

WEST VIRGINIA LEGISLATURE
SENATE JOURNAL
EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2015
FORTY-EIGHTH DAY

Charleston, W. Va., Monday, March 2, 2015

The Senate met at 11 a.m.

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

Prayer was offered by Dr. Mervin Smith, District Superintendent of the West Virginia South District Church of the Nazarene, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Mike Hall, a senator from the fourth district.

Annabelle Vance and Janie Lester of Mathias, West Virginia, proceeded in the singing of "Home to West Virginia".

Pending the reading of the Journal of Sunday, March 1, 2015,

On motion of Senator Snyder, the Journal was approved and the further reading thereof dispensed with.

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

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill No. 357, Creating Coal Jobs and Safety Act of 2015.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On pages sixty-nine through seventy-three, section six, by striking out all of section six and inserting in lieu thereof a new section, designated section six, to read as follows:

§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; premovement requirements; certified and qualified persons.

Mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel. When equipment is being transported or trammed where trolley wire is energized on the split of air in which said equipment is being transported or trammed, no person shall be permitted to be in by the equipment in the ventilating split that is passing over such equipment, except those directly involved with transporting or tramping the equipment, and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.;

On page seventy-four, section twenty-eight, line nine, after the word “cameras” by inserting the words “if permitted by the director”;

On page seventy-four, section twenty-eight, lines eleven through thirteen, by striking out the following: The use of sideboards on shuttle cars on which cameras are installed shall not be prohibited by rule.;

And,

On page eighty-two, section thirty-seven, line one hundred fifty-nine, after the word “cameras” by striking out the remainder of the subsection and inserting in lieu thereof the words “if permitted by the director.

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

Eng. Com. Sub. for Senate Bill No. 357--A Bill to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-13 and §22-3-19 of said code; to amend and reenact §22-11-6 and §22-11-8 of said code; to amend said code by adding thereto a new section, designated §22-11-22a; to amend said code by adding thereto a new section, designated §22A-1-41; to amend and reenact §22A-1A-1 of said code; to amend and reenact §22A-2-6, §22A-2-28 and §22A-2-37 of said code; to amend and reenact §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603 and §22A-2A-604 of said code; and to amend said code by adding thereto a new section, designated §22A-2A-204a, all relating to coal mining generally; providing that discharges from waste piles do not exceed applicable water quality standards; promulgating rules regarding procedures for requesting and obtaining inactive status and rules relating to requirements for contemporaneous reclamation under West Virginia Surface Coal Mining and Reclamation Act; abolishing West Virginia Diesel Equipment Commission; transferring duties and responsibilities of West Virginia Diesel Equipment Commission to Director of the Office of Miners’ Health, Safety and Training; defining terms; providing rule-making authority; providing that rules previously approved by Diesel Equipment Commission continue in full force and effect; requiring rules for statewide hardness-based

aluminum water quality criteria for protection of aquatic life; prohibiting wholesale incorporation of water quality standards into permits; modifying the scope of the permit shield as it relates to compliance with water quality standards; establishing an administrative and civil enforcement process for coal mining-related permits that conforms with corresponding federal requirements; making legislative findings; requiring suspension or revocation of a certificate held by a certified person under certain circumstances; disallowing prescription as a defense if prescription is more than one year old; setting forth requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; increasing distance from the nearest working face where transportation of certain personnel in certain instances is done exclusively by rail; requiring certain equipment be readily available in certain circumstances; increasing distance of track to be maintained when a section is fully developed and being prepared for retreating; establishing criteria for the use of sideboards on shuttle cars; changing distance of shelter holes along haulage entries; and setting requirements for riders on locomotives.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill No. 357, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)--24.

The nays were: Beach, Facemire, Kessler, Laird, Miller, Prezioso, Romano, Snyder,

Unger and Yost--10.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 357) passed with its Senate amended title.

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

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 2nd day of March, 2015, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

(Com. Sub. for H. B. No. 2002), Predicating actions for damages upon principles of comparative fault.

(Com. Sub. for H. B. No. 2010), Requiring the elections of justices of the West Virginia Supreme Court of Appeals, circuit court judges, family court judges and magistrates be nonpartisan and by division.

(Com. Sub. for H. B. No. 2025), Prohibiting certain sex offenders from loitering within one thousand feet of a school or child care facility.

(H. B. No. 2212), Changing the amount of severance tax revenue annually dedicated to the West Virginia Infrastructure General Obligation Debt Service Fund.

(Com. Sub. for H. B. No. 2234), Requiring a court to permit a party in a divorce

proceeding to resume using the name he or she used prior to the marriage.

(Com. Sub. for H. B. No. 2568), The Pain-Capable Unborn Child Protection Act.

And,

(H. B. No. 2669), Relating to compulsory tuberculosis testing.

Respectfully submitted,

Mark R. Maynard,

Chair, Senate Committee.

John B. McCuskey,

Chair, House Committee.

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

Your Committee on the Judiciary has had under consideration

Senate Bill No. 320, Standardizing notification process for revocation of certificates of authority.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 320 (originating in the Committee on the Judiciary)--A Bill to amend and reenact §31B-10-1006 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-9-53a of said code, all relating to notices of revocation of certificate of authority; requiring notice of revocation to foreign limited liability companies and foreign limited partnerships to be sent to their registered agent or if there is no registered agent to their principal office.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,

Chair.

Senator Carmichael requested unanimous consent that the bill (Com. Sub. for S. B. No. 320) contained in the preceding report from the Committee on the Judiciary be taken up for immediate consideration.

The question being on the adoption of Senator Carmichael's aforesaid request, and on this question, Senator Kessler demanded the yeas and nays.

At the request of Senator Kessler, and by unanimous consent, his demand for the yeas and nays was withdrawn.

Thereafter, the bill (Com. Sub. for S. B. No. 320) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill No. 325, Relating to filing of candidates' financial disclosure statements.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 325 (originating in the Committee on the Judiciary)--A Bill to amend and reenact §6B-2-6 of the Code of West Virginia, 1931, as amended, relating to filing dates for financial disclosure statements by candidates; setting deadlines for candidates to file financial disclosure statements with Ethics Commission; setting deadlines for Ethics Commission to file duplicate copies of statements to certain offices; clarifying to which office Ethics Commission sends copies of statements; and disqualifying candidates who fail to file

statement by deadline.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,

Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 325) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill No. 446, Increasing number of terminals authorized by limited video lottery retailer license.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 446 (originating in the Committee on the Judiciary)--A Bill to amend and reenact §29-22B-1101 of the Code of West Virginia, 1931, as amended, relating to increasing number of limited video lottery terminals allowed at a retail location; and requiring Lottery Commission to conduct a bid for current permit holders prior to September 1, 2015.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,

Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 446) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill No. 453, Relating to motor vehicle dealers, distributors, wholesalers and manufacturers.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 453 (originating in the Committee on the Judiciary)--A Bill to amend and reenact §17A-6A-1, §17A-6A-3, §17A-6A-4, §17A-6A-5, §17A-6A-6, §17A-6A-8, §17A-6A-8a, §17A-6A-9, §17A-6A-10, §17A-6A-11, §17A-6A-12, §17A-6A-13, §17A-6A-15 and §17A-6A-18 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §17A-6A-12a, §17A-6A-14a, §17A-6A-15a, §17A-6A-15b and §17A-6A-15c, all relating to motor vehicle dealers, distributors, wholesalers and manufacturers generally; adopting legislative findings; defining terms; modifying terms relating to cancellations of dealer agreements; modifying circumstances not constituting good cause to cancel an agreement; clarifying that the standard of proof in termination, cancellation and nonrenewal disputes; modifying compensation terms when contract is discontinued; setting interest rate where payments to dealers from manufacturers or distributors are untimely; adding conduct which is considered a prohibited practice; increasing to one hundred eighty days the notice period afforded dealers should a manufacturer or distributor not approve a successor dealer; clarifying that air miles are used to determine distances between

dealerships; restricting manufacturer and distributor use of dealership property; modifying obligations under warranties; and clarifying indemnity practices.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,

Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 453) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill No. 541, Relating to regulation and control of elections.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 541 (originating in the Committee on the Judiciary)--A Bill to amend and reenact §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8, §3-8-9, §3-8-10 and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §3-8-1b, §3-8-1c, §3-8-5c and §3-8-9a, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying what reporting qualifies for a federal reporting exemption; modifying reporting requirements for independent expenditures; clarifying scope of reporting obligations by committee treasurers; requiring certain contributions be reported to State Election Commission within forty-eight hours of their receipt; requiring financial statements for

candidates for State Senate, House of Delegates, circuit judge and family court judge to be filed electronically with Secretary of State; permitting certain financial statements to be filed by mail or in person; establishing a processing fee for financial statements not filed electronically; requiring Secretary of State to maintain an online searchable database; setting forth contribution limits for various offices; prohibiting contributions by foreign nationals; setting contribution limits for precandidacy contributions when candidate has declined to name the office for which he or she seeks to become a candidate; directing Secretary of State to publish an online list of late filing violators; clarifying penalties related to disclosure of information related to a complaint alleging violations or irregularities of this article; permitting a political committee to transfer funds to a national, state or local committee of a political party without limitation; permitting a political action committee to contribute to another political action committee; establishing expenditure limits by political party committees, political party caucuses and candidates; permitting candidates, after a general election, to transfer any unused contributions to state party executive committees, state party legislative caucus committees, local committees of a political party or any other candidate for public office without limitation; and creating criminal penalties.

With the recommendation that the committee substitute do pass; but with the further recommendation that it be rereferred to the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,

Chair.

Senator Carmichael requested unanimous consent that the bill (Com. Sub. for S. B. No. 541) contained in the preceding report from the Committee on the Judiciary be taken up for

immediate consideration.

Which consent was not granted, Senator Unger objecting.

Following a point of inquiry to the President, with resultant response thereto,

Senator Carmichael then moved that the bill (Com. Sub. for S. B. No. 541) contained in the preceding report from the Committee on the Judiciary be taken up for immediate consideration, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)--18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost--16.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Carmichael's motion adopted.

Thereafter, the bill (Com. Sub. for S. B. No. 541) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Trump, the bill was then rereferred to the Committee on the Judiciary.

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

Your Committee on the Judiciary has had under consideration

Senate Bill No. 542, Reforming provisions of Consumer Credit and Protection Act

relating to debt collections.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill No. 542 (originating in the Committee on the Judiciary)--A Bill to amend and reenact §46A-2-125, §46A-2-126 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend and reenact §46A-3-112 and §46A-3-113 of said code; to amend and reenact §46A-5-101 and §46A-5-106 of said code; and to amend said code by adding thereto a new section, designated §46A-5-107, all relating to clarifying permitted and prohibited actions with regard to the prohibition on oppression and abuse in the course of debt collection; clarifying permitted and prohibited actions with regard to the prohibition of unreasonable publication; clarifying permitted and prohibited actions and communications with regard to the prohibition on the use of unfair or unconscionable means in the course of debt collection; increasing permitted delinquency charges; modifying damages and penalties for violations; modifying the limitation of actions brought under this chapter; adjusting time allowed after discovery to correct an error without liability in certain circumstances; adjusting damages for inflation; and specifying venue of an action or proceeding brought by a consumer.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,

Chair.

Senator Carmichael requested unanimous consent that the bill (Com. Sub. for S. B. No. 542) contained in the preceding report from the Committee on the Judiciary be taken up for immediate consideration.

Which consent was not granted, Senator Unger objecting.

Thereafter, on motion of Senator Carmichael, the bill (Com. Sub. for S. B. No. 542) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill No. 582 (originating in the Committee on the Judiciary)--A Bill to amend and reenact §5-26-1 and §5-26-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §5-26-3 and §5-26-4, all relating to the Herbert Henderson Office of Minority Affairs; requiring Office to report to Select Committee on Minority Affairs; requiring director to implement recommendations of select committee; defining terms; continuing Minority Affairs Fund; establishing a community-based pilot demonstration project; providing for operation and funding of pilot project; setting forth objectives and goals of pilot project; and requiring leverage of existing resources.

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

Respectfully submitted,

Charles S. Trump IV,

Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. No. 582) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senators Ferns, Yost, Kessler, Leonhardt and Stollings offered the following resolution:

Senate Resolution No. 49--Recognizing Bethany College on the 175th anniversary of its charter.

Whereas, Bethany College, located at Bethany, Ohio County, was chartered by the Commonwealth of Virginia as a four-year liberal arts college on March 2, 1840, and was recognized as a college by the new State of West Virginia in 1863, and is therefore, the oldest college in the State of West Virginia; and

Whereas, Alexander Campbell, one of the principal founders of the Christian Church (Disciples of Christ) in the United States established Bethany College for the “Instruction of youth in the various branches of science and literature; the useful arts and foreign languages” and while Bethany College is affiliated with the Christian Church, the church exercises no sectarian control on the college; and

Whereas, Bethany College has provided its students with an excellent education to prepare them for service in a myriad of careers including the law, (Thomas Buergenthal, retired International Court of Justice, the Hague) medicine (Dr. John Niederhuber, chief executive officer, Inova Translational Medicine Institute), community service, (Dr. Arthur B. Keys Jr., former CEO International relief and Development) as well as broadcasters Dave Sims (Seattle Mariners), Faith Daniels and Bob Orr among many others; and

Whereas, Bethany College has benefitted from talented faculty members including Amos Emerson Dolbear, American physicist and inventor, who, while serving on the faculty at Bethany College in 1868, invented the electric static telephone, but even before that, had invented the first permanent magnet and metallic diaphragm for the telephone receiver. He was not sophisticated in the U. S. patent laws and lost out on the invention of the telephone to Alexander Graham Bell, even though his invention predated Bell’s by 11 years. However,

Marconi had to purchase Dolbear's patent to market his radio in the U. S.; and

Whereas, Bethany College has benefitted from excellent lay leaders through the years, including U. S. President James A. Garfield, who served on the Bethany College board of trustees from 1866 until 1881, and was serving as a BC trustee at the time of his assassination. President Garfield was lieutenant in the Union Army and a staunch advocate for civil rights after the war and although he only served a few months in office, he appointed several former slaves including Frederick Douglass to prominent government positions; and

Whereas, In addition to President Garfield, four other U. S. presidents have visited the Bethany College campus including John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon and Gerald Ford. In addition, from 1840, when Alexander Campbell served as the first president of the college, only 19 individuals have served as president with Scott D. Miller, Ph. D., now serving in that position. Among the 19 presidents, the late, Governor Cecil Underwood served as Bethany College's 13th president and served from 1972-1975; and

Whereas, Bethany College admitted female students in 1877 and has continued its commitment to provide a quality liberal arts education to students from 28 states, the District of Columbia, Puerto Rico and nine countries; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes Bethany College on the 175th anniversary of its charter; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate officials of Bethany College.

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

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

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

Petitions

Senator Nohe presented a petition from Cathy L. Mace and ten West Virginia residents, supporting Senate Bill No. 35 (*Permitting carrying of concealed weapons without license*).

Referred to the Committee on Government Organization.

Senator Carmichael announced that in the meeting of the Committee on Rules previously held, the committee had returned to the Senate calendar, on second reading, **Engrossed House Bill No. 2213**, having been removed from the Senate calendar under rule number seventeen of the Rules of the Senate on February 25, 2015.

The Senate proceeded to the eighth order of business.

Com. Sub. for Senate Bill No. 14, Creating Public Charter Schools Act of 2015.

On third reading, coming up in regular order, with the right having been granted on Wednesday, February 25, 2015, for amendments to be received on third reading, was reported by the Clerk.

Senator Sypolt requested unanimous consent that further consideration of the bill be deferred until the conclusion of bills on today's first reading calendar.

Which consent was not granted, Senator Unger objecting.

Thereafter, on motion of Senator Sypolt, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar.

Eng. Senate Bill No. 195, Authorizing Conservation Committee promulgate legislative rule relating to financial assistance programs.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 195) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 195) takes effect from passage.

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

Com. Sub. for Senate Bill No. 254, Relating to Fire, EMS and Law-Enforcement Officer Survivor Benefit Act.

On third reading, coming up in regular order, with the right having been granted on yesterday, Sunday, March 1, 2015, for amendments to be received on third reading, was reported by the Clerk.

On motions of Senators Kessler and M. Hall, the following amendment to the bill was reported by the Clerk and adopted:

On page eight, section two, line four, by striking out the word “may” and inserting in lieu thereof the word “shall”.

On motions of Senators Kessler, Beach, Facemire, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel, Yost and M. Hall, the following amendments to the bill (Com. Sub. for S. B. No. 254) were next reported by the Clerk and considered simultaneously:

On page four, section two, line eleven, by striking out “\$50,000” and inserting in lieu thereof “\$100,000”;

And,

On page six, section two, line one, by striking out “\$50,000” and inserting in lieu thereof “\$100,000”.

Following discussion,

The question being on the adoption of the amendments, and on this question, Senator Kessler demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendments offered by Senators Kessler, Beach, Facemire, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel, Yost and M. Hall to the bill adopted.

There being no further amendments offered,

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

Engrossed Committee Substitute for Senate Bill No. 254 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 254) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill No. 336, Eliminating Health Care Authority's power to apply certain penalties to future rate applications.

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

passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 336) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 336) takes effect from passage.

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

Eng. Senate Bill No. 386, Excluding mobile x-ray services from health care provider

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tax.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sybolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 386) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 395, Modifying definitions of "battery" and "domestic battery".

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sybolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 395) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 407, Implementing state safety oversight program.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 407) passed with its title.

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

Eng. Senate Bill No. 420, Relating to retirement benefits for certain employees in kindergarten programs.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt,

Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 420) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 436, Relating to State Athletic Commission.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Beach--1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 436) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 439, Relating to higher education personnel.

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

passage.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Beach--1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 439) passed with its title.

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

Eng. Senate Bill No. 447, Allowing issuance of diploma by public, private or home school administrator.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Beach--1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 447) passed with its title.

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

Eng. Senate Bill No. 457, Relating to selection of school athletic coaches or other extracurricular activities coaches.

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

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Beach--1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 457) passed with its title.

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

Eng. Senate Bill No. 479, Adding additional family court judges.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 479) passed with its title.

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

Eng. Senate Bill No. 499, Creating Tourist-Oriented Directional Signs Program.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 499) passed with its title.

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

Eng. Com. Sub. for Senate Bill No. 529, Relating to PERS, SPRS and TRS benefits and costs.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill No. 529 pass?"

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 529) passed with its title.

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

Eng. Senate Bill No. 549, Establishing classifications and salary schedules for State Police forensic lab civilian employees.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 549) passed with its title.

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

Eng. Senate Bill No. 560, Establishing special revenue fund for use of certain Supreme Court advanced technology.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 560) passed with its title.

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

Eng. Senate Bill No. 577, Allowing higher education governing boards invest certain funds with nonprofit foundations.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael,

Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 577) passed with its title.

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

Eng. Senate Bill No. 578, Relating to occupational disease claims.

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

Senators Walters and Woelfel moved to be excused from voting on any matter pertaining to the bill under rule number forty-three of the Rules of the Senate, which motions prevailed.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Unger, Williams, Yost and Cole (Mr. President)--30.

The nays were: Miller and Snyder--2.

Absent: None.

Excused from voting: Walters and Woelfel--2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 578) passed with its title.

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

Eng. Senate Bill No. 579, Clarifying restriction on limited video lottery location near business selling petroleum products.

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

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 579) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 579) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill No. 234, Exempting certain water and sewer utilities owned by political subdivisions from PSC jurisdiction.

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

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

Senate Bill No. 310, Exempting nonprofit public utility companies from B&O tax.

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

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

On page three, section three, line four, by striking out the word “utility” and inserting in lieu thereof the words “water and sewer”.

The bill (S. B. No. 310), as amended, was then ordered to engrossment and third reading.

Senate Bill No. 550, Authorizing agreements between county commissions and municipalities regarding structures unfit for human habitation.

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

Senate Bill No. 580, Relating to statute of limitations on health care injury claims for minors.

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

Senate Bill No. 581, Relating to Tourism Promotion Fund and Courtesy Patrol Fund.

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

Eng. Com. Sub. for House Bill No. 2157, Relating to absentee ballot fraud.

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

Eng. House Bill No. 2213, Reducing the distributions to the West Virginia Infrastructure Fund.

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

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

On page three, section eighteen-d, lines thirty-one and thirty-two, by striking out the following: With a minimum of ten percent of the aforementioned fifty percent being used to fund veteran-related projects.

Following discussion,

The question being on the adoption of the Finance committee amendment to the bill, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kirkendoll, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel and Cole (Mr. President)--29.

The nays were: Kessler, Laird, Leonhardt, Unger and Yost--5.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the Finance committee amendment to the bill adopted.

The bill (Eng. H. B. No. 2213), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

Com. Sub. for Com. Sub. for Senate Bill No. 352, Expanding scope of cooperative associations to goods and services including recycling.

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

Senate Bill No. 363, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims.

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

Com. Sub. for Com. Sub. for Senate Bill No. 385, Regulating transportation network companies.

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

At the request of Senator Plymale, and by unanimous consent, Senator Plymale addressed the Senate regarding Senate Bill No. 137 (*Exempting HEPC and CCTCS and member institutions from WVOASIS*).

Pending announcement of meetings of standing committees of the Senate, including a majority party caucus,

On motion of Senator Carmichael, the Senate recessed until 5 p.m.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Snyder, and by unanimous consent, returned to the sixth order of business, which agenda includes the making of main motions.

Senator Snyder moved that the full Senate hold a public hearing on Committee Substitute for Senate Bill No. 541 (*Relating to regulation and control of elections*).

Following discussion,

Senator D. Hall moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the adoption of Senator Snyder's aforestated motion, and on this question, Senator Snyder demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost--16.

The nays were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)--18.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Snyder's aforestated motion rejected.

The Senate again proceeded to the tenth order of business.

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

Eng. Com. Sub. for Senate Bill No. 14, Creating Public Charter Schools Act of 2015.

On third reading, coming up in deferred order, with the right having been granted on

Wednesday, February 25, 2015, for amendments to be received on third reading, was again reported by the Clerk.

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

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

That §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §6C-2-2 of said code be amended and reenacted; that §18-7A-3 of said code be amended and reenacted; that §18-7B-2 of said code be amended and reenacted; that §18-9A-2 and §18-9A-12 of said code be amended and reenacted; that §18-20-5 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13, §18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and that §29-12-5a of said code be amended and reenacted, all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY
OF THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-2. Definitions.

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) “Agency” means the Public Employees Insurance Agency created by this article.

(2) “Director” means the Director of the Public Employees Insurance Agency created by this article.

(3) “Employee” means any person, including an elected officer, who works regularly full time in the service of the state of West Virginia and, for the purpose of this article only, the term “employee” also means any person, including an elected officer, who works regularly full time in the service of a county board of education; a public charter school established pursuant to article thirty-three, chapter eighteen of this code; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or ~~comprehensive mental retardation~~ intellectually and developmentally disabled facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; any person who works regularly full time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in section two, article one, chapter eighteen-b of this code; any person who works regularly full time in the service of a combined city-county health department created pursuant to article two, chapter sixteen of this code; any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code; and any person who works as a long-term substitute as defined in section one, article one, chapter eighteen-a of this code in the

service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least one hundred thirty-three instructional days during an instructional term, and until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: *Provided, however*, That a long-term substitute employed fewer than one hundred thirty-three instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an “employee” during the term of office of the elected member. Upon election by the State Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the State Board of Education is considered an “employee” during the term of office of the appointed member: *Provided further*, That the elected member of a county board of education and the appointed member of the State Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an “employee” if that person meets the following criteria:

(i) Participates in a job-sharing arrangement as defined in section one, article one, chapter eighteen-a of this code;

(ii) Has been designated, in writing, by all other participants in that job-sharing arrangement as the “employee” for purposes of this section; and

(iii) Works at least one third of the time required for a full-time employee.

(4) “Employer” means the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units; a county board of education; a public charter school established pursuant to article thirty-three, chapter eighteen of this code; a county, city or town in the state; any separate corporation or instrumentality established by one or more counties, cities or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or comprehensive mental retardation facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to section one, article two-a, chapter twenty-seven of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to article two, chapter sixteen of this code; and a corporation meeting the description set forth in section three, article twelve, chapter eighteen-b of this code that is employing a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an “employer” within the meaning of this article shall be decided by the director. The term “employer” does not include within its meaning the National Guard.

(5) “Finance board” means the Public Employees Insurance Agency finance board created by this article.

(6) “Person” means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations;

health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) “Plan”, unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.

(8) “Retired employee” means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the state Teachers Retirement System and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to article sixteen-d of this chapter. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but

may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

§5-16-22. Permissive participation; exemptions.

The provisions of this article are not mandatory upon any employee or employer who is not an employee of or is not the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units, ~~or~~ a county board of education or a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code and nothing contained in this article may be construed so as to compel any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article.

Those employees enrolled in the insurance program authorized under the provisions of article two-b, chapter twenty-one-a of this code may not be required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions

of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs. The provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code, relating to group life insurance, accident and sickness insurance, and group accident and sickness insurance, are not applicable to the provisions of this article whenever the provisions of articles fourteen, fifteen and sixteen, chapter thirty-three of this code are in conflict with or contrary to any provision set forth in this article or to any plan or plans established by the Public Employees Insurance Agency.

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, ~~or~~ a county board of education or a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than ten days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the Public Employees Insurance Agency insurance program as authorized by this article shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the state of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, ~~or~~ a county board of education or a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code

pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: *Provided*, That after June 30, 1996, an employer not mandated to participate in the plan is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years: *Provided, however*; That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, who have participated in the plan as active employees of the employer for less than five years are responsible for the entire premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect the entire premium from the retired employees, unless the employer elects to pay the employer share of the premium. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-2. Definitions.

For the purpose of this article and article three of this chapter:

(a) "Board" means the West Virginia Public Employees Grievance Board created in article three of this chapter.

(b) "Chief administrator" means, in the appropriate context, the commissioner, chancellor, director, president, secretary or head of any state department, board, commission, agency, state institution of higher education, commission or council, the state superintendent, the county superintendent, the executive director of a regional educational service agency or the director of a multicounty vocational center who is vested with the authority to resolve a

grievance. If a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code includes in its approved charter application a determination that this article applies to the charter school and its employees, “chief administrator” also means the principal of the public charter school. A “chief administrator” includes a designee, with the authority delegated by the chief administrator, appointed to handle any aspect of the grievance procedure as established by this article.

(c) "Days" means working days exclusive of Saturday, Sunday, official holidays and any day in which the employee's workplace is legally closed under the authority of the chief administrator due to weather or other cause provided for by statute, rule, policy or practice.

(d) “Discrimination” means any differences in the treatment of similarly situated employees, unless the differences are related to the actual job responsibilities of the employees or are agreed to in writing by the employees.

(e) (1) "Employee" means any person hired for permanent employment by an employer for a probationary, full- or part-time position.

(2) A substitute education employee is considered an “employee” only on matters related to days worked or when there is a violation, misapplication or misinterpretation of a statute, policy, rule or written agreement relating to the substitute.

(3) “Employee” does not mean a member of the West Virginia State Police employed pursuant to article two, chapter fifteen of this code, but does include civilian employees hired by the superintendent of the State Police. “Employee” does not mean an employee of a constitutional officer unless he or she is covered under the civil service system, an employee of the Legislature or a patient or inmate employed by a state institution.

(4) If a public charter school authorized pursuant to article thirty-three, chapter eighteen

of this code includes in its approved charter application a determination that this article applies to the charter school and its employees, “employee” also means a person employed by the public charter school.

(f) "Employee organization" means an employee advocacy organization with employee members that has filed with the board the name, address, chief officer and membership criteria of the organization.

(g) "Employer" means a state agency, department, board, commission, college, university, institution, State Board of Education, Department of Education, county board of education, regional educational service agency or multicounty vocational center, or agent thereof, using the services of an employee as defined in this section. If a public charter school authorized pursuant to article thirty-three, chapter eighteen of this code includes in its approved charter application a determination that this article applies to the charter school and its employees, “employer” also includes the public charter school.

(h) "Favoritism" means unfair treatment of an employee as demonstrated by preferential, exceptional or advantageous treatment of a similarly situated employee unless the treatment is related to the actual job responsibilities of the employee or is agreed to in writing by the employee.

(i) (1) "Grievance" means a claim by an employee alleging a violation, a misapplication or a misinterpretation of the statutes, policies, rules or written agreements applicable to the employee including:

(i) Any violation, misapplication or misinterpretation regarding compensation, hours, terms and conditions of employment, employment status or discrimination;

(ii) Any discriminatory or otherwise aggrieved application of unwritten policies or

practices of his or her employer;

(iii) Any specifically identified incident of harassment;

(iv) Any specifically identified incident of favoritism; or

(v) Any action, policy or practice constituting a substantial detriment to or interference with the effective job performance of the employee or the health and safety of the employee.

(2) "Grievance" does not mean any pension matter or other issue relating to public employees insurance in accordance with article sixteen, chapter five of this code, retirement or any other matter in which the authority to act is not vested with the employer.

(j) "Grievance proceeding", "proceeding" or the plural means a conference, level one hearing, mediation, private mediation, private arbitration or level three hearing, or any combination, unless the context clearly indicates otherwise.

(k) "Grievant" means an employee or group of similarly situated employees filing a grievance.

(l) "Harassment" means repeated or continual disturbance, irritation or annoyance of an employee that is contrary to the behavior expected by law, policy and profession.

(m) "Party", or the plural, means the grievant, intervenor, employer and the Director of the Division of Personnel or his or her designee, for state government employee grievances. The Division of Personnel shall not be a party to grievances involving higher education employees.

(n) "Representative" means any employee organization, fellow employee, attorney or other person designated by the grievant or intervenor as his or her representative and may not include a supervisor who evaluates the grievant.

(o) "Reprisal" means the retaliation of an employer toward a grievant, witness, representative or any other participant in the grievance procedure either for an alleged injury

itself or any lawful attempt to redress it.

CHAPTER 18. EDUCATION.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

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

(1) "Accumulated contributions" means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on behalf of a retired member.

(3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) "Annuities" means the annual retirement payments for life granted beneficiaries in accordance with this article.

(5) "Average final salary" means the average of the five highest fiscal year salaries earned as a member within the last fifteen fiscal years of total service credit, including military service as provided in this article, or if total service is less than fifteen years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this

code and Section 401 (a) (17) of the Internal Revenue Code.

(6) "Beneficiary" means the recipient of annuity payments made under the retirement system.

(7) "Contributor" means a member of the retirement system who has an account in the teachers accumulation fund.

(8) "Deposit" means a voluntary payment to his or her account by a member.

(9) "Employer" means the agency of and within the state which has employed or employs a member.

(10) "Employer error" means an omission, misrepresentation or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(11) "Employment term" means employment for at least ten months, a month being defined as twenty employment days.

(12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member's rights to employment or wages, with all retroactive salary payments to be allocated to and considered

paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended.

(14) "Member" means any person who has accumulated contributions standing to his or her credit in the state Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to section thirteen of this article.

(15) "Members of the administrative staff of the public schools" means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(16) "Members of the extension staff of the public schools" means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical or secretarial.

(17) "New entrant" means a teacher who is not a present teacher.

(18) "Nonteaching member" means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; ~~or~~ (E) a governing board, as defined in section two, article one, chapter eighteen-b of this code; or (F) a public charter school established pursuant to article thirty-three of this chapter: *Provided*, That any person whose

employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(19) "Plan year" means the twelve-month period commencing on July 1 and ending the following June 30 of any designated year.

(20) "Present member" means a present teacher or nonteacher who is a member of the retirement system.

(21) "Present teacher" means any person who was a teacher within the thirty-five years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(23) "Public schools" means all publicly supported schools, including colleges and universities in this state.

(24) "Refund beneficiary" means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(25) "Regular interest" means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) "Regularly employed for full-time service" means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(27) "Required beginning date" means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of seventy and one-half years.

(28) "Retirant" means any member who commences an annuity payable by the retirement system.

(29) "Retirement board" means the Consolidated Public Retirement Board created pursuant to article ten-d, chapter five of this code.

(30) "Retirement system" means the state Teachers Retirement System established by this article.

(31) "Teacher member" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision, or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections, the Division of

Health or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; ~~and~~ (L) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (M) any person employed by a public charter school established pursuant to article thirty-three of this chapter.

(32) "Total service" means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of seventy years shall be considered to be seventy years.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

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

(1) "Annual addition" means, for purposes of the limitations under Section 415 (c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts or contributions as described in Section 415 (k) (3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan shall not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

(2) "Annuity account" or "annuity" means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(3) “Compensation” means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with section seven, article ten-d, chapter five of this code and Section 401 (a) (17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, “compensation” has the meaning given it in subsection (d), section thirteen of this article;

(4) “Consolidated board” or “board” means the Consolidated Public Retirement Board created and established pursuant to article ten-d, chapter five of this code;

(5) “Defined contribution system” or “system” means the Teachers’ Defined Contribution Retirement System created and established by this article;

(6) “Employer” means the agency of and within the state of West Virginia which has employed or employs a member;

(7) “Employer contribution” means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;

(8) “Employment term” means employment for at least ten months in any plan year with a month being defined as twenty employment days;

(9) “Existing employer” means any employer who employed or employs a member of the system;

(10) “Existing retirement system” means the state Teachers Retirement System

established in article seven-a of this chapter;

(11) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended;

(12) “Member” or “employee” means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension, administrative or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; ~~and~~ (M) any person designated as a 21st Century Learner Fellow pursuant to section eleven, article three, chapter eighteen-a of this code who elects to remain a member of the Teachers’ Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to article thirty-three of this

chapter;

(13) “Member contribution” means an amount reduced from the employee’s regular pay periods, and deposited into the member’s individual annuity account within the Teachers' Defined Contribution Retirement System;

(14) “Permanent, total disability” means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, “permanent, total disability” means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than twelve months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness;

(15) “Plan year” means the twelve-month period commencing on July 1 of any designated year and ending on the following June 30;

(16) “Public schools” means all publicly supported schools, including normal schools, colleges and universities in this state;

(17) “Regularly employed for full-time service” means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(18) “Required beginning date” means April 1 of the calendar year following the later of:
(A) The calendar year in which the member attains age seventy and one-half years; or (B) the calendar year in which the member retires or otherwise ceases employment with a participating

employer after having attained the age of seventy and one-half years;

(19) “Retirement” means a member’s withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(20) “Year of employment service” means employment for at least ten months, with a month being defined as twenty employment days: *Provided*, That no more than one year of service may be accumulated in any twelve-month period.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-2. Definitions.

For the purpose of this article:

(a) “State board” means the West Virginia Board of Education.

(b) “County board” or “board” means a county board of education.

(c) “Professional salaries” means the state legally mandated salaries of the professional educators as provided in article four, chapter eighteen-a of this code.

(d) “Professional educator” shall be synonymous with and shall have the same meaning as “teacher” as defined in section one, article one of this chapter and includes technology integration specialists.

(e) “Professional instructional personnel” means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance or psychologist duties.

(f) “Professional student support personnel” means a “teacher” as defined in section one,

article one of this chapter who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) "Service personnel salaries" means the state legally mandated salaries for service personnel as provided in section eight-a, article four, chapter eighteen-a of this code.

(h) "Service personnel" means all personnel as provided in section eight, article four, chapter eighteen-a of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by two hundred: *Provided*, That the computation for any service person employed for three and one-half hours or less per day as provided in section eight-a, article four, chapter eighteen-a of this code shall be calculated as one-half an employment day.

(i) "Net enrollment" means the number of pupils enrolled in special education programs, kindergarten programs and grades one to twelve, inclusive, of the public schools of the county, subject to the following:

(1) Net enrollment further shall include:

~~(4)~~ (A) Adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:

~~(A)~~ (i) Net enrollment includes no more than one thousand of those adults counted on the basis of full-time equivalency and apportioned annually to each county in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the

basis of full-time equivalency; and

~~(B)~~ (ii) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student; and

~~(2)~~ (B) Students enrolled in early childhood education programs as provided in section forty-four, article five of this chapter, counted on the basis of full-time equivalency;

~~(3)~~ (2) No pupil shall be counted more than once by reason of transfer within the county or from another county within the state and no pupil shall be counted who attends school in this state from another state;

~~(4)~~ (3) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

~~(5)~~ (4) For the purposes of determining the county's basic foundation program only, for any county whose net enrollment as determined under all other provisions of this definition is less than one thousand four hundred, the net enrollment of the county shall be increased by an amount to be determined in accordance with the following:

(A) Divide the state's lowest county student population density by the county's actual student population density;

(B) Multiply the amount derived from the calculation in subparagraph (A) of this paragraph by the difference between one thousand four hundred and the county's actual net enrollment;

(C) If the increase in net enrollment as determined under this paragraph plus the county's net enrollment as determined under all other provisions of this section is greater than one thousand four hundred, the increase in net enrollment shall be reduced so that the total does not exceed one thousand four hundred; and

(D) During the 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this paragraph to determine whether or not these provisions properly address the needs of counties with low enrollment and a sparse population density; and

(5) Net enrollment shall include students enrolled in a public charter school established pursuant to article thirty-three of this chapter.

(j) “Sparse-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section, of the definition of “net enrollment”, to the square miles of the county is less than five.

(k) “Low-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than five but less than ten.

(l) “Medium-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than ten but less than twenty.

(m) “High-density county” means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to paragraph (5), subdivision (i) of this section, of the definition of “net enrollment”, to the square miles of the county is equal to or greater than twenty.

(n) “Levies for general current expense purposes” means ninety percent of the levy rate for county boards of education calculated or set by the Legislature pursuant to section six-f,

article eight, chapter eleven of this code.

(o) “Technology integration specialist” means a professional educator who has expertise in the technology field and is assigned as a resource teacher to provide information and guidance to classroom teachers on the integration of technology into the curriculum.

(p) “State aid eligible personnel” means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this article and whose salaries are not funded by a specific funding source such as a federal or state grant, donation, contribution or other specific funding source not listed.

§18-9A-12. County basic foundation; total basic state aid allowance.

(a) The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine and ten of this article. On the first working day of July in each year, the state board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in section eleven of this article except as provided in subsection (b) of this section.

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: *Provided*, That prior to such adjustment, the State Tax Commissioner shall provide the state board, by January 15 of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue

which will not be available to each county board in the ensuing fiscal year as a result of the circumstance:

(1) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is under a final court order, or a final decision of a board of assessment appeals under section twenty-four-b, article three, chapter eleven of this code, to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect or must refund due to the final court order or final decision of a board of assessment appeals: *Provided*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(2) In those instances where the local share as computed under section eleven of this article is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the Tax Commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the Tax Commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under section eleven of this article, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county: *Provided*, That said adjustment shall

not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however;* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the Tax Commissioner: *Provided,* That the county is required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however;* That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided further;* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(4) In instances where a public charter school is authorized and has or will begin operations in a county school district pursuant to article thirty-three of this chapter, the total program allowance for the district shall be reduced by the county's per pupil total basic foundation allowance multiplied by the second month net enrollment of the public charter school authorized to operate in the county.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or

contributions in lieu of property taxes, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under section eleven of this article, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The State Tax Commissioner then shall provide the State board, by January 15 of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the State board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-5. Powers and duties of state superintendent.

(a) The State Superintendent of Schools shall organize, promote, administer and be responsible for:

(1) Stimulating and assisting county boards of ~~education~~ in establishing, organizing and maintaining special schools, classes, regular class programs, home-teaching and visiting-teacher services.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) (A) Preparing the necessary rules, policies, formula for distribution of available appropriated funds, reporting forms and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification and approval of qualified teachers and therapists subject to approval by the State board of Education: *Provided*, That no state rule, policy or standard under this article or any county board rule, policy or standard governing special education may exceed the requirements of federal law or regulation.

(B) The state superintendent shall annually review the rules, policies and standards of the state and federal law for serving the needs of exceptional children enrolled in the public schools and shall report to the Legislative Oversight Commission on Education Accountability by December 1 ~~or as soon thereafter as requested by the commission, 2008, and in each year thereafter,~~ of each year the findings of the review along with an accounting of the services provided and the costs thereof for exceptional children enrolled in the public schools of this state during the latest available school year. An appropriation shall be made to the Department of Education to be distributed to county boards and public charter schools authorized pursuant to article thirty-three of this article to support children with high acuity needs that exceed the capacity of county or the public charter school to provide with funds available. Each county board and public charter school shall apply to the state superintendent for receipt of this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from

the appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be distributed to county boards and public charter schools for this purpose before any of the state appropriation is distributed. The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code that implements the provisions of this subdivision relating to distributing the funds to the county boards and public charter schools. The rule at least shall include a definition for “children with high acuity needs”.

(4) Receiving from county boards ~~of education~~ their applications, annual reports and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in section thirteen-f, article two of this chapter receive an education in accordance with state and federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

~~(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight commission on education accountability no later than December 1, 1995.~~

(b) Nothing contained in this section shall be construed to prevent any county board ~~of education~~ from establishing and maintaining special schools, classes, regular class programs, home-teaching or visiting-teacher services out of funds available from local revenue.

ARTICLE 33. WEST VIRGINIANA PUBLIC CHARTER SCHOOLS ACT OF 2015.**§18-33-1. Legislative purpose and intent.**

The West Virginia Legislature hereby establishes public charter schools to benefit students, parents, teachers and community members by creating new, innovative and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals and diversity of public education. The purposes of the charter school initiative are to:

- (a) Improve student learning by creating more quality public schools with high standards for student performance;
- (b) Encourage the use of different, high quality models of teaching, governing, scheduling or other aspects of public schooling that meet a variety of student needs;
- (c) Close achievement gaps between high-performing and low-performing groups of public school students;
- (d) Allow schools freedom and flexibility in exchange for exceptional levels of results-driven accountability;
- (e) Increase high-quality educational opportunities within the public education system for all students, especially those at risk of academic failure; and
- (f) Provide students, parents, community members and local entities with expanded opportunities for involvement in the public education system.

§18-33-2. Definitions.

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings:

- (a) “Applicant” means teachers, parents, school administrators, community residents,

public organizations, private nonprofit organizations, a noncharter public school, a noncharter public school program or a combination thereof that seek approval from a charter school authorizer to establish a public charter school;

(b) “Charter application” means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(c) “Authorizer” means an entity empowered under this article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee and monitor public charter schools and decide whether to renew, not renew or revoke charter contracts;

(d) “Charter contract” means a performance-based contract for a fixed term between a public charter school and an authorizer that describes performance expectations, defines operational responsibilities and outlines the autonomy and accountability for each party to the contract;

(e) “Conversion public charter school” means a public charter school that existed as a noncharter public school before becoming a public charter school;

(f) “Education service provider” means an education management organization, charter management organization, school design provider or any other partner entity with whom a public charter school intends to contract for education services and resources, including education design, implementation or management;

(g) “Governing board” means the independent board of a public charter school that is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school’s application;

(h) “County board” means a board exercising management and control of a school

district other than a public charter school formed under this article. A county board's management and control of a public charter school is limited to only that granted under this article as the authorizer;

(i) "Noncharter public school" means a public school other than a school formed pursuant to this article;

(j) "Public charter school" means a public school formed pursuant to this article that:

(1) Is part of the state's system of public education; is nonhome school based and not affiliated with or espousing any specific religious denomination, organization, sect or belief or the promotion or engaging in any religious practices in terms of its educational program. Nor shall a public charter school, as defined in this article, be affiliated with any organized group whose espoused beliefs attack or malign an entire class of people, typically for immutable characteristics, as identified through listings of such groups as may be made by the U. S. Department of Justice, the Federal Bureau of Investigation, or officials having similar jurisdiction in this state;

(2) Has autonomy over key decisions, including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum and instruction;

(3) Is governed by a board that is independent of a county board except for the county board's responsibilities under this article as the public charter school's authorizer;

(4) Is established and operated under the terms of a legally binding charter contract between the governing board and its authorizer in accordance with this article;

(5) Is a public school to which parents choose to send their children;

(6) Ensures student participation in required state assessments of student performance, as required of other public school students under section five, article two-e of this chapter;

(7) Designs its educational program to meet or exceed the student performance standards set forth in section five, article two-e of this chapter;

(8) Provides instructional time that is at least equal to the number of days or their equivalent required by section forty-five, article five of this chapter;

(9) Adheres to all generally accepted accounting principles;

(10) Requires a criminal history check pursuant to section ten, article three, chapter eighteen-a of this code for any staff person that would be required to be licensed if employed in a noncharter public school unless a criminal history check has already been completed for that staff person pursuant to that section;

(11) Prohibits contractors or service providers or their employees from making direct, unaccompanied contact with students or access school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers or employees have not previously been convicted of a qualifying offense pursuant to section fifteen-c, article five of this chapter;

(12) Complies with the provisions of article one, chapter twenty-nine-b of this code relating to freedom of information and the provisions of article nine-a, chapter six relating to open governmental proceedings;

(13) Ensures students meet the compulsory school attendance requirements of section forty-four, chapter five of this chapter and section one-a, article eight of this chapter, as applicable;

(14) Provides a program of public education that:

(A) Includes one or more of the following: Prekindergarten and any grade or grades from kindergarten to grade 12;

(B) May include a focus on students with special needs, such as at-risk pupils, English language learners or students involved with the juvenile justice system; and

(C) May include a specific academic approach or theme;

(15) Provides programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules and regulations. A charter school shall deliver the services directly or contract with another provider to deliver the services;

(16) Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and

(17) Operates under the oversight of the authorizer from which its charter contract is granted and in accordance with its approved charter contract; and

(k) "Start-up public charter school" means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

§18-33-3. Reports.

One year after public charter schools have been in operation, and each year thereafter, the state superintendent shall issue to the Governor, the Legislature and the general public a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to section five of this article as well as any additional relevant data compiled by the state superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges and areas for improvement in meeting the purposes of this chapter and any suggested changes in state law or policy necessary to strengthen the public charter school program.

§18-33-4. Public charter school eligibility; enrollment.

(a) *Eligibility.* -- Any student residing in the state is eligible to apply to a public charter school.

(b) *Enrollment.* -- A public charter school shall enroll students in accordance with this subsection.

(1) Public charter school organizers shall include all segments of the populations served by the existing noncharter public schools in their area in their recruitment efforts.

(2) Unless the number of students exceeds the enrollment capacity of a program, class, grade level or building, a public charter school shall:

(A) Automatically enroll all students residing in the attendance area in which the school is located except for any students that opt out of enrollment; and

(B) Enroll all other students who wish to attend the school.

(3) Enrollment decisions shall be made in a nondiscriminatory way and shall not be based on intellectual ability, measures of achievement or aptitude, athletic ability, disability, creed, race, gender, national origin, religion or ancestry.

(4) Except as otherwise provided in this subsection, if capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students from among the list of applicants by a random selection lottery. A list maintained to fill potential vacancies may be carried over to the succeeding year. Any student residing within the attendance area shall automatically be included in the list of applicants unless the student opts out of being included.

(5) Any noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy that gives enrollment preference to pupils who reside within the former attendance area of that noncharter public school and that requires automatic

enrollment of pupils who were previously enrolled in the noncharter public school except for any students that opt out of enrollment in the school.

(6) A public charter school shall give enrollment preference to pupils enrolled in the public charter school the previous school year and to siblings of pupils already enrolled in the public charter school.

(7) A public charter school may establish enrollment preferences that enable the school to give enrollment preference to at-risk students and students not succeeding in noncharter public schools.

(8) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than ten percent of the school's total student population.

(c) *Discrimination prohibited.* -- A public charter school may not discriminate on the basis of race, ethnicity, national origin, religion, gender, sexual orientation, income level, disabling condition, proficiency in the English language or academic or athletic ability, except that nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk pupils, students with disabilities and students who pose such severe disciplinary problems that they warrant a specific education program.

§18-33-5. Authorizers.

(a) *Eligible authorizer.* -- A county board may authorize the creation of a start-up public charter school or the conversion of a noncharter public school to a public charter school within the boundaries of the school district governed by that county board pursuant to this article. This authority for a county board to authorize a charter school pursuant to this subsection is

applicable even if the county school system is under state board intervention pursuant to section five, article two-e of this chapter.

(b) *Cap.* -- No more than two public charter schools shall be authorized per calendar year for the first five years public charter schools are in operation. During the first five calendar years public charter schools are in operation:

(1) Year one is the first calendar year in which a public charter school is authorized;

(2) As soon as feasible after an authorizer authorizes a public charter school, the authorizer shall notify the state board;

(3) After two public charter schools have been authorized during any calendar year, the state board shall notify as soon as feasible all authorizers that no more public charter schools may be authorized for the remainder of that calendar year;

(4) In determining which schools are authorized under the cap, priority shall be given to the first two schools that are authorized, as determined by the date of authorization, and any other authorization during that calendar year is null and void; and

(5) If as a result of multiple schools being authorized on the same date the cap is exceeded, the state board shall determine which of the multiple schools authorized on the same date are to remain authorized and the other authorizations on the same date are null and void.

(c) *Duties.* -- An authorizer shall:

(1) Evaluate applications from organizers of proposed public charter schools;

(2) Approve or deny applications pursuant to section eight of this article;

(3) Create a framework to guide the development of charter contracts;

(4) Negotiate and execute sound charter contracts with each approved public charter school;

- (5) Monitor the performance and compliance of public charter schools;
- (6) Determine whether each charter contract merits renewal or revocation; and
- (7) Establish and follow charter granting policies and practices that are transparent, based on merit and avoid all conflicts of interest.

(d) *Principles and professional standards.* -- An authorizer shall develop and maintain policies and practices consistent with nationally recognized principles and professional standards for authorizing public charter schools, including standards relating to:

- (1) Organizational capacity and infrastructure;
- (2) Evaluating applications;
- (3) Performance contracting;
- (4) Ongoing public charter school oversight and evaluation; and
- (5) Charter approval, renewal, and revocation decisionmaking.

(e) *Reporting and evaluation.* -- An authorizer, that has authorized at least one public charter school that is currently in operation, shall submit to the state superintendent for presentation to the state board an annual report within sixty days of the end of each school fiscal year summarizing:

- (1) The authorizer's strategic vision for chartering and progress toward achieving that vision;
- (2) The performance of all operating public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;
- (3) The status of the authorizer's public charter school portfolio of approved charter applications, identifying all public charter schools within that portfolio as:
 - (A) Approved, but not yet open;

- (B) Operating;
- (C) Renewed;
- (D) Transferred;
- (E) Terminated;
- (F) Closed; or
- (G) Never opened; and

(4) The authorizing duties and functions provided by the authorizer during the previous academic year.

(f) *Conflicts of interest.* -- An employee, trustee, agent or representative of an authorizer may not simultaneously serve as an employee, trustee, agent, representative, vendor or contractor of a public charter school operating under that authorizer.

(g) *Services purchased from authorizer.* -- A public charter school may not be required to purchase services from its authorizer as a condition of charter approval or of executing a charter contract, nor may any such condition be implied. However, a public charter school may, at its discretion, choose to purchase services from its authorizer. In such event, the public charter school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the public charter school.

§18-33-6. Appeals, training and other duties of the West Virginia Board of Education.

(a) *Duties.* -- The state board shall, pursuant to this article:

(1) Establish training programs for charter school applicants, administrators, and governing board members;

(2) Hear appeals from applicants for authorization and from public charter school

governing boards relating to renewal and revocation: *Provided*, That the state board only may uphold the decision or remand the issue to the authorizer with a recommendation and may not in any case reverse a decision of an authorizer;

(3) Issue and broadly publicize requests for proposals pursuant to section seven of this article to invite, solicit, encourage and guide the development of high-quality public charter school applications; and

(4) Pursuant to subsection (b), section five of this article, for the first five calendar years public charter schools are in operation:

(A) After the two per calendar year cap is exceeded, notifying authorizers that no more public charter schools may be authorized for the remainder of that calendar year; and

(B) Determining which schools are authorized when authorization of multiple schools on the same date results in the two per calendar year cap being exceeded.

(b) *Funding*. -- The state board may charge up to one percent of the funding received pursuant to subsection (b), section fourteen of this article in order to perform its duties under this article.

(c) *Training*. -- The state board shall consult with nationally recognized charter school organizations in establishing training programs for charter school applicants, administrators and governing board members. The training for administrators and governing board members shall include at least twelve training sessions annually. Administrators and governing board members may miss no more than one training session annually without a valid excuse, as determined by the authorizer. No charter may be granted until the applicant, administrators and governing board members have received the initial training offered by the state board.

§18-33-7. Request for proposals.

(a) *Issuance.* -- To invite, solicit, encourage and guide the development of high-quality public charter school applications, the state board shall issue and broadly publicize requests for proposals by June 30, 2016, and by June 30 of each year thereafter. The content and dissemination of the requests for proposals shall be consistent with the purposes and requirements of this article.

(b) *Content.* -- The state board's request for proposals shall contain information set forth in this subsection.

(1) A request for proposals shall present the state board's strategic vision for and interest in chartering.

(2) The state board may give priority to proposals that expand opportunities for children who are not realizing their full potential, who may be disaffected or disengaged in their current education situations and who may be at risk of failure academically, socially, economically or personally. The state board may encourage proposals that include a specific academic approach or theme to address the diverse educational needs of communities in the state. A request for proposals shall include a clear statement of any priority or preference the state board wishes to grant to particular types of applications. Notwithstanding the state board's statement of any priority or preference, an authorizer shall consider each application submitted to it based on the merits of that particular application.

(3) A request for proposals shall include or otherwise direct applicants to the performance framework that the state board has developed for public charter school oversight and evaluation in accordance with section ten of this article.

(4) A request for proposals shall include the criteria and standards that will guide the authorizer's decision to approve or deny an application.

(5) A request for proposals shall state clear, appropriately detailed questions as well as guidelines concerning the format and content essential for applicants to demonstrate the capacities necessary to establish and operate a successful public charter school.

(6) A request for proposals shall require applications to provide or describe thoroughly, at a minimum, all of the following essential elements of the proposed public charter school plan:

(A) The proposed public charter school's vision, including:

(i) An executive summary; and

(ii) The mission and vision of the proposed public charter school, including identification of the targeted student population and the community the school hopes to serve; and

(B) The proposed public charter school's governance plan, which shall include:

(i) A governing board which shall include the following nine members: Three parents of children attending the public charter school; two faculty; one service person; a representative of business; a person knowledgeable of finance; and the principal of the school who shall be an ex officio voting member;

(ii) Background information on proposed governing board members, except the principal member, and any assurances or certifications required by the authorizer;

(iii) The election of the principal by the governing board;

(iv) Proposed governing bylaws which at least include good governing practices and provisions for the removal of board members;

(v) An organization chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, principal, staff and any related bodies such as advisory bodies or parent and teacher councils;

(vi) A clear description of the roles and responsibilities for the governing board, the

principal and management team and any other entities shown on the organization chart; and

(vii) Identification of the proposed founding governing board members other than the principal member;

(C) The proposed public charter school's plan of organization, including:

(i) The location or geographic area of the school;

(ii) The grades to be served each year for the full term of the charter;

(iii) Minimum, planned and maximum enrollment per grade per year for the term of the charter;

(iv) The school's proposed calendar and sample daily schedule;

(v) Plans and timelines for student recruitment and enrollment, including lottery procedures;

(vi) Explanations of any partnerships or contractual relationships central to the school's operations or mission;

(vii) The school's proposals for providing transportation, food service and other significant operational or ancillary services;

(viii) A facilities plan, including backup or contingency plans if appropriate; and

(ix) A detailed school start-up plan, identifying tasks, timelines and responsible individuals; and

(D) The proposed public charter school's finances, including:

(i) A description of the school's financial plan and policies, including financial controls and audit requirements;

(ii) Start-up and three-year budgets with clearly stated assumptions;

(iii) Start-up and first-year cash-flow projections with clearly stated assumptions;

(iv) Evidence of anticipated fund-raising contributions, if claimed in the application; and

(v) A description of the insurance coverage the school proposes to obtain, including a determination as to whether the public charter school will elect to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to section five-a, article twelve, chapter twenty-nine of this code;

(E) The proposed public charter school's student policy, including:

(i) The school's plans for identifying and successfully serving students with the wide range of learning needs and styles typically found in noncharter public schools of the sending area, including special education and English language learners;

(ii) The school's plans for compliance with all applicable federal and state laws, rules and regulations; and

(iii) The school's student discipline plans and policies, including those for special education students;

(F) The proposed public charter school's academic program, including:

(i) A description of the academic program the proposed charter school will use;

(ii) A description of the school's instructional design, including the type of learning environment, such as classroom-based or independent study, class size and structure, curriculum overview, teaching methods and research basis;

(iii) The school's plan for using internal and external assessments to measure and report student progress on the measures and metrics of the performance framework developed by the authorizer in accordance with section ten of this article; and

(iv) A description of co-curricular or extracurricular programs and how they will be funded and delivered;

(G) The proposed public charter school's staff policy, including:

(i) A staffing chart for the school's first year and a staffing plan for the term of the charter;

(ii) Plans for recruiting and developing school leadership and staff;

(iii) The school's leadership, teacher and service personnel employment policies, including performance evaluation plans and method or methods of selection, subject to subparagraph (iii), paragraph (B) of this subdivision;

(iv) A determination as to whether article two, chapter six-c of this code, relating to the public employees grievance procedure, applies to the charter school and its employees; and

(v) Opportunities and expectations for parent involvement; and

(H) The proposed public charter school's school closure protocol, including:

(i) Timely notification to parents;

(ii) Orderly transition of students and student records to new schools;

(iii) Proper disposition of school funds, property, and assets in accordance with section twelve of this article; and

(iv) Tasks, timelines and responsible parties, including delineating the respective duties of the school and the authorizer.

(7) With respect to the conversion of an existing noncharter public school to public charter school status, in addition to the other requirements of this article, the request for proposals shall require applicants to demonstrate support for the proposed conversion to a public charter school by:

(A) Submitting certification that sixty percent of the teachers voted to apply for conversion to a public charter school; and

(B) Submitting a petition signed by the parents, guardians or custodians of sixty percent of the students enrolled in the school.

§18-33-8. Charter applications.

(a) *Application.* -- An applicant for approval as a public charter school must submit an application that satisfies the requirements of the state board's request for proposals required by section seven of this article. An applicant may submit a proposal for a particular public charter school to no more than one authorizer at a time. The purposes of the application are to present the proposed public charter school's academic and operational vision and plans, demonstrate the applicant's capacities to execute the proposed vision and plans to increase student achievement and provide the authorizer a clear basis for assessing the applicant's plans and capacities.

(b) *Application review process.* -- In reviewing and evaluating applications, authorizers shall employ procedures, practices, criteria and standards consistent with nationally recognized principles and standards for authorizing high-quality public charter schools.

(1) The application review process shall include a thorough evaluation of each application, an in-person interview with the applicant, a thirty-day comment period and a public hearing.

(2) In deciding whether to approve applications, authorizers shall:

(A) Grant charters only to applicants that have demonstrated competence in each element of the state board's published approval criteria and are likely to open and operate a public charter school that will increase student achievement;

(B) Base decisions on documented evidence collected through the application review process; and

(C) Follow charter-granting policies and practices that are transparent, based on merit

and avoid conflicts of interest or any appearance of a conflict of interest.

(c) *Approval; denial.* -- No later than ninety days after the filing of an application, an authorizer shall decide to approve or deny the application. The authorizer shall make and announce all charter approval or denial decisions in a meeting open to the public.

(1) An approval decision may include, if appropriate, reasonable conditions that the applicant must meet before a charter contract may be executed.

(2) If the authorizer denies an application, the authorizer shall clearly state, for public record, its reasons for denial at the time of rendering the decision to deny. An applicant may subsequently reapply to that authorizer or appeal to the state board.

(3) Within ten days of taking action to approve or deny an application, the authorizer shall report to the state superintendent the action it has taken. The authorizer shall provide a copy of the report to the applicant at the same time that the report is submitted to the state superintendent.

(4) The state superintendent shall register the charters approved by all chartering authorities in chronological order by date of approval.

(5) An approved application may not serve as a school's charter contract nor may it be incorporated by reference into the charter contract.

(6) A decision on an application shall be conveyed in writing to the applicant. A decision may grant approval or conditional approval, request resubmission or reject the application and must include written reasons for the decisions.

(7) Any appeal of a denial of an application shall be made to the state board within sixty days of the time the denial is received in writing by the applicant. Within sixty days, the state board only may uphold the decision or remand the issue to the authorizer with a

recommendation. The state board may not reverse a decision of the authorizer. The state board shall report to the state superintendent any recommendation it has made on appeal within ten days. If the issue is remanded and the application is again denied by the authorizer, the applicant may continue to appeal within the sixty days, but the state board only may uphold the decision or remand any further appeal to the authorizer with a recommendation and may not reverse the authorizer's decision.

§18-33-9. Charter contracts.

(a) When an application is approved, a charter contract shall be executed in accordance with this section.

(b) After approval of an application and no later than ninety days after charter application approval, the authorizer and the governing board shall execute a charter contract that sets forth:

(1) The term of the charter contract;

(2) Performance provisions describing the academic and operational performance expectations and measures by which the public charter school will be judged;

(3) Administrative provisions articulating the administrative relationship between the authorizer and the public charter school, including each party's rights and duties;

(4) The process the authorizer will use to provide ongoing oversight, including a process to conduct annual site visits;

(5) The process the authorizer will use to notify the charter school of any deficiencies and the process by which the charter school may submit an improvement plan;

(6) The agreed-upon process for amending the approved charter contract;

(7) The process agreed to by the authorizer and the charter school that identifies how disputes will be handled and resolved; and

(8) Any conditions set by the authorizer and agreed to by the charter school to commence operations of the school.

(c) The performance provisions set forth in a charter contract under subsection (b) of this section shall include applicable federal accountability requirements and state accreditation requirements that will allow the state board to issue the public charter school a level of accreditation pursuant to subdivision (2), subsection (1), section five, article two-e of this chapter.

(d) The performance provisions set forth in a charter contract under subsection (b) of this section may be refined or amended by mutual agreement of the parties to the charter contract after the public charter school is operating and has collected baseline achievement data for its enrolled students.

(e) A charter contract shall be signed by a designated representative of the authorizer and of the public charter school's governing board.

(f) A public charter school may not commence operations without a charter contract executed in accordance with this section and approved in a meeting open to the public.

§18-33-10. Public charter school performance framework.

(a) *Performance framework.* -- The performance provisions of a charter contract shall be based on a performance framework developed by the state board that sets forth the academic and operational performance indicators that will guide the authorizer's evaluations of each public charter school.

(b) *Data elements.* -- The performance framework developed under subsection (a) of this section shall include, at a minimum, indicators for:

- (1) Student academic proficiency;

- (2) Student achievement goals;
- (3) Achievement gaps in both proficiency and growth between major student subgroups;
- (4) Attendance;
- (5) Recurrent enrollment from year to year;
- (6) With respect to high school, postsecondary readiness;
- (7) Financial performance and sustainability;
- (8) Governing board performance and stewardship; and
- (9) Parent and community engagement.

(c) *Annual performance targets.* -- Annual performance targets shall be set by a public charter school in conjunction with its authorizer and shall be designed to help each school meet applicable federal and state requirements and authorizer expectations.

(d) *Data disaggregation.* -- The performance framework developed under subsection (a) of this section shall require the disaggregation of all student performance data by major student subgroups.

§18-33-11. Oversight.

(a) *Data collection; monitoring.* -- For each public charter school it oversees, the authorizer is responsible for collecting, analyzing and reporting all data from state assessments in accordance with the performance framework required by section ten of this article. An authorizer shall monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing all data to support ongoing evaluation according to the charter contract.

(b) *Notification of unsatisfactory performance or compliance.* -- In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall

promptly notify in writing the public charter school of perceived problems and provide reasonable opportunity for the school to remedy the problems.

§18-33-12. Charter term renewal.

(a) *Initial charter term.* -- An initial charter shall be granted for a term of five operating years. The charter term commences on the public charter school's first day of operation. An approved public charter school may delay its opening for one school year in order to plan and prepare for the school's opening. If the public charter school requires an opening delay of more than one school year, the public charter school shall request an extension from its authorizer. The authorizer may grant or deny the extension depending on the particular public charter school's circumstances.

(b) *Charter renewal term.* -- A charter may be renewed for successive terms of five years, although an authorizer may grant a renewal for a term not to exceed ten years based on the school's performance data, demonstrated capacities and particular circumstance of each public charter school.

(c) *Authorizer renewal responsibilities.* -- No later than June 30 of a public charter school's fourth year of operation under each five-year term of a charter contract, the authorizer shall issue a public charter school performance report. If the charter of the public charter school is expiring, the authorizer shall offer charter renewal application guidance to the school.

(1) The performance report required in this subsection shall summarize the public charter school's performance record to date, based on the data collected under the performance framework in section ten of this article and the charter contract, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the school that may jeopardize its position in seeking renewal if not timely rectified. The school and the authorizer shall

mutually agree to a reasonable time period for the charter school to respond to the performance report and submit any corrections for the report.

(2) The renewal application guidance required by this subsection shall include or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions, which shall be based on the performance framework set forth in section ten of this article, as set forth in the charter contract and consistent with this article. The renewal application guidance shall, at a minimum, require and provide an opportunity for the public charter school to:

(A) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(B) Describe improvements undertaken or planned for the school; and

(C) Detail the school's plans for the next charter term.

(d) *Renewal application.* -- No later than September 30 of a public charter school's fifth year of operation under a term of a charter contract or September 30 of a public charter school's final authorized year of operation under a term of a charter contract, the governing board of a public charter school seeking renewal shall submit a renewal application to the authorizer pursuant to any renewal application guidance offered by the authorizer under subsection (c) of this section.

(e) *Renewal decision.* -- An authorizer shall rule in a public meeting and by resolution on a renewal application no later than forty-five days after the filing of the renewal application. In making charter renewal decisions, every authorizer shall:

(1) Ground its decisions on a thorough analysis of evidence of the school's performance over the term of the charter contract in accordance with the terms and measures established in the performance framework set forth in the charter contract;

(2) Ensure that data used in making renewal decisions are available to the public charter school and the public;

(3) Provide a public report summarizing the evidence basis for each decision; and

(4) In instances where the authorizer declines to renew the charter, allow the school twenty days to respond in writing to the decision and public report before that decision becomes final. The school shall be allowed to provide the authorizer with such arguments and supporting information as it sees fit, and the authorizer shall consider all such timely submitted material prior to rendering its final determination. The authorizer shall render its final determination within ten days of receiving the school's written response, arguments, and supporting information.

(f) *Charter revocation and nonrenewal.* --

(1) A decision by an authorizer to revoke or not to renew the charter of a public charter school must be made in accordance with this subsection.

(2) A charter may be revoked at any time or not renewed if the authorizer determines that the public charter school failed to comply with the provisions of this article or:

(A) Committed a material violation of any of the terms, conditions, standards or procedures required under this chapter or the charter contract;

(B) Failed to meet the performance expectations set forth in the charter contract;

(C) Failed to meet generally accepted standards of fiscal management; or

(D) Violated any provision of law from which the school was not exempted.

(3) If an authorizer revokes or does not renew a charter, the authorizer shall clearly state, in a resolution of its governing entity in a public meeting, the reasons for the revocation or nonrenewal.

(4) The charter school authorizer may place a charter school on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in revocation of the school's charter.

(5) If an authorizer revokes or does not renew a charter, the county board of the district in which the school is located shall determine whether the school converts to noncharter public school status or the school is to be closed.

(6) If the county board elects to close a public charter school, the board shall clearly state, in a resolution in a public meeting, the reasons for the closure.

(g) *Notification to state superintendent.* -- Within ten days of taking action to renew, not renew or revoke a charter under this section and within ten days of taking action to close a public charter school, the authorizer or county board, as applicable, shall report to the state superintendent the action taken and shall provide a copy of the report to the public charter school at the same time that the report is submitted to the state superintendent. The report shall include a copy of the governing entity of the authorizer's or the county board's resolution setting forth the action taken and reasons for the decision.

(h) *Appeal of nonrenewal or revocation.* -- Any appeal of a nonrenewal or revocation of a charter shall be made to the state board within sixty days of the authorizer stating its reasons by resolution in a public meeting the reasons for the revocation or nonrenewal. Within sixty days, the state board only may uphold the decision or remand the issue to the authorizer with a recommendation. The state board may not reverse a decision of the authorizer. The state board shall report to the state superintendent any recommendation it has made on appeal within ten days. If the issue is remanded and the decision is again to not renew or to revoke the charter, the

applicant may continue to appeal within the sixty days, but the state board only may uphold the decision or remand any further appeal to the authorizer with a recommendation and may not reverse the authorizer's decision.

(i) *School closure and dissolution.* --

(1) In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol required to be included in the application pursuant to section seven of this article.

(2) If a public charter school closes for any reason:

(A) The authorizer shall oversee and work with the closing public charter school to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the requirements of this chapter; and

(B) The assets of the public charter school shall be distributed first to satisfy outstanding payroll obligations for employees of the public charter school and then to creditors of the public charter school. Any remaining funds shall be paid to the county board. If the assets of the public charter school are insufficient to pay all parties to whom the public charter school owes compensation, the prioritization of distribution of assets may be determined by decree of a court of law.

§18-33-13. Operations.

(a) *Legal status.* -- Notwithstanding any provision of law to the contrary, to the extent that any provision of this article is inconsistent with any other state or local law, rule or regulation, the provisions of this article govern and are controlling.

(1) A public charter school is subject to all federal laws and authorities, and anything in this article that is in conflict with federal laws and authorities is null and void.

(2) A charter contract may include one or more schools, to the extent approved by the authorizer and consistent with applicable law. Each public charter school that is part of a charter contract must be separate and distinct from any others.

(3) A single governing board may be issued one or more charter contracts. Each public charter school operating under its own contract is a discrete legal entity, separate and distinct from any others.

(b) Local educational agency status. --

(1) The school district in which the public charter school is located remains the local educational agency and the public charter school is a school within that local educational agency except that the public charter school is treated as a local educational agency for purposes of applying for competitive federal grants;

(2) The school district retains responsibility for special education and serves students in public charter schools in a manner consistent with local educational agency obligations under applicable federal, state and local law and the charter contract; and

(3) The county board remains accountable for the performance of the public charter school pursuant to subsection (m), section five, article two-e of this chapter.

(c) Powers of public charter schools. -- A public charter school has all the powers necessary for carrying out the terms of its charter contract, including the powers to:

(1) Receive and disburse funds and gifts for educational purposes;

(2) Contract or cooperate with noncharter public schools for service for students with special needs, English language learner students and other specialized populations, as well as for

mutually agreed administrative services;

(3) Secure appropriate insurance and enter into contracts and leases, free from the prevailing wage laws set forth in article five-a, chapter twenty-one of this code;

(4) Contract with an education service provider for education services and resources related to the management and operation of the public charter school, as long as the public charter school's governing board retains authority over the oversight and management of the public charter school;

(5) Incur debt in reasonable anticipation of the receipt of public or private funds, except that an authorizer is not responsible for any debt incurred by the public charter school;

(6) Pledge, assign or encumber its assets to be used as collateral for loans or extensions of credit;

(7) Solicit and accept any gifts or grants for public charter school purposes subject to applicable laws and the terms of its charter contract;

(8) Acquire real property for use as its facility or facilities from public or private sources; and

(9) Sue and be sued in its own name.

(d) *General requirements.* -- A public charter school is subject to the general requirements set out in this subsection.

(1) A public charter school may not discriminate against any person on the basis of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin or on any other basis that would be unlawful if done by a noncharter public school.

(2) A public charter school may not engage in any religious practices in its educational program, admissions or employment policies or operations.

(3) A public charter school may not charge tuition and may only charge such fees as may be imposed by other noncharter public schools in the state.

(4) The powers, obligations and responsibilities set forth in a charter contract may not be delegated or assigned by either party.

(e) *Applicability of other laws, rules and regulations.* -- The applicability of other laws, rules and regulations to public charter schools is as set out in this subsection.

(1) Public charter schools are subject to the same civil rights, health, life and safety, and financial requirements applicable to other noncharter public schools in the state, except as otherwise specifically provided in this chapter.

(2) Public charter schools are subject to the same student assessment and accreditation requirements applicable to other noncharter public schools in the state, but only to the extent that will allow the state board to issue the public charter school a level of accreditation pursuant to subdivision (2), subsection (1), section five of this chapter. Nothing in this article precludes a public charter school from establishing additional student assessment measures that go beyond state requirements if the school's authorizer approves the measures.

(3) Governing boards are subject to and must comply with the state's open meeting law pursuant to article nine-a, chapter six of this code.

(4) Except as provided in this article and its charter contract, a public charter school is exempt from all statutes and rules applicable to a noncharter public school or a local school district.

(5) Employees, governing body members and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to other noncharter public schools.

(6) No county board shall require any employee of the local school district to be employed in a charter school or any student enrolled in the school district to attend a charter school. No county board shall harass, threaten, discipline, discharge, retaliate or in any manner discriminate against any district employee involved directly or indirectly with an application to establish a charter school as authorized under this section.

(7) A county board shall not discriminate against a charter school in publicizing the district's educational options through advertising, direct mail, availability of mailing lists or other informational activities.

(8) Public charter schools are subject to the same federal nutrition standards applicable to other noncharter public schools.

(f) *Teachers and other school personnel.* -- This subsection governs school personnel employment in a public charter school.

(1) Personnel hired by a public charter school are employed by the charter school. The charter school is ultimately responsible for processing employee paychecks, managing its employees' participation in the applicable retirement system and managing its employees' participation in insurance plans established by the Public Employees Insurance Agency: *Provided,* That nothing in this subdivision prohibits the public charter school from contracting with another person or entity to perform services relating to managing its employees' participation in the retirement system or insurance plan.

(2) A public charter school must comply with applicable federal laws and regulations regarding the qualification of teachers and other instructional staff.

(3) All classroom teachers in a public charter school are subject to the same licensing requirements applicable to classroom teachers in a noncharter public school.

(4) All personnel in a public charter school continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school for purposes of employment in noncharter public schools.

(g) *Accounting requirements.* -- A public charter school shall comply with all applicable accounting and financial reporting requirements as prescribed for regular public schools, including adherence to generally accepted accounting principles. A public charter school shall annually engage an external auditor to perform an independent audit of the school's finances. The public charter school shall submit the audit to its authorizer and to the state superintendent within nine months of the end of the fiscal year for which the audit is performed.

§18-33-14. Funding.

(a) *Enrollment count.* -- Each charter school shall report to its county board the number of students enrolled in its school based on second month enrollment. Each county board shall report to the West Virginia Department of Education the enrollment of all public charter schools in the county based on second month enrollment.

(b) *Revenue provisions.* -- On or before October 1 of each year, each public charter school shall submit its budget request to the state board. The request shall not exceed the statewide per pupil total program allowance as computed under article nine-a of this chapter multiplied by the second month net enrollment of the public charter school: *Provided*, That for the funding for the first year of operation, the limit on the appropriation request shall be based on the projected second month net enrollment of the public charter school, with the funding for the public charter school and the authorizing county board to be subsequently adjusted, if necessary, in the first year of operation, based on the actual second month net enrollment. The state board shall include in its appropriation request to the Governor a request for an

appropriation for public charter schools equal to the total amount requested by all charter schools. The Governor shall request an appropriation in the amount requested by the state board at the next legislative session. The state board shall distribute the funding appropriated for the public charter schools to the county boards in which each charter school is located. Each county board shall distribute the funding received to each public charter school in a timely manner.

(c) *Special Education Funding.* -- The following provisions govern special education funding:

(1) The county board shall pay directly to the public charter school any federal or state aid attributable to a student with a disability attending the public charter school in proportion to the level of services for the student with a disability that the public charter school provides directly or indirectly; and

(2) Public charter schools have the same access as county boards to funding for students with high acuity needs pursuant to section five, article twenty of this chapter.

(d) *Federal Funds.* -- Except as otherwise provided in this article, the state shall send applicable federal funds to public charter schools attended by eligible students. Public charter schools with students eligible for funds under Title I of the federal Elementary and Secondary Education Act of 1965, 20 U. S. C., section 6301 *et seq.*, must receive and use these funds in accordance with federal and state law. During the first year of operation, a public charter school must receive Title I funds on the basis of an estimated enrollment of eligible students, as agreed with its authorizer.

(e) *Gifts and Grants.* -- A public charter school may receive gifts and grants from private sources in any manner that is available to a local school district. Nothing in this article may be construed to prohibit any person or organization from providing funding or other assistance for

the establishment or operation of a public charter school. The governing board of a public charter school may accept gifts, donations or grants of any kind made to the school and expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor except that a gift, donation or grant may not be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

(f) *Disclosure of funding sources.* -- Each public charter school annually shall submit to the state board its sources of funding along with its budget request required to be submitted to the state board pursuant to subsection (b) of this section. The state board shall make the public charter school's funding sources available publicly.

§18-33-15. Transportation.

(a) A charter school may contract with a local school district or other entity for transportation services.

(b) A charter school or any entity providing transportation for a charter school shall comply with all transportation and safety laws and administrative regulations applicable to public schools.

§18-33-16. Facilities.

(a) *Facilities; property.* -- A public charter school may acquire facilities and property in accordance with this subsection.

(1) A public charter school has a right of first refusal to purchase or lease at or below fair market value a closed noncharter public school facility or property or unused portions of a noncharter public school facility or property located in a school district from which it draws its students if the school district decides to sell or lease the noncharter public school facility or property. The school district may not require purchase or lease payments that exceed the fair

market value of the property.

(2) A public charter school may negotiate and contract with a school district, the governing board of a state institution of higher education or any other public or for-profit or nonprofit private entity for the use of a school building.

(3) Library, community service, museum, performing arts, theater, cinema, church, community college, college and university facilities may provide space to public charter schools within their facilities under their preexisting zoning and land-use designations.

(4) A public charter school may purchase or lease at or below fair market value part or all of any surplus or unused state-owned facility or property located in the state. The state agency in control of the facility may not require purchase or lease payments that exceed the fair market value of the property.

(5) The same zoning rules that apply to other noncharter public schools apply to public charter schools.

(b) Nothing in this section requires the county board to seek funds from any source, including the School Building Authority, for conversion of any existing district school facility or for constructing a district school or facility for use by the public charter school.

(c) *Inspection; building code.* -- The West Virginia State Fire Marshal is the agency that has jurisdiction over inspection of any facility used by the public charter school and issuance of a certificate of occupancy for the facility. A facility used by a public charter school is subject to the same building codes, regulations and fees that apply to other noncharter public schools including inspections by the West Virginia Department of Education, Office of School Facilities as required by subsection (c), section sixteen, article nine-d of this chapter.

§18-33-17. Miscellaneous.

(a) *Transfer of credits.* -- If a student who was previously enrolled in a public charter school enrolls in another noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools.

(b) *Access to extracurricular and interscholastic activities.* -- A public charter school is eligible for state-sponsored or school district sponsored interscholastic leagues, competitions, awards, scholarships and recognition programs for students, educators, administrators and schools to the same extent as noncharter public schools. A public charter school student is eligible to participate in extracurricular activities not offered by the student's public charter school at the noncharter public school within the attendance boundaries of which the student's custodial parent or legal guardian resides or the noncharter public school from which the student withdrew for the purpose of attending a public charter school. A public charter school student is eligible for extracurricular activities at a noncharter public school subject to eligibility standards applied to full-time students of the noncharter public school. A school district or noncharter public school may not impose additional requirements on a public charter school student to participate in extracurricular activities that are not imposed on full-time students of the noncharter public school. Public charter school students shall pay the same fees as other students to participate in extracurricular or co-curricular activities. For each public charter school student who participates in an extracurricular or co-curricular activity at a noncharter public school, the public charter school must pay a reasonable share of the noncharter public school's costs for the activity, as determined through negotiations between the schools involved.

(c) *Retirement.* -- All public charter school employees shall participate in the Teachers

Retirement System or the Teachers' Defined Contribution Retirement System, whichever is applicable in accordance with articles seven-a, seven-b and seven-d of this chapter.

(d) *Insurance.* -- All public charter school employees shall participate in insurance plans established by the Public Employees Insurance Agency pursuant to article sixteen, chapter five of this code.

§18-33-18. Teacher approval of converting existing noncharter public school to public charter school status.

(a) A teacher shall be eligible to vote in accordance with the provisions of this section if the teacher is regularly employed at the school.

(b) A secret ballot vote at a special meeting of all teachers regularly employed at the school shall be conducted to determine the level of employee commitment to apply to convert to a public charter school.

(c) A panel consisting of the elected officers of the faculty senate of the school and three parent members appointed by the local school improvement council shall call the meeting required in subsection (b) of this section, conduct the votes and certify the results. The panel shall provide notice of the special meeting to all employees eligible to vote at least two weeks prior to the meeting and shall provide an absentee ballot to each employee eligible to vote who cannot attend the meeting to vote.

(d) At least sixty percent of the teachers who are eligible to vote in accordance with this section must vote to apply for conversion to a public charter school before the level of teacher commitment at the school is sufficient for the school to apply for conversion to a public charter school.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 12. STATE INSURANCE.**§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, public charter schools electing to obtain coverage, and for employees and officers of the state Department of Corrections.**

(a) In accordance with the provisions of this article, the state Board of Risk and Insurance Management shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members and for all employees and officers of the state Department of Corrections: *Provided*, That the ~~board~~ Board of Risk and Insurance Management is not required to provide insurance for every property, activity or responsibility of county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools and school board members and for all employees and officers of the state Department of Corrections.

(b) Insurance provided by the ~~board~~ Board of Risk and Insurance Management pursuant to the provisions of subsection (a) of this section shall cover claims, demands, actions, suits or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the Department of Corrections was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the county board of education, or Commissioner of Corrections or in an official capacity as a county superintendent or as a school board member

or as Commissioner of Corrections.

(c) Insurance coverage provided by the ~~board~~ Board of Risk and Insurance Management pursuant to subsection (a) of this section shall be in an amount to be determined by the state Board of Risk and Insurance Management, but in no event less than \$1 million for each occurrence. In addition, each county board of education shall purchase, through the ~~board~~ Board of Risk and Insurance Management, excess coverage of at least \$5 million for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the ~~board~~ Board of Risk and Insurance Management pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

(e) The county superintendent and other school personnel shall be defended by the county board of education or an insurer in the case of suit, unless the act or omission shall not have been within the course or scope of employment or official responsibility or was motivated by malicious or criminal intent.

(f) The provisions of this section only apply to public charter schools authorized pursuant to article thirty-three, chapter eighteen of this code that have included in their approved charter application a determination to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to this section. If a public charter school elects to obtain coverage

pursuant to this section:

(1) Any provision in this section applicable to a county board of education also applies to a charter school governing board;

(2) Any provision in this section applicable to a school board member also applies to a member of a charter school governing board; and

(3) Any provision of this section applicable to teachers, supervisory and administrative staff members and service personnel employed by a county board of education also applies to teachers, supervisory or administrative staff members and service personnel employed by a public charter school.

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

Engrossed Committee Substitute for Senate Bill No. 14 was then read a third time and put upon its passage.

Pending extended discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill No. 14 pass?"

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Leonhardt, Maynard, Mullins, Nohe, Sypolt, Takubo, Trump, Walters and Cole (Mr. President)--18.

The nays were: Beach, Facemire, Kessler, Kirkendoll, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Unger, Williams, Woelfel and Yost--16.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 14) passed.

On motion of Senator Sypolt, the following amendment to the title of the bill was

reported by the Clerk and adopted:

Eng. Com. Sub. for Senate Bill No. 14--A Bill to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §6C-2-2 of said code; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-9A-2 and §18-9A-12 of said code; to amend and reenact §18-20-5 of said code; to amend said code by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, §18-33-8, §18-33-9, §18-33-10, §18-33-11, §18-33-12, §18-33-13, §18-33-14, §18-33-15, §18-33-16, §18-33-17 and §18-33-18; and to amend and reenact §29-12-5a of said code, all relating to public charter schools; setting forth legislative purpose and intent; defining terms; requiring state superintendent to report on the charter school program; setting forth provisions pertaining to eligibility and enrollment; prohibiting discrimination; allowing a county board to authorize the creation of a start-up public charter school or the conversion of a noncharter public school to a public charter school; capping the number of public charter schools authorized; setting forth the duties of the authorizer; requiring an authorizer to develop and maintain policies and practices consistent with nationally recognized principles and professional standards for authorizing public charter schools; requiring certain authorizers to submit to the state superintendent an annual report summarizing certain information; prohibiting an employee, trustee, agent or representative of an authorizer from simultaneously serving as an employee, trustee, agent, representative, vendor or contractor of a public charter school operating under that authorizer; prohibiting a public charter school from being required to purchase services from its authorizer; requiring West Virginia Board of Education to perform certain duties relating to training, appeals, requests for proposals and the two per calendar year cap; limiting West Virginia Board of Education authority on appeal to only

upholding the decision or remanding the issue with a recommendation; allowing West Virginia Board of Education to charge up to a certain amount for performing its duties; requiring West Virginia Board of Education to issue and broadly publicize requests for proposals; setting forth such information the requests for proposals shall contain, including a determination on whether to participate in the public employees grievance procedures; setting forth provisions pertaining to application for approval as a public charter school; setting forth provisions pertaining to the application review process; setting forth provisions pertaining to application approval and denial; setting forth provisions pertaining to appeal of application denial; requiring the execution of a charter contract; requiring the performance provisions of a charter contract be based on a performance framework developed by West Virginia Board of Education that sets forth the academic and operational performance indicators that will guide the authorizer's evaluations of each public charter school; requiring performance targets be set by a public charter school in conjunction with its authorizer; setting forth authorizer responsibilities relating to oversight; providing for an initial charter term of five years and a renewal term of five to ten years; setting forth authorizer responsibilities relating to renewal; requiring submission of renewal application; setting forth provisions pertaining to the renewal decision by the authorizer; setting forth provisions pertaining to charter revocation and nonrenewal, including provisions allowing for appeal; providing for public charter school closure and dissolution; establishing priority in the application of laws, rules, regulations and authorities; allowing a charter contract to include one or more schools; allowing a single governing board to be issued one or more charter contracts; providing that the school district in which the public charter school is located remains the local education agency; providing that the school district retains responsibility for special education; declaring that the county board remains accountable for the performance of the public charter

school; setting forth powers of public charter schools; prohibiting public charter schools from certain activities relating to discrimination, religious practices, charging tuition and delegating or assigning responsibilities set forth in a charter contract; limiting fees that may be charged; setting forth provisions pertaining to the applicability of other laws, rules and regulations to public charter schools; prohibiting county boards from certain actions relating to public charter schools; declaring that personnel hired by the charter school are employed by the charter school; requiring a public charter school to comply with applicable federal laws and regulations regarding the qualifications of teachers and other instructional staff; providing that all public charter school classroom teachers are subject to the same licensing requirements applicable to classroom teachers in noncharter public schools; providing that all personnel in a public charter school continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school for purposes of employment in noncharter public schools; setting forth provisions pertaining to accounting, financial reporting and auditing; setting forth provisions pertaining to funding for public charter schools; allowing a public charter school to contract with a local school district or other entity for transportation services; requiring any entity providing transportation services to comply with all transportation and safety and administrative regulations applicable to noncharter public schools; setting forth provisions pertaining to public charter school facilities and property; clarifying that county boards not required to seek funds for certain facility-related purposes; setting forth provisions pertaining to building inspections, codes, regulations and fees; setting forth provisions pertaining to the transfer of credits; setting forth provisions pertaining to extracurricular and interscholastic activities; requiring that public charter school employees participate in the Teachers Retirement System or the Teachers' Defined Contribution Retirement System, whichever is applicable;

requiring that all public charter school employees participate in insurance plans established by the Public Employees Insurance Agency; providing for teacher approval of converting existing noncharter public school to public school prior to application; and setting forth provisions related to Board of Risk and Insurance Management coverage of certain public charter schools.

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

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senators Laird, Beach and Unger regarding the passage of Engrossed Committee Substitute for Senate Bill No. 14 were ordered printed in the Appendix to the Journal.

At the request of Senator Walters, unanimous consent being granted, the remarks by Senators Gaunch and Leonhardt regarding the passage of Engrossed Committee Substitute for Senate Bill No. 14 were ordered printed in the Appendix to the Journal.

At the request of Senator Carmichael, and by unanimous consent, the remarks by Senator Sypolt regarding the passage of Engrossed Committee Substitute for Senate Bill No. 14 were ordered printed in the Appendix to the Journal.

Without objection, the Senate returned to the third order of business.

A message from The Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill No. 508, Reorganizing Hatfield-McCoy Regional Recreation Authority.

On motion of Senator Carmichael, the message on the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting section and inserting in lieu there of the following:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-3. Definitions.

For purposes of this article only, and unless a different meaning plainly is required:

(1) "Criminal justice enforcement personnel" means those persons within the state criminal justice system who are actually employed as members of the State Police, members of the Division of Protective Services, natural resources police officers, chiefs of police and police of incorporated municipalities, and county sheriffs and their deputies, and whose primary duties are the investigation of crime and the apprehension of criminals.

(2) "Head of a law-enforcement agency" means the Superintendent of the State Police, the Director of the Division of Protective Services, the chief natural resources police officer of the Division of Natural Resources, a chief of police of an incorporated municipality, a county sheriff or the Director of the Division of Forestry.

(3) "State or local law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, although those institutions may not be considered law-enforcement agencies. ~~The term includes persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article fourteen,~~

~~chapter twenty of this code, although the authority is not a law-enforcement agency.~~

(4) "Head of campus police" means the superintendent or administrative head of state or local law-enforcement officers employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code.

~~(5) "Head of the rangers of the Hatfield-McCoy Regional Recreation Authority" means the superintendent or administrative head of state or local law-enforcement officers employed as rangers by the Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code.~~

§15-10-4. Cooperation between law-enforcement agencies and other groups of state or local law-enforcement officers.

(a) The head of any law-enforcement agency, or the head of any campus police ~~or the head of the rangers of the Hatfield-McCoy regional recreational authority~~, as those terms are defined in section three of this article, may temporarily provide assistance and cooperation to another agency of the state criminal justice system or to a federal law-enforcement agency in investigating crimes or possible criminal activity if requested to do so in writing by the head of another law-enforcement agency or federal law-enforcement agency. Such assistance may also be provided upon the request of the head of the law-enforcement agency or federal law-enforcement agency without first being reduced to writing in emergency situations involving the imminent risk of loss of life or serious bodily injury. The assistance may include, but is not limited to, entering into a multijurisdictional task force agreement to integrate federal, state, county and municipal law-enforcement agencies or other groups of state or local law-enforcement officers, or any combination thereof, for the purpose of enhancing interagency

coordination, intelligence gathering, facilitating multijurisdictional investigations, providing criminal justice enforcement personnel of the law-enforcement agency to work temporarily with personnel of another agency, including in an undercover capacity, and making available equipment, training, technical assistance and information systems for the more efficient investigation, apprehension and adjudication of persons who violate the criminal laws of this state or the United States, and to assist the victims of such crimes. When providing the assistance under this article, a head of a law-enforcement agency shall comply with all applicable statutes, ordinances, rules, policies or guidelines officially adopted by the state or the governing body of the city or county by which he or she is employed, and any conditions or restrictions included therein.

(b) While temporarily assigned to work with another law-enforcement agency or agencies, criminal justice enforcement personnel and other state and local law-enforcement officers shall have the same jurisdiction, powers, privileges and immunities, including those relating to the defense of civil actions, as such criminal justice enforcement personnel would enjoy if actually employed by the agency to which they are assigned, in addition to any corresponding or varying jurisdiction, powers, privileges and immunities conferred by virtue of their continued employment with the assisting agency.

(c) While assigned to another agency or to a multijurisdictional task force, criminal justice enforcement personnel and other state and local law-enforcement officers shall be subject to the lawful operational commands of the superior officers of the agency or task force to which they are assigned, but for personnel and administrative purposes, including compensation, they shall remain under the control of the assisting agency. These assigned personnel shall continue to be covered by all employee rights and benefits provided by the assisting agency, including

workers' compensation, to the same extent as though such personnel were functioning within the normal scope of their duties.

(d) No request or agreement between the heads of law-enforcement agencies, or the heads of campus police ~~or the head of the rangers of the Hatfield-McCoy regional recreation authority~~, made or entered into pursuant to this article shall remain in force or effect until a copy of said request or agreement is filed with the office of the circuit clerk of the county or counties in which the law-enforcement agencies, or the campus police, ~~or the Hatfield-McCoy regional recreation authority rangers~~ involved operate. Agreements made pursuant to this article shall remain in effect unless and until the agreement is changed or withdrawn in writing by the head of one of the law-enforcement agencies. Upon filing, the requests or agreements may be sealed, subject to disclosure pursuant to an order of a circuit court directing disclosure for good cause. Nothing in this article shall be construed to limit the authority of the head of a law-enforcement agency or the head of campus police ~~or the head of the rangers of the Hatfield-McCoy regional recreation authority~~ to withdraw from any agreement at any time.

(e) Nothing contained in this article shall be construed so as to grant, increase, decrease or in any manner affect the civil service protection or the applicability of civil service laws as to any criminal justice enforcement personnel, or as to any state or local law-enforcement officer or agency operating under the authority of this article, nor shall this article in any way reduce or increase the jurisdiction or authority of any criminal justice enforcement personnel, or of any state or local law-enforcement officer or agency, except as specifically provided herein.

(f) Nothing contained in this article shall be construed so as to authorize the permanent consolidation or merger or the elimination of operations of participating federal, state, county municipal law-enforcement agencies, or other groups of state and local law-enforcement

officers, ~~the head or~~ campus police. ~~or the head of the rangers of the Hatfield-McCoy regional recreation authority.~~

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.

§20-7-1. Chief natural resources police officer; natural resources police officers; special and emergency natural resources police officers; subsistence allowance; expenses.

(a) The division's law-enforcement policies, practices and programs are under the immediate supervision and direction of the division law-enforcement officer selected by the director and designated as chief natural resources police officer as provided in section thirteen, article one of this chapter.

(b) Under the supervision of the director, the chief natural resources police officer shall organize, develop and maintain law-enforcement practices, means and methods geared, timed and adjustable to seasonal, emergency and other needs and requirements of the division's comprehensive natural resources program. All division personnel detailed and assigned to law-enforcement duties and services under this section shall be known and designated as natural resources police officers and are under the immediate supervision and direction of the chief natural resources police officer except as otherwise provided. All natural resources police officers shall be trained, equipped and conditioned for duty and services wherever and whenever required by division law-enforcement needs. The chief natural resources police officer may also assign natural resources police officers to perform law-enforcement duties on any trail, grounds, appurtenant facility or other areas accessible to the public within the Hatfield-McCoy Recreation Area, under agreement that the Hatfield-McCoy Regional Recreation Authority, created pursuant to article fourteen of this chapter, shall reimburse the division for salaries paid to the officers and

shall either pay directly or reimburse the division for all other expenses of the officers in accordance with actual or estimated costs determined by the chief natural resources police officer.

(c) The chief natural resources police officer, acting under supervision of the director, is authorized to select and appoint emergency natural resources police officers for a limited period for effective enforcement of the provisions of this chapter when considered necessary because of emergency or other unusual circumstances. The emergency natural resources police officers shall be selected from qualified civil service personnel of the division, except in emergency situations and circumstances when the director may designate officers, without regard to civil service requirements and qualifications, to meet law-enforcement needs. Emergency natural resources police officers shall exercise all powers and duties prescribed in section four of this article for full-time salaried natural resources police officers except the provisions of subdivision (8) of said section.

(d) The chief natural resources police officer, acting under supervision of the director, is also authorized to select and appoint as special natural resources police officers any full-time civil service employee who is assigned to, and has direct responsibility for management of, an area owned, leased or under the control of the division and who has satisfactorily completed a course of training established and administered by the chief natural resources police officer, when the action is considered necessary because of law-enforcement needs. The powers and duties of a special natural resources police officer, appointed under this provision, is the same within his or her assigned area as prescribed for full-time salaried natural resources police officers. The jurisdiction of the person appointed as a special natural resources police officer, under this provision, shall be limited to the division area or areas to which he or she is assigned

and directly manages.

(e) The Director of the Division of Forestry is authorized to appoint and revoke Division of Forestry special natural resources police officers who are full-time civil service personnel who have satisfactorily completed a course of training as required by the Director of the Division of Forestry. The jurisdiction, powers and duties of Division of Forestry special natural resources police officers are set forth by the Director of the Division of Forestry pursuant to article three of this chapter, and articles one-a and one-b, chapter nineteen of this code.

(f) The chief natural resources police officer, with the approval of the director, has the power and authority to revoke any appointment of an emergency natural resources police officer or of a special natural resources police officer at any time.

(g) Natural resources police officers are subject to seasonal or other assignment and detail to duty whenever and wherever required by the functions, services and needs of the division.

(h) The chief natural resources police officer shall designate the area of primary residence of each natural resources police officer, including himself or herself. Since the area of business activity of the division is actually anywhere within the territorial confines of the State of West Virginia, actual expenses incurred shall be paid whenever the duties are performed outside the area of primary assignment and still within the state.

(i) Natural resources police officers shall receive, in addition to their base pay salary, a minimum monthly subsistence allowance for their required telephone service, dry cleaning or required uniforms, and meal expenses while performing their regular duties in their area of primary assignment in the amount of \$130 each month. This subsistence allowance does not apply to special or emergency natural resources police officers appointed under this section.

(j) After June 30, 2010, all those full time law-enforcement officers employed by the Division of Natural Resources as conservation officers shall be titled and known as natural resources police officers. Wherever used in this code the term "conservation officer", or its plural, means "natural resources police officer", or its plural, respectively.

(k) Notwithstanding any provision of this code to the contrary, the provisions of subdivision six, subsection c, section twelve, article twenty-one, chapter eleven of this code are inapplicable to pensions of natural resources police officers paid through the Public Employees Retirement System.

ARTICLE 14. HATFIELD-MCCOY REGIONAL RECREATION AUTHORITY.

§20-14-1. Legislative findings.

The West Virginia Legislature finds that there is a significant need within the state and throughout the eastern United States for well-managed facilities for trail-oriented recreation for off-highway motor vehicle enthusiasts. ~~mountain bicyclists, equestrians and others.~~ The Legislature further finds that under an appropriate contractual and management scheme, well-managed, trail-oriented, recreation facilities could exist on private property without diminishing the landowner's interest, control or profitability in the land and without increasing the landowner's exposure to liability.

The Legislature further finds that, with the cooperation of private landowners, there is an opportunity to provide trail-oriented recreation facilities primarily on private property in the mountainous terrain of southern West Virginia and that the facilities will provide significant economic and recreational benefits to the state and to the communities in southern West Virginia through increased tourism in the same manner as whitewater rafting and snow skiing benefit the state and communities surrounding those activities.

The Legislature further finds that the creation and empowering of a ~~statutory corporation~~ joint development entity to work with the landowners, county officials and community leaders, state and federal government agencies, recreational user groups and other interested parties to enable and facilitate the implementation of the facilities will greatly assist in the realization of these potential benefits.

The Legislature further finds that it is in the best interests of the state to encourage private landowners to make available for public use through the Hatfield-McCoy Regional Recreation Authority land for these recreational purposes by limiting their liability for injury to persons entering thereon, by limiting their liability for injury to the property of persons entering thereon and by limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

§20-14-2. Definitions.

Unless the context clearly requires a different meaning, the terms used in this section have the following meanings:

- (a) "Authority" means the Hatfield-McCoy Regional Recreational Authority;
- (b) "Board" means the board of the Hatfield-McCoy Regional Recreation Authority;
- (c) "Charge" means, for purposes of limiting liability for recreational purposes set forth in this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience or occasion as set by the authority: *Provided*, That the authority may set charges in differing amounts for different categories of participants, including, but not limited to, in-state and out-of-state participants, as the authority sees fit;
- (d) "Hatfield-McCoy Recreation Area" means a system of recreational trails and

appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites and other facilities that are a part of the system;

(e) "Land" includes, but is not limited to, roads, water, watercourses, private ways and buildings, structures and machinery or equipment thereon when attached to the realty;

(f) "Owner" means those vested with title to real estate and those with the ability to exercise control over real estate and includes, but is not limited to, tenant, lessee, licensee, holder of a dominant estate or other lawful occupant; ~~or person in control of the premises;~~

~~(g) "Recreational purposes" includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user;~~

(g) "Participant" means any person using the land, trails and facilities of the Hatfield-McCoy Recreation Area;

(h) "Participating county or counties" means the counties of Boone, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Wayne and Wyoming ~~and with the approval of the board, any other county or counties where trails and other recreational facilities relating to the Hatfield-McCoy recreation area are developed in the future with the cooperation of the county commission~~ that have agreed to operate the Hatfield-McCoy Regional Recreation Authority as a joint development entity and to participate in its governance; and

(i) "Recreational purposes" includes, but is not limited to, any one or any combination of

the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or motor vehicle driving and riding, bicycling, horseback riding, nature study, water skiing, winter sports and visiting, viewing or enjoying historical, archaeological, scenic or scientific sites or otherwise using land for purposes of the user.

§20-14-3. Creation; appointment of board; terms.

(a) ~~There is hereby created the "Hatfield-McCoy Regional Recreation Authority" which is a public corporation and a government instrumentality existing This joint development entity is created~~ The public corporation, the Hatfield-McCoy Regional Recreation Authority, previously created by this section is hereby converted to a new public corporation created as a joint development entity of the participating counties for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by off-highway motor vehicle enthusiasts. ~~equestrians, mountain bicyclists and others.~~ This recreational trail system shall be located in ~~southern West Virginia~~ the counties of Boone, Kanawha, Lincoln, Logan, McDowell, Mercer, Mingo, Wayne and Wyoming with significant portions of the recreational trail system being located on private property made available for use through lease, license, easement or other appropriate legal form by a willing landowner.

(b) The authority shall be governed by a board of ~~at least seventeen~~ no more than eighteen members who shall be representative of the various interests involved in the Hatfield-McCoy Recreation Area project in the ~~southern region of the state~~ participating counties and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in section two of this article, shall appoint two members of the board as follows:

(A) One member who represents and is associated with a corporation or individual landowner whose land is being used or is expected to be used in the future as part of the Hatfield-McCoy Recreation Area project or their designee. This member shall be appointed to a four-year term.

(B) One member who represents and is associated with travel and tourism or economic development efforts within the county or who is associated with a mining, logging, natural gas or other resource-extraction industry or who is a licensed land surveyor or licensed professional engineer. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

~~(2) The members of the board appointed under subdivision (1), subsection (b) of this section by the county commissions shall appoint three additional board members, at least two of whom represent and are associated with recreational users of the Hatfield-McCoy recreation area project. These members shall serve three-year terms.~~

~~(3) The following three persons shall serve as nonvoting members representing the state: The director of the division of travel and tourism, the director of the Division of Natural Resources, and the director of the Division of Forestry, or their respective designees.~~

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. The terms of the members serving as of the date of enactment of the amendments of this section made during the 2015 regular session of the Legislature shall expire on June 30, 2015, and each participating county shall appoint two members to the board of the newly converted public corporation with terms to commence on July 1, 2015. Members of the board are not entitled to compensation for

services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

~~(c) Before the authority issues any revenue bonds or revenue refunding bonds under the authority of this article, each appointed voting member of the board shall execute a surety bond in the penal sum of \$25,000 and the officers and executive director of the board shall each execute a surety bond in the penal sum of \$50,000. Each surety bond shall be conditioned upon the faithful performance of the duties of the member, officer or director, shall be executed by a surety company authorized to transact business in this state as surety and shall be approved by the Governor and filed in the office of the Secretary of State. The authority shall pay premiums on the surety bonds from funds accruing to the authority.~~

The conversion of the Hatfield-McCoy Regional Recreation Authority to a joint development entity does not terminate or interrupt its status as a public corporation. The amendments to this article made during the 2015 regular session of the Legislature do not alter the debts, liabilities, responsibilities or other obligations of any party with regard to this public corporation.

(d) The Hatfield-McCoy Regional Recreation Authority is a public body for purposes of the West Virginia Freedom of Information Act, as provided in article one, chapter twenty-nine-b of this code.

§20-14-4. Board; quorum; executive director; expenses.

The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

The board shall meet quarterly, unless a special meeting is called by its chairman:
Provided, That ~~on the second Monday of July of each even-numbered~~ at the first meeting of each

fiscal year beginning in an odd-numbered year, or as soon thereafter as feasible, the board shall ~~meet to~~ elect a chairman, secretary and treasurer from among its own members.

A majority of the members of the board constitutes a quorum, and a quorum shall be present for the board to conduct business. ~~Unless the bylaws require a larger number, action may be taken by majority vote of the members present.~~

The board ~~shall~~ may prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted, rules governing the use of the trail system and the safety of participants and shall review and approve an annual budget. The fiscal year for the authority begins on July 1, and ends on the thirtieth day of the following June.

The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and may appoint counsel and legal staff for the authority and retain such temporary engineering, financial and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare annually a budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits and total compensation. Before August 15, the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year and a copy of the approved budget for the current fiscal year.

All costs incidental to the administration of the authority, including office expenses, personal services expense and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

§20-14-4a. Financial review and oversight.

(a) The authority shall contract for and obtain an annual financial audit to be conducted by a private accounting firm in compliance with generally accepted government auditing standards. When complete, the audit shall be transmitted to the board, the president of the county commission of each participating county and the Legislative Auditor. The cost of the audit shall be paid by the authority.

(b) If the authority receives any funds from the Legislature by appropriation or grant, the Legislative Auditor shall have the power and authority to examine the revenues, expenditures and performance of the Hatfield-McCoy Regional Recreation Authority and for these purposes shall have the power to inspect the properties, equipment, facilities of the authority and to request, inspect and obtain copies of any records of the authority. For each fiscal year in which the authority receives any funds from the Legislature by appropriation or grant, the executive director shall provide to the Legislative Auditor and Secretary of Revenue a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year within forty-five days of the close of that fiscal year.

§20-14-5. Powers of authority.

The authority, as a public corporation and ~~governmental instrumentality exercising public powers of the state~~ joint development entity, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

(1) To acquire, own, hold and dispose of property, real and personal, tangible and intangible;

(2) To lease property, whether as lessee or lessor, and to acquire or grant through easement, license or other appropriate legal form, the right to develop and use property and open it to the use of the public;

(3) To mortgage or otherwise grant security interests in its property;

(4) To procure insurance against any losses in connection with its property, license or easements, contracts, including hold-harmless agreements, operations or assets in such amounts and from such insurers as the authority considers desirable;

(5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;

(6) To sue and be sued, implead and be impleaded and complain and defend in any court;

(7) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of article three, chapter five of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements and provide such other legal services as may be requested by the authority;

(8) To adopt, use and alter at will a corporate seal;

(9) To make, amend, repeal and adopt bylaws for the management and regulation of its

affairs;

(10) To appoint officers, agents and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership or corporation to effect any or all of the purposes of this article;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from and enter into contracts and other transactions with any federal agency;

(13) To maintain an office at such places within the state as it may designate;

(14) To borrow money and to issue ~~its bonds, security interests or notes~~ and to provide for ~~and secure the payment of the bonds, security interests or notes~~ and to provide for the rights of the holders of the ~~bonds, security interests or notes~~ and to purchase, hold and dispose of any of its ~~bonds, security interests or notes~~;

(15) ~~To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in such manner and upon such terms as the authority considers would best serve the purposes of this article;~~

(16) To issue ~~its bonds, security interests and notes payable solely from the revenues or other funds available to the authority, and the authority may issue its bonds, security interests or notes in such principal amounts as it considers necessary to provide funds for any purpose under this article, including:~~

(A) The payment, funding or refunding of the principal of, interest on or redemption premiums on ~~any bonds, security interests or notes issued by it whether the bonds, security~~

~~interests~~, notes or interest to be funded or refunded have or have not become due;

(B) The establishment or increase of reserves to secure or to pay ~~bonds, security interests~~, notes or the interest on the ~~bonds, security interest~~ or notes and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. ~~Any bonds, security interests~~ or Notes may be additionally secured by a pledge of any revenues, funds, assets or moneys of the authority from any source whatsoever;

(17) ~~(16)~~ To issue renewal notes ~~or security interests, to issue bonds to pay notes or security interests and, whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured~~ except that no renewal notes may be issued to mature more than ten years from the date of issuance of the notes renewed and ~~no refunding bonds may be issued to mature more than twenty-five years from the date of issuance;~~

(18) ~~(17)~~ To apply the proceeds from the sale of renewal notes, ~~security interests of refunding bonds~~ to the purchase, redemption or payment of the notes ~~security interests or bonds~~ to be refunded;

(19) ~~(18)~~ To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the federal government or from any governmental unit or any person, firm or corporation and to carry out the terms or provisions of or make agreements with respect to or pledge any gifts or grants and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants;

(20) ~~(19)~~ To the extent permitted under its contracts with the holders of ~~bonds, security interests~~ or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any ~~bond,~~

~~security interest, note, contract or agreement of any kind to which the authority is a party;~~

~~(21) To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of security interests may be issued in the same manner and for the same purposes as bond and note venues;~~

~~(22) To promulgate legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code as necessary to implement and make effective the powers, duties and responsibilities invested in the authority by the provisions of this article and otherwise by law, including regulation of the conduct of persons using the Hatfield-McCoy recreation area. Notwithstanding any other provisions of this code to the contrary, until the Legislature has authorized the rules, the authority may promulgate emergency rules for those purposes pursuant to section fifteen, article three, chapter twenty-nine-a of this code;~~

~~(23)~~ (20) To construct, reconstruct, improve, maintain, repair, operate and manage the Hatfield-McCoy recreation area at the locations within the state participating counties as may be determined by the authority;

(21) To enter into an agreement with the West Virginia Division of Natural Resources for natural resources police officers to provide law-enforcement services within the Hatfield-McCoy Recreation Area and to reimburse the Division of Natural Resources for its costs therefor;

~~(24)~~ (22) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain and operate or oversee the operation of the Hatfield-McCoy recreation area at such locations within the state participating counties as may be determined by the authority;

~~(25)~~ (23) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section;

~~(26)~~ (24) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

~~(27)~~ To provide for law enforcement within the Hatfield-McCoy recreational area by appointing rangers as provided in section six of this article;

~~(28)~~ (25) To develop, maintain and operate or to contract for the development, maintenance and operation of the Hatfield-McCoy Recreation Area;

~~(29)~~ (26) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for ~~public recreation~~ recreational purposes or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

~~(30)~~ (27) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers or other facilities which are part of the Hatfield-McCoy Recreation Area and to retain and utilize that revenue for any purposes consistent with this article;

~~(31)~~ To cooperate with the states of Kentucky and Virginia and appropriate state and local officials and community leaders in those states to connect the trails of the West Virginia portion of the Hatfield-McCoy recreation area with similar recreation facilities in those states;

~~(32)~~ (28) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use as part of the Hatfield-McCoy Recreation Area; and

~~(33)~~ (29) To directly operate and manage recreation activities and facilities within the

§20-14-8. Prohibited acts, penalty.

(a) A person may not enter or remain upon the Hatfield-McCoy Recreation Area without a valid, nontransferrable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land and not for recreational purposes;

(b) A person may not consume or possess any alcoholic liquor at any time or any location within the Hatfield-McCoy Recreation Area.

(c) The operator or passenger of a motor vehicle within the Hatfield-McCoy Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the American National Standards Institute standard, z 90.1, the United States Department of Transportation Federal Motor Vehicle Safety Standard No. 218 or Snell Memorial Foundation safety standards for protective headgear for vehicle users.

(d) Each trail user shall obey all traffic laws, traffic-control devices and signs within the Hatfield-McCoy Recreation Area, including those which restrict trails to certain types of motor vehicles, motorcycles or those equipped with roll cages.

(e) Each trail user shall at all times remain within and on a designated and marked trail while within the Hatfield-McCoy Recreation Area.

(f) A person may not be on any trail within the Hatfield-McCoy Recreation Area at any time from one half-hour after sunset until one half-hour before sunrise, except in an emergency.

(g) Every person within the Hatfield-McCoy Recreation Area who is under sixteen years

of age shall at all times be under the immediate supervision of and within sight of a person who is at least eighteen years of age and who either is a parent or guardian of the youth or has the express permission of a parent or guardian to supervise the youth. No parent, guardian or supervising adult may allow a child under the age of sixteen years to leave that person's sight and supervision within the Hatfield-McCoy Recreation Area.

(h) A person may not ignite or maintain any fire within the Hatfield-McCoy Recreation Area except at a clearly marked location at a trailhead center.

(i) A person within the Hatfield-McCoy Recreation Area may not operate a motor vehicle in any competition or exhibition of speed, acceleration, racing, test of physical endurance or climbing ability unless in an event sanctioned by the authority.

(j) Every person operating a motor vehicle within the Hatfield-McCoy Recreation Area shall be subject to all of the duties applicable to the driver of a motor vehicle by the provisions of chapter seventeen-c of this code except where inconsistent with the provisions of this article and except as to those provisions of chapter seventeen-c of this code which by their nature can have no application and may not operate a motor vehicle in violation of those duties.

(k) A person may not possess a glass container while riding on a motor vehicle within the Hatfield-McCoy Recreation Area.

(l) A person may not operate or ride in a utility terrain vehicle, as defined in article one, chapter seventeen-f of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control unless equipped with seat belts meeting at a minimum federal motor vehicle safety standards and properly worn by the driver and all passengers.

(m) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100. Prosecution or conviction for the

misdemeanor described in this subsection shall not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.

§20-14-9. Limiting liability.

~~(a) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen,~~ An owner of land used by or for the stated purposes of the Hatfield-McCoy regional recreation authority, whether with or without charge, owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous or hazardous condition, use, structure or activity on the premises to persons entering for those purposes.

~~(b) Notwithstanding the provisions of section three, article twenty-five, chapter nineteen of this code, the landowner or lessor of the property for recreational purposes does not thereby:~~
~~(a) Extend any assurance that the premises are safe for any purpose; or (b) confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of these persons.~~

~~(e)~~ (b) Unless otherwise agreed in writing, an owner who grants a lease, easement or license of land to the authority for recreational purposes, whether with or without charge, owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures or activities thereon. An owner who grants a lease, easement or license of land to the authority for recreational purposes does not by giving a lease, easement or license: (1) Extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume

responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser or otherwise.

~~(d) (c) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful or malicious infliction of injury to persons or property: *Provided*, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself. *Provided, however*, That equestrians who are using the land upon which the Hatfield-McCoy recreation area is located but who are not engaged in a commercial profit-making venture are exempt from the provisions of subsection (d), section five, article four, chapter twenty of this code.~~

§20-14-10. Purchasing and bidding procedures.

(a) Whenever the authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or exceed \$2,500 in cost, the purchase or contract shall be based on competitive bids. Where the purchase of particular commodities or services is reasonably anticipated to be \$25,000 or less, the executive director may, on behalf of the authority, solicit bids or price quotes in any manner that the executive director deems appropriate and the authority shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for commodities or services in this price range, the authority may purchase those commodities and services pursuant to state master contracts as provided in section ten-e, article three, chapter five-a of this code.

(b) Where the cost for the purchase of commodities or services is reasonably anticipated

to exceed \$25,000, the executive director shall solicit sealed bids for the commodities or services to be provided. *Provided*, That the executive director may permit bids by electronic transmission be accepted in lieu of sealed bids. Bids shall be solicited by public notice. The notice shall be published as a Class II legal advertisement in all participating counties in compliance with the provisions of article three, chapter fifty-nine of this code, and by such other means as the executive director deems appropriate. The notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. After all bids are received, the authority shall enter into a written contract with the lowest responsible bidder; however, the authority may reject any or all bids that fail to meet the specifications required by the authority or that exceed the authority's budget estimation for those commodities or services. If the executive director determines in writing that there is only one responsive and responsible bidder and that there has been sufficient public notice to attract competitive bids, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(c) For any contract that exceeds \$25,000 in total cost, the authority shall require the vendors to post a bond, with form and surety to be approved by the authority, in an amount equal to at least fifty percent of the contract price conditioned upon faithful performance and completion of the contract.

(d) The bidding requirements specified in this section do not apply to any leases for real property upon which the authority makes improvements for public access to the recreation area, information distribution and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage or administrative facilities.

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year, or fined not less than \$10 nor more than \$1000, or both confined and fined.

§20-14-11. Conflicts of interest prohibiting certain contracts.

(a) No contract, change order to a prior contract or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the board or an employee of the authority, or a spouse, sibling, child or parent of a member of the board or an employee of the authority or to any vendor or prospective vendor in which a member of the board or employee of the authority, or a spouse, sibling, child or parent of a member of the board or an employee of the authority has an ownership interest of greater than five percent.

(b) No contract, change order to a prior contract or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the West Virginia Legislature, or a spouse, sibling, child or parent of a member of the Legislature, or to any vendor or prospective vendor in which a member of the Legislature or a spouse, sibling, child or parent of a member of the Legislature, has an ownership interest of greater than five percent.

(c) All responses to bid solicitations, requests for quotation, requests for proposal, contracts, change orders and contract renewals with the authority submitted or approved under the provisions of this article shall include an affidavit that the vendor or prospective vendor is not in violation of this section.

(d) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than ten days nor more than one year,

or fined not less than \$10 nor more than \$1000, or both confined and fined.

§20-14-12. Civil remedies for unlawful purchasing and contracts.

The county commission of any participating county may challenge the validity of any contract or purchase entered, solicited or proposed by the authority in violation of sections ten or eleven of this article by seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If the court finds by a preponderance of evidence that the provisions of sections ten or eleven of this article have been violated, the court may declare the contract or purchase to be void and may grant any injunctive relief necessary to correct the violations and protect the funds of the authority as a joint development entity.

ARTICLE 15. ATV RESPONSIBILITY ACT.

§20-15-2. Definitions.

The terms in this article have the following meaning, unless the context clearly requires a different meaning:

(1) "All-terrain vehicle" or "ATV" means any motor vehicle designed for off-highway use and designed to travel on not less than three low-pressure tires, having a seat designed to be straddled by the operator and handlebars for steering control and intended by the manufacturer to be used by a single operator or by an operator and no more than one passenger.

(2) "Authorized outfitter" or "licensee" means a commercial outfitter, which is a person, partnership, limited liability company ("LLC"), corporation, other organization, or any combination thereof, licensed by the Hatfield-McCoy Regional Recreation Authority, who operates from any temporary or permanent camp, private or public lodge, or private home, who provides guided tours or the rental of all-terrain vehicles, utility-terrain vehicles or motorcycles for use on assigned lands for monetary profit or gain.

(3) "Low-pressure tire" means every tire in which twenty pounds per square inch or less of compressed air is designed to support the load.

(4) "Motorcycle" means any motor vehicle manufactured with no more than two wheels and having a seat or saddle for the use of the operator.

(5) "Participant" means any person using the land, trails and facilities of the Hatfield-McCoy Regional Recreation Authority.

(6) "Utility-terrain vehicle" or "UTV" means any motor vehicle with four or more low-pressure tires designed for off-highway use having bench or bucket seating for each occupant and a steering wheel for control.

§20-15-5. Duties of participants.

(a) All participants:

(1) Shall comply with any requirements established by law, including those in section one, article one, chapter seventeen-f of this code, which defines those acts prohibited by operators of all-terrain vehicles;

(2) Shall comply with the rules or regulations established for use of the Hatfield-McCoy Recreation Area;

(3) Shall, as to the Hatfield-McCoy Regional Recreation Authority or to any recreation area landowner, lessor, authorized outfitter or licensee, expressly assume the risk of and legal responsibility for any injury, loss or damage to person or property which results from participation in operating an all-terrain vehicle, utility-terrain vehicle or motorcycle, and caused by any of the following:

(A) Variations in terrain, slope or angle of terrain;

(B) Surface or subsurface conditions including: Rocks, trees or other forms of forest

growth or debris;

(C) Collisions with signs, markers, width restrictors, culverts, bridges, pipes, equipment, vehicles or any other objects or fixtures used in trail management, maintenance, construction or development;

(D) Collisions with signs, markers, pipes, equipment, vehicles or any component thereof used in natural resource maintenance, development or extraction;

(E) Collisions with electrical transmission poles, towers, lines, guy wires or any component thereof;

(4) Shall obey all rules or instructions announced by the Hatfield-McCoy Regional Recreation Authority, authorized outfitter or licensee, with regard to the operation of the all-terrain vehicle or motorcycle he or she is operating; and

(5) Shall wear all safety equipment provided by the authorized outfitter or licensee, or which might otherwise be required by law.

(b) Each participant shall have the sole individual responsibility for:

(1) Knowing the range of his or her own ability to negotiate any slope or trail;

(2) Operating the ATV, UTV or motorcycle within the limits of the participant's own ability;

(3) Maintaining reasonable control of speed and course at all times;

(4) Heeding all posted warnings;

(5) Operating only on trails designated by the Hatfield-McCoy Regional Recreation Authority; and

(6) Refraining from acting in a manner which a reasonable person would believe to be likely to cause or contribute to the injury of any person.

(c) If while riding an ATV, UTV or motorcycle any participant collides with any object or person, the responsibility for the collision shall be solely that of the participant or participants involved and not that of the Hatfield-McCoy Regional Recreation Authority, any recreation area landowner, lessor, authorized outfitter or licensee unless the Hatfield-McCoy Regional Recreation Authority, recreation area landowner, lessor, authorized outfitter or licensee or their agent caused the collision in a tortious manner.

(d) After an accident, a participant may not leave the area where the accident took place without:

- (1) Leaving personal identification, including his or her name and address;
- (2) Notifying the proper authorities; and
- (3) Obtaining assistance when he or she knows or reasonably should know that any other person involved in the accident is in need of medical or other assistance.

(e) Where a participant is a lawful passenger, that participant may not distract or perform any act which might interfere with the safe operation of the all-terrain vehicle, utility-terrain vehicle or motorcycle of which he or she is a passenger.

(f) Any person under the age of sixteen years shall remain under the direct supervision and within sight of a parent or guardian both of whom must otherwise comply with state or federal laws and any rules or regulations promulgated thereunder.

(g) A participant may not make any alterations or tamper with the all-terrain vehicle, utility-terrain vehicle or motorcycle he or she is operating or of which he or she is a passenger in any way which would interfere with the continued safe operation of that machine.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

For the purposes of this article, unless a different meaning clearly appears in the context:

(1) "Approved law-enforcement training academy" means any training facility which is approved and authorized to conduct law-enforcement training as provided in this article;

(2) "Chief executive" means the superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief natural resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

(3) "County" means the fifty-five major political subdivisions of the state;

(4) "Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;

(5) "Governor's committee on crime, delinquency and correction" or "Governor's committee" means the Governor's committee on crime, delinquency and correction established as a state planning agency pursuant to section one, article nine, chapter fifteen of this code;

(6) "Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime, make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws although those institutions and agencies may not be considered

law-enforcement agencies. The term also includes those persons employed as rangers ~~by the Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code,~~ or by resort area districts in accordance with the provisions of section twenty-three, article twenty-five, chapter seven of this code, although ~~neither the authority nor any~~ no resort area district may be considered a law-enforcement agency: *Provided*, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special natural resources police officer;

(7) "Law-enforcement official" means the duly appointed chief administrator of a designated law-enforcement agency or a duly authorized designee;

(8) "Municipality" means any incorporated town or city whose boundaries lie within the geographic boundaries of the state;

(9) "Subcommittee" or "law-enforcement professional standards subcommittee" means the subcommittee of the Governor's committee on crime, delinquency and correction created by section two of this article; and

(10) "West Virginia law-enforcement agency" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: *Provided*, That neither ~~the Hatfield-McCoy Regional Recreation Authority,~~ the Public Service Commission nor any state institution of higher education nor any resort area district is a law-enforcement agency.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-6. Exceptions as to prohibitions against carrying concealed handguns; exemptions

140 **from licensing fees.**

(a) The licensure provisions set forth in this article do not apply to:

(1) Any person:

(A) Carrying a deadly weapon upon his or her own premises;

(B) Carrying a firearm, unloaded, from the place of purchase to his or her home, residence or place of business or to a place of repair and back to his or her home, residence or place of business; or

(C) Possessing a firearm while hunting in a lawful manner or while traveling from his or her home, residence or place of business to a hunting site and returning to his or her home, residence or place of business;

(2) Any person who is a member of a properly organized target-shooting club authorized by law to obtain firearms by purchase or requisition from this state or from the United States for the purpose of target practice from carrying any pistol, as defined in this article, unloaded, from his or her home, residence or place of business to a place of target practice and from any place of target practice back to his or her home, residence or place of business, for using any such weapon at a place of target practice in training and improving his or her skill in the use of the weapons;

(3) Any law-enforcement officer or law-enforcement official as defined in section one, article twenty-nine, chapter thirty of this code;

(4) Any employee of the West Virginia Division of Corrections duly appointed pursuant to the provisions of section eleven-c, article one, chapter twenty-five of this code while the employee is on duty;

(5) Any member of the armed forces of the United States or the militia of this state while

the member is on duty;

(6) Any resident of another state who holds a valid permit or license to possess or carry a handgun issued by a state or a political subdivision subject to the provisions and limitations set forth in section six-a of this article;

(7) Any federal law-enforcement officer or federal police officer authorized to carry a weapon in the performance of the officer's duty; and

~~(8) Any Hatfield-McCoy Regional Recreation Authority Ranger while the ranger is on duty; and~~

~~(9)~~ (8) Any parole officer appointed pursuant to section fourteen, article twelve, chapter sixty-two of this code in the performance of their duties.

(b) On and after July 1, 2013, the following judicial officers and prosecutors and staff shall be exempted from paying any application fees or licensure fees required under this article. However, on and after that same date, they shall be required to make application and satisfy all licensure and handgun safety and training requirements set forth in section four of this article before carrying a concealed handgun in this state:

(1) Any justice of the Supreme Court of Appeals of West Virginia;

(2) Any circuit judge;

(3) Any retired justice or retired circuit judge designated senior status by the Supreme Court of Appeals of West Virginia;

(4) Any family court judge;

(5) Any magistrate;

(6) Any prosecuting attorney;

(7) Any assistant prosecuting attorney; or

(8) Any duly appointed investigator employed by a prosecuting attorney.

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill No. 508, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Beach, Blair, Boley, Boso, Carmichael, Facemire, Ferns, Gaunch, D. Hall, M. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 508) passed with its title.

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

The Senate proceeded to the fourth order of business.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Com. Sub. for Senate Bill No. 366, Creating Patient Protection and Transparency Act.

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

Respectfully submitted,

Mike Hall,

Chair:

At the request of Senator Carmichael, unanimous consent being granted, the bill (Com. Sub. for S. B. No. 366) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Senate Bill No. 583 (originating in the Committee on Finance)--A Bill to amend and reenact §11-27-11 of the Code of West Virginia, 1931, as amended, increasing the tax rate on providers of certain nursing facility services for one year.

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

Respectfully submitted,

Mike Hall,

Chair:

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. No. 583) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

Senator M. Hall, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Senate Bill No. 584 (originating in the Committee on Finance)--A Bill to amend and reenact §18-2-16 and §18-2-16a of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §18-2L-1, §18-2L-2, §18-2L-3, §18-2L-4, §18-

2L-5, §18-2L-6, §18-2L-7, §18-2L-8, §18-2L-9, §18-2L-10 and §18-2L-11; and to amend and reenact §18-9D-15 of said code, all relating to the transfer of the Cedar Lakes Camp and Conference Center from the State Board of Education to a private, nonstock, not-for-profit corporation established under the laws of this state; and providing available funding for said corporation from the School Building Authority for a period of three years after the transfer.

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

Respectfully submitted,

Mike Hall,

Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. No. 584) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Senate Bill No. 585 (originating in the Committee on the Judiciary)--A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter designated §17H-1-1, §17H-1-2, §17H-1-3, §17H-1-4, §17H-1-5, §17H-1-6, §17H-1-7, §17H-1-8, §17H-1-9, §17H-1-10, §17H-1-11, §17H-1-12, §17H-1-13, §17H-1-14, §17H-1-15, §17H-1-16, §17H-1-17 and §17H-1-18, §17H-2-1, §17H-2-2, §17H-2-3, §17H-2-4, §17H-2-5, §17H-2-6, §17H-2-7, §17H-2-8, §17H-2-9, §17H-2-10, §17H-2-11, §17H-2-12, §17H-2-13, §17H-2-14, §17H-2-15, §17H-2-16, §17H-2-17, §17H-2-18 and §17H-2-19, all relating to regulation of transportation network companies and regulation of taxicab companies; defining terms; establishing permit and permit

fee; establishing requirements relating to insurance, disclosures, transportation network companies and its drivers, safety and records; limiting controlling authority; and permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval; exempting taxicab companies from regulatory jurisdiction of Public Service Commission; establishing permit and permit fee; establishing requirements relating to insurance, disclosures, taxicab companies and its drivers, safety and records; limiting controlling authority; and permitting Commissioner of the Division of Motor Vehicles to propose rules for legislative approval.

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

Respectfully submitted,

Charles S. Trump IV,

Chair.

At the request of Senator Carmichael, unanimous consent being granted, the bill (S. B. No. 585) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Cole (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Senate Concurrent Resolution No. 31, Authorizing meeting of Joint Select Committee on Tax Reform.

Senate Concurrent Resolution No. 37, Requesting Joint Committee on Government and Finance study pharmaceutical benefits management industry.

Senate Concurrent Resolution No. 39, Requesting Joint Committee on Government

and Finance study Cedar Lakes Camp and Conference Center.

Senate Concurrent Resolution No. 47, Amending Joint Rules of Senate and House relating to printing enrolled bills.

And,

Senate Resolution No. 48, Amending Senate Rule No. 49 relating to Journal.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

William P. Cole III,

Chairman ex officio.

Senator Nohe, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Eng. Com. Sub. for House Bill No. 2223, Including consumer credit sales that are secured by a mortgage, deed of trust or other equivalent consensual security interest on a dwelling or residential real estate in the definitions of "primary mortgage loan" and "subordinate mortgage loan.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance .

Respectfully submitted,

David Nohe,

Chair.

The bill, under the original double committee reference, was then referred to the Committee on Finance.

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Senator Nohe, from the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration

Eng. House Bill No. 2879, Relating to certain limitations on amount of state funds on deposit in any depository.

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

Respectfully submitted,

David Nohe,

Chair.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Beach, Carmichael and Unger.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Tuesday, March 3, 2015, at 4 p.m.
