to nonrenew any health benefit plan to an eligible employer if, at any time, the carrier determines, by applying the same network criteria which it applies to other small employer health benefit plans, that it no longer has an adequate network of health care providers accessible for that eligible small employer. If the carrier makes a determination that an adequate network does not exist, the carrier has no obligation to obtain additional health care providers to establish an adequate network;

(11) Upon thirty days' advance notice to the commissioner, a carrier may, at any time, elect to nonrenew all health benefit plans issued pursuant to this section. If a carrier nonrenews all its business issued pursuant to this section for any reason other than the adequacy of the provider network, the carrier may not offer this health benefit plan to any eligible small employer for a period of at least two years after the last eligible small employer is nonrenewed; and

(12) The Insurance Commissioner may not approve any health benefit plan issued pursuant to this section until it has obtained any necessary federal governmental authorizations or waivers. The Insurance Commissioner shall apply for and obtain all necessary federal authorizations or waivers.

(b) Health benefit plans authorized by this section are not intended to violate the prohibition set out in subsection (a), section four of this article.

(c) Carriers offering health benefit plans pursuant to this section shall annually or before December 1 of each year report in a form acceptable to the commissioner the number of health benefit plans written by the carrier and the number of individuals covered under the health benefit plans.

(d) To the extent that provisions of this section differ from those contained elsewhere in this chapter, the provisions of this section control.

On motion of Senator Takubo, the following amendments to the Health and Human Resources committee amendment to the bill (Eng. Com. Sub. for H. 2459) were reported by the Clerk, considered simultaneously, and adopted:

On page twenty-one, section eight, subsection (a), subdivision (1), line four, after the word "development" by inserting a comma and the word "acquisition";

On page twenty-five, section ten, lines twenty-one through thirty-one by striking out all of subdivisions (6) and (7) and inserting in lieu thereof the following:

“(6) (A) Notwithstanding the provisions of section seventeen of this article, any hospital that holds a valid certificate of need issued pursuant to this article, may transfer that certificate of need to a person purchasing that hospital, or all or substantially all of its assets, if the hospital is financially distressed. A hospital is financially distressed if, at the time of its purchase:

(i) It has filed a petition for voluntary bankruptcy;

(ii) It has been the subject of an involuntary petition for bankruptcy;

(iii) It is in receivership;

(iv) It is operating under a forbearance agreement with one or more of its major creditors;

(v) It is in default of its obligations to pay one or more of its major creditors and is in violation of the material, substantive terms of its debt instruments with one or more of its major creditors;
or

(vi) It is insolvent: evidenced by balance sheet insolvency and/or the inability to pay its debts as they come due in the ordinary course of business.

(B) A financially distressed hospital which is being purchased pursuant to the provisions of this subsection shall give notice to the authority of the sale thirty days prior to the closing of the transaction and shall file simultaneous with that notice evidence of its financial status. The financial status or distressed condition of a hospital shall be evidenced by the filing of any of the following:

(i) A copy of a forbearance agreement;

(ii) A copy of a petition for voluntary or involuntary bankruptcy;

(iii) Written evidence of receivership, or

(iv) Documentation establishing the requirements of subparagraph (v) or (vi), paragraph (A) of this subdivision. The names of creditors may be redacted by the filing party.

(C) Any substantial change to the capacity of services offered in that hospital made subsequent to that transaction would remain subject to the requirements for the issuance of a certificate of need as otherwise set forth in this article.

(D) Any person purchasing a financially distressed hospital, or all or substantially all of its assets, that has applied for a certificate of need after January 1, 2017, shall qualify for an exemption from certificate of need;

(7) The acquisition by a qualified hospital which is party to an approved cooperative agreement as provided in section twenty-eight, article twenty-nine-b, chapter sixteen of this code, of a hospital located within a distance of twenty highway miles of the main campus of the qualified hospital; and

(8) The acquisition by a hospital of a physician practice group which owns an ambulatory surgical center as defined in this article.”;

On page twenty-six, section eleven, subsection (c), subdivision (1), line thirty-three, after the word “business” by striking out the period and the word “If” and inserting in lieu thereof the words “and if”;

On page twenty-six, section eleven, subsection (c), subdivision (1), line thirty-eight, after the word “percent” by changing the period to a colon and inserting the following proviso: *Provided*, That these limitations on the exemption for a private office practice with more than one location shall not apply to a private office practice with more than twenty locations in the state at the time of the changes made to this article during the 2017 Regular Session of the Legislature.;

On page twenty-seven, section eleven, subsection (b), subdivision (4), line fifty-eight, after the word “facility” by changing the period to a colon and inserting the following proviso: *Provided*, That a skilled nursing facility developed pursuant to subdivision (17) of this section and subsequently acquired pursuant to this subdivision may not transfer or sell any of the skilled nursing home beds of the acquired skilled nursing facility until the skilled nursing facility has been in operation for at least ten years.;

On page twenty-nine, section eleven, subsection (b), subdivision (17), lines ninety-three and ninety-four, by striking out the following: “The beds may not be transferred or sold until the skill nursing facility has been in operation for at least ten years;”;

On page sixty, section thirty, lines twenty-five through twenty-eight, by striking out all of subdivision (9);

And,

By renumbering the remaining subsection.

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

The bill (Eng. Com. Sub. for H. B. 2459), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2679, Relating to the possession of firearms in parks and park facilities.

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

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 House Bill 2721, Removing the cost limitation on projects completed by the Division of Highways.

On second 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 House Bill 2722, Eliminating the financial limitations on utilizing the design-build program for highway construction.

On second 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. House Bill 3106, Relating to increasing the number of limited video lottery terminals.

On second 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.

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

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

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was reported by the Clerk.

The question being "Shall Engrossed Committee Substitute for Senate Bill 286 pass?"

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, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

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. 286) passed with its title.

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

Action as to Engrossed Committee Substitute for Senate Bill 286 having been concluded, the Senate proceeded to the consideration of

Com. Sub. for Senate Bill 386, Creating WV Medical Cannabis Act. On third reading, coming up in regular order, was reported by the Clerk.

On third reading, coming up in deferred order, with the unreported Judiciary committee amendment pending and with the right having been granted on yesterday, Tuesday, March 28, 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 and adopted:

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-15, §16-8A-16 and §16-8A-17, all to read as follows:

ARTICLE 8A. WEST VIRGINIA MEDICAL CANNABIS ACT.

§16-8A-1. Definitions.

As used in this article, the following words have the meanings indicated.

(1) "Caregiver" means:

(A) A person who has agreed to assist with a qualifying patient's medical use of cannabis; and

(B) For a qualifying patient under the age of eighteen years, a parent or legal guardian.

(2) "Certifying physician" means an individual who:

(A) Has an active, unrestricted license to practice medicine that was issued by the West Virginia Board of Medicine or the West Virginia Board of Osteopathic Medicine;

(B) Is in good standing with the West Virginia Board of Medicine or the West Virginia Board of Osteopathic Medicine, whichever is applicable;

(C) Has a valid and unencumbered authority to prescribe controlled substances; and

(D) Is registered with the commission to make cannabis available to patients for medical use in accordance with regulations adopted by the commission.

(3) "Commission" means the West Virginia Medical Cannabis Commission established under this article.

(4) "Dispensary" means an entity licensed under this article that acquires, possesses, processes, transfers, transports, sells, distributes, dispenses, or administers cannabis, products containing cannabis, related supplies, related products containing cannabis including food, tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or caregiver.

(5) "Dispensary agent" means an owner, a member, an employee, a volunteer, an officer, or a director of a dispensary.

(6) "Fund" means the West Virginia Medical Cannabis Commission Fund established under this article.

(7) "Grower" means an entity licensed under this article that:

(A)(i) Cultivates, manufactures, processes, packages, or dispenses medical cannabis; or

(ii) Processes medical cannabis products; and

(B) Is authorized by the commission to provide cannabis to a qualifying patient, caregiver, processor, dispensary, or independent testing laboratory.

(8) "Independent testing laboratory" means a facility, entity, or site that offers or performs tests related to the inspection and testing of cannabis and products containing cannabis.

(9) "Medical cannabis grower agent" means an owner, an employee, a volunteer, an officer, or a director of a grower.

(10) "Processor" means an entity that:

(A) Transforms medical cannabis into another product or extract; and

(B) Packages and labels medical cannabis.

(11) "Processor agent" means an owner, member, employee, volunteer, officer, or director of a processor.

(12) "Qualifying patient" means an individual who:

(A) Has been provided with a written certification by a certifying physician in accordance with a bona fide physician–patient relationship; and

(B) If under the age of eighteen years, has a caregiver.

(13) "Written certification" means a certification that:

(A) Is issued by a certifying physician to a qualifying patient with whom the physician has a bona fide physician–patient relationship; and

(B) Includes a written statement certifying that, in the physician's professional opinion, after having completed an assessment of the patient's medical history and current medical condition, the patient has a condition:

(i) That meets the inclusion criteria and does not meet the exclusion criteria of the certifying physician's application; and

(ii) For which the potential benefits of the medical use of cannabis would likely outweigh the health risks for the patient; and

(C) May include a written statement certifying that, in the physician's professional opinion, a thirty–day supply of medical cannabis would be inadequate to meet the medical needs of the qualifying patient.

(D) Written certifications referenced in this subdivision shall be written on tamper-resistant, non-copyable paper.

§16-8A-2. Creation of West Virginia Medical Cannabis Commission.

(a) There is hereby created the West Virginia Medical Cannabis Commission.

(b) The commission is an independent commission that functions within the Department of Health and Human Resources.

(c) The purpose of the commission is to develop policies, procedures, guidelines, and regulations to implement programs to make medical cannabis available to qualifying patients in a safe and effective manner.

(d) The commission shall develop identification cards for qualifying patients and caregivers.

(e) The department shall adopt rules that establish the requirements for identification cards provided by the commission. The rules shall include:

(1) The information to be included on an identification card;

(2) Requirements that ensure identification cards may not be tampered with or altered and that the identification cards be non-copyable;

(3) The method through which the commission will distribute identification cards; and

(4) The method through which the commission will track identification cards.

(f) The commission shall develop and maintain a website that:

(1) Provides information on how an individual can obtain medical cannabis in the state; and

(2) Provides contact information for licensed dispensaries.

§16-8A-3. Makeup of commission and creation of the West Virginia Medical Cannabis Commission Fund.

(a) The commission shall consist of the following sixteen members:

(1) The Secretary of the Department of Health and Human Resources, or the secretary's designee;

(2) The Commissioner of the Department of Agriculture, or the commissioner's designee;

(3) The West Virginia Treasurer, or the Treasurer's designee; and

(4) The following twelve members, appointed by the Governor:

(i) Two members of the public who support the use of cannabis for medical purposes and who are or were patients who found relief from the use of cannabis;

(ii) One member designated by the West Virginia Association of Alcoholism and Drug Counselors;

(iii) Two physicians licensed to practice in this state;

(iv) One nurse practitioner licensed to practice in this state with experience in hospice care;

(v) One pharmacist licensed to practice in this state;

(vi) One pharmacologist who has experience in the science of cannabis with experience in and a knowledge of the uses, effects and modes of actions of drugs;

(vii) One representative of the West Virginia State Bar;

(viii) One representative of law enforcement;

(ix) An attorney licensed in this state who is knowledgeable about medical cannabis laws in the United States; and

(x) An individual with experience in horticulture, recommended by the Department of Agriculture.

(b)(1) The term of a member is four years. However, the Governor shall set the terms of the initial members of the commission by executive order such that three expire after one year, three expire after two years, and three expire after three years in order to stagger the membership terms of the commission.

(2) At the end of a commission member's term, he or she shall continue to serve until a successor is appointed and qualified.

(3) A member may not serve more than three consecutive full terms.

(4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.

(c) The Governor shall designate the chair from among the members of the commission.

(d) A majority of the full authorized membership of the commission is a quorum.

(e) A member of the commission may not receive compensation, but shall be entitled to reimbursement for expenses incurred while engaged in the discharge of official duties, not to exceed the amount paid to members of the Legislature.

(f) The commission may employ staff, including contractual staff, in accordance with the funds provided in the annual state budget.

(g) The commission may set reasonable fees that shall be sufficient to cover the costs of operating the commission in conformity with the duties imposed upon it by the provisions of this article.

(h)(1) There is hereby created in the State Treasury a separate special revenue account, which shall be an interest-bearing account, to be known as the West Virginia Medical Cannabis Commission Fund.

(2) The commission shall administer the fund.

(3) Any balance remaining in the fund at the end of any state fiscal year reverts to the General Revenue Fund: *Provided*, That annually ten percent of the funds shall be dedicated to educational programs regarding safe cannabis use and supporting controlled substance and alcohol recovery programs. The commission shall establish a procedure for disbursement by rule.

(4) The fund shall be subject to an audit by the West Virginia Legislative Auditor's Office.

(5) The Treasurer shall pay out money from the fund as directed by the commission.

(6) The fund consists of:

(A) Any money appropriated by the Legislature to the fund;

(B) Any other money from any other source accepted for the benefit of the fund, in accordance with any conditions adopted by the commission for the acceptance of donations or gifts to the fund; and

(C) Any fees collected by the commission under this article.

§16-8A-4. Certifying physician's registration.

(a) The commission shall register as a certifying physician an individual who:

(1) Meets the requirements of this article; and

(2) Submits application materials that meet the requirements of this article.

(b) To be registered as a certifying physician, a physician shall submit a proposal to the commission that includes:

(1) The reasons for including a patient under the care of the physician for the purposes of this article, including the patient's qualifying medical conditions;

(2) An attestation that a standard patient evaluation will be completed, including a history, a physical examination, a review of symptoms, and other pertinent medical information; and

(3) The physician's plan for the ongoing assessment and follow-up care of a patient, and for collecting and analyzing data.

(c) The commission may not require an individual to meet requirements in addition to the requirements listed in subsections (a) and (b) of this section to be registered as a certifying physician.

(d)(1) The commission shall consider for approval physician applications for the following medical conditions:

(A) Chronic or debilitating diseases or medical conditions that result in a patient being admitted into Hospice or receiving palliative care; and

(B) Chronic or debilitating diseases or medical conditions or the treatment of chronic or debilitating diseases or medical conditions that produce:

(i) Cachexia, anorexia, or wasting syndrome;

(ii) Severe or chronic pain that does not find effective relief through standard pain medication;

(iii) Severe nausea;

(iv) Seizures;

(v) Severe or persistent muscle spasms; or

(vi) Refractory generalized anxiety disorder.

(2) The commission may not limit treatment of a particular medical condition to one class of physicians.

(C) Post-traumatic stress disorder.

(e) The commission may approve applications that include any other condition that is severe and for which other medical treatments have been ineffective if the symptoms reasonably can be expected to be relieved by the medical use of cannabis.

(f)(1) A certifying physician or the spouse of a certifying physician may not receive any gifts from or have an ownership interest in a medical cannabis grower, a processor, or a dispensary.

(2) A certifying physician may receive compensation from a medical cannabis grower, a processor, or dispensary if the certifying physician:

(A) Obtains the approval of the commission before receiving the compensation; and

(B) Discloses the amount of compensation received from the medical cannabis grower, processor, or dispensary to the commission.

(g)(1) A qualifying patient may be a patient of the certifying physician or may be referred to the certifying physician.

(2) A certifying physician shall provide each written certification to the commission.

(3) On receipt of a written certification provided under subdivision (2) of this subsection, the commission shall issue an identification card to each qualifying patient or caregiver named in the written certification.

(4) A certifying physician may discuss medical cannabis with a patient.

(5)(A) Except as provided in paragraph (B) of this subdivision, a qualifying patient or caregiver may obtain medical cannabis only from a medical cannabis grower licensed by the commission or a dispensary licensed by the commission.

(B) A qualifying patient under the age of eighteen years may obtain medical cannabis only through his or her caregiver.

(6)(A) A caregiver may serve no more than five qualifying patients at any time.

(B) A qualifying patient may have no more than two caregivers.

(h)(1) A certifying physician shall register biennially.

(2) The commission shall grant or deny a renewal of a registration for approval based on the physician's performance in complying with rules adopted by the commission.

(i) Certifying physicians shall report all certifications for qualifying patients as set forth in this article to the Controlled Substances Monitoring Database as set forth in article nine, chapter sixty-A of this code.

§16-8A-5. Reporting requirement.

On or before January 31 each year, the commission shall report to the Governor and the Joint Committee on Government and Finance the commission's activities over the course of the previous year.

§16-8A-6. Medical cannabis growers and grower agents.

(a)(1) The commission may license medical cannabis growers that meet all requirements established by the commission to operate in the state to provide cannabis to:

(A) Processors licensed by the commission under this article;

(B) Dispensaries licensed by the commission under this article;

(C) Qualifying patients and caregivers; and

(D) Independent testing laboratories registered with the commission under this article.

(2)(A) Except as provided in paragraph (B) of this subdivision, the commission may license no more than fifteen medical cannabis growers.

(B) Beginning July 1, 2020, the commission may issue the number of licenses necessary to meet the demand for medical cannabis by qualifying patients and caregivers in an affordable, accessible, secure, and efficient manner.

(C) The commission shall establish an application review process for granting medical cannabis grower licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the commission.

(D) If the commission finds sufficient availability, at least ten percent of the licenses granted pursuant to this section shall be to persons participating in a veterans agriculture program.

(E) The commission may not issue more than one medical cannabis grower license to each applicant.

(F) A grower shall pay an application fee in an amount to be determined by the commission consistent with this article.

(3) The commission shall set standards for licensure as a medical cannabis grower to ensure public safety and safe access to medical cannabis, which may include a requirement for the posting of security.

(4) Each medical cannabis grower agent shall:

(A) Be registered with the commission before the agent may volunteer or work for a licensed grower; and

(B) Obtain state and national criminal history records checks in accordance with section twelve of this article.

(5)(A) A licensed grower shall apply to the commission for a registration card for each grower agent by submitting the name, address, and date of birth of the agent.

(B) Within one business day after a grower agent ceases to be associated with a grower, the grower shall notify the commission and return the grower agent's registration card to the commission. On receipt of the notice, the commission shall immediately revoke the registration card of the grower agent and, if the registration card was not returned to the commission, notify the Superintendent of the West Virginia State Police.

(C) The commission may not register a person as a grower agent who has been convicted of a felony drug offense.

(6)(A) A medical cannabis grower license is valid for four years on initial licensure.

(B) A medical cannabis grower license is valid for two years on renewal.

(7) An application to operate as a medical cannabis grower may be submitted in paper or electronic form.

(8)(A) The commission may encourage licensing medical cannabis growers that grow strains of cannabis, including strains with high cannabidiol content, with demonstrated success in alleviating symptoms of specific diseases or conditions.

(B) The commission may encourage licensing medical cannabis growers that prepare medical cannabis in a range of routes of administration.

(9)(A) The commission shall:

(i) Actively seek to achieve geographic diversity when licensing medical cannabis growers; and

(ii) Encourage applicants who qualify as a minority-owned business, as that term is defined in section fifty-nine, article three, chapter five-a of this code.

(B) Beginning July 1, 2020, a grower licensed under this article to operate as a medical cannabis grower shall report annually to the commission regarding geographic diversity and minority ownership and employees of the grower.

(10) An entity seeking licensure as a medical cannabis grower shall meet local zoning and planning requirements.

(b) An entity licensed to grow medical cannabis under this section may provide cannabis only to:

(1) Processors licensed by the commission under this article;

(2) Dispensaries licensed by the commission under this article;

(3) Qualified patients;

(4) Caregivers; and

(5) Independent testing laboratories registered with the commission under this article.

(c)(1) An entity licensed to grow cannabis under this section may only dispense cannabis from a facility of a grower that is also licensed as a dispensary.

(2) An entity licensed to grow medical cannabis under this section may be licensed to grow and process medical cannabis on the same premises.

(d) An entity licensed to grow medical cannabis under this section shall ensure that safety precautions established by the commission are followed by any facility operated by the grower.

(e) The commission shall establish requirements for security and the manufacturing process that a grower must meet to obtain a license under this section, including, but not limited to, a requirement for a product-tracking system.

(f) A grower licensed under this section shall allow the commission and its agents to inspect licensed facilities.

(g) The commission is authorized to impose penalties or rescind the license of a grower that does not meet the standards for licensure set by the commission.

(h) Notwithstanding any provision of law to the contrary, a qualifying patient is exempt from the provisions of this section and may grow and cultivate no more than two mature cannabis plants solely for his or her own use in accordance with the certification from a certifying physician. A qualifying patient remains subject to the prohibitions set forth in section four hundred one, article four, chapter sixty-A of this code for delivery or distribution of any cannabis which is grown and possessed pursuant to this subsection.

§16-8A-7. Dispensaries.

(a) The Commission is hereby authorized to license dispensaries of medical cannabis.

(b) To be licensed as a dispensary, an applicant must submit to the commission:

(1) An application fee in an amount to be determined by the commission consistent with this article; and

(2) An application that includes:

(A) The legal name and physical address of the proposed dispensary;

(B) The name, address, and date of birth of each principal officer and each director, none of whom may have served as a principal officer or director for a dispensary that has had its license revoked; and

(C) Operating procedures that the dispensary will use, consistent with commission regulations for oversight, including storage of cannabis and products containing cannabis only in enclosed and locked facilities.

(c) The commission shall:

(1) Establish an application review process for granting dispensary licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the commission; and

(2) Actively seek to achieve geographic diversity when licensing dispensaries.

(d) (1) Upon initial issuance, a license to dispense medical cannabis shall be valid for four years.

(2) Upon renewal, a dispensary license shall be valid for two years.

(e) A dispensary licensed under this section or a dispensary agent registered under section eight of this article may not be prosecuted or penalized under state law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use by a qualifying patient or a caregiver in compliance with the provisions of this article.

(f) The commission shall establish requirements for security and product handling procedures that a dispensary must meet to obtain a license under this section, including a requirement for a product-tracking system.

(g) A dispensary licensed under this section shall allow the Commission and its agents to inspect licensed facilities at any time without the necessity of a warrant to ensure compliance with this article.

(h) The commission may impose penalties or rescind the license of a dispensary that does not meet the standards for licensure set by the commission.

(i) Each dispensary licensed under this section shall submit to the commission a quarterly report which shall include:

(1) The number of patients served;

(2) The county of residence of each patient served;

(3) The medical condition for which medical cannabis was recommended;

(4) The type and amount of medical cannabis dispensed; and

(5) If available, a summary of clinical outcomes, including adverse events and any cases of suspected diversion.

(j)(1) Except as provided by subdivision (2) of this subsection, the commission may license no more than sixty medical cannabis dispensaries;

(2) Beginning July 1, 2020, the commission may issue the number of licenses necessary to meet the demand for medical cannabis by qualifying patients and caregivers by an affordable, accessible, secure and efficient manner.

(k) The quarterly report required by the provisions of subsection (i) of this section shall not include personal identifying information of qualifying patients.

§16-8A-8. Dispensary agents.

(a) A dispensary agent shall:

(1) Be at least twenty-one years old;

(2) Be registered with the commission before the agent may volunteer or work for a dispensary; and

(3) Obtain state and national criminal history records check in accordance with section twelve of this article.

(b) A dispensary shall apply to the commission for a registration card for each dispensary agent by submitting the name, address, and date of birth of the agent.

(c)(1) Within one business day after a dispensary agent ceases to be associated with a dispensary, the dispensary shall:

(A) Notify the commission; and

(B) Return the dispensary agent's registration card to the commission.

(2) On receipt of a notice described in subdivision (1) of this subsection, the commission shall:

(A) Immediately revoke the registration card of the dispensary agent; and

(B) If the registration card was not returned to the commission, notify the Superintendent of the West Virginia State Police.

(d) An individual who has been convicted of a felony drug offense may not register as a dispensary agent.

§16-8A-9. Processors.

(a) The Commission is hereby authorized to license processors of medical cannabis.

(b) To be licensed as a processor, an applicant must submit to the commission:

(1) An application fee in an amount to be determined by the commission in accordance with this article; and

(2) An application that includes:

(A) The legal name and physical address of the proposed processor;

(B) The name, address, and date of birth of each principal officer and director, none of whom may have served as a principal officer or director for a licensee under this article that has had its license revoked; and

(C) Operating procedures that the processor will use, consistent with commission regulations for oversight, including storage of cannabis, extracts, and products containing cannabis only in enclosed and locked facilities.

(c) The commission shall establish an application review process for granting processor licenses in which applications are reviewed, evaluated, and ranked based on criteria established by the commission.

(d)(1) Upon initial issuance, a processor license shall be valid for four years.

(2) Upon renewal, a processor license shall be valid for two years.

(e) A processor licensed under this section or a processor agent registered pursuant to section ten of this article may not be prosecuted or penalized under state law for acquiring, possessing, processing, transferring, transporting, selling, distributing, or dispensing cannabis, products containing cannabis, related supplies, or educational materials for use by a licensee under this article or a qualifying patient or a caregiver in compliance with the provisions of this article.

(f) The commission shall establish requirements for security and product handling procedures that a processor must meet to obtain a license under this section, including a requirement for a product-tracking system.

(g) A processor licensed under this section shall allow the commission or its agents to inspect licensed facilities at any time without the necessity of a warrant to ensure compliance with this article.

(h) The commission may impose penalties or rescind the license of a processor that does not meet the standards for licensure set by the commission.

§16-8A-10. Processor Agents.

(a) A processor agent shall:

(1) Be at least twenty-one years old;

(2) Be registered with the commission before the agent may volunteer or work for a processor;
and

(3) Obtain state and national criminal history records check in accordance with section twelve of this article.

(b) A processor agent shall apply to the commission for a registration card for each processor agent by submitting the name, address, and date of birth of the agent.

(c)(1) Within one business day after a processor agent ceases to be associated with a processor, the processor shall:

(A) Notify the commission; and

(B) Return the processor agent's registration card to the commission.

(2) On receipt of a notice described in subdivision (1) of this subsection, the commission shall:

(A) Immediately revoke the registration card of the processor agent; and

(B) If the registration card was not returned to the commission, notify the Superintendent of the West Virginia State Police.

(d) An individual who has been convicted of a felony drug offense may not register as a processor agent.

§16-8A-11. Independent Laboratories.

(a) The commission shall register a public criminal justice agency as the primary testing laboratory to test cannabis and products containing cannabis that are to be sold in the state.

(b) The commission may register additional private independent testing laboratories to test cannabis and products containing cannabis that are to be sold in the state.

(c) To be registered as a private independent testing laboratory, a laboratory shall:

(1) Meet the application requirements established by the commission;

(2) Pay any applicable fee required by the commission; and

(3) Meet the standards and requirements for accreditation, inspection, and testing established by the commission.

(d) The commission shall adopt regulations that establish:

(1) The standards and requirements to be met by an independent laboratory to obtain a registration;

(2) The standards of care to be followed by all testing laboratories;

(3) The initial and renewal terms for an independent laboratory registration and the renewal procedure; and

(4) The bases and processes for denial, revocation, and suspension of a registration of an independent testing laboratory.

(d) The commission may inspect any independent testing laboratory registered under this section to ensure compliance with this article.

§16-8A-12. Criminal records check.

(a) The commission and the State Police shall enter into a memorandum of understanding regarding criminal records checks that include, at a minimum, the following:

(1) Any applicant is required to submit to the State Police all information necessary to complete a nationwide background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses and the National Interstate Identification Index;

(2) The applicant is required to pay all fees associated with the background checks;

(3) The State Police shall complete the background checks promptly upon receipt of all necessary information and fees; and

(4) The State Police shall forward to the commission and to the applicant the criminal history record information of the applicant forthwith.

(b) Information obtained from the background checks required under this section shall be:

(1) Confidential and may not be disseminated other than as authorized in this section; and

(2) Used only for the registration purpose authorized by this article.

(c) The subject of a criminal history records check under this section may appeal the contents of the printed statement issued, as authorized by relevant criminal history database.

§16-8A-13. Offenses; Exempted behaviors.

(a) The following persons when acting in strict compliance with the provisions of this article are not subject to arrest, prosecution, civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for:

(1) A qualifying patient:

(A) In possession of an amount of medical cannabis determined by the commission to constitute a thirty-day supply; or

(B) In possession of an amount of medical cannabis that is greater than a thirty-day supply if the qualifying patient's certifying physician stated in the written certification that a thirty-day supply would be inadequate to meet the medical needs of the qualifying patient;

(2) A grower licensed under section six of this article or a grower agent registered under section six of this article;

(3) A certifying physician;

(4) A caregiver;

(5) A dispensary licensed under section seven of this article or a dispensary agent registered under section eight of this article;

(6) A processor licensed under section nine of this article or a processor agent registered under section ten of this article; or

(7) A hospital, medical facility, or hospice program where a qualifying patient is receiving treatment.

(b)(1) No person who knowingly distributes, possesses with intent to distribute or manufacture cannabis that has been diverted in violation of the provisions of this article from a qualifying patient, caregiver, licensed grower, or licensed dispensary.

(2) A person who violates this subsection is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than \$10,000, or both fined and imprisoned.

(3) The offense set forth in this subsection is separate and distinct from other provisions of this code prohibiting the manufacture, possession, or distribution of marijuana under this code.

§16-8A-14. Conduct not protected.

(a) This article may not be construed to authorize any individual to engage in, and does not prohibit the imposition of any civil, criminal, or other penalties for, the following:

(1) Undertaking any task under the influence of marijuana or cannabis, when doing so would constitute negligence or professional malpractice;

(2) Operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or boat while under the influence of marijuana or cannabis;

(3) Smoking marijuana or cannabis in any public place;

(4) Smoking marijuana or cannabis in a motor vehicle; or

(5) Except as provided in subsection (b) of this section, smoking marijuana or cannabis on a private property that:

(A)(i) Is rented from a landlord; and

(ii) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the property;
or

(B) Is subject to a policy that prohibits the smoking of marijuana or cannabis on the property of an attached multi-residence dwelling adopted by the council of unit owners, for entities regulated by chapter thirty-six-a of this code, or the executive board of a unit owners association, for entities regulated by chapter thirty-six-b of this code.

(b) The provisions of subdivision (5), subsection (a) of this section do not apply to vaporizing cannabis.

(c) This article may not be construed to provide immunity or an affirmative defense to a person who violates the provisions of this article from criminal prosecution for a violation of any law prohibiting or regulating the use, possession, dispensing, distribution, or promotion of controlled dangerous substances, dangerous drugs, detrimental drugs, or harmful drugs, or any conspiracy or attempt to commit any of those offenses.

(d) This article may not be construed to require a hospital, medical facility, or hospice program to report to the commission any disciplinary action taken by the hospital, medical facility, or hospice program against a certifying physician, including the revocation of privileges, after the registration of the certifying physician by the commission.

(e) This article may not be construed to prohibit a person from being concurrently licensed by the commission as a grower, a dispensary, or a processor.

§16-8A-15. State employee actions and federal law.

(a) Notwithstanding any provision of this code to the contrary, a state employee who incurs counsel fees in connection with a federal criminal investigation or prosecution solely related to the employee's good faith discharge of public responsibilities under this article is eligible for reimbursement of counsel fees.

(b) The Governor may suspend implementation of this article upon making a formal determination that there is a reasonable chance of federal prosecution of state employees for involvement with implementation of this article.

§16-8A-16. Rulemaking.

The commission may, in consultation with the Secretary of the Department of Health and Human Resources and the Commissioner of Agriculture, promulgate emergency rules pursuant to the provisions of section fifteen, article three, chapter twenty-nine-a of this code to implement the provisions of this article and shall, in consultation with the Secretary of the Department of Health and Human Resources and the Commissioner of Agriculture, subsequently propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code.

§16-8A-17. Specific effective date; Requirements to be met prior to implementation of article.

(a) The provisions of this section and sections one, two, three, twelve, fifteen and sixteen of this article shall be effective from passage.

(b) The provisions of sections four, five, six, seven, eight, nine, ten, eleven, thirteen and fourteen of this article shall be effective on July 1, 2018.

(c) The provisions of this article shall not be construed to make lawful or otherwise authorize the growing, manufacturing, distribution, dispensing or possession of cannabis until all sections are in effect and the commission established by this article is fully operational.

On motion of Senator Stollings, the following amendment to the Judiciary committee amendment to the bill (Com. Sub. for S. B. 386) was reported by the Clerk:

On page four, section two, after subsection (f), by inserting a new subsection, designated subsection (g), to read as follows:

(g) Unless otherwise required by federal law or another section of this code, drug screening tests in this state may no longer include a report on the level of tetrahydrocannabinol (THC). If the commission determines that this subsection needs clarification, it may propose legislative rules necessary to implement the provisions of this subsection in accordance with the provisions of article three, chapter twenty-nine-a of this code.

Following discussion,

The question being on the adoption of Senator Stollings' amendment to the Judiciary committee amendment to the bill, the same was put and did not prevail.

On motion of Senator Trump, the following amendments to the Judiciary committee amendment to the bill (Com. Sub. for S. B. 386) were next reported by the Clerk, considered simultaneously, and adopted:

On page seven, section four, subsection (d), subdivision (1), paragraph (B), after subparagraph (vi), by inserting in lieu thereof a new paragraph, designated paragraph (C), to read as follows:

(C) Post-traumatic stress disorder.:

On page seven, section four, subsection (d), subdivision (1), by striking out all of paragraph (C);

And,

On page nineteen, section thirteen, lines twenty through twenty-seven, by striking out all of subsection (b) and inserting in lieu thereof a new subsection, designated subsection (b), to read as follows:

(b) (1) A who knowingly distributes, possesses with intent to distribute or manufactures cannabis that has been diverted in violation of the provisions of this article from a qualifying patient, caregiver, licensed grower, or licensed dispensary, is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for not less than one nor more than five years, fined not more than \$10,000, or both fined and imprisoned.

(2) The offense set forth in this subsection is separate and distinct from other provisions of this code prohibiting the manufacture, possession, or distribution of marijuana under this code.

The question now 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,

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

Engrossed Committee Substitute for Senate Bill 386 was then read a third time and put upon its passage.

Pending extended discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 386 pass?"

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

The nays were: Azinger, Boley, Maroney, Sypolt, Takubo and Weld—6.

Absent: None.

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. 386) 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 Senate Bill 386—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-8A-1, §16-8A-2, §16-8A-3, §16-8A-4, §16-8A-5, §16-8A-6, §16-8A-7, §16-8A-8, §16-8A-9, §16-8A-10, §16-8A-11, §16-8A-12, §16-8A-13, §16-8A-14, §16-8A-15, §16-8A-16, and §16-8A-17, all relating to creating the West Virginia Medical Cannabis Act; defining terms; creating the West Virginia Medical Cannabis Commission; setting forth members of the West Virginia Medical Cannabis Commission; setting forth responsibilities for the West Virginia Medical Cannabis Commission; creating a special revenue account known as the West Virginia Medical Cannabis Commission Fund; requiring a portion of any profit to be spend for specific programs; detailing the fund's revenue sources and disbursements; detailing requirements of the commission to implement the provisions of the act; setting requirements for becoming a certifying physician; authorizing the commission to approve physician applications for certain medical conditions; requiring reporting to the Controlled Substances monitoring database; setting out conditions for which cannabis may be used; requiring certain annual reports to the Governor and Legislature; authorizing the commission to license medical cannabis growers and grower agents that meet certain requirements; setting forth certain parameters for licensed growers and grower agents; requiring a certain percentage of licenses be granted to persons in veterans agriculture programs; providing an exception for a qualifying patient to grow a specified amount without a license; authorizing the commission to license dispensaries and register dispensary agents; setting forth certain requirements for dispensaries and dispensary agents setting an initial limit on number of medical cannabis growers and dispensaries; authorizing commission to license the number of growers and dispensaries sufficient to meet demand as of July 1, 2020; authorizing the commission to license medical cannabis processors and register processor agents; authorizing testing laboratories; stating requirements for the commission's registration of independent laboratories; requiring the State Police and commission to enter a memorandum of understanding for criminal records checks and setting forth basic requirements; providing that certain persons licensed, registered and authorized under the act may not be subject to arrest, prosecution or any civil or administrative penalty, including a civil penalty or disciplinary action by a professional licensing board, or be denied any right or privilege, for the medical use of cannabis; creating a new criminal offense of distributing, possessing, manufacturing or using cannabis that has been diverted from an authorized medicinal use; specifically stating conduct related to cannabis that is not protected by the provisions of the act; authorizing state employees to recover certain counsel fees; empowering the Governor to suspend implementation of the act if the Governor determines certain federal action may occur; authorizing promulgation of emergency rules and the proposal of legislative rules for approval by the Legislature; and establishing effective dates.

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

Thereafter, at the request of Senator Woelfel, and by unanimous consent, the remarks by Senators Rucker, Ojeda, Maroney, Takubo, Stollings and Boso regarding Engrossed Committee substitute for Senate Bill 386 were ordered printed in the Appendix to the Journal.

Thereafter, at the request of Senator Ferns, and by unanimous consent, the remarks by Senator Woelfel regarding Engrossed Committee Substitute for Senate Bill 386 were ordered printed in the Appendix to the Journal.

Without objection, the Senate returned to the third order of business.

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 2002—A Bill to amend and reenact §16-2F-1, §16-2F-2, §16-2F-3, §16-2F-4, §16-2F-5, §16-2F-6, and §16-2F-8 and of the Code of West Virginia, 1931, as amended; all relating to parental notification of abortions performed on unemancipated minors; setting out legislative findings; defining terms; clarifying parental notification requirements prior to performing an abortion on an unemancipated minor; modifying waiver language; providing exceptions; providing a judicial process to not permit parental notification; requiring reporting; providing for disciplinary actions; and providing criminal penalties.

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

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

Eng. Com. Sub. for House Bill 2109—A Bill to amend and reenact §31-18E-9 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Land Reuse Agency Authorization Act; including a municipal land bank as an agency that may acquire property; providing that a municipal land bank may have the right of first refusal to buy certain tax delinquent property, within municipal limits, for taxes owed and any related fees before the tax delinquent property is placed for public auction at tax sales.

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. House Bill 2188—A Bill to amend and reenact §18-21-2 of the Code of West Virginia, 1931, as amended, relating to extending the length of time for the special Community-Based Pilot Demonstration Project to Improve Outcomes for At-Risk Youth.

Referred to the Committee on Health and Human Resources.

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 2196—A Bill to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to the secondary schools athletic commission; and participation by home schooled students in extracurricular activities.

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 2376—A Bill to amend and reenact §5F-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §9-5-11b and §9-5-22 of said code; to amend said code by adding thereto a new section, designated §9-10-1; to amend and reenact §11-27-38 of said code; to amend and reenact §11B-2-15 of said code; to amend and reenact §16-3-5 of said code; to amend and reenact §16-5S-7 of said code; to amend and reenact §33-25G-2 of said code; to amend and reenact §49-2-125 of said code; and to amend and reenact §60A-9-5 of said code; all relating to the organizational structure of state government; providing that the Bureau for Medical Services be renamed the Department of Medical Services with the Commissioner of the Bureau for Medical Services becoming the Secretary of the Department of Medical Services; providing that the department continue to operate as currently configured as the Bureau for Medical Services with the structure of the Department of Health and Human Resources for administrative support, interagency cooperation and program support; removing the Human Rights Commission, Division of Human Services, Bureau for Public Health, Office of Emergency Medical Services and the Emergency Medical Service Advisory Council, Health Care Authority, Commission on Mental Retardation, Women's Commission and the Child Support Enforcement Division from administration by the Department of Administration; providing that the Bureau for Public Health, The Bureau for Child Support Enforcement, The Bureau of Children and Families, The Office of the Inspector General, The Health Care Authority, The State Commission on Intellectual Disability, The Women's Commission, The Commission for the Deaf and Hard of Hearing; and the James H. "Tiger" Morton Catastrophic Illness Commission are to be administered as a part of the Department of Health and Human Resources; providing that the Bureau of Medical Services and The Children's Health Insurance Agency are incorporated in and administered as a part of the Department of Medical Services; and making technical changes in various chapters of the code to reflect the creation of the Department of Medical Services.

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 2453—A Bill to amend and reenact §19-12E-5 of the Code of West Virginia, 1931, as amended, relating to expanding the list of persons the Commissioner of Agriculture may license to grow or cultivate industrial hemp.

Referred to the Committee on Agriculture and Rural Development; 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 2520—A Bill to amend and reenact §16-45-3 and §16-45-5 of the Code of West Virginia, 1931, as amended, relating to prohibiting the use of a tanning device by a person under the age of eighteen.

Referred to the Committee on Health and Human Resources.

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 2552—A Bill to amend and reenact §19-14-4 and §19-14-5 of the Code of West Virginia, 1931, as amended, all relating to temporarily increasing pet food registration fees; directing that the additional money be deposited into the West Virginia Spay Neuter Assistance Fund; requiring spay and neuter services purchased with these funds be performed within the state.

Referred to the Committee on Agriculture and Rural Development; 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 2589—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-15g, relating to requiring county boards of education to permit students who are homeschooled or attend private schools to enroll and take classes at the county's vocational school.

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 2654—A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions' ability to dispose of county or district property; adding the ability of county commissions to grant such property to 501(c)(3) tax exempt organizations operated exclusively for charitable, educational or scientific purposes; noting that such sales are not required to be made considering the property's present commercial or market value; setting a minimum value for such sales; revising the requirement that property conveyed to volunteer fire department or volunteer ambulance service reverts back to county commission following termination of use to account for the 501(c)(3) tax exempt organizations operated exclusively for charitable, educational or scientific purposes; and, to provide that such reversionary right may be disclaimed by the county commission.

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 2704—A Bill to amend and reenact §18A-3-6 and §18A-3-10 of the Code of West Virginia, 1931, as amended, all relating generally to the licensure or certification of teachers, providing that a teacher convicted under chapter sixty-one, article eight-d, section five shall have his or her certificate or license automatically revoked and permitting the West Virginia Department of Education to require a licensee submit to fingerprints that may be analyzed by the State Police for a state criminal history record check through the central abuse registry and then forwarded to the federal bureau of investigation for a national criminal history record check when the licensee has lived outside of the state of West Virginia for a period of one year or more since his or her licensure, or the West Virginia Department of Education or the school administrator has a reasonable belief that the licensee has not notified the school administrator

of any felony conviction, conviction of any offense under chapter sixty-one, article eight-b of this Code, or offenses of similar nature to those in chapter sixty-one, article eight-b of this Code that have been established under any other state or the United States.

Referred to the Committee on Education; and then 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 2711—A Bill to repeal §18-2-26a of the Code of West Virginia, 1931, as amended; to amend and reenact §18-2-26 of said code; to amend and reenact §18-2E-5 of said code; to amend and reenact §18-5-13 and §18-5-45 of said code; to further amend said code by adding thereto two new sections designated §18-5-13b and §18-5-13c; to amend and reenact §18-9A-8a of said code; and to amend and reenact §18A-4-14 of said code, all relating generally to education; repealing requirement for biennial meetings of county boards by region; providing for dissolving regional educational service agencies by certain date; allowing for modification and dissolving by cooperative agreement before said date; providing for the transfer, liquidation or disbursement of property and records; clarifying responsibilities and authority of Legislature and state board with respect to process for improving education and purposes and intent of system of accountability; requiring high quality digital literacy skill standard; modifying statewide assessment program; modifying annual performance measures for accreditation; requiring county board use of statewide electronic information system; modifying process for assessing school and school system performance; eliminating office of education performance audits and authorizing employment of experienced education professionals with certain duties; modifying school accreditation and removing authorization for state board intervention in school operations; modifying school system approval and processes for state board intervention; modifying processes for improving capacity; modifying process for building leadership capacity of system during intervention; expanding county board authority for entering into cooperative agreements; establishing the County Superintendents' Advisory Council; setting forth the council's authority and responsibilities, including the formation of four geographic quadrants to carry out the work of the council; requiring certain meetings and reports; authorizing county board agreements to establish educational services cooperatives; providing references to regional education service agencies mean cooperatives; providing priorities for transfer, liquidation and disbursement of regional education service agency property, equipment and records upon dissolution; providing for governing council of educational services cooperatives; providing for powers and duties; providing for cooperative annual plan and optional programs and services; providing for selection of fiscal agent county board and annual audit; providing for staff and member expenses; providing for member compensation; defining instructional day and instruction through alternative methods; providing for increasing length of instructional day and uses of instructional time gained; providing for use of instruction delivered through alternative methods; providing flexibility in scheduling faculty senate meetings; authorizing reduction in instructional term for certain emergency or disaster declaration by Governor; reducing foundation allowance for regional education service agencies; requiring planning period within school day, rather than instructional day and encouraging districts and schools to develop and execute planning period strategy; and making technical improvements and removing obsolete provisions.

Referred to the Committee on Education; 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 2720—A Bill to amend and reenact (18-9D-3 and §18-9D-9 of the Code of West Virginia, 1931, as amended; all relating to the funding of the School Building Authority operational costs; continuing a special revenue account.

Referred to the Committee on Education; 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 2771—A Bill to amend and reenact §18A-3-2a of the Code of West Virginia, 1931, as amended, relating to teaching certificates for teachers whose spouses are members of the Armed Forces who are on active duty stationed in this state or within fifty air miles of the West Virginia border.

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 2781—A Bill to amend and reenact §3-1-34 of the Code of West Virginia, 1931, as amended; and to amend and reenact §3-2-11 of said code, all relating to voting procedures; setting forth the effective date for voter identification requirements passed in the 2016 Legislative session; removing the requirement that the Division of Motor Vehicles forward information of persons who decline voter registration to the Secretary of State; amending the effective date for voter registration requirements passed in the 2016 Legislative session; and, providing that the Division of Motor Vehicles shall report to the Joint Committee on Government and Finance by January 1, 2018 with a full and complete list of all infrastructure they require to achieve certain purposes.

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 2794—A Bill to amend and reenact §46A-2-128 of the Code of West Virginia, 1931, as amended, relating to the means of giving notice to a debt collector of a consumer's representation by legal counsel.

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 2804—A Bill to amend and reenact §30-1-7a of the Code of west Virginia, 1931, as amended, relating to continuing education requirements; removing continuing education requirements; and removing outdated provisions.

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

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 2815—A Bill to repeal §18B-1-5a, 18B-1-8b, 18B-1-10 of the Code of West Virginia, 1931, as amended; to repeal §18B-1A-3 of said code; to repeal §18B-1B-10 and §18B-1B-13 of said code; to repeal §18B-2-5 and §18B-2-7 of said code; to repeal §18B-5-2a of said code; to amend and reenact §18B-1-2 and §18B-1-6 of said code; to amend and reenact §18B-1B-1, §18B-1B-2, §18B-1B-4, and §18B-1B-6 of said code; to amend and reenact §18B-1D-2, §18B-1D-4, and §18B-1D-7 of said code; to amend and reenact §18B-2A-3 and §18B-2A-4 of said code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-4-7 of said code; to amend and reenact §18B-5-4, §18B-5-6, §18B-5-7, and §18B-5-9 of said code; to amend and reenact §18B-10-1, §18B-10-1c, §18B-10-8, and §18B-10-16 of said code; to amend and reenact §18B-19-1, §18B-19-3, §18B-19-4, §18B-19-5, §18B-19-6, §18B-19-7, §18B-19-9, §18B-19-10, §18B-19-11, §18B-19-13, and §18B-19-14 of said code; and to amend said code by adding thereto one new section, designated §18B-19-19, all relating to public education higher education governance generally; defining terms; repealing obsolete provisions of code; clarifying scope of rule-making authority of higher education policy commission and certain institutions of higher education; eliminating outdated language; providing for rule-making procedures; requiring promulgation of rules by commission, council and certain institutions of higher education; providing for shorter time period for commission and council to review and comment on rules proposed by governing boards of institutions of higher education; providing legislative intent; providing for composition of commission; providing for primary responsibility of commission; updating and clarifying powers of commission; limiting authority of commission over certain institutions of higher education; eliminating authority of commission to assess institutions for payment of expenses of commission and for funding of statewide higher education services, obligations, or initiatives; clarifying authority of commission over review and approval of academic programs; repealing and eliminating outdated language; eliminating authority of commission with respect to certain financial and budget reviews and approvals; expanding authority of certain governing boards over appointment of president of certain higher education institutions; eliminating requirement for approval by commission of appointment of president for certain institutions of higher education; eliminating jurisdiction of commission relative to the accountability system over certain institutions of higher education; providing for updated responsibility of commission in development and advancement of public policy agenda and collection of data for certain institutions of higher education; eliminating certain reporting responsibilities for certain institutions of higher education; altering authority of commission over institutional compacts of certain institutions of higher education; eliminating requirement for certain institutions of higher education to prepare an institutional compact for submission to the commission; eliminating application of certain data-based measures on certain institutions of higher education; altering timeframe for updates to institutional compacts; eliminating commission approval of institutional compacts of certain institutions of higher education; eliminating authority of chancellor over coordination of policies, purposes and rules of governing boards of certain institutions of higher education; updating powers of governing boards; eliminating requirement of commission approval of master plans for certain institutions of higher education; requiring certain institutions to provide copies of master plan to Legislative Oversight Commission on Educational Accountability; providing that rules of commission and council related to administering a system for the management of personnel matters do not apply to certain institutions of higher education; authorizing governing boards to contract and pay for any supplemental employee benefit; providing for legislative findings and purposes; clarifying authority of certain governing boards to delegate authority to its president; clarifying authority of commission and governing boards of certain institutions of higher education with respect to development of rules for accreditation and determination of minimum standards for conferring degrees; eliminating authority of commission

to revoke an institution's authority to confer degrees when governing board or chief executive officer do not provide certain information to commission; eliminating applicability of certain commission and council rules on certain institutions of higher education; requiring certain governing boards to promulgate and adopt rules related to acquisitions and purchases; clarifying authority of certain governing boards over certain purchasing activities; authorizing prepayment by commission, council or governing boards in certain instance; expanding scope of authorized purchasers on certain purchase contracts; updating power of Joint Committee over performance audits of purchasing; updating authority of commission, council and governing boards over purchase card procedures; requiring certain governing boards to establish purchasing card procedures; clarifying authority for state institutions to enter into design-build contracts and other commonly accepted methods of procurement and financing for construction projects; providing that Design-Build Procurement Act does not apply to state institutions of higher education; providing authority to donate equipment, supplies and materials to not for profit entity to promote public welfare; updating certain best practices applicable to ensuring fiscal integrity of institutions of higher education; authorizing additional situation where emergency purchase card use is permitted; authorizing different tuition and fees for online courses; updating time frame for payment of fees by students; authorizing deposit of certain fees into single special revenue account by certain institutions; updating applicability of rule by commission and council for tuition and deferred payment plans; authorizing certain governing board to proposed a rule related to tuition and fee deferred payment plans; authorizing certain governing boards to authorize a mandatory auxiliary fee without commission approval; updating tuition and fee increase percentage that requires commission or council approval; updating conditions commission or council are required to consider in determining whether to approve a tuition or fee increase; revising requirements and parameters for certain revenue bonds issued by certain governing boards; updating approvals required for issuance of certain revenue bonds by state institutions of higher education; providing for transfer and deposit of certain fees by certain governing boards into single special revenue account; requiring commission and council to develop system capital development oversight policy and providing content for such policy; requiring each governing board to adopt a campus development plan; updating time frame for reporting to commission and council on campus development plans; eliminating requirement for commission approval of campus development plans of certain governing boards; providing for content of campus development plans; eliminating commission approval over certain capital and maintenance project lists; authorizing certain governing boards to undertake projects not contained in campus development plan; eliminating certain commission approvals related to capital improvements for certain institutions; authorizing capital improvements to be funded through notes; updating conditions to be met for certain institutions to be responsible for capital project management; updating requirements for capital project management rule to be promulgated and adopted by certain governing boards; providing updated applicability and functions of higher education facilities information system; eliminating certain requirements related to leasing of real property by commission, council, and governing boards; updating requirements for use of appraisals in connection with sale of real property; updating permitted uses of proceeds from sale, conveyance or other disposal of real property received by commission, council or a governing board; authorizing certain governing boards to enter into lease-purchase agreements in certain instances without commission approval; eliminating requirement of commission approval for certain real estate and construction transactions; and requiring certain governing boards to provide certain information to commission.

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. House Bill 2878—A Bill to amend and reenact §17-17A-1 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of authorized Federal Grant Anticipation Notes the Division of Highways may apply for from \$200 million to \$500 million.

At the request of Senator Ferns, and by unanimous consent, the bill was taken up for immediate consideration and reference of the bill to a committee dispensed with.

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 2887—A Bill to amend and reenact §18B-1-1d of the Code of West Virginia, 1931, as amended, relating to retirement and separation incentives.

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 2897—A Bill to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended, to amend and reenact §8-16-5 of said code; to amend and reenact §16-12-11 of said code; to amend and reenact §16-13-3 of said code; to amend and reenact §16-13A-7 of said code; to amend and reenact §21-1D-5; and to amend and reenact §21-11-11 of said code, all relating to competitive bidding in construction contracts.

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 2930—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing powerball, hot lotto, and mega millions winners to remain anonymous; providing that a person entitled to collect proceeds exceeding one million dollars from a winning powerball, hot lotto, or mega millions may remain anonymous in regards to his or her name, personal contact information, and likeness; providing that if a person entitled to collect proceeds exceeding one million dollars from a winning powerball, hot lotto, or mega millions ticket wishes to remain anonymous, then he or she shall contact the State Lottery Director in writing or appear at the state lottery headquarters in person; providing where such request to remain anonymous may be mailed or emailed; providing that upon such a request, the director will contact the person requesting anonymity and schedule an appointment to meet; establishing an effective date of January 1, 2018; and providing for an exemption under the Freedom of Information Act for the name, personal contact information, and likeness of a person entitled to collect proceeds exceeding one million dollars from a winning powerball, hot lotto, or mega millions ticket.

Referred to the Committee on the Judiciary; 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 2941—A Bill to amend and reenact §17-2A-7 and §17-2A-8 of the Code of West Virginia, 1931, as amended, all relating to the Division of Highways utilization of the Attorney General for legal services; requiring the Commissioner of the Division of Highways to utilize the Attorney General for all legal assistance and services; and providing for exceptions.

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 2961—A Bill to amend and reenact §47-20-23 and §47-20-31 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-21-21 and §47-21-30 of said code, all relating to appeals of certain administrative actions taken by the Tax Commissioner affecting certain charitable bingo or charitable raffle licensees.

Referred 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 2962—A Bill to amend and reenact §11-1-1 of the Code of West Virginia, 1931, as amended, relating to enlarging the authority of the Tax Commissioner to perform background investigations of employees and contractors; and making technical corrections.

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. House Bill 2963—A Bill to amend and reenact §11-11-17a of the Code of West Virginia, 1931, as amended; relating to terminating on a certain date provisions by which domiciliary personal representatives of nonresident decedents may apply for certain releases.

Referred 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 2967—A Bill to amend and reenact §44-3A-3 of the Code of West Virginia, 1931, as amended, relating generally to administration of estates and trusts; transferring to county commissions duty to administer fiduciary supervisor/fiduciary commissioner qualifying test and provide annual training seminar.

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. House Bill 3022—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-5a, relating to the reporting of fraud,

misappropriation of moneys, and other violations of law to the commission on special investigations.

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 3037—A Bill to amend and reenact §5B-2F-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5D-1-4 of said code, all relating to removing the Division of Energy as an independent agency; redesignating the Division of Energy as the Office of Energy within the Development Office of the Department of Commerce; and designating the Secretary of Commerce, or his or her designee as the Chair of the West Virginia Public Energy Authority Board.

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 3048—A Bill to amend and reenact §15-5A-5 of the Code of West Virginia, 1931, as amended, relating to collection of Tier II fees for chemical inventories.

Referred 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 3091—A Bill to amend and reenact §11-21-74 of the Code of West Virginia, 1931, as amended, relating generally to employer withholding taxes; changing due date for employers to file annual reconciliation and withholding statements with Tax Commissioner to January 31, requiring certain employers to file W-2 information electronically with the Tax Commissioner; and deleting obsolete language.

Referred 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 3095—A Bill to amend §18-7A-13a of the Code of West Virginia, 1931, as amended, relating to allowing retired teachers to be subsequently employed by the Higher Education Policy Commission or the council for community and technical college education without any loss of retirement annuity or retirement benefits under certain circumstances.

Referred to the Committee on Education.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Swope, unanimous consent being granted, it was ordered that the Journal show had Senator Swope been present in the chamber in earlier proceedings today, he would have voted "yea" on the passage of Engrossed Committee Substitute for Senate Bill 609.

At the request of Senator Mullins, unanimous consent being granted, it was ordered that the Journal show had Senator Mullins been present in the chamber in earlier proceedings today, he would have voted "yea" on the passage of Engrossed Senate Bill 664 and Engrossed Senate Bill 667.

At the request of Senator Smith, and by unanimous consent, the Senate returned to the twelfth order of business.

Remarks were made by Senator Smith and Ferns.

Thereafter, at the request of Senator Gaunch, and by unanimous consent, the remarks by Senator Ferns were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Ferns, the Senate adjourned until tomorrow, Thursday, March 30, 2017, at 11 a.m.

SENATE CALENDAR

**Thursday, March 30, 2017
11:00 AM**

UNFINISHED BUSINESS

S. C. R. 49 - Erecting signs in Kanawha County declaring Home of Ralph Maddox 1980 NHPA Hall of Fame

THIRD READING

Eng. Com. Sub. for H. B. 2459 - Relating to regulation of health care and the certificate of need process

SECOND READING

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

FIRST READING

Eng. Com. Sub. for H. B. 2329 - Prohibiting the production, manufacture or possession of fentanyl - (Com. amend. and title amend. pending)

Eng. H. B. 2878 - Increasing amount of authorized Federal Grant Anticipation Notes for which Division of Highways may apply

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2017

Thursday, March 30, 2017

8:30 a.m.	Banking & Insurance	(Room 451M)
9 a.m.	Judiciary	(Room 208W)
9:30 a.m.	Finance	(Room 451M)
1 p.m.	Health & Human Resources	(Room 451M)
1 p.m.	Energy, Industry & Mining	(Room 208W)
2 p.m.	Education	(Room 451M)
2 p.m.	Government Organization	(Room 208W)