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TWENTY-FIRST DAY

Tuesday, March 2, 2021

TWENTY-FIRST DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Monday, March 1, 2021, being the first order of business, when the further reading thereof was dispensed with and the same approved.

At 11:09 a.m., on motion of Delegate Summers, the House recessed for five minutes.

Following the recess, the House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

Reordering of the Calendar

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for S. B. 277, on Second reading, Special Calendar, had been transferred to the House Calendar; and Com. Sub. for S. B. 11 and H. J. R. 2, on Third reading, House Calendar, had been transferred to the Special Calendar.

Committee Reports

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

H. B. 2621, Mandating certification for certain members of fire departments, require certain types of training, allow specialized personnel who are not firefighters to be members of a department, and require the postings of fire department evaluations,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2621 - "A Bill to amend and reenact §15A-11-8 and §15A-11-9 of the Code of West Virginia, 1931, as amended, all relating to requirements of fire departments; requiring the Fire Officer 2 training to contain a component on current laws, rules and regulations governing the fire service; requiring the Firefighter 1 training to contain a section on the Fire Commission, Fire Marshal's Office and the operations of both; establishing a mandatory certification program for fire chiefs, or acting chiefs, of every fire department; requiring the Fire Commission propose emergency legislative rules and legislative rules to implement the certification process; setting forth the process of denial, suspension, or revocation of fire departments, chiefs, or acting chiefs, and the conditions under which the certification can be denied, suspended or revoked; allowing persons with specialized training to be members of volunteer fire departments who are not certified as firefighters; limiting the

actions of specialized members of fire departments who are not certified fire fighters; requiring the fire commission to propose emergency legislative rules and legislative rules to implement the process of allowing specialized members of departments; allowing the fire commission to propose emergency rules and legislative rules governing the activities of junior firefighters; requiring the Fire Marshal to issue certificates to departments following a department evaluation, and requiring that the certificate of evaluation be posted at the fire department in a conspicuous place to be visible to members of the department and to members of the public,”

With the recommendation that the committee substitute do pass.

Delegate Steele, Chair of the Committee on Government Organization submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

H. B. 2699, Authorize the Workforce West Virginia to hire additional employees to serve at the Commissioner’s will and pleasure,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2699 - “A Bill to amend §21A-2-6 of the Code of West Virginia, 1931, as amended, relating to the general powers and duties of the Commissioner of Workforce West Virginia, and authorizing the agency to hire additional employees to serve at the will and pleasure of the Commissioner,”

With the recommendation that the committee substitute do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for H. B. 2699) was referred to the Committee on Finance.

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

Com. Sub. for S. B. 270, Providing for collection of tax by hotel marketplace facilitators,

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

Delegate Capito, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

H. B. 2741, Relating to expansion of the alcohol test and lock program to offenders with a drug related offense,

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

Delegate Capito, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

H. B. 2257, Relating to extended supervision for certain drug offenders,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2257 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §62-12-30, relating to extended supervision for certain drug offenders; establishing supervised release penalty of up to 10 years for certain drug offenders; establishing when period of supervised release begins; providing for supervision by multijudicial circuit probation officers; clarifying terms of supervised release same as those for probation; establishing a fee for supervised release; establishing that court may modify or revoke supervised release; providing court required probation officer provide written conditions; providing for supervised release following revocation; providing for delayed revocation,"

H. B. 2507, Remove the limitations on advertising and promotional activities by limited video lottery retailers,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2507 - "A Bill to repeal §29-22B-404 of the Code of West Virginia, 1931, as amended, and to amend and reenact §29-22B-702, §29-22B-706, and §29-22B-1201 of said Code, relating to removing certain limitations on advertising and promotional activities by the Lottery Commission, limited video lottery retailers and limited video lottery operators; removing requirements for notice and public hearing; and removing a required reduction of limited video lottery locations which was to take effect this year,"

And,

H. B. 2675, Relating to costs and interest in eminent domain condemnation proceedings,

And reports back a committee substitute therefor, with the same title, as follows:

Com. Sub. for H. B. 2675 - "A Bill to amend and reenact §54-2-12, §54-2-13, §54-2-14, §54-2-14a, §54-2-15, §54-2-16, §54-2-18, and §54-2-21 of the Code of West Virginia, 1931, as amended, all relating to bringing the statutory interest rate to be paid in condemnation cases into conformity with current statutory rates, and establishing an effective date,"

With the recommendation that the committee substitutes each do pass.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

Com. Sub. for H. B. 2013, Relating to the Hope Scholarship Program,

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 2262, Relating to the controlled substance monitoring database.

On motion of Delegate Summers, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page two, section five, line thirty-one, by striking out “30A-9-5(b)” and inserting in lieu thereof “§60A-9-5(b)”.

On page two, section five, line thirty-two, by striking out “30A-9-5(b)” and inserting in lieu thereof “§60A-9-5(b)”.

And,

On page seven, section five-a, line one, by striking out “§60A-2-101” and inserting in lieu thereof “§60A-2-201”.

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 64**), and there were—yeas 99, nays none, absent and not voting 1, with absent and not voting being as follows:

Absent and Not Voting: Westfall.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2262) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 16 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §9-11-1 and §9-11-2, all relating to providing continued eligibility for developmental disability services to dependents of military service members; defining terms; establishing dependents retention of rights for developmental disability services provided conditions are met; providing dependents be placed on waiting list for services; establishing a process to reestablish services for dependent upon return to state; prohibiting payment for services rendered outside state; and providing for rulemaking”; which was referred to the Committee on Veterans’ Affairs and Homeland Security then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 53 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-6-22b, relating to barring a person who has been charged with willfully and intentionally causing the death of another by a criminal complaint, indictment, or a child abuse petition from participating in or planning the funeral or burial of the deceased”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 308 - "A Bill to amend and reenact §29-22A-10b of the Code of West Virginia, 1931, as amended, relating to modifying the requirement that a racetrack must have participated in the West Virginia Thoroughbred Development Fund since January 1, 1999, or before in order for counties to receive two percent of the net terminal income where the video lottery terminals are located"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 321 - "A Bill to amend and reenact §17A-3-14 of the Code of West Virginia, 1931, as amended, relating to updating language regarding special license plates for Fairmont State University"; which was referred to the Committee on Technology and Infrastructure then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect from passage and requested the concurrence of the House of Delegates in the passage, of

S. B. 338 - "A Bill to amend and reenact §15A-11-11 of the Code of West Virginia, 1931, as amended, relating to creating the Fire Service Equipment and Training Fund; restricting the use of grant funds to specified purposes; specifying disposition of grant funds remaining in the fund at the end of the fiscal year; requiring the Fire Commission to establish an equipment and training grant program for volunteer and part-volunteer companies based upon certain circumstances; specifying the criteria the State Fire Marshal shall consider when making grants; authorizing the Fire Commission to propose emergency legislative rules and legislative rules; requiring the Legislative Auditor notify the Fire Commission of any volunteer or part-volunteer department that is ineligible to receive grant funds; and requiring that volunteer or part-volunteer department or companies are ineligible until the Legislative Auditor informs the Fire Commission that the company or department has come into compliance"; which was referred to the Committee on Fire Departments and Emergency Medical Services then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 358 - "A Bill to amend and reenact §29-22A-9 of the Code of West Virginia, 1931, as amended, relating to removing the prohibition on having automated teller machines in the area where racetrack video lottery machines are located; and making technical corrections."

At the request of Delegate Summers, and by unanimous consent, reference of the bill (S. B. 358) to a committee was dispensed with.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

S. B. 374 - "A Bill to amend and reenact §15A-3-14 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of money for which a purchase may be made without obtaining three bids to \$10,000"; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 377 - "A Bill to amend and reenact §16-1-9a of the Code of West Virginia, 1931, as amended, relating to public water systems; providing an extension of the deadline by which a water utility company and public service district must provide boiled water advisories through a text or voice alert mass notification system; and clarifying the advisory may be made by either text or voice alert"; which was referred to the Committee on Health and Human Resources then the Judiciary.

Resolutions Introduced

Delegate Holstein offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

H. C. R. 17 - "Requesting the Division of Highways name a portion of Rt 85 South, starting at the Van Community Park of the community of Van and ending at the bridge at Clinton Camp Rd in Wharton in Boone County, the 'U. S. Army SSG James C. Vickers Silver Star Highway'."

Whereas, James C. Vickers was born on February 3, 1932, in Lorado, West Virginia, the son of Watt and Desta Vickers. In April 1950, he enlisted in the United States Army and took his basic training at Fort Knox, Kentucky. He completed basic training there the same month the Korean War started, June 1950. SSG James C. Vickers was assigned to B Company, 31st Infantry Regiment, 7th Infantry Division, and saw his first combat action in the amphibious assault at Inchon, South Korea on September 14, 1950. SSG James C. Vickers made a second amphibious assault at Iwon, North Korea on October 29, 1950, as part of a push for an early end to the war. His unit was part of Taskforce Drysdale, an action to clear a number of enemy roadblocks between Koto-ri and Hagaruri, North Korea. His whole unit was pinned down by a .50 caliber heavy machine gun 800 to 1,000 yards away. He took out the enemy gun, protecting his unit from taking losses. SSG James C. Vickers was wounded in action a day later in the battle for the Chosin Reservoir, in weather as cold as -32 degrees. He was one of very few in his unit that was not killed or captured in the battle, as he ignored his commander's order to surrender and fought his way back to American troops. His actions on that day were recognized when SSG Vickers was awarded the prestigious Silver Star March 11, 2001. SSG James C. Vickers distinguished himself on many occasions and is the recipient of many awards including: The Purple Heart, Combat Infantry Badge, Republic of South Korea Presidential Unit Citation, Army Presidential Unit Citation W/ Oak Leaf Cluster, Navy Presidential Unit Citation W/ Oak Leaf Cluster, Korean Service Medal W/ four Combat Stars and two Arrowheads, National Defense Service Medal, United Nations Service Medal, Army of Occupation Medal (Japan), and Army Good Conduct Medal; and

Whereas, The citizens of Boone County's 23rd District of West Virginia, seek to honor the service and bravery of Korean War veteran and Silver Star recipient U.S. Army Staff Sgt James C. Vickers; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a portion of RT 85 South, starting at the Van Community Park of the community of Van and ending at the bridge at Clinton Camp Rd in Wharton in Boone County, the "U. S. Army Staff Sgt James C. Vickers Silver Star Highway"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the portion of road containing bold and prominent letters proclaiming the road as "U.S. Army Staff Sgt James C. Vickers Silver Star Highway"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegate Westfall offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

H. C. R. 18 - "Requesting the Division of Highways name bridge number 18-021/22-000.49 (18A245), locally known as Sycamore Creek Bridge #1, carrying County Route 21/22 over Sycamore Creek in Jackson County, the 'U. S. Army CWO3 Daniel Okey Cunningham Memorial Bridge'."

Whereas, Daniel Okey Cunningham was born on September 22, 1941, to Okey and Mildred Cunningham at their homestead near Ripley, West Virginia; and

Whereas, Daniel Okey Cunningham, known to most people as "Danny", enlisted in the United States Army immediately after high school and was deployed to Korea; and

Whereas, Following his service in Korea, he joined the U.S. Army Reserves and eventually attained the rank of Chief Warrant Officer Three; and

Whereas, Danny Cunningham continued to be active in veterans' affairs long after he concluded his service in the Reserves, becoming a life member of Veterans of Foreign Wars Post 3488, and a member of American Legion Post 107 and the Military Officers Association of America; and

Whereas, On October 4, 1963, following his return from his overseas deployment, Danny Cunningham married Dorothy Easter, whom he had known since he was nine years old. The two of them saved until they were able to purchase property along Sycamore Road where they built their own home by themselves. Through their industry and enterprise, they were able to pay off their mortgage on the property within one and a half years. Danny and Dorothy raised four children and were married for 51 years until his passing; and

Whereas, Danny Cunningham was employed with the Kaiser Aluminum Company at their plant in Ravenswood and worked there diligently until his retirement; and

Whereas, He continued to stay active after his retirement, caring for the cattle, chickens, doves, and sheep at his farm, tending to his bees, and growing vegetables. He also was a skilled woodworker who created many beautiful masterpieces in wood during his lifetime; and

Whereas, Soon after his retirement, Daniel Okey Cunningham developed Chronic Obstructive Pulmonary Disorder as a result of exposure to asbestos while he was employed and, yet he continued to stay active and to push himself in activities at his home and in his community. Eventually, he succumbed to the ravages of the disease after saying, "I love my family. I love my family so much" before his passing; and

Whereas, Daniel Okey Cunningham was known as a man who was devoted to his country and who greatly enjoyed sharing his time and knowledge with the people of his community; and

Whereas, It is fitting that an enduring memorial be established to commemorate Chief Warrant Officer Daniel Okey Cunningham and his contributions to our state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name 18·021/22-000.49 () (18A245), locally known as Sycamore Creek Bridge #1, carrying County Route 21/22 over Sycamore Creek in Jackson County, the “U. S. Army CWO3 Daniel Okey Cunningham Memorial Bridge”; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “Army CWO3 Daniel Okey Cunningham Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the House forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates J. Jeffries, Maynard, Graves, Pinson, Wamsley, Phillips, McGeehan, Toney, Hott, Smith and Higginbotham offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

H. C. R. 19 - “Requesting the Division of Highways name a bridge bearing the milepost 6.14, carrying County Route 41 in Putnam County, locally known as ‘Clymer’s Creek Road’, as the ‘U. S. Army Pvt. Dallis H. Johnson WWII Memorial Bridge’.”

Whereas, Dallis Harold Johnson was born on March 5, 1925, in Hurricane, West Virginia, where he was a lifelong resident of Putnam County and worked as a farmhand on the Johnson family farm; and

Whereas, Private Johnson enlisted in the US Army at Huntington, WV August 23, 1943; and

Whereas, In June of 1944, Private Johnson was stationed with the US Army 133rd Infantry, fighting the Germans for control of Italy; and

Whereas, Private Johnson wrote his last letter home to his parents on June 19, 1944, as his regiment was taking a period of rest near Rome, Italy; and

Whereas, On June 26 and 27, 1944, Private Johnson’s regiment fought fiercely to capture small towns near Cecina, Italy; and

Whereas, On Wednesday, June 28, 1944, Dallis Harold Johnson, age 19, died in combat while fighting the Germans near Campiglia, Italy; and

Whereas, Private Johnson was sorely missed by his entire family, including his parents, Walter and Demma Bryant Johnson, sister Mairlis Edwards, brother Orus Johnson, brother Chester Johnson, brother Harless Johnson, and brother Gordon Johnson, after giving his life to fight for his country; and

Whereas, Several years after his passing and later in her life, sister Mairlis Johnson Edwards worked to have Private Johnson’s name placed onto the West Virginia Veterans Memorial at the West Virginia State Capitol, which honors those lost in World War I, World War II, the Vietnam War and the Korean War, where it may still be seen today; and

Whereas, For these reasons it is fitting and proper that the bridge be named in honor of Private Johnson; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a bridge bearing the milepost 6.14, carrying County Route 41 in Putnam County, locally known as “Clymer’s Creek Road”, as the “U. S. Army Pvt. Dallis H. Johnson WWII Memorial Bridge”; and, be it

Further Resolved, That the Commissioner of the Division of Highways is requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the “U. S. Army Pvt. Dallis H. Johnson WWII Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegate Steele offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

H. C. R. 20 - “Requesting the Division of Highways to name Slab Fork Road, beginning near the Lester Highway and proceeding along County State Route 34 to its end at the Coalfield Expressway in Raleigh County, the ‘Bill Withers Memorial Road’.”

Whereas, Bill Withers was born July 4, 1938, and grew up in Slab Fork, West Virginia, in the final years of the Great Depression. He was the youngest of six kids and struggled to fit in, largely due to his speech impediment. He joined the Navy after high school and worked as a milkman in Santa Clara County, California, after he left the service. He later worked at an aircraft-parts factory. It was during his time in the service that he developed an interest in singing and songwriting. He bought a cheap guitar at a pawn shop, taught himself to play, and began writing songs between shifts at the factory. He recorded an album at Sussex Records with producer Booker T. Jones, bassist Donald “Duck” Dunn, and Stephen Stills on guitar. One of the first songs they cut was “Ain’t No Sunshine”. The album 1971’s “Just As I Am”, became an enormous hit and turned Bill Withers into a star overnight. He followed it up with 1972’s “Still Bill”, which became an even bigger hit thanks to the leadoff single, “Lean on Me”. Bill had nine Grammy nominations, was inducted into the 2007 Grammy Hall of Fame for “Lean on Me”. On being inducted into the West Virginia Music Hall of Fame he said, “I am from this place, and I am of this place.” In 2015, he was inducted into the Rock and Roll Hall of Fame. He has left a lasting impression on American music. His final album was 1985’s *Watching You Watching Me*. One of West Virginia’s most successful songwriters, his career spanned four decades, and his music continues to influence today’s soul and hip-hop. He passed on April 3, 2020; and

Whereas, It is fitting that an enduring memorial be established to commemorate Bill Withers and his contributions to our state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name Slab Fork Road, beginning near the Lester Highway and proceeding along County State Route 34 to its end at the Coalfield Expressway in Raleigh County, the “Bill Withers Memorial Road”; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the portion of road as the “Bill Withers Memorial Road”; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a copy of this resolution to the commissioner of the Division of Highways.

Delegates Evans, Pethtel, Thompson, Bates, Griffith, Young, Barach, Hansen, Dean, Paynter and Walker offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

H. C. R. 21 - "Requesting the Division of Highways name bridge number 24-005/02-004.51 (24A031), (37.41379, -81.78366), locally known as Avondale Bridge, carrying CR 5/2 over Dry Fork in McDowell County, the 'U. S. Army SP4 Dennis Harvey Roberts Memorial Bridge'."

Whereas, U.S. Army Specialist Dennis Harvey Roberts was born on April 12, 1949, in McDowell County; and

Whereas, Specialist Roberts was a resident of Avondale, West Virginia for nearly 40 years. He was a well-respected member of the Avondale Community. He raised a family there, in the community he loved so much. "Ritter Hollow" as the locals call it, is home to Avondale. Specialist Roberts lived "up the hollow" for nearly 50 years. As a young man, he became a member of the United States Army. He was deployed to Vietnam, where he would spend 11 months and 15 days in the defense of our country. Specialist Roberts' last duty assignment was Troop A 2TM Squadron 1* Cavalry, 24 Armed Division, Fort Hood, Fourth Army. Specialist Roberts was a combat infantry man and was specially trained in auto mechanics, track, and vehicle mechanics; and

Whereas, Specialist Roberts was a highly decorated soldier, having been awarded the following commendations by the Army: National Defense Service Medal, Vietnam Campaign Medal, Vietnam Service Medal with one Bronze Star, Republic of Vietnam Campaign Medal, Marksman with Rifle bar, and Combat Infantry Badge; and

Whereas, Specialist Roberts was honorably discharged from the Army on April 1, 1975. He suffered from Post-Traumatic Stress Disorder (PTSD), a challenge he worked to overcome each day of his life. He also suffered a hearing loss in both ears, as result of his battlefield service. Specialist Roberts lost his struggle with PTSD and his life on June 18, 2016. Specialist Roberts demonstrated many hours of community service to not only Avondale, but to McDowell County. He has given countless hours of support to community activities such as local school groups and activities; and

Whereas, It is fitting that an enduring memorial be established to commemorate U.S. Army Specialist Dennis Harvey Roberts and his contributions to our country and state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 24-005/02-004.51 (24A031), (37.41379, -81.78366), locally known as Avondale Bridge, carrying CR 5/2 over Dry Fork in McDowell County, the "U. S. Army SP4 Dennis Harvey Roberts Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U. S. Army SP4 Dennis Harvey Roberts Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Bills Introduced

Bills were introduced, pursuant to House Rule 92, and severally referred as follows:

By Delegates Doyle, Hansen, Fleischauer, Skaff, Thompson, Evans, Hornbuckle, Walker, Young, Griffith and Bates:

H. B. 2814 - "A Bill to repeal §3-3-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §3-1-34 and §3-1-41 of said code; to amend and reenact §3-1A-5 of said code; to amend and reenact §3-2-25 and §3-2-27 of said code; to amend and reenact §3-3-1, §3-3-1a, §3-3-2, §3-3-

2a, §3-3-3, §3-3-5, §3-3-9, §3-3-10, and §3-3-12 of said code; to amend and reenact §3-4A-19 of said code; to amend and reenact §3-5-13 and §3-5-17 of said code; to amend and reenact §3-6-6, §3-6-7, and §3-6-9 of said code; to amend said code by adding thereto a new section, designated §3-9-14; and to amend and reenact §3-9-19 of said code, all relating to modernization of procedures for voting in public elections; modifying voter identification procedure at the polls; removing authority of election commissioners and poll clerks to dispute voter claims of disability; providing for distribution of informational materials and periodic updates thereof; revising the procedure to declare voters inactive on registration lists; authorizing all registered voters to vote absentee ballot by mail; simplifying the requirements for an emergency absentee ballot; providing for secure receipt of hand-delivered absentee ballots; specifying security and accessibility requirements for early voting locations; providing for stand-alone drop-off locations for deposit of completed absentee ballots; revising time requirements and deadlines; eliminating restrictions on in-person and absentee voting for elections held on Saturdays; revising terms and procedures for casting an absentee ballot by mail; reforming the procedures and grounds for challenging an absentee ballot; specifying the form and printed text of envelopes for absentee ballots; establishing a prec canvass procedure for ballots received in advance of Election Day; authorizing voter cure for potentially deficient absentee ballots; establishing a criminal offense of coercion and intimidation of a voter; defining a criminal offense of unauthorized marking of another person's absentee ballot; providing criminal penalties for violations; and correcting citations and grammar throughout"; to the Committee on the Judiciary then Finance.

By Delegates Maynard and Evans:

H. B. 2815 - "A Bill to amend and reenact §17C-14-12 of the Code of West Virginia, 1931, as amended, relating to requiring air conditioning on all school buses"; to the Committee on Education then Finance.

By Delegate Linville:

H. B. 2816 - "A Bill to amend and reenact §6-9-8 of the Code of West Virginia, 1931, as amended, establishing the 'State Auditor's Public Integrity and Fraud Fund;' and relating to restitution to the state for the reimbursement of costs incurred for misuse of public funds"; to the Committee on the Judiciary then Finance.

By Delegate Graves:

H. B. 2817 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §60B-1-1, §60B-1-2, §60B-1-3, §60B-1-4, §60B-1-5, §60B-1-6, §60B-1-7, and §60B-1-8, all relating to creating the Donated Drug Repository Program; establishing the West Virginia Board of Pharmacy has the authority to administer the program; setting forth eligible drugs and eligible recipients; establishing how the drugs are to be received, handled, stored, dispensed, distributed, and disposed of; permitting a handling fee; defining terms; and requiring rule-making"; to the Committee on Health and Human Resources.

By Delegate Graves:

H. B. 2818 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5AA-1, relating to enacting the 'Solemn Covenant of the States to Award Prizes for Curing Diseases' Compact"; to the Committee on Health and Human Resources then the Judiciary.

By Delegate Cooper:

H. B. 2819 - "A Bill to amend and reenact §11-15-3c of the Code of West Virginia, 1931, as amended, relating to exempting from the sales tax all-terrain vehicles and utility terrain vehicles used as farm equipment"; to the Committee on Agriculture and Natural Resources then Finance.

By Delegate Mandt:

H. B. 2820 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-63-1 and §16-63-2, all relating to oversight of syringe exchange programs by the Department of Health and Human Resources; providing syringe exchange program requirements for operation; requiring the Department of Health and Human Resources to incorporate operational requirements into grant agreements; providing for rulemaking; and providing for civil penalties and other remedies at law"; to the Committee on Prevention and Treatment of Substance Abuse then Health and Human Resources.

By Delegate Graves:

H. B. 2821 - "A Bill to amend and reenact §6C-4-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §6C-4-4, all relating to providing adequate opportunities for state employees to obtain continuing education credits for professional licenses and registrations; and requiring Division of Personnel to conduct rulemaking"; to the Committee on Government Organization.

By Delegate Graves:

H. B. 2822 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-37a, relating to requiring state purchases of certain items to be made from authorized dealers in this state rather than directly from the manufacturers in certain circumstances"; to the Committee on Small Business, Entrepreneurship and Economic Development then Government Organization.

By Delegate Cooper:

H. B. 2823 - "A Bill to amend and reenact §15A-11-3 of the Code of West Virginia, 1931, as amended, relating to exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code"; to the Committee on Agriculture and Natural Resources then Government Organization.

By Delegate Barrett:

H. B. 2824 - "A Bill to amend and reenact §18-20-10 of the Code of West Virginia, 1931, as amended, relating to public school education assessment of students for dyslexia and dyscalculia; specifying State Board of Education and local school boards responsibilities relating to dyslexia and dyscalculia"; to the Committee on Education then Finance.

By Delegates Barrett, Householder, Criss, Hardy and Graves:

H. B. 2825 - "A Bill to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-16-4 of said code, all relating to shifting funding from the Landfill Closure Assistance Fund to local solid waste authorities; providing for an additional fee; providing for reduction of a fee; and setting out conditions and limitations for collection and use of the additional fee"; to the Committee on Government Organization then Finance.

By Delegate Barrett:

H. B. 2826 - "A Bill to amend and reenact §61-6-21 of the Code of West Virginia, 1931, as amended, relating to providing civil rights protections to certain individuals"; to the Committee on the Judiciary.

By Delegate Holstein:

H. B. 2827 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8-32, relating to creating the felony offense of sexual crimes against animals; providing criminal penalties and exceptions to the offense; and ordering relinquishment of possession of animals"; to the Committee on the Judiciary.

By Delegates Hanna, Haynes, Holstein, Barnhart, Martin, Wamsley, Bruce, Pritt, Burkhammer, Bridges and Phillips:

H. B. 2828 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-7-18, relating to creating the 'Firearm Protection Act'; providing that any federal law which attempts to ban semiautomatic firearms or to limit the size of a magazine of a firearm or other limitation on firearms in this state is unenforceable in West Virginia; and providing an effective date"; to the Committee on the Judiciary.

By Delegates Storch, Gearheart, Pethtel, Evans, Anderson and J. Pack:

H. B. 2829 - "A Bill to amend and reenact §8-22-20 of the Code of West Virginia, 1931, as amended, relating to the amortization of annual impacts on funding deficiencies due to new gains or losses on assets and liabilities and changes in actuarial assumptions"; to the Committee on Pensions and Retirement then Finance.

By Delegate Graves:

H. B. 2830 - "A Bill to amend and reenact §49-5-104 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-8-5 of said code; and to amend and reenact §61-14-2, §61-14-8, and §61-14-9 of said code, all relating to strengthening sex trafficking laws; allowing for accessibility of juvenile adjudication records for child victims of sex trafficking; providing for immunity from prosecution for child victims of sex trafficking; providing for criminal liability of a person who aids, assists, or abets the trafficking of an adult or child; providing that a child victim of sex trafficking be eligible for comprehensive and specialized trauma-informed child welfare services; and allowing a child victim of sex trafficking to expunge records of juvenile delinquency adjudication"; to the Committee on the Judiciary.

By Delegate Graves:

H. B. 2831 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-16A-1, §18B-16A-2, §18B-16A-3, and §18B-16A-4, all relating to a nursing program expansion pilot project; establishing a pilot project; providing for an application and selection process; providing for funding; and setting forth accountability and reporting requirements"; to the Committee on Health and Human Resources then Finance.

By Delegate Holstein:

H. B. 2832 - "A Bill to amend and reenact §18-5-13 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-2-1 of said code; to amend and reenact §18A-4-7a of said code; to amend and reenact §18A-5-1 of said code; and to amend and reenact §18B-8-6 of said code, all relating to providing that expression of political ideas and speech (verbal or written), may not be a factor in hiring or employment, admittance, suspension or expulsion in schools, colleges, or universities"; to the Committee on Education then the Judiciary.

By Delegate Clark:

H. B. 2833 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60-7-6B, relating to permitting Class A licensees through the West Virginia ABC to sell wine; clarifying limits; and providing for an effective date"; to the Committee on Government Organization.

By Delegates Espinosa, Howell, Barrett, Householder and Higginbotham:

H. B. 2834 - "A Bill to amend and reenact §29-1-3 of the Code of West Virginia, 1931, as amended, related to the Commission on the Arts; to add the Curator of the West Virginia Division of Arts, Culture and History as an ex officio voting member of the commission; other technical updates"; to the Committee on Government Organization.

By Delegates J. Kelly, Rohrbach, Anderson, Conley, Toney, Criss, Linville, Mandt and Paynter:

H. B. 2835 - "A Bill to amend and reenact §16-2D-8 and §16-2D-11 of the Code of West Virginia, 1931, as amended, all relating to requiring a certificate of need for substance use facilities and services"; to the Committee on Health and Human Resources.

By Delegates Evans, Toney, Bridges, Booth, Mazzocchi, Boggs, Dean, Paynter, Brown, Steele and Maynard:

H. B. 2836 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-1-25, relating to the establishment of a public easement by prescription on private property; providing that failure of noticed owners to limit or condition use of the road or path for a continuous period of 20 years may create a public easement; providing for circuit court petition and designation of public easements conditions for granting easement by a court; defining terms; and providing effective dates"; to the Committee on Technology and Infrastructure then the Judiciary.

By Delegate Higginbotham:

H. B. 2837 - "A Bill to amend and reenact §49-2-115 and §49-2-121 of the Code of West Virginia, 1931, as amended, all relating to providing that no bond may be required as a condition of licensure, approval, certification, or registration of a child care facility"; to the Committee on Government Organization.

By Delegates Westfall and Queen:

H. B. 2838 - "A Bill to amend and reenact §6-9-8 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-6-26, and §11-6-27 of said code; and to amend and reenact §11A-3-36 of said code, all relating to authorizing the ordering of restitution to the state for reimbursement of costs incurred for misuse of public funds; creating the State Auditor's Public Integrity and Fraud Fund for use of said funds; and providing for operating funds in the public utilities and land sections to expire funds at the end of the fiscal year in a method consistent with other divisions of the State Auditor's Office"; to the Committee on the Judiciary then Finance.

By Delegates Thompson, Walker, Young and Doyle:

H. B. 2839 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-63-1, §16-63-2, §16-63-3, and §16-63-4; to amend said code by adding thereto a new article, designated §16-64-1 and §16-64-2; to amend and reenact §18-5-22 of said code; and to amend and reenact §55-7-15 of said code, all relating to providing naloxone to patients in the event of an emergency to ensure immunity; providing Naloxone medication to the families of those predisposed to overdoses; providing 'Naloxone distribution days' sponsored by the State of West Virginia; making Naloxone kits available for distribution to first responders in public buildings, prisons, and treatment centers; providing naloxone to patients in the event of an emergency to ensure immunity; providing Naloxone medication to the families of those predisposed to overdoses and who have addiction issues; providing 'Naloxone distribution days' sponsored by the State of West Virginia; making Naloxone kits available for distribution to first responders in public buildings, prisons, treatment centers, etc.; and providing mental health professionals to school-aged children in West Virginia to accompany the nurses who are already there and to ensure that enough mental healthcare opportunities are given to West Virginia schoolchildren who have loved ones dealing with addiction issues or addiction tendencies. This shall be known as the 'Recovery Can't Wait Act'; to the Committee on Health and Human Resources then the Judiciary.

By Delegates Thompson, Walker, Young and Doyle:

H. B. 2840 - "A Bill to amend and reenact §21-5C-2 of the Code of West Virginia, 1931, as amended, relating to minimum wages to be paid to employees in West Virginia; providing a schedule

of gradual increases in the minimum hourly wage; and increasing the allowable subminimum training wage for new employees based upon the employee's date of hire"; to the Committee on Small Business, Entrepreneurship and Economic Development then Workforce Development then Finance.

By Delegates Thompson, Walker and Young:

H. B. 2841 - "A Bill to amend and reenact §3-8-5 and §3-8-5f of the Code of West Virginia, 1931, as amended, all relating to the regulation and transparency of campaign finance contributions; establishing a \$3,000 limit on loans a candidate may make to his or her campaign; requiring candidates publicly declare donor lists; requiring lawmakers make donor lists publicly available on their legislative websites; requiring candidates to make public their income tax filings"; to the Committee on the Judiciary.

By Delegates Higginbotham, Anderson, Householder, J. Kelly, Wamsley, Kessinger, Statler, Ellington, G. Ward, Kimble and Zatezalo:

H. B. 2842 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-22, relating to placing limitations on the authority of municipalities and local governments to enact any code, ordinance, or land use regulation that would prohibit, have the effect of prohibiting, or regulate in any manner a public utility or department of public utilities from furnishing a utility service to a utility customer based on an energy source provided or used by a utility service, a customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service based on the energy source provided or used by a utility service, a public utility or department of public utilities from utilizing vehicles, equipment, machinery, or tools, to provide utility services to a utility customer based on the energy source used by or powering vehicles, equipment, machinery, or tools used by utility service; and defining terms"; to the Committee on Political Subdivisions then the Judiciary.

By Delegates Keaton, Barnhart, Wamsley, Holstein and Haynes:

H. B. 2843 - "A Bill to amend and reenact §33-20B-9 of the Code of West Virginia, 1931, as amended, relating to requiring insurers of physicians who perform abortions to establish a separate insurance pool"; to the Committee on Banking and Insurance then the Judiciary.

By Delegates Keaton, Wamsley and Haynes:

H. B. 2844 - "A Bill to amend and reenact §11-13S-4 of the Code of West Virginia, 1931, as amended, relating to the amount of tax credit allowed for manufacturing investment; and reducing the 40 percent limitation to 25 percent"; to the Committee on Finance.

By Delegate Keaton:

H. B. 2845 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7L-1, §55-7L-2, and §55-7L-3, all relating to permitting civil actions by a social media website user for censorship or suppression of social media user's speech; providing definitions; stating defenses to civil action; and authorizing the Attorney General to bring action on behalf of a social media user"; to the Committee on the Judiciary.

By Delegates Keaton and Haynes:

H. B. 2846 - "A Bill to amend and reenact §33-3-14 of the Code of West Virginia, 1931, as amended, relating to dedicating 25 percent of the annual insurance premium tax to the PEIA Rainy Day Fund"; to the Committee on Banking and Insurance then Finance.

By Delegate Keaton:

H. B. 2847 - "A Bill to amend and reenact §7-11B-21 of the Code of West Virginia, 1931, as amended; and to amend and reenact §7-18-1 of said code, all relating to the eligibility of the hotel

occupancy tax for a payment in lieu of taxes agreement under the Tax Increment Financing Act”; to the Committee on Finance.

By Delegates Thompson, Walker, Young, Doyle and Hornbuckle:

H. B. 2848 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-5A-1, §21-5A-2, §21-5A-3, §21-5A-4, §21-5A-5, §21-5A-6, §21-5A-7, and §21-5A-8, all relating to establishing fair minimum rates of wages to be paid under contracts for the construction of public improvements; establishing state policy for payment of prevailing wages; defining terms; requiring annual determination of prevailing rates for localities in the state; providing for hearing of objections, judicial review, and appeal; requiring fair minimum rates of wages to be published as part of specifications to bid on contracts; specifying required language in contracts; limiting scope of this article to public improvements in excess of \$500,000; requiring records of wage payments to be preserved; providing for access to wage payment records; granting authority to promulgate legislative rules; and limiting applicability to contracts entered after the effective date of this act”; to the Committee on Workforce Development then Government Organization then Finance.

By Delegates Thompson, Walker, Young, Doyle and Hornbuckle:

H. B. 2849 - “A Bill to repeal §21-5G-1, §21-5G-2, §21-5G-3, §21-5G-4, §21-5G-5, §21-5G-6, and §21-5G-7 of the Code of West Virginia, 1931, as amended, all relating to worker affiliation with a labor organization”; to the Committee on Small Business, Entrepreneurship and Economic Development then Workforce Development then the Judiciary.

By Delegates Thompson, Walker, Young, Doyle and Hornbuckle:

H. B. 2850 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-26, relating to establishing a Business and Corporate Crime Unit of the West Virginia State Police; authorizing the superintendent to determine the structure of the unit; describing the purpose and focus; authorizing investigations by members of the unit; and providing for cooperation with and assistance to other law-enforcement officers and authorities”; to the Committee on Veterans’ Affairs and Homeland Security then the Judiciary.

By Delegates Foster and Steele:

H. B. 2851 - “A Bill to amend and reenact §29A-3-19 of the Code of West Virginia, 1931, as amended, relating to sunset provisions of legislative rules; removing the five year sunset requirement for new legislative rules after initial five year sunset provision; requiring all legislative rules to sunset on July 1 of the applicable year effective July 1, 2021; authorizing the Secretary of State to modify all active legislative rules with sunset provisions in accordance with this requirement; and requiring the Secretary of State to file a notice of sunset in the State Register upon the expiration of a legislative rule”; to the Committee on Government Organization.

By Delegates Ellington, Toney, Conley, J. Kelly and Kimes:

H. B. 2852 - “A Bill to amend and reenact §18-9A-15 of the Code of West Virginia, 1931, as amended, relating to distribution of the allowance for increased enrollment; removing mandated distribution of 60 percent of allowance based on projected increased enrollment prior to September 1; authorizing advance at district request prior to availability of actual increased enrollment of partial distribution of up to 60 percent of school districts estimated share; and providing for return of refund of excess distribution”; to the Committee on Education then Finance.

By Delegates Steele, Westfall, J. Pack, Higginbotham, Foster, Graves, J. Kelly, Maynard and Keaton:

H. B. 2853 - “A Bill to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4, and §22C-9-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22C-9-7a, all relating to oil and gas conservation; providing for the

unitization of interests in drilling units in connection with shallow horizontal oil or gas wells generally; setting forth application requirements; establishing the standard of review; providing for unitization orders for shallow horizontal drilling units; requiring notice and timeliness; providing for hearings; addressing oil and gas produced from shallow horizontal wells, vertical wells and unconventional reservoirs; providing for reunification of interests of unknown and unlocatable interest owners with surface owners in certain circumstances and providing procedures therefor; adding new definitions; and modifying existing definitions”; to the Committee on Energy and Manufacturing then the Judiciary.

By Delegates Storch, Gearheart, Pethtel, Evans, Anderson, Graves and J. Pack:

H. B. 2854 - “A Bill to amend and reenact §8-22A-2, §8-22A-14, §8-22A-16, §8-22A-17, §8-22A-18, and §8-22A-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §8-22A-34 and §8-22A-35, all relating to the West Virginia Municipal Police Officers and Firefighters Retirement System; defining terms; removing conflicting and obsolete statutory provisions; eliminating conflicting provisions relating to late retirement and restrictions on annuity options for married members; clarifying preretirement death benefits; clarifying commencement date of disability benefits; clarifying death benefit for dependent children; providing for return to covered employment; and providing for severability”; to the Committee on Pensions and Retirement then Finance.

By Delegates Storch, Gearheart, Pethtel, Evans, Anderson, Graves and J. Pack:

H. B. 2855 - “A Bill to amend and reenact §20-18-2, §20-18-8, §20-18-20, §20-18-23, and §20-18-27 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-18-37, all relating to the Natural Resources Police Officers Retirement System; defining terms; clarifying concurrent employer contribution rate; clarifying preretirement death benefits; amending conflicting statutory provisions; and adding a severability clause”; to the Committee on Pensions and Retirement then Finance.

By Delegates Statler, Nestor, Horst, Kimes, Paynter, J. Jeffries, Toney, Hanna, Williams and Barnhart:

H. B. 2856 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-2A-25, relating to performance metrics for the West Virginia Division of Highways; requiring the division to develop performance standards and criteria to measure agency performance in all essential operations; requiring the division to employ a management information system that will track the division’s past and current progress toward meeting performance standards; and requiring the division to report to the Joint Committee on Infrastructure”; to the Committee on Technology and Infrastructure then Government Organization.

By Delegates Statler, Longanacre, Horst, Kimes, Paynter and Hanna:

H. B. 2857 - “A Bill to amend and reenact §6B-2B-2 of the Code of West Virginia of 1931, as amended, relating to use of public funds to display a public official’s name or likeness and prohibiting such display on public road signs”; to the Committee on Technology and Infrastructure then the Judiciary.

By Delegates Statler, Horst, Kimes, Nestor, Longanacre, J. Jeffries, Toney, Hanna, Williams and Barnhart:

H. B. 2858 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-30-1, §17-30-2, §17-30-3, §17-30-4 and §17-30-5, all relating to requiring the Commissioner of Highways to develop a formula for allocating road funds among districts, for the benefit of the counties; making legislative findings; requiring the Commissioner to solicit and consider public comments; requiring the Commissioner to include certain factors in the formula; and requiring the Commissioner to submit the formula to the Legislature for approval as a legislative rule”; to the Committee on Technology and Infrastructure then Government Organization.

By Delegates Mazzocchi, Tully, Fast, Paynter, Bridges, J. Jeffries, D. Jeffries and Horst:

H. B. 2859 - "A Bill to amend and reenact §55-7-22 of the Code of West Virginia, 1931, as amended, relating to use of reasonable force in defense of self, real, and personal property; providing immunity from civil and/or criminal prosecution against persons lawfully using force in defensive actions; when there is no duty to retreat; and entitlement to receive court costs, fees and damages to persons acting to protect self, real, and personal property, another person or in other defined situations"; to the Committee on the Judiciary.

By Delegates Statler, Barnhart, Holstein, Longanacre, Bridges, Toney and Hanna:

H. B. 2860 - "A Bill to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended, relating to requiring that open hunting season for big game begin on a Saturday"; to the Committee on Agriculture and Natural Resources then the Judiciary.

By Delegate Bates:

H. B. 2861 - "A Bill to amend and reenact §23-4-8 of the Code of West Virginia, 1931, as amended, relating to physical examination of a claimant for Workers Compensation benefits; and requiring information relating to who scheduled and paid for the examination"; to the Committee on Health and Human Resources then the Judiciary.

By Delegates Storch, Gearheart, Pethtel, Evans, Anderson, Graves and J. Pack:

H. B. 2862 - "A Bill to amend and reenact §7-14D-2, §7-14D-11, §7-14D-13, §7-14D-19, and §7-14D-20 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-14D-32, all relating to the Deputy Sheriff Retirement System Act; defining terms; amending and removing conflicting statutory provisions; removing obsolete restriction on type of annuity for married members; clarifying preretirement death benefits; clarifying survivor death benefit; and providing for severability"; to the Committee on Pensions and Retirement then Finance.

Special Calendar**Third Reading**

Com. Sub. for S. B. 11, Declaring work stoppage or strike by public employees to be unlawful; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 65**), and there were—yeas 53, nays 46, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Barach, Barnhart, Barrett, Bates, Boggs, Booth, Bridges, Brown, Conley, D. Kelly, Dean, Diserio, Doyle, Evans, Ferrell, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Holstein, Hornbuckle, J. Kelly, Lovejoy, Miller, Paynter, Pethtel, Pushkin, Queen, Reed, Reynolds, Riley, Rohrbach, Rowan, Rowe, Skaff, Storch, Thompson, Toney, Walker, Wamsley, Williams, Worrell, Young and Zukoff.

Absent and Not Voting: Westfall

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 11) passed.

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

H. J. R. 2, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate; on third reading, coming up in regular order, was read a third time.

Delegate Rowe had been recognized to ask questions of Delegate Capito when Delegate Foster arose to a point of order, regarding the content of the Gentleman's remarks. The Speaker ruled that the point was well taken and then recognized Delegate Rowe to speak to the bill.

On the adoption of the resolution, the yeas and nays were taken (**Roll No. 66**), and there were—yeas 78, nays 21, absent and not voting 1, with the yeas, nays and absent and not voting being as follows:

Yeas: Anderson, Barnhart, Barrett, Bates, Booth, Bridges, Bruce, Burkhammer, Capito, Clark, Conley, Cooper, Criss, Dean, Ellington, Espinosa, Fast, Ferrell, Forsht, Foster, Gearheart, Graves, Hamrick, Hanna, Hardy, Haynes, Higginbotham, Holstein, Horst, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Keaton, D. Kelly, J. Kelly, Kessinger, Kimble, Kimes, Linville, Longanacre, Mallow, Mandt, Martin, Maynard, Mazzocchi, McGeehan, Miller, Nestor, J. Pack, L. Pack, Paynter, Phillips, Pinson, Pritt, Queen, Reed, Reynolds, Riley, Rohrbach, Rowan, Smith, Statler, Steele, Storch, Summers, Sypolt, Thompson, Toney, Tully, Wamsley, B. Ward, G. Ward, Worrell, Zatezalo and Hanshaw (Mr. Speaker).

Nays: Barach, Boggs, Brown, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Pethtel, Pushkin, Rowe, Skaff, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the resolution (H. J. R. 2) adopted, as follows:

H. J. R. 2 - "Proposing an amendment to the Constitution of the State of West Virginia, amending section nine, article IV thereof, relating to the impeachment of officials; providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate; specifying that a judgment rendered by the Senate following an impeachment trial is not reviewable by any court of this state; 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 2022, which proposed amendment is that section nine, article IV thereof, be amended to read as follows:

ARTICLE IV.

§9. Impeachment of officials.

Any officer of the state may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The House of Delegates ~~shall have~~ has the sole power of impeachment. The Senate ~~shall have~~ has the sole power to try impeachments and no person shall be convicted without the concurrence of two thirds of the members elected

thereto. When sitting as a court of impeachment, the ~~President~~ Chief Justice of the Supreme Court of Appeals, or, if from any cause it be improper for him or her to act, then any other judge of that court, to be designated by it, shall preside; and the senators shall be on oath or affirmation, to do justice according to law and evidence. Judgment in cases of impeachment ~~shall~~ does not extend further than ~~to~~ removal from office, and disqualification to hold any office of honor, trust or profit, under the state; but the party convicted ~~shall be~~ remains liable to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the Legislature for the trial of impeachments. No court of this state has any authority or jurisdiction, by writ or otherwise, to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate conducted hereunder; nor is any judgment rendered by the Senate following a trial of impeachment reviewable by any court of this state.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered "Amendment No. 1" and designated as the "Clarification of the Judiciary's Role in Impeachment Proceedings Amendment" and the purpose of the proposed amendment is summarized as follows: "Clarifying that courts have no authority or jurisdiction to intercede or intervene in or interfere with impeachment proceedings of the House of Delegates or the Senate; and specifying that a judgment rendered by the Senate following an impeachment trial is not reviewable by any court of this state."

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

Second Reading

Com. Sub. for H. B. 2002, Relating to Broadband; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Technology and Infrastructure, was reported by the Clerk on page four, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

"CHAPTER 17. ROADS AND HIGHWAY

ARTICLE 2E. DIG ONCE POLICY.

§17-2E-2. Definitions.

In this article, unless the context otherwise requires:

(1) 'Broadband conduit' or 'conduit' means a conduit, innerduct, or microduct for fiber optic cables that support facilities for broadband service.

(2) 'Broadband service' has the same meaning as defined in §31G-1-2 of this code.

(3) 'Council' means the Broadband Enhancement Council.

(4) 'Direct bury' means the burying of telecommunications wire or cable directly into the ground by means of plowing or direct insertion without the opening of a trench and without the installation of conduit or innerduct.

(5) 'Division' means the Division of Highways.

(6) 'Longitudinal access' means access to or the use of any part of a right-of-way that extends generally parallel to the traveled right-of-way.

(7) 'Permit' means an encroachment permit issued by the commissioner of the division under the authority of this code, and pursuant to the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or equivalent policy, as may be currently enforced by the division, that specifies the requirements and conditions for performing work in a right-of-way and ~~where such work involves the creation or opening of a trench for the installation of telecommunications facilities in a right-of-way.~~

(8) 'Right-of-way' means land, property, or any interest therein acquired or controlled by the division for transportation facilities or other transportation purposes or specifically acquired for utility accommodation.

(9) 'Telecommunications carrier' means a telecommunications carrier:

(A) As determined by the Public Service Commission of West Virginia; or

(B) That meets the definition of telecommunications carrier with respect to the Federal Communications Commission, as contained in 47 U.S.C. §153

(10) 'Telecommunications facility' means any cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment, or other equipment, system, or device that is used to transmit, receive, produce or distribute a signal for telecommunications purposes via wireline, electronic, or optical means.

(11) 'Utility' has the meaning ascribed to it in §17-2A-17a of this code.

(12) 'Wireless access' means access to, and use of, a right-of-way for the purpose of constructing, installing, maintaining, using, or operating telecommunications facilities for wireless telecommunications.

§17-2E-3. Use of rights-of-way; broadband conduit installation in rights-of-way; permits; agreements; compensation; valuation of compensation; telecommunications facilities construction and installation in rights of way.

~~(a) Before obtaining a permit for the construction or installation of a telecommunications facility in a right-of-way, a telecommunications carrier, must enter into an agreement with the division consistent with the requirements of this article.~~

~~(b) Before granting a permit for longitudinal access or wireless access to a right-of-way, the division shall:~~

~~(1) First enter into an agreement with a telecommunications carrier, that is competitively neutral and nondiscriminatory as to other telecommunications carriers, and~~

~~(2) Upon receipt of any required approval or concurrence by the Federal Highway Administration the division may issue a permit granting access under this section: *Provided*, That the division shall comply with all applicable federal regulations with respect to approval of an agreement, including, but not limited to, 23 C.F.R. §710.403 and 23 C.F.R. §710.405. The agreement shall be approved by the Commissioner of Highways in order to be effective and, without limitation:~~

~~(A) Specify the terms and conditions for renegotiation of the agreement;~~

~~(B) Set forth the maintenance requirements for each telecommunications facility;~~

~~(C) Be nonexclusive; and~~

~~(D) Be for a term of not more than 30 years;~~

~~(c) Unless specifically provided for in an agreement entered into pursuant to subsection (a) of this section, the division may not grant a property interest in a right-of-way pursuant to this article.~~

~~(d) A telecommunications carrier shall compensate the division for the use of spare conduit or related facilities owned or controlled by the division as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section. The compensation must be, without limitation:~~

~~(1) At fair market value: *Provided*, That because the social, environmental, and economic benefits from such use of state highway rights-of-way is of overwhelming value to the citizens of this state and is in the overall public interest, the division shall establish the fair market value for purposes of this article at \$0 in monetary compensation;~~

~~(2) Competitively neutral;~~

~~(3) Nondiscriminatory;~~

~~(4) Open to public inspection;~~

~~(5) Determined based on the geographic region of this state, taking into account the population and the impact on private right-of-way users in the region; and once determined, set at an amount that encourages the deployment of digital infrastructure within this state; and~~

~~(6) Paid with in-kind compensation.~~

~~(e) The division may consider adjustments for areas the division, in conjunction with the council, determines are underserved or unserved areas of the state and may consider the value to such areas for economic development, enhancing the transportation system, expanding opportunities for digital learning, and telemedicine.~~

~~(f) For the purpose of determining the amount of in-kind compensation a telecommunications carrier must pay the division for the use of spare conduit or excess conduit or related facilities of the division as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section, the division may:~~

~~(1) Conduct an analysis once every five years, in accordance with the rules, policies, or guidelines of the division, to determine the fair market value of a right-of-way to which access has been granted pursuant to this section; and~~

~~(2) Determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities~~

(a) If in-ground construction or installation of a telecommunications facility in right-of-way owned or controlled by the division serves a public purpose and may be accommodated as a utility pursuant to federal and state law, the division will receive applications and issue a permit to the owner of the facility for access to, and occupation of, division's right-of-way consistent with this section and

applicable division policy with respect to requirements and conditions for performing work in division right-of-way.

(b) Upon receipt of a complete application as specified in the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or equivalent policy, as may be currently enforced by the division, that specifies the requirements and conditions for performing work in a right-of-way, the division will, within sixty business days, advise applicant in writing of any deficiencies with the planned project that: (1) adversely affect the safety, design, construction, operation, maintenance or stability of the state road system; (2) interfere with or impair the present use or planned future expansion of any affected highway or bridge; (3) conflict with applicable division policy with respect to requirements and conditions for performing work in division right-of-way; or (4) violate applicable federal or state law. The applicant may correct any deficiencies and resubmit the application, which shall be reviewed by the division and either approved or denied within thirty days of the resubmittal. Any denial of a resubmittal shall be in writing and explain any deficiencies as provided in this subsection. After the division approves a permit application, and notwithstanding any other provision of this code to the contrary, the division shall issue a specific district level construction authorization for the approved project within ten business days unless specific logistical issues reasonably prevent commencement.

(c) Compliance with applicable environmental laws shall at all times be the responsibility of the applicant. If any environmental clearance must be performed by the division before an application is approved, the division will notify the applicant in writing of all necessary requirements for such clearance within fifteen working days of receiving a complete application. Division will also provide a list of all known federal and state entities with whom an applicant may also need to consult and coordinate for environmental clearance purposes.

(d) The division will create and make available for potential applicants an informational notice specific to in-ground telecommunications facility construction and installation that explains routine issues for such projects including a consolidated checklist or flow chart of all state or federal regulatory requirements, including but not limited to permits, agency required reviews, agency required approvals, and agency required forms, that may apply. The division shall annually update such informational notice for accuracy and completeness by coordination with each state or federal agency having required regulatory action in the permitting process legal, regulatory and division requirements and may request the assistance of the Office of Broadband in preparing this informational notice.

(g) (e) The provisions of this article shall not apply to the relocation or modification of existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.

§17-2E-5. Telecommunications carrier initiated construction and joint use.

(a) Upon application for a permit for construction and installation in the division's right-of-way as set forth in §17-2E-3(d) of this code, the applying telecommunications carrier applicant shall notify, by email, the council Office of Broadband and all other telecommunications carriers on record with the council of the application. Other telecommunications carriers have 15 calendar days to notify the applicant of their interest to share the applicant's trench. This requirement extends to all underground construction technologies.

(b) If no competing telecommunications carrier or other utility provides notice of interest to share the applicant's trench within 15 calendar days of notice of the project, the carrier or other utility applying for the permit shall ~~affirm that fact to the division prior to being issued a permit~~ provide written certification in accordance with §17-2E-5(g).

(c) If a competing telecommunications carrier or other utility provides notice of interest to share the applicant's trench, an agreement between the two (or more) telecommunications carriers or other utilities shall be executed by those entities within 30 days of the notice of interest, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. The financial obligations of each carrier shall be based on the proportionate sharing of costs between each carrier for joint trenching or trench sharing based on the amount of conduit or innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division use a trench, it shall also pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way, or the division has otherwise determined, in its sole discretion, that including the division in the apportionment of costs is not warranted. A copy of the executed agreement shall be provided to the division.

(d) Should a dispute arise between the initial applying telecommunications carrier or utility and a competing telecommunications carrier or utility, including a failure to execute an agreement required by subsection (c) of this section, the dispute shall ~~be adjudicated by the Public Service Commission. All disputes brought to the Public Service Commission under this article shall be adjudicated within 45 days addressed in a Public Service Commission informal complaint process and the Public Service Commission shall attempt to resolve the dispute within 45 days. If a dispute is not resolved informally within 45 days, the commission will adjudicate the dispute within 60 days of the date that the informal process concluded without a resolution: Provided, That the Public Service Commission does not have jurisdiction to award damages, and: Provided, however, the Public Service Commission does not have jurisdiction to adjudicate disputes in which the Division of Highways is a party.~~

(e) If two or more telecommunications carriers or utilities are required or authorized to share a single trench, each carrier or utility in the trench must share the cost and benefits of the trench in a fair, reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all underground construction technologies.

~~(f) The commissioner of the division shall promulgate rules governing the relationship between the telecommunications carriers, as hereinafter provided in this article~~

~~(g)~~ The provisions of this section do not apply to the following projects:

- (1) Projects where the total length of the trench is less no more than 1,000 feet in length;
- (2) Projects that use the direct bury of cable or wire facilities;
- (3) Projects that are solely for the service of entities involved in national security matters or where the disclosure or sharing of a trench location would be against federal policy; or
- (4) made available for lease to competing telecommunications carriers on a nondiscriminatory basis at rates established by the rules of the Federal Communications Commission Projects where the telecommunications carrier or utility installs an amount of spare conduit or innerduct equal to what is being installed for its own use and which is shall be given to the Office of Broadband. Such spare conduit or innerduct shall be made available for sale or lease to competing telecommunications carriers on a nondiscriminatory basis at rates apportioned on the basis of the cost of the installation thereof, to other telecommunications providers; and, the revenues derived from such sale, less any

costs associated therewith, shall be remitted to the telecommunications carrier or utility that installed such spare conduit or innerduct established by the rules of the Federal Communications Commission in a manner consistent with all applicable state and federal law and regulations. All carriers installing spare conduit or innerduct shall notify the council and the Office of Broadband of the location and capacity of such spare conduit and innerduct upon completion of the project, and the council shall make such information publicly available for competing telecommunications carriers.

(g) The Office of Broadband is responsible for ensuring compliance with this section and will provide the division and the applicant with certification of compliance at such time as the applicant has met all of the requirements of this section.

§17-2E-6. In-kind compensation.

[Repealed].

§17-2E-7. ~~Multiple carriers in a single trench.~~ Use of telecommunications facilities owned or controlled by Division of Highways.

~~(a) If the Division of Highways enters into an agreement with two or more telecommunications carriers, a consortium or other entity whose members, partners or other participants are two or more telecommunications carriers, or, if the Division requires or allows two or more telecommunications carriers to share a single trench, the agreements entered into pursuant to this article shall require that the telecommunications carriers share the obligation of compensating the Division of Highways on a fair, reasonable and equitable basis, taking into consideration the proportionate uses and benefits to be derived by each telecommunications carrier from the trench, conduits, and other telecommunications facilities installed under the agreements.~~

~~(b) The provisions of §17-2E-7(a) of this code do not prevent the Division of Highways from requiring every participating telecommunications carrier to bear joint and several liability for the obligations owed to the Division of Highways under the agreements.~~

~~(c) Any agreement requiring two or more telecommunications carriers to share the obligation of compensating the Division of Highways shall provide the Division the right to review and audit the records and contracts of and among the participating carriers to ensure compliance with §17-2E-7(a) of this code~~

The division may enter into an agreement and issue a permit consistent with the requirements of §17-2E-3 of this code to allow any carrier to use excess telecommunications facilities owned or controlled by the division: *Provided*, That this section shall be subject to the provisions of the Vertical Real Estate Management and Availability Act and no excess telecommunications facilities owned or controlled by the division subject to §31G-5-1 *et seq.* of this code shall be governed by the provisions of this section.

§17-2E-8. ~~Existing policies.~~ Disposal of in-kind compensation; excess telecommunications facilities.

~~(a) The requirements set forth in this article do not alter existing rules, policies, and procedures relating to other utility facilities within a right-of-way or for accommodating utility facilities or other facilities under the control of the Division of Highways.~~

~~(b) The Division of Highways may consider the financial and technical qualifications of a telecommunications carrier when determining specific insurance requirements for contractors~~

~~authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair telecommunications facilities with longitudinal access or wireless access to the right-of-way.~~

~~(c) If the Division of Highways authorizes longitudinal access, wireless access, or the use of, and access to, conduit or related facilities of the Division for construction and installation of a telecommunications facility, the Division may require an approved telecommunications carrier to install the telecommunications facility in the same general location as similar facilities already in place, coordinate their planning and work with other contractors performing work in the same geographic area, install in a joint trench when two or more telecommunications carriers are performing installations at the same time and equitably share costs between such carriers.~~

~~(d) The placement, installation, maintenance, repair, use, operation, replacement, and removal of telecommunications facilities with longitudinal access or wireless access to a right-of-way or that use or access conduit or related facilities of the Division shall be accommodated only when in compliance with this code and Division of Highways rules, policies and guidelines.~~

~~(e) Access to a right of way must be administered in compliance with the Telecommunications Act of 1996, 47 U.S.C. §151, et seq., as amended~~

Upon written approval of the Governor, the division may transfer or assign the ownership, control, or any rights related to any excess telecommunications facilities owned or controlled by the division to any other state agency.

§17-2E-9. Rule-making authority.

~~The Commissioner of the Division of Highways may promulgate rules pursuant to the provisions of §29A-3-15 of this code as may be necessary to carry out the purpose of this article, and as may have been specifically delineated within this article~~

The commissioner of the division may promulgate rules pursuant to the provisions of §29A-3-1 et seq. of this code as may be necessary to carry out the purpose of this article.

CHAPTER 24D. CABLE TELEVISION AND BROADBAND TELECOMMUNICATIONS.

ARTICLE 1. CABLE TELEVISION AND BROADBAND TELECOMMUNICATIONS SYSTEMS ACT.

§24D-1-1. Legislative findings.

The Legislature finds that television and broadband telecommunications ~~is~~ are an important source of information and entertainment affecting the welfare and economy of the state, and that cable television services and broadband internet have become widespread, often providing the only access to quality television signals in many areas of the state. The Legislature finds that it is in the public interest to establish uniform standards within the State of West Virginia for the issuance, renewal and transfer of cable television franchises; to establish uniform standards for the provision of cable and broadband internet service; to establish uniform procedures for the investigation and resolution of complaints concerning cable service; and to establish just, reasonable and nondiscriminatory rates and charges for the provision of cable and broadband internet service to the extent that the service is not subject to effective competition. The purpose of the article is to promote such goals by all available means not in conflict with federal law, rules or regulations

§24D-1-2. Definitions.

As used in this chapter:

(1) 'Applicant' means a person who initiates an application or proposal.

(2) 'Application' means an unsolicited filing for a cable franchise.

(3) 'Basic cable service' means any service tier which includes the retransmission of local television broadcast signals.

(4) 'Broadband' or 'broadband service' means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection, that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as voice-over Internet protocol and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the council will publish the revised data rates in the State Register within 60 days of the federal update.

(5) 'Broadband operator' means any person or group of persons: (A) Who provides broadband service and directly or through one or more affiliates owns a significant interest in the broadband system; or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of a broadband system.

(4) (6) 'Cable franchise' or 'franchise' means a nonexclusive initial authorization or renewal thereof issued pursuant to this chapter, whether the authorization is designated as a franchise, permit, order, contract, agreement or otherwise, which authorizes the construction or operation of a cable system.

(5) (7) 'Cable operator' means any person or group of persons: (A) Who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in the cable system; or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

(6) (8) 'Cable service' means: (A) The one-way transmission to subscribers of video programming or other programming service; and (B) subscriber interaction, if any, which is required for the selection of video programming or other programming service.

(7) (9) 'Cable system' means any facility within this state consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but does not include: (A) A facility that serves only to retransmit the television signals of one or more television broadcast stations; (B) a facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control or management, unless that facility or facilities uses any public right-of-way; or (C) a facility of a public utility subject, in whole or in part, to the provisions of chapter twenty-four of this code, except to the extent that those facilities provide video programming directly to subscribers.

(8) (10) 'Commission' or 'Public Service Commission' means the Public Service Commission of West Virginia.

(9) (11) 'County commission' means the commissioners composing the county commission in pursuance of section nine, article IX of the Constitution of this state within whose jurisdiction there

exists a cable or broadband system or where such cable or broadband system is hereafter constructed, operated, acquired or extended.

~~(10)~~ ~~(12)~~ 'Facility' includes all real property, antennas, poles, supporting structures, wires, cables, conduits, amplifiers, instruments, appliances, fixtures and other personal property used by a cable or broadband operator in providing service to its subscribers.

~~(11)~~ ~~(13)~~ 'Franchising authority' means a municipality, a county commission or the Public Service Commission empowered by federal, state or local law to grant a cable or broadband franchise.

~~(12)~~ ~~(14)~~ 'Institution of higher education' means an academic college or university accredited by the north central association of colleges and schools.

~~(13)~~ ~~(15)~~ 'Municipality' means any municipal corporation duly chartered in the State of West Virginia within whose jurisdiction there exists a cable or broadband system or where such cable or broadband system is hereafter constructed, operated, acquired or extended.

~~(14)~~ ~~(16)~~ 'Other programming service' means information that a cable or broadband operator makes available to all subscribers generally.

~~(15)~~ ~~(17)~~ 'Person' means an individual, partnership, association, joint stock company, trust, corporation or governmental agency.

~~(16)~~ ~~(18)~~ 'Proposal' means a filing solicited by the franchising authority for a cable or broadband franchise.

~~(17)~~ ~~(19)~~ 'Public, educational or governmental access facilities' means: (A) Channel capacity designated for public, educational or governmental uses; and (B) facilities and equipment for the use of that channel capacity.

~~(18)~~ ~~(20)~~ 'Public place' includes any property, building, structure or water to which the public has a right of access and use.

~~(19)~~ ~~(21)~~ 'School' means an academic and noncollege type regular or special education institution of learning established and maintained by the Department of Education and the arts or licensed and supervised by that department.

~~(20)~~ ~~(22)~~ 'Service area' means that geographic area for which a cable or broadband operator has been issued a cable or broadband franchise.

~~(21)~~ ~~(23)~~ 'Video programming' means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

§24D-1-9. Cable or broadband system installation, construction, operation, removal, general provisions.

(a) A cable franchise or broadband operator shall be construed to authorize the construction or operation of a cable or broadband system: (i) Over public rights-of-way; and (ii) through easements, which are within the area to be served by the cable or broadband system and which have been dedicated for compatible uses.

(b) The technical specifications, general routes of the distribution system and the schedule for construction of the cable system are subject to the approval of the franchising authority.

(c) In installing, operating and maintaining facilities, the cable or broadband operator shall avoid all unnecessary damage and injury to any trees, structures and improvements in and along the routes ~~authorized by the franchising authority~~ utilized for the system.

(d) The cable or broadband operator shall indemnify and hold the state, county and municipality harmless at all times from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation or maintenance of its cable or broadband system, notwithstanding any negligence on the part of the state, county and/or municipality, their employees or agents. Upon receipt of notice in writing from the state, county and/or municipality, the cable or broadband operator shall, at its own expense, defend any action or proceeding against the state, county and/or municipality in which it is claimed that personal injury or property damage was caused by activities of the cable or broadband operator in the installation, operation or maintenance of its cable or broadband system.

(e) The cable operator shall provide a cable drop and basic cable service at no cost to any school or institution of higher education within its service area if service is actually being delivered within a ~~reasonable distance~~ 1000 feet from the school or institution of higher education which may request service.

(f) The cable operator shall be required to designate at least 10 percent but not more than three of all of its channels for public, educational or governmental use.

(g) Upon termination of the period of the cable permit or of any renewal thereof, by passage of time or otherwise, the cable operator shall remove its facilities from the highways and other public places in, on, over, under or along which they are installed if so ordered by the franchising authority and shall restore the areas to their original or other acceptable condition or otherwise dispose of its facilities. If removal is not completed within six months of the termination, any property not removed shall be deemed to have been abandoned and the cable operator shall be liable for the cost of its removal.

(h) The use of public highways and other public places shall be subject to

(1) All applicable state statutes, municipal ordinances and all applicable rules and orders of the commission governing the construction, maintenance, and removal of overhead and underground facilities of public utilities.

(2) For county highways, all applicable rules adopted by the governing body of the county in which the county highways are situated; and

(3) For state or federal-aid highways, all public welfare rules adopted by the secretary of the Department of Transportation.

(4) For use of any railroad right-of-way, or, in the crossing of the trackway of any railroad, nothing in this article shall be construed to provide any greater or any lesser compliance with any safety policy or procedure established by the railroad dealing with use of such right of way or the crossing of a trackway and which is applicable to any other similarly situated utility, whether utilizing aerial or buried lines.

(i) In the use of easements dedicated for compatible uses, the cable or broadband operator shall ensure:

(1) That the safety, functioning and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for a cable or broadband system;

(2) That the cost of the installation, construction, operation or removal of facilities is borne by the cable or broadband operator or subscribers, or a combination of both; and

(3) That the owner of the property is justly compensated by the cable or broadband operator for any damages caused by the installation, construction, operation or removal of facilities by the cable or broadband operator.

(4) An 'easement dedicated for compatible uses' is a public or private easement for electric, gas, telephone, or other utility transmission.

§24D-1-15. Procedures for restoring interrupted service and improving substandard service.

(a) Each cable or broadband operator, for the purpose of restoring interrupted service and improving substandard service, shall be able to receive calls twenty-four hours a day, seven days a week, and shall have one or more qualified persons as may be necessary to repair the cable or broadband system, facilities and equipment owned by the cable or broadband operator and located on a subscriber's premises, including, but not limited to, cable or broadband receiving equipment and directly associated equipment.

(b) Each cable or broadband operator shall restore interrupted service not later than 24 hours after being notified by a subscriber that service has been interrupted, unless:

(1) Service cannot be restored until another company repairs facilities owned by such company and leased to, or required for the operation of, the cable service;

(2) The interruption was caused by an act of nature; or

(3) The cable operator is unable to restore service within 24 hours due to extenuating circumstances. In the event of such extenuating circumstances, the cable or broadband company shall restore service as soon as feasible. ~~and~~ A cable operator shall then submit a written notice to the commission indicating that service has been restored and explaining the nature of the extenuating circumstances.

§24D-1-16. Credit or refund for interrupted service.

(a) If cable or broadband service to a subscriber is interrupted for more than 24 continuous hours, such subscriber shall, upon request, receive a credit or refund from the cable or broadband operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber. Electric utilities that lease fiber to broadband providers shall not be required to provide refunds to broadband providers who lease the fiber for service outages.

(b) The commission may promulgate rules establishing a viewing time reliability standard for cable operators and requiring such companies to file with the commission information on service interruptions not caused by subscribers.

§24D-1-21. Rights of individuals.

(a) A cable television or broadband system operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of other speech protected by the 1st Amendment to the United States Constitution, or country of natural origin.

(b) A cable or broadband system operator shall provide subscribers 30 days advance written notice of any changes to rates or charges, including the expiration of any promotion or special pricing that would result in an increase in the subscribers billing or cost of service.

(c) A cable or broadband system operator shall inform subscribers and provide written notice to subscribers that disputes regarding interrupted or substandard service or billing issues, which are unresolved to satisfaction of the subscriber, can be filed as a complaint with the consumer protection division of the WV Attorney General's Office.

§24D-1-26. Cable television and broadband industry industries not regulated as a utility.

No provision of this article may be construed to grant the commission the power to regulate the cable television industry or the broadband industry as a utility.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-2. Definitions.

For the purposes of this article:

(1) 'Applicable codes' means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including, but not limited to, the National Electrical Safety Code, or any local amendments to those codes: *Provided*, That notwithstanding any other provisions of these applicable codes, the Code of West Virginia and/or the West Virginia Code of State Rules, variances for the installation and maintenance of broadband service infrastructure on utility poles, if these are agreed upon between infrastructure owners, shall be allowed.

(4) (2) 'Broadband' or 'broadband service' means any service providing advanced telecommunications capability with the same downstream data rate and upstream data rate as is specified by the Federal Communications Commission and that does not require the end-user to dial up a connection, that has the capacity to always be on, and for which the transmission speeds are based on regular available bandwidth rates, not sporadic or burstable rates, with latency suitable for real-time applications and services such as voice-over Internet protocol and video conferencing, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas: *Provided*, That as the Federal Communications Commission updates the downstream data rate and the upstream data rate the council will publish the revised data rates in the State Register within 60 days of the federal update.

(2) (3) 'Council' means the Broadband Enhancement Council.

(3) (4) 'Digital Equality of Opportunity' means a condition in which all individuals and communities have the information technology capacity needed for full participation in our society, democracy and economy.

(5) 'Downstream data rate' means the transmission speed from the service provider source to the end-user.

(4) (6) 'Internet protocol address' or 'IP address' means a unique string of numbers separated by periods that identifies each computer using the internet protocol to communicate over a network.

(5) (7) 'Upstream data rate' means the transmission speed from the end-user to the service provider source.

(6) (8) 'Unserved area' means ~~a community that has no access to broadband~~ an area lacking broadband internet service from at least one broadband internet service provider offering all of the following in at least one service plan to residential consumers:

(A) an actual downstream data rate of 25 megabits per second; and

(B) an actual upstream data rate of three megabits per second; and

(C) unlimited data usage without overage charges; and

(D) unlimited data usage without 'throttling' or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

(9) 'Underserved' means an area lacking broadband internet service from at least two broadband internet service providers offering all of the following in at least one service plan to residential consumers:

(A) an actual downstream data rate of 100 megabits per second; and

(B) an actual upstream data rate of 50 megabits per second; and

(C) unlimited data usage without overage charges; and

(D) unlimited data usage without 'throttling' or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

§31G-1-4. Powers and duties of the council generally.

(a) The council shall

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

(3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training; and

(4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; ~~and~~

(5) Cooperate and assist in the expansion of electronic instruction and distance education services; and

(6) explore ways to achieve digital equality of opportunity throughout the state.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted, ~~has and may exercise the following powers authority necessary or appropriate to carry out and effectuate the purpose and intent of this article, as enumerated herein to: The council shall have the power and capacity to~~

~~(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project~~

~~(2) (1) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;~~

~~(3) (2) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages, encourage one-stop government access and that all public entities stream audio and video of all public meetings;~~

~~(4) (3) Make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to perform the duties of the council assist in the mapping of the state and categorization of areas within the state;~~

~~(5) (4) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article; and to~~

~~(4) (5) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties.~~

~~(7) to oversee the use of conduit installed pursuant to section two of article three of this chapter; and to~~

~~(8) Perform any and all other activities in furtherance of its purpose~~

(c) The council shall ~~exercise its powers and authority to~~ advise and make recommendations to the Legislature Office of Broadband and shall coordinate with that Office on bringing broadband service to unserved and underserved areas, as well as to propose statutory changes that may enhance and expand broadband in the state.

(d) The council shall report to the Secretary of Commerce ~~Joint Committee on Government and Finance~~ on or before January ~~December~~ 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article, and shall be a public document. The council shall also make any other reports as may be required by the Legislature or the Governor.

§31G-1-6. Mapping of areas within state.

[Repealed]

§31G-1-9. Collection of data.

[Repealed]

§31G-1-12. Grants.

[Repealed]

ARTICLE 1A. OFFICE OF BROADBAND.**§31G-1A-1. Office of Broadband; Director of Office; qualifications for Director.**

(a) There shall be created an Office of Broadband which shall be organized within the Economic Development Office under the authority of the Secretary of Commerce. The Office of Broadband shall be given a dedicated annual appropriation within the state budget.

(b) The Director of the Office of Broadband shall have a minimum of a baccalaureate degree in a relevant field of finance, economics, or technology, and shall have a minimum of 10 years of experience in the broadband industry.

§31G-1A-2. Powers and duties of the Office of Broadband generally.

(a) The Office of Broadband shall:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile, and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

(3) Cooperate and assist in the expansion of electronic instruction and distance education services;

(4) Gather and report data regarding the adoption by broadband services, by speed, and by community, separately for residential and non-residential consumers;

(5) Gather and report data regarding prices charged for broadband services to residential and non-residential consumers (including, but not limited to one-time fees, monthly fees, termination fees, equipment fees, and other fees); and

(6) Incorporate the goal of digital equity in its fulfillment of responsibilities.

(b) In addition to the powers set forth elsewhere in this article, the Office of Broadband is hereby granted, has and may exercise the powers necessary or appropriate to carry out and effectuate the purpose and intent of this article, as enumerated herein. The Office of Broadband shall have the power and capacity to:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile, and wireless applications;

(2) Make and execute contracts, commitments, and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state and categorization of areas within the state;

(3) Acquire by gift or purchase, hold or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article;

(4) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization to carry out its statutory duties;

(5) To oversee the use of conduit installed pursuant to §31G-3-2 of this code; and to

(6) Perform any and all other activities in furtherance of its purpose.

(c) The Office of Broadband shall exercise its powers and authority to advise and make recommendations to the Legislature on bringing broadband service to unserved and underserved areas, as well as to propose statutory changes that may enhance and expand broadband in the state.

(d) The Office of Broadband shall report to the Joint Committee on Government and Finance of the West Virginia Legislature on or before January 1 of each year. The report shall include the action that was taken by the Office of Broadband during the previous year in carrying out the provisions of this article. The Office of Broadband shall also make any other reports as may be required by the Legislature or the Governor.

§31G-1A-3. Mapping of areas within state.

(a) Based on its analysis of data, broadband demand, and other relevant information, the Office of Broadband shall establish a mapping of broadband services in the state. The council shall publish an annual assessment and map of the status of broadband, including specific designations of unserved areas of the state. With respect to unserved areas of the state, the Office of Broadband shall, to the extent it is able, map project areas with funding provided by public entities.

(b) To the extent possible, and subject to limitations contained in subsection (f) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting estimated or actual downstream data rate and upstream data rate in a particular region, area, community, street or location. Any such mapping may only specify data rates at a particular street address or physical location, and shall not make public the IP address or the name of the specific individual at such location. This map shall be known as the West Virginia Broadband Availability Map.

(c) To the extent possible, and subject to limitations contained in subsection (f) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting the adoption of broadband services, separately by estimated or actual downstream data rate and upstream data rates, in a particular region, area, community, street or location. Any such mapping shall provide data separately for residential connections and non-residential connections. This map shall be known as the West Virginia Broadband Adoption Map.

(d) The mapping provided for in this section may be based on information collected or received by the Broadband Council and Office of Broadband, including, but not limited to, data collected from:

(1) State and federal agencies or entities that collect data on broadband services;

(2) Industry provided information;

(3) Consumer data provided to the Broadband Council or Office of Broadband pursuant to §31G-1A-6 and §31G-1A-9 of this code; and

(4) Other data sources procured by or provided to the Office of Broadband or the Broadband Council.

(e) Any entity that has received or hereinafter receives state or federal moneys, and which has used those moneys to install infrastructure used for broadband services, shall furnish detailed information concerning the location, type, and extent of such infrastructure to the Office of Broadband for use in mapping and shall furnish the location, type, and prices of any broadband services

subscribed to by residential (and separately non-residential) consumers as a result of the installed infrastructure.

(f) The mapping and designations provided for under this section may be revised on a continuing basis by the council as warranted by the data and information provided.

(g) In addition to the provisions of §31G-1A-13 of this code, the mapping of broadband services may exclude from public accessibility and availability:

(1) The location or identity of any critical infrastructure used by public or private entities in furtherance of their internet services;

(2) Personal name and personal IP addresses connected with particular data rates; and

(3) Information designated as confidential for public security reasons by either state or federal homeland security agencies: *Provided*, That it shall be duty of the public and private entities to make the Office of Broadband aware of such confidential designation: *Provided, however*, That unless the Office of Broadband determines good cause exists, the actual or estimated upstream and downstream data rates of an area or region of the state shall not be excluded from public or private availability.

(h) All executive agencies which have permitting and/or regulatory approval authority over any project permitted or reviewed and approved pursuant to §17-2E-3(d) of this code shall cooperate with and provide all necessary information to the Office of Broadband to determine the feasibility and federal allowability of creating Advanced Regulatory Environment Analysis (AREA) maps. AREA maps will pre-survey likely routes for middle-mile infrastructure so all relevant information can be included in a centralized GIS mapping system to be maintained by the Office of Broadband for utilization by the private sector when extending new fiber infrastructure pursuant to Chapter 17, Article 2E of this code. AREA mapping shall also include, but is not limited to, any areas already granted Finding of No Significant Impact ('FONSI'), categorical exclusions ('CATEX'), areas prior approved by the West Virginia State Historic Preservation Office ('SHPO'), and all West Virginia Division of Highways mapping for permits that include installation of infrastructure. The Office of Broadband shall report to the legislature's interim Joint Committee on Technology within 180 days following the amendment and reenactment of this article during the Regular Session of the Legislature in 2021, and shall regularly report on AREA mapping to the legislature's interim Joint Committee on Technology annually during the November interim session of following years.

(i) (1) If in analyzing the consumer-supplied speed data for an area of 2 square miles or more, the Office of Broadband finds that speeds supplied by a provider are less than 80% of the lowest speed tier advertised by the provider in more than 40% of the tests in that area in a calendar year, then the Office of Broadband shall notify the Consumer Protection Division of the Attorney General's Office; and shall transmit such records of any relevant speed tests in their custody to the Consumer Protection Division of the Attorney General's Office.

(2) A customer experiencing such a status as described above will be due a proportional service credit.

(3) There shall be a rebuttable presumption that such customer is entitled to such credit: *Provided*, That such presumption is rebuttable with speed tests supplied by the provider demonstrating performance.

§31G-1A-4. Retention of outside expert consultant.

(a) (1) In order to assist the Office of Broadband with the highly technical task of categorizing the areas of the state, the Office of Broadband may retain outside expert consultants to assist in the purposes of this article. The experts may assist the Office of Broadband to map the state on the basis of broadband availability, to evaluate and categorize data, to assist in public outreach and education in order to stimulate demand and to provide other support and assistance as necessary to accomplish the purposes of this article. To the extent necessary to carry out the provisions of this article, any expert consultants retained by the Broadband Council shall also be made available to the Office of Broadband whether through the direction of the Broadband Council or transfer of existing agreements to the Office of Broadband. All work products, reports, and correspondence between the Broadband Council and any expert consultants shall be provided to the Office of Broadband.

(2) To the extent funds are made available for such a purpose and where necessary to carry out the provisions of this article, any expert consultants retained by the Office of Broadband shall also be made available to the Broadband Council in furtherance of its mission.

(b) The retention and contracting of all expert consultants shall be transparent, including specifically, making publicly available any contracts, retention agreements, payments and invoicing for services.

§31G-1A-5. Public awareness and education.

In order to implement and carry out the intent of this article, the Office of Broadband may take such actions as it deems necessary or advisable in order to increase awareness of issues concerning broadband services and to educate and inform the public.

§31G-1A-6. Collection of data.

(a) In order to ascertain, categorize, analyze, map, and update the status of broadband in the state, as well as to enable the Office of Broadband to make informed policy and legislative recommendations, the Office of Broadband may establish a voluntary data collection program. The program may include voluntarily submitted data from internet service providers, including any home or region data rate meters utilized by the provider. The program may also utilize and collect voluntarily submitted data rate information submitted by any person reflecting the person's personal data rate at a particular IP address. This personal data rate may be based upon a web-based test or analysis program.

(b) Any and all data collected by the Office of Broadband shall not be deemed public information and is not subject to public release or availability pursuant to §29B-1-1 *et seq.* of this code.

(c) Any data collection program established by the Office of Broadband shall:

(1) Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person's physical address;

(2) Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and

(3) Not include any person's personal web history or search information, or otherwise publicly identify the person's name in connection with an IP address or physical address.

(d) The Office of Broadband may establish guidelines and additional rules governing a data collection program through the legislative rulemaking process, pursuant to the provisions of §29A-3-1 *et seq.*

§31G-1A-7. Voluntary donation and easement programs.

(a) The Office of Broadband shall create guidelines for, and recommend to the Legislature a means of implementing a voluntary donation program to allow for pipeline, railroad, and other similar structures and rights-of-way in the state to be donated to the state for use by public or private entities to facilitate broadband service and availability through placement of fiber.

(b) The Office of Broadband shall create guidelines for, and recommend to the Legislature a means of implementing a program to allow for an easement program to be established to allow public or private entities to facilitate broadband service and availability through placement of fiber.

§31G-1A-8. Grants.

In furtherance of the purposes of this article, the Office of Broadband is permitted to seek non-state funding and grants. The Office of Broadband may utilize funding and grants to support the responsibilities, initiatives, and projects set forth in this article. The Office of Broadband may additionally disburse such moneys to fund projects and initiatives in furtherance of the enhancement and expansion of broadband services in this state, and the other purposes of this article.

§31G-1A-9. Protection of proprietary business information.

(a) Broadband deployment information provided to the Office of Broadband or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of §29B-1-1 *et seq.* of this code: *Provided*, That the information is identified as confidential information when submitted to the Office of Broadband.

(b) Trade secrets or proprietary business information obtained by the council or the Office of Broadband from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual or agency other than officials or authorized persons of the state. Any person who makes any unauthorized disclosure of such confidential information or data is guilty of a misdemeanor and, upon conviction thereof, may be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the Office of Broadband is the Secretary of Commerce, who is authorized to establish and administer appropriate security measures. The Office of Broadband shall designate two additional persons to share the responsibility of securing trade secrets or proprietary information. No person will be allowed access to trade secrets or proprietary information without written approval of a minimum of two of the three authorized persons specified above.

§31G-1A-10. Legislative rule-making authority.

In order to implement and carry out the intent of this article, the Secretary of the Department of Commerce, at the direction and recommendation of the Office of Broadband, may propose rules for legislative approval, pursuant to the provisions of §29A-3-1 *et seq.* of this code.

ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.**§31G-3-3. Conduit installation or fiber installation by counties, municipalities, and other political subdivisions.**

(a) Notwithstanding any other provision of this code, any county, municipality, or other political subdivision of the State of West Virginia may:

(1) Contract with any entity to make payment necessary for that entity to install conduit, fiber or broadband facilities as defined in §31G-1-2 of this code throughout that political subdivision; or

(2) Acting as a county, municipality, or political subdivision, install such conduit, fiber, or broadband facilities as defined in §31G-1-2 of this code throughout that political subdivision; or

(3) Partner with:

(i) Any nonprofit organization; or

(ii) Cooperative association; or

(iii) Another county, municipality, or political subdivision; or

(iv) With any private corporations, company, or person; or,

(v) With any public-private partnership; or

(vi) Any combination of such entities;

to install such conduit or fiber throughout that county, municipality, or political subdivision; and,

(4) Additionally, any county, municipality, or political subdivision of the State of West Virginia may partner with any of the previously mentioned entities, or any combination of the same, which operate a network operations center, to operate a fiber network: *Provided*, That, such network must be open for access to all carriers and content providers in a manner:

(i) Which is consistent with all applicable state and federal law; and

(ii) Which is neutral and nondiscriminatory, making all services offered available to all carriers and content providers on the same terms.

(b) All work performed must be in accordance with all applicable codes, as defined in §31G-1-2 of this code.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-1. Definitions.

As used in this article, the following terms are defined as follows:

(1) 'Applicable codes' means the same as set forth in §31G-1-2(1) of this code.

~~(4)~~ (2) 'Attacher' means any person, corporation, or other entity, or the agents or contractors of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line or facility of any kind to a utility pole in the right of way or its adjacent ground space.

~~(2)~~ (3) 'Attachment Application' means the application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall include:

(A) Proof of insurance; or

(B) An indemnification agreement prepared by the Pole Owner.

~~(3)~~ (4) 'Make Ready Costs' means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines or equipment of a Pre-Existing Third Party User, undertaken by an Attacher to enable attachment to the utility pole or similar structure. Make-Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment.

(4) (5) 'Pole Owner' means a person, corporation or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

~~(5)~~ (6) 'Pre-Existing Third Party User' means the owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

§31G-4-2. Attachment to third party facilities.

(a) Upon approval of an Attachment Application, an Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment using Pole Owner approved contractors; provided, however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage without first providing 45 days prior written notice to the Pre-Existing Third Party User, in order to permit the Pre-Existing Third Party User to relocate its facilities on its own.

(b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within forty-five days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage, an Attacher may undertake such work.

(c) Within 30 days of the completion of any relocation or alteration, an Attacher shall send notice of the move and as-built reports to the Pre-Existing Third Party User and the owner of all poles or other structures on which such relocations or alterations were made. The as-built reports shall include a unique field label identifier, and an address or coordinates.

(d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or structure owner(s) may conduct an inspection within 14 days at an Attacher's expense. An Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and pole or structure owner for the inspection. If any such relocation or alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User shall, within seven days of the inspection, notify an Attacher of such failure to conform.

(e) In a notice, the Pre-Existing Third Party User may elect to either:

(1) Perform the correction itself and bill the Attacher for the actual, reasonable and documented costs of the correction, or

(2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-inspection corrections performed by the Attacher must be completed within 30 days of such notification.

(f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates, each being deemed an Indemnatee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually and reasonably incurred by an Indemnatee, by reason of any claim by an affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

(g) All work performed must be in accordance with applicable codes as set forth in §31G-1-2(1) of this code: including, but not limited to, the National Electrical Safety Code and other generally accepted safety codes: Provided, That the variances to applicable codes as set forth in §31G-1-2(1) of this code and to private agreements as set forth in §31G-6-1 of this code shall apply to this section.

(h) In the event an ILEC pole owner requires and accepts payment for make-ready work, and fails to perform that work within 45 days, the ILEC pole owner which has been paid and which has failed to perform the work, shall immediately return and refund the moneys paid for that work which was not completed. Failure to return those funds within 14 calendar days shall be cause for a fine, payable to the Public Service Commission, equal to the amount of the payment and a cause of action in circuit court for return of the payment and is subject to treble damages, reasonable attorney's fees, and any applicable court costs. Good-cause and good-faith efforts to have performed the work shall be a defense against the imposition of any fine: Provided, That the provisions of this subsection shall not apply to any make-ready work where a pole replacement is necessary.'

ARTICLE 6. PRE-EMPTION OF CONFLICTING LOCAL ORDINANCES AND PRIVATE RESTRICTIONS; REPORTING REQUIREMENTS FOR WEST VIRGINIA PROJECTS RECEIVING FEDERAL OR STATE FUNDING.

§31G-6-1. Pre-emption in favor of broadband services; construction of language in agreements.

(a) Notwithstanding any other provision of the West Virginia Code and/or the West Virginia Code of State Regulations, any ordinance of any political subdivision relating to broadband service is hereby pre-empted to the extent necessary in favor of such broadband installation.

(b) No corporate, organizational, or institutional policy, agreement, contract, or other like document, including the rules and regulations of any Home Owners Association, or any similar entity or organization, promulgated or effective after the effective date of this legislation, may regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment and the terms of any such document shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.

§31G-6-2. Pre-emption in favor of broadband service in pole attachments; construction of language in pole attachment agreements.

(a) Notwithstanding any other provision of the West Virginia Code and/or the West Virginia Code of State Regulations, any ordinance of any political subdivision regarding pole attachment spacing, positioning, or order by or between any Investor Owned Utility ('IOU') and any Incumbent Local Exchange Carrier ('ILEC') and/or Competitive Local Exchange Carrier ('CLEC') which would seek to

provide broadband service, is hereby pre-empted to the extent necessary in favor of such broadband installation or deployment.

(b) Any corporate policy, individual agreement, organizational policy, contract or like document relating to pole attachment spacing, positioning, or order by or between any Investor Owned Utility ('IOU') and any Incumbent Local Exchange Carrier ('ILEC') and/or Competitive Local Exchange Carrier ('CLEC') shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.

§31G-6-3. Reporting Requirements.

Reporting, under oath, from executives of companies receiving federal or state funding for broadband expansion in the State of West Virginia may be required at the directive of the Senate Committee on Transportation and Infrastructure, the House Committee on Technology and Infrastructure and/or the Joint Interim Committee on Technology.”

On motion of Delegate Linville, the amendment was amended on page 25, section 21, line 9, immediately following the word “A”, by striking out the words “cable or”.

An amendment, offered by Delegate Fleischauer, was reported by the Clerk.

Whereupon,

Delegate Fleischauer obtained unanimous consent to withdraw the amendment.

The Committee on Technology and Infrastructure amendment, as amended, was then adopted.

There being no further amendments, the bill was ordered to engrossment and third reading.

Com. Sub. for H. B. 2024, Expand use of telemedicine to all medical personnel; on second reading, coming up in regular order, was read a second time.

Delegate Rowe moved to amend the bill on page 4, section 26, lines 42 through 44, by striking out current subdivision (1) and replacing it with the following:

“(1) The laws regarding the profession in this state, including jurisdiction of state courts to enforce the state’s laws regulating medical care in the state with service of process on the health care provider provided through the West Virginia Secretary of State, all professional rules and standards of conduct incorporated into the health care practitioner’s practice act, and the legislative rules of the registering board; and”

Delegate J. Pack arose to inquire of the Chair regarding the placement of the amendment.

Whereupon, in the absence of objection, the amendment was reformed as follows:

On page 3, section 26, lines 42 through 44, by striking out current subdivision (1) and replacing it with the following:

“(1) The laws regarding the profession in this state, including jurisdiction of state courts to enforce the state’s laws regulating medical care in the state with service of process on the health care provider provided through the West Virginia Secretary of State, all professional rules and standards of conduct incorporated into the health care practitioner’s practice act, and the legislative rules of the registering board; and”

On the question of adoption of the amendment, the same was put and prevailed.

The bill was then ordered to engrossment and third reading.

Com. Sub. for H. B. 2025, Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner; on second reading, coming up in regular order, was read a second time.

Delegate Steele moved to amend the bill on page five, by striking out the entirety of section 3, including the section heading, from line 1 through 136.

Delegate Martin requested to be excused from voting on Com. Sub. for H. B. 2025 under the provisions of House Rule 49.

The Speaker replied that the Delegate belongs to a class of not greater than five impacted by the bill and excused the Member from voting on the amendment and passage of the bill.

On the question of the amendment, the same was put and adopted.

Having been engrossed, on motion of Delegate Steele and by unanimous consent, the bill was advanced to third reading with the right to amend, and the rule was suspended to permit the offering and consideration of such.

Com. Sub. for H. B. 2093, Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

H. B. 2791, Relating to enrollment and costs of homeschooled or private school students at vocational schools; on second reading, coming up in regular order, was read a second time.

Delegate Walker moved to amend the bill on page 1, section 15g, lines 3 and 4, following the words "public school students", by striking out the colon and inserting in lieu thereof a period.

And,

On line 4, by striking out the words "*Provided*, That if" and inserting in lieu thereof the following:

"The homeschooled or private school student applicant must meet equivalent qualifications required of public school applicants and disclose if he or she in the last year has been subject to any disciplinary or absentee issues in a public or private school. The county shall at least annually notify homeschoolers in the county of the availability of the vocational education classes to homeschooled students. If"

On the question of the adoption of the amendment, the same was put and did not prevail.

There being no further amendments, the bill was ordered to engrossment and third reading.

Leaves of Absence

At the request of Delegate Summers, and by unanimous consent, leave of absence for the day was granted Delegate Westfall.

Miscellaneous Business

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of the following Member in the Appendix to the Journal:

- Delegate Capito regarding H. J. R. 2

Pursuant to House Rule 94b, forms were filed with the Clerk's Office to be added as a cosponsor of the following:

- H. B. 2051:** Delegate Fleischauer;
- H. B. 2141:** Delegate Phillips;
- H. B. 2335:** Delegate Kessinger;
- H. B. 2342:** Delegate Reynolds;
- H. B. 2495:** Delegate L. Pack;
- H. B. 2546:** Delegates Higginbotham, Thompson and Walker;
- H. B. 2667:** Delegates Capito and Criss;
- H. B. 2697:** Delegate Hansen;
- H. B. 2702:** Delegate Higginbotham;
- H. B. 2708:** Delegate Tully;
- H. B. 2709:** Delegates Keaton and L. Pack;
- H. B. 2711:** Delegate Wamsley;
- H. B. 2718:** Delegate Wamsley;
- H. B. 2719:** Delegate Wamsley;
- H. B. 2721:** Delegate Wamsley;
- H. B. 2735:** Delegate Graves;
- H. B. 2736:** Delegate Graves;
- H. B. 2742:** Delegate Wamsley;
- H. B. 2760:** Delegates Queen and Riley;
- H. B. 2764:** Delegates Keaton and L. Pack;
- H. B. 2765:** Delegate Queen;
- H. B. 2796:** Delegate Rohrbach;

H. B. 2798: Delegate Rowan;

H. B. 2831: Delegate J. Pack;

H. B. 2835: Delegate Mazzocchi;

H. B. 2847: Delegate Hamrick;

H. C. R. 9: Delegate McGeehan;

And,

H. R. 7: Delegates Dean and McGeehan.

At 1:07 p.m., the House of Delegates adjourned until 11:00 a.m., Wednesday, March 3, 2021.

**HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470**

SPECIAL CALENDAR

Wednesday, March 3, 2021

22nd Day

11:00 A. M.

THIRD READING

- Com. Sub. for H. B. 2002 - Relating to Broadband (J. PACK) (REGULAR)
- Com. Sub. for H. B. 2024 - Expand use of telemedicine to all medical personnel (J. PACK) (REGULAR)
- Com. Sub. for H. B. 2025 - Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner (STEELE) (REGULAR) [RIGHT TO AMEND]
- Com. Sub. for H. B. 2093 - Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes (J. PACK) (REGULAR)
- H. B. 2791 - Relating to enrollment and costs of homeschooled or private school students at vocational schools (ELLINGTON) (REGULAR)

SECOND READING

- Com. Sub. for H. B. 2013 - Relating to the Hope Scholarship Program (HOUSEHOLDER) (REGULAR) [FINANCE COMMITTEE AMENDMENT PENDING]

FIRST READING

- Com. Sub. for S. B. 270 - Providing for collection of tax by hotel marketplace facilitators (STEELE) (REGULAR)

- S. B. 358 - Removing prohibition on ATMs located in area where racetrack video lottery machines are located (REGULAR)
- Com. Sub. for H. B. 2257 - Relating to extended supervision for certain drug offenders (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2507 - Remove the limitations on advertising and promotional activities by limited video lottery retailers (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2621 - Mandating certification for certain members of fire departments, require certain types of training, allow specialized personnel who are not firefighters to be members of a department, and require the postings of fire department evaluations (STEELE) (REGULAR)
- Com. Sub. for H. B. 2675 - Relating to costs and interest in eminent domain condemnation proceedings (CAPITO) (REGULAR)
- H. B. 2741 - Relating to expansion of the alcohol test and lock program to offenders with a drug related offense (CAPITO) (REGULAR)

HOUSE CALENDAR

Wednesday, March 3, 2021

22nd Day

11:00 A. M.

SECOND READING

- Com. Sub. for S. B. 272 - Relating to WV Employment Law Worker Classification Act
- Com. Sub. for S. B. 277 - Creating COVID-19 Jobs Protection Act (CAPITO) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2004 - Permit a licensed health care professional from another state to practice in this state through telehealth when registered with the appropriate West Virginia board (J. PACK) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2015 - Requiring rules of local boards of health to be approved by the county commission except in cases of a public health emergency (J. PACK) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2363 - Relating to "Best Interests of the Child Protection Act of 2021" (CAPITO) (REGULAR)
- H. B. 2536 - Relating to expressions of legislative intent regarding equivalent instruction time (ELLINGTON) (REGULAR)
- Com. Sub. for H. B. 2628 - Relating to the removal of the prohibition on having ATMs in the area where racetrack video lottery machines are located (CAPITO) (REGULAR)

FIRST READING

- H. B. 2582 - Relating to creating a third set of conditions for the professional teaching certificate (ELLINGTON) (REGULAR)
- H. B. 2590 - Relating to the West Virginia Employment Law Worker Classification Act (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2620 - Relating to a departmental study of the child protective services and foster care workforce (J. PACK) (REGULAR)

**WEST VIRGINIA
HOUSE OF DELEGATES**

WEDNESDAY, MARCH 3, 2021

HOUSE CONVENES AT 11:00 A.M.

**AGRICULTURE AND NATURAL RESOURCES
8:00 A.M. – ROOM 215 E**

**BANKING AND INSURANCE
9:00 A.M. – HOUSE CHAMBER**

**FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES
9:00 A.M. – ROOM 215 E**

**PENSIONS AND RETIREMENT
10:00 A.M. – ROOM 462 M**

**SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT
10:00 A.M. – ROOM 215 E**

**COMMITTEE ON RULES
10:45 A.M. – ROOM 418 M**

**SENIOR, CHILDREN AND FAMILY ISSUES
1:00 P.M. – ROOM 215 E**

**POLITICAL SUBDIVISIONS
2:00 P.M. – HOUSE CHAMBER**

**PREVENTION AND TREATMENT OF SUBSTANCE ABUSE
2:00 P.M. – ROOM 215 E**

**TECHNOLOGY AND INFRASTRUCTURE
3:00 P.M. – HOUSE CHAMBER**

**VETERANS' AFFAIRS AND HOMELAND SECURITY
3:00 P.M. – ROOM 215 E**

**REMARKS BY MEMBERS
5:00 P.M. – HOUSE CHAMBER**

THURSDAY, MARCH 4, 2021

**PUBLIC HEARING
COMMITTEE ON THE JUDICIARY
8:00 A.M. – ROOM 215 E**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470