

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

Charleston, W. Va., Wednesday, March 4, 2015

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Thomas Price, Roxalana Gospel Tabernacle, Dunbar, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ryan J. Ferns, a senator from the first district.

Pending the reading of the Journal of Tuesday, March 3, 2015,

On motion of Senator Facemire, 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 concurrence by that body in the passage of

Eng. Senate Bill No. 294, Eliminating certain unnecessary, inactive or redundant councils, committees and boards.

A message from the Clerk of the House of Delegates announced the concurrence by that

body in the Senate amendment to the House of Delegates amendments to, and the passage as amended, with its Senate amended title, of

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

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. 435, Creating WV Sheriffs' Bureau of Professional Standards.

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 page three, section one, line one, by striking out the word “seven” and inserting in lieu thereof the word “nine”;

On page three, section one, line four, by striking out the word “and” and inserting in lieu thereof a comma;

And,

On page three, section one, line six, after the word “Association” by inserting a comma and the following: “and two citizen members representing the general public who shall be appointed by the Secretary of the Department of Military Affairs and Public Safety, with the consent of the Senate, and whose service shall be conditioned upon signing all necessary nondisclosure agreements relating to confidential law-enforcement information.”

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill No. 435, 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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--1.

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. 435) passed with its title.

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

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

Eng. Senate Bill No. 477, Supplementing, amending, decreasing and increasing appropriation from State Road Fund to DOH.

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:

On page two, lines fifteen and sixteen, by striking out the following:

“3 Maintenance, Contract Paving and

4 Secondary Road Maintenance.....27200 14,388,245”;

On motion of Senator Carmichael, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill No. 477, 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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--1.

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. 477) 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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 477) takes effect from passage.

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

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill No. 463, Making supplementary appropriation to DHHR, DHS, Health Care Provider Tax, Medicaid State Share Fund.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill No. 466, Making supplementary appropriation of federal funds to Department of Commerce.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill No. 467, Making supplementary appropriation of federal funds to Department of Agriculture, State Conservation Committee.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill No. 469, Making supplementary appropriation of federal funds to DEP, Division of Environmental Protection.

A message from The Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill No. 471, Making supplementary appropriation of federal funds to DHHR, Human Rights Commission, and DHHR, DHS.

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

Eng. Com. Sub. for House Bill No. 2015--A Bill to amend the Code of West Virginia,

1931, as amended, by adding thereto a new section, designated §4-2-4a; and to amend and reenact §4-10-3 of said code, all relating to the examination of spending units by the Legislative Auditor generally; requiring the legislative auditor to make certain post audits during 2015 and to make a report on the post audit process at the direction of the Joint Committee on Government and Finance on or before December 1, 2015, that includes recommendations for the formulation of a regular schedule for making post audits of each spending unit of the state government; providing for a report to the Legislature by the Joint Committee on Government and Finance; and clarifying definitions of certain terms.

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

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

Eng. Com. Sub. for House Bill No. 2239--A Bill to amend and reenact §30-1-19 of the Code of West Virginia, 1931, as amended, relating to logistical advisory committee; setting forth a purpose of the committee; requiring participation from certain entities; providing for membership; providing the committee with certain authority; and requiring certain reporting.

Referred to the Committee on Government Organization.

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

Eng. Com. Sub. for House Bill No. 2377--A Bill to amend and reenact §18-2-5 of the Code of West Virginia, 1931, as amended, relating to authorizing State Board of Education to approve certain alternatives with respect to instructional time proposed by a county board or school that meet the spirit and intent of affected statutes and are intended to optimize student

learning; removing outdated and conflicting provisions related to school entrance and kindergarten; stating the purpose of subsection and providing context; providing limitations on alternatives; and making findings on learning time for consideration by state board.

Referred to the Committee on Education.

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

Eng. Com. Sub. for House Bill No. 2466--A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-16-11b; and to amend and reenact §60-6-7 and §60-8-3 of said code, all relating to the sale of alcoholic beverages by certain non-profit organizations; creating a one-day special license; establishing a license fee; allowing non-intoxicating beer, wine and liquor from a licensed mini-distillery to be sold and served at fundraising events.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2502--A Bill to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to persons possessing deadly weapons on school buses or on the premises of educational facilities; authorizing active law-enforcement officers in certain circumstances to possess a firearm or deadly weapon on a school bus, on school property or at school sponsored functions; authorizing retired law-enforcement officers in certain circumstances to carry deadly weapons on a school bus, on school property or at school sponsored functions when certain conditions are met; and establishing reporting requirements for the school principal.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2515--A Bill to amend and reenact §20-2-4 and §20-2-5a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §20-2-5h, all relating to wildlife generally; requiring persons required to deliver wildlife to an official checking station to electronically register that wildlife in lieu of its delivery to an official checking station; establishing a fine for the illegal taking of elk; requiring the Division of Natural Resources to take an active role in the reintroduction of the elk species; authorizing the director to propose legislative rules; and providing for criminal penalties.

Referred to the Committee on Natural Resources; and then to the Committee on Finance.

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

Eng. House Bill No. 2521--A Bill to amend and reenact §5-10-44 of the Code of West Virginia, 1931, as amended; to amend and reenact §7-14D-7a of said code; to amend and reenact §8-22A-8; to amend said code by adding thereto a new section, designated §8-22A-8a of said code; to amend said code by adding thereto a new section, designated §15-2-54; to amend said code by adding thereto a new section, designated §15-2A-23; to amend and reenact §16-5V-8a of said code; to amend and reenact §18-7A-14c of said code; to amend and reenact §18-7B-21 of said code; and to amend said code by adding thereto a new section, designated §51-9-18, all relating to the correction of errors under the West Virginia Public Employees Retirement System, the West Virginia Deputy Sheriff Retirement System, the West Virginia Municipal

Police Officers and Firefighters Retirement System, the West Virginia Emergency Medical Services Retirement System, the State Teachers Retirement System, the Teachers' Defined Contribution Retirement System, the West Virginia State Police Death, Disability and Retirement System, the West Virginia State Police Retirement System and the Judges' Retirement System; and clarifying the scope, application and requirements for error correction by the Consolidated Public Retirement Board.

Referred to the Committee on Pensions; and then to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2585--A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-9b, relating to requiring leaseholders of mineral interests to notify the owners of the minerals in writing when there is an assignment of the lease to another party.

Referred to the Committee on the Judiciary.

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

Eng. House Bill No. 2675--A Bill to amend and reenact §11-13V-4 of the Code of West Virginia, 1931, as amended, relating to reducing certain severance taxes that are dedicated to the Workers' Compensation Debt Reduction Fund, beginning after June 30, 2015.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2718--A Bill to amend the Code of West Virginia,

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1931, as amended, by adding thereto a new section, designated §29-22A-10g, relating to suspending the collection and transfer of racetrack video lottery revenues to the Licensed Racetrack Modernization Fund for one fiscal year; collecting and allocating \$9 million from racetrack video lottery revenues to the state road fund and other funds for specific purposes during the fiscal year ending June 30, 2016; creating a new fund in the state treasury; and extending the availability of any unexpended balance in the Licensed Racetrack Modernization Fund for matching for two additional fiscal years.

Referred to the Committee on Finance.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, with its Senate amended title, to take July 1, 2015, and requested the concurrence of the Senate in the changed effective date, as to

Eng. House Bill No. 2726, Clarifying choice of laws issues in product's liability actions.

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

On further motion of Senator Carmichael, the Senate concurred in the changed effective date of the bill, that being to take effect July 1, 2015, instead of ninety days from passage.

Senator Carmichael moved that the bill take effect July 1, 2015.

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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. No. No. 2726) takes effect July 1, 2015.

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

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

Eng. House Bill No. 2797--A Bill to amend and reenact §17A-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §18-20-1a of said code; to amend and reenact §28-1-2 of said code; and to amend and reenact §28-5-31 of said code, all relating to changing the term "mentally retarded" to "intellectually disabled;" and changing the term "handicapped" to "disabled.

Referred to the Committee on Health and Human Resources.

A message from The Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2015, and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill No. 2840--A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-45a, relating to authorizing a county board of education in certain circumstances to provide instruction to students during emergency closures under an alternative plan to make up lost days of traditional instruction in a manner that meets the instructional day and time requirements for not more than four instructional days of accumulated time so that the board is not required to repurpose other days or add additional days of instruction to maintain compliance in reaching the mandatory one hundred eighty separate instructional days.

Referred to the Committee on Education.

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

Eng. House Bill No. 2877--A Bill to amend and reenact §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13V-7 of said code, all relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; and raising to \$25,000 the tax liability threshold amount at which taxpayers must file returns electronically or pay by electronic funds transfers.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2878--A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31D-1-131, relating to creating a one-stop electronic business portal in West Virginia.

Referred to the Committee on Government Organization.

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

Eng. House Bill No. 2880--A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto by adding thereto a new article, designated §62-15A-1, §62-15A-2, §62-15A-3 and §62-15A-4 relating to creating an addiction treatment pilot program.

Referred to the Committee on Health and Human Resources.

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

Eng. House Bill No. 2914--A Bill to amend and reenact §7-25-11 and §7-25-15 the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §7-25-7a and §7-25-27, all relating generally to resort area districts; providing for voluntary dissolution of a resort area district; establishing a procedure for a dissolution; permitting nominations for resort area board members be made by mail or electronic means; permitting property owners to make nominations; providing for election of board members by plurality vote instead of by a majority vote; limiting the amount of assessments that may be levied against a parcel of real property; establishing a procedure for assessments proposed by a board on its own initiative; and providing for the effect of 2015 amendments.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill No. 2916--A Bill to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to providing limited authority to the Governor to borrow amounts from the Revenue Shortfall Reserve Fund for the completion of renovations to Capitol Complex Building 3.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill No. 2999--A Bill to amend and reenact §16-2D-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-2D-5f, to amend said code by adding thereto a new article, designated §16-2M-1, §16-2M-2 and §16-2M-3; all relating to neonatal abstinence centers; authorizing neonatal

abstinence centers; requiring the secretary to promulgate a licensure program and rules; requiring the state agency to consider neonatal abstinence care as a unique service in conducting certificate of need review; exempting neonatal abstinence centers from moratoriums on certain nursing facilities; prohibiting the Health Care Authority from ordering a moratorium on skilled nursing facilities providing services for children under one year of age suffering from Neonatal Abstinence Syndrome; and exempting such facilities from current moratoriums.

Referred to the Committee on Health and Human Resources.

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

Eng. Com. Sub. for House Bill No. 3006--A Bill to amend and reenact §11-10-17a of the Code of West Virginia, 1931, as amended, relating to the determination of the adjusted rate of interest by the Tax Commissioner for the administration of tax deficiencies and overpayments for tax years beginning after December 31, 2016.

Referred to the Committee on Finance.

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

Eng. House Bill No. 3017--A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25b, relating to addressing sudden cardiac arrest in interscholastic athletes; requiring promulgation and minimum contents of rules by West Virginia Secondary School Activities Commission; defining interscholastic athletes; providing guidelines and information about the nature and warning signs of sudden cardiac arrest and the risks; requiring signature and return of information by athlete and parent or guardian prior to practice or competition; requiring head coach complete a commission-approved

sudden cardiac arrest recognition and return-to-play protocol course annually; requiring head coach receive instruction on proper administration of cardiopulmonary resuscitation including use of hands-on practicing to support cognitive learning; and listing available sources for potential use in program development.

Referred to the Committee on Education.

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on March 3, 2015, he had approved **Enr. Committee Substitute for Senate Bill No. 13, Enr. Committee Substitute for Senate Bill No. 255, Enr. Senate Bill No. 298, Enr. Senate Bill No. 299, Enr. Senate Bill No. 302, Enr. Committee Substitute for Senate Bill No. 378, Enr. Committee Substitute for House Bill No. 2004, Enr. Committee Substitute for House Bill No. 2025, Enr. House Bill No. 2212, Enr. Committee Substitute for House Bill No. 2234 and Enr. House Bill No. 2669.**

The Senate proceeded to the fourth order of business.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2381, Providing a teacher mentoring increment for classroom teachers with national board certification who teach and mentor at certain schools.

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,

Dave Sypolt,

Chair:

The bill, under the original double committee reference, was then referred to the Committee on Finance.

Senator Sypolt, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

Eng. Com. Sub. for House Bill No. 2755, Relating to service and professional employee positions at jointly established schools.

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

Respectfully submitted,

Dave Sypolt,

Chair:

The Senate proceeded to the sixth order of business.

Senators Stollings and Kirkendoll offered the following resolution:

Senate Concurrent Resolution No. 51--Requesting the Division of Highways name the bridge locally known as Hewett Creek Box Beam 2.01, bridge number 03-9-2.01 (03A051), (37.96246, -81.85199), near Hewett, Boone County, the "U. S. Army PFC Samuel C. Ball Memorial Bridge".

Whereas, Samuel C. Ball was born on January 12, 1925, to Bert and Beulah Ball of Hewett, Boone County, and he was a lifelong resident of West Virginia; and

Whereas, Samuel C. Ball entered the United States Army in World War II in 1943 and served as a Private First Class with the 142nd Infantry, 36th Division, and after eleven months of service to his country, PFC Samuel C. Ball made the ultimate sacrifice in battle near Tendon,

France, on September 30, 1944; and

Whereas, It is fitting that West Virginia should honor the memory and service of this young man with a lasting memorial; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name the bridge locally known as Hewett Creek Box Beam 2.01, bridge number 03-9-2.01 (03A051), (37.96246, -81.851999), near Hewett, Boone County, the "U. S. Army PFC Samuel C. Ball Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the "U.S. Army PFC Samuel C. Ball Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Secretary of the Department of Transportation and the surviving relatives of PFC Samuel C. Ball.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Com. Sub. for Senate Concurrent Resolution No. 20, Requesting DOH name stretch of road in McDowell County "U. S. Army 1SG Joe C. Alderman Memorial Road".

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 22, Requesting DOH name portion of U. S. Rt. 119 in Boone County "U. S. Army SGT Mark Andrew Messer Memorial Road".

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 25, Requesting DOH name bridge in Harrison County "U. S. Army PFC Nick A. Cavallaro Memorial Bridge" and "U. S. Army SSG Benjamin T. Portaro Memorial Bridge".

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 29, Requesting DOH name bridge in Kanawha County "Rosie the Riveter Memorial Bridge".

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Com. Sub. for Senate Concurrent Resolution No. 34, Requesting DOH name bridge in Greenbrier County "U. S. Army Air Corps LT William H. Corkrean, Jr., Memorial Bridge".

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Com. Sub. for Senate Concurrent Resolution No. 35, Requesting DOH name bridge in McDowell County "U. S. Army CPL Zane Joseph Gero and U. S. Marine Corps CPL John Anthony 'Tony' Gero Memorial Bridge".

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 40, Requesting DOH name bridge in Putnam County "U. S. Army Sgt. Deforest Lee Talbert Memorial Bridge".

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Senate Concurrent Resolution No. 41, Requesting DOH name bridge in Berkeley County "W. C. Honaker and Clyde Spies Memorial Bridge".

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Com. Sub. for House Concurrent Resolution No. 6, The Army Air Force SGT Everett Wayne "Bud" Sell Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

Com. Sub. for House Concurrent Resolution No. 20, The Virginia & U. S. Army Major Woodrow Cook Memorial Road.

On unfinished business, coming up in regular order, was reported by the Clerk.

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

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

The Senate proceeded to the eighth order of business.

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

On third reading, coming up in regular order, with the right having been granted on Monday, March 2, 2015, for amendments to be received on third reading, was reported by the Clerk.

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

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

That §8-12-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-16-19 of said code be amended and reenacted; that §8-19-4 of said code be amended and reenacted; that §16-13A-1a, §16-13A-9 and §16-13A-25 of said code be amended and reenacted; that §24-1-1, §24-1-1b and 24-1-2 of said code be amended and reenacted; that §24-2-1, §24-2-2, §24-2-3, §24-2- 4a, §24-2-4b, §24-2-7 and §24-2-11 of said code be amended

and reenacted; and that §24-3-5 of said code be amended and reenacted, all to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-12-17. Sale or lease of municipal public utility.

In any case where a municipality owns a gas system, an electric system, a waterworks system, a sewer system or other public utility, and a majority of not less than sixty percent of the members of the governing body deem it for the best interest of such municipality that such utility be sold or leased, the governing body may so sell or lease such gas system, electric system, waterworks system, sewer system or other public utility upon such terms and conditions as said governing body, in its discretion, considers in the best interest of the municipality: *Provided*, That such sale or lease may be made only upon: (1) The publication of notice of a hearing before the governing body of the municipality, as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in a newspaper published and of general circulation in the municipality, such publication to be made not earlier than twenty days and not later than seven days prior to the hearing; and (2) the approval by the Public Service Commission of West Virginia. The governing body, upon the approval of the sale or lease by a majority of its members of not less than sixty percent of the members of the governing body, shall have full power and authority to proceed to execute or effect such sale or lease in accordance with the terms and conditions approved as aforesaid, and shall have power to do any and all things necessary or incident thereto: *Provided*, That if at any time after such approval and before the execution of the authority, any person should present to the governing body an offer to buy such public utility at a price which exceeds by at least five percent the sale

price which shall have been so approved and authorized or to lease the same upon terms which the governing body, in its discretion, shall consider more advantageous to the municipality than the terms of the lease which shall have been previously approved, the governing body shall have the power to accept such subsequent offer and to make such sale or such lease to the person making the offer, upon approval of the offer by a majority of not less than sixty percent of the members of the governing body; if a sale shall have been approved by the governing body, and such subsequent proposition be for a lease, or, if a lease shall have been approved by the governing body, and the subsequent proposition shall be for a sale, the governing body shall have the authority to accept the same upon approval of the offer by a majority of not less than sixty percent of the members of the governing body. The person making such proposition shall furnish bond, with security to be approved by the governing body, in a penalty of not less than twenty-five percent of such proposed bid, conditioned to carry such proposition into execution, if the same shall be approved by the governing body. In any case where any such public utility shall be sold or leased by the governing body as hereinabove provided, no part of the moneys derived from such sale or lease shall be applied to the payment of current expenses of the municipality, but the proceeds of such sale or lease shall be applied in payment and discharge of any indebtedness created in respect to such public utility and, in case there be no indebtedness, the governing body, in its discretion, shall have the power and authority to expend all such moneys when received for the purchase or construction of fire-fighting equipment and buildings for housing such equipment, a municipal building or city hall, and the necessary land upon which to locate the same, or for the construction of paved streets, avenues, roads, alleys, ways, sidewalks, sewers and other like permanent improvements, and for no other purposes. In case there be a surplus after the payment of such indebtedness, the surplus shall be used as aforesaid.

The requirements of this section shall not apply to the sale or lease of any part of the properties of any such public utility determined by the governing body to be unnecessary for the efficient rendering of the service of such utility.

§8-16-19. Appeal to Public Service Commission from rates fixed.

If any party in interest is dissatisfied with the rates fixed under the provisions of ~~the immediately preceding section of this article~~ section eighteen, article sixteen, chapter eight of this code, such party shall have the right to appeal to the Public Service Commission at any time within thirty days after the fixing of such rates by the governing body, but the rates so fixed by the governing body shall remain in full force and effect, until set aside, altered or amended by the Public Service Commission.

ARTICLE 19. MUNICIPAL AND COUNTY WATERWORKS AND ELECTRIC POWER SYSTEMS.

§8-19-4. Estimate of cost; ordinance or order for issuance of revenue bonds; interest on bonds; rates for services; exemption from taxation.

Whenever a municipality or county commission shall, under the provisions of this article, determine to acquire, by purchase or otherwise, construct, establish, extend or equip a waterworks system or an electric power system, or to construct any additions, betterments or improvements to any waterworks or electric power system, it shall cause an estimate to be made of the cost thereof, and may, by ordinance or order, provide for the issuance of revenue bonds under the provisions of this article, which ordinance or order shall set forth a brief description of the contemplated undertaking, the estimated cost thereof, the amount, rate or rates of interest, the time and place of payment and other details in connection with the issuance of the bonds. ~~Such~~ The bonds shall be in such form and shall be negotiated and sold in such manner and upon such terms as the governing body of such municipality or county commission may, by ordinance or order, specify. All ~~such~~ the bonds and the interest thereon shall be exempt from all taxation by this state, or any county, municipality or county commission, political subdivision or agency thereof. Notwithstanding any other provision of this code to the contrary, the real and personal property which a municipality or county has acquired and constructed according to the provisions of this article, and any leasehold interest therein held by other persons, shall be deemed public property and shall be exempt from taxation by the state, or any county, municipality or other levying body, so long as the same is owned by ~~such~~ the municipality or county: *Provided*, That with respect to electric power systems, this exemption for real and personal property shall be applicable only for ~~such~~ the real and personal property: (1) Physically situate within the municipal or county boundaries of the municipality or county which acquired or constructed ~~such~~ the electric power system and there was in place prior to the effective date of the amendments to this section made in the year 1992 an agreement between the municipality and the county commission for payments in lieu of tax; or (2) acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate. Notwithstanding anything contained in this statute to the contrary, this exemption shall be applicable to any leasehold or similar interest held by persons other than a municipality or county only if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the electric power system is or is to be physically situate: *Provided, however*, That payments made to any county commission, county school board or municipality in lieu of tax pursuant to such an agreement

shall be distributed as if the payments resulted from ad valorem property taxation. ~~Such~~ The bonds shall bear interest at a rate per annum set by the municipality or county commission, payable at such times, and shall be payable as to principal at such times, not exceeding fifty years from their date, and at such place or places, within or without the state, as shall be prescribed in the ordinance or order providing for their issuance. Unless the governing body of the municipality or county commission shall otherwise determine, ~~such~~ the ordinance or order shall also declare that a statutory mortgage lien shall exist upon the property so to be acquired, constructed, established, extended or equipped, fix minimum rates or charges for water or electricity to be collected prior to the payment of all of said bonds and shall pledge the revenues derived from the waterworks or electric power system for the purpose of paying ~~such~~ the bonds and interest thereon, which pledge shall definitely fix and determine the amount of revenues which shall be necessary to be set apart and applied to the payment of the principal of and interest upon the bonds and the proportion of the balance of ~~such~~ the revenues, which are to be set aside as a proper and adequate depreciation account, and the remainder shall be set aside for the reasonable and proper maintenance and operation thereof. The rates or charges to be charged for the services from ~~such~~ the waterworks or electric power system shall be sufficient at all times to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same become due, and reasonable reserves therefor, and to provide for the repair, maintenance and operation of the waterworks or electric power system, and to provide an adequate depreciation fund, and to make any other payments which shall be required or provided for in the ordinance or order authorizing the issuance of said bonds.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-1a. Jurisdiction of the Public Service Commission.

The jurisdiction of the Public Service Commission relating to public service districts shall be expanded to include the following powers and ~~such~~ the powers shall be in addition to all other powers of the Public Service Commission set forth in this code:

(a) To study, modify, approve, deny or amend the plans created under section one-b of this article for consolidation or merger of public service districts and their facilities, personnel or administration;

(b) To petition the appropriate circuit court for the removal of a public service district board member or members; and

(c) To create by general order a separate division within the Public Service Commission to provide assistance to public service districts in technological, operational, financial and regulatory matters, including, upon written request of the public service board, assistance to the board in deliberations regarding a proposed rate change or project.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a) (1) The board may make, enact and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district. The board shall establish, in accordance with this article, rates, fees and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred

under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B) and (C) of this subdivision; or

(E) May be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned or operated by the West Virginia Division of Highways.

(2) The board of a public service district with annual combined gross revenue of \$3 million or more from its separate or combined services may make, enact and enforce all needful rules in connection with the enactment or amendment of rates, fees and charges of the district. At a minimum, these rules shall provide for:

(A) Adequate prior public notice of the contemplated rates, fees and charges by causing a notice of intent to effect such a change to be specified on the monthly billing statement of the customers of the district for the month next preceding the month in which the contemplated change is to be before the board on first reading.

(B) Adequate prior public notice of the contemplated rates, fees and charges by causing to be published as a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of the code. The publication area for publication shall be all territory served by the district. If the district provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the district provides service.

(C) The public notice of the proposed action shall state the current rates, fees and charges and the proposed changes to said rates, fees and charges; the date, time, and place of both a public hearing on the proposal and the proposed final vote on adoption; and the place or places within the district where the proposed rates, fees and charges may be inspected by the public. A reasonable number of copies of the proposal shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the board and be heard with respect to the proposed rates, fees and charges.

(D) The proposed rates, fees and charges shall be read at two meetings of the board with at least two weeks intervening between each meeting. The public hearing may be conducted with or following the second reading.

(E) Rates, fees and charges approved by an affirmative vote of the board shall be forwarded in writing to the county commission appointing the approving board. The county commission shall publish notice of the proposed rates, fees and charges by a Class 1 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of the code. Within forty-five days of receipt of the proposed rates, fees and charges, the county commission

shall take action to approve or reject the proposed rates, fees and charges. After forty-five days, and absent action by the county commission, the proposed rates, fees and charges shall be effective with no further action by the board or county commission. In any event, this forty-five day period may be extended by the official action of both the board proposing the rates, fees and charges, and the appointing county commission.

(F) Enactment of the proposed rates, fees and charges shall follow an affirmative vote or inaction by the county commission and shall be effective no sooner than forty-five days following action or inaction by the county commission. The forty-five day waiting period may be waived by public vote of the county commission only if the commission finds and declares the district to be in financial distress such that the forty-five day waiting period would be detrimental to the ability of the district to deliver continued and compliant public services.

(2) (3) Where water, sewer, stormwater or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of section eight, article three, chapter twenty-four of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or \$50, with the district to secure the payment of service rates, fees and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or \$50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or \$50. In any case where a deposit is forfeited to pay service rates, fees and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or \$50 has been remitted to the district. After twelve months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals or charges for services or facilities furnished remain unpaid for a period of twenty days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, ten days after the water or gas services become delinquent: *Provided, however*; That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the board to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(b) In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately water facilities, sewer facilities or stormwater facilities and the district owns

and operates another kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer or stormwater service fees and charges: *Provided*, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer and stormwater service has the right to terminate water service for delinquency in payment of water, sewer or stormwater bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer or stormwater account: *Provided, however*, That any termination of water service must comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Division of Health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, from the houses, dwellings or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from the houses, dwellings and buildings where there is gravity flow or transportation by any other methods approved by the Division of Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code and the houses, dwellings and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump or any other method approved by the Division of Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant or occupant and sewage will flow by gravity or be transported by other methods approved by the Division of Health from the house, dwelling or building into the sewer facilities, the district may charge, and the owner, tenant or occupant shall pay, the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner, tenant or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's or occupant's specific customer class.

(e) The owner, tenant or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. §122.26; (2) the district's authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer System's designated service area. It is further hereby found, determined and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant or occupant shall pay the rates, fees and charges for stormwater services established under this article only after thirty-days' notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(f) All delinquent fees, rates and charges of the district for either water facilities, sewer facilities, gas facilities or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank and priority with the lien on the premises of state, county, school and municipal taxes. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: *Provided*, That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property, unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in section three, article eleven, chapter twenty-two of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of

Environmental Protection, as prescribed by section eleven of said article, is exempt from the provisions of this section.

(h) A public service district which has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community shall prepare an annual report detailing the collection and expenditure of rates, fees or charges and make it available for public review at the place of business of the governing body and the stormwater utility main office.

§16-13A-25. Borrowing and bond issuance; procedure.

~~(a) Notwithstanding any other provisions of this article to the contrary, a A public service district ~~may not~~ has plenary power to borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section thirteen, twenty or twenty-four of this article, without the prior consent and approval of the Public Service Commission: *Provided*, That approval of funding set forth in section eleven, article two, chapter twenty-four of this code or this section is not required if the funding is for a project which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and where the cost of the project changes but the change does not affect the rates established for the project. Upon written request of the public service board contemplating such transaction or project. The Public Service Commission shall provide technical support to the public service board, including, but not limited to, engineering, design and financial analysis of the proposed transaction or project.~~

~~(b) The Public Service Commission may waive the provision of prior consent and approval for entering into contracts for engineering, design or feasibility studies pursuant to this section for good cause shown which is evidenced by the public service district filing a request for waiver of this section stated in a letter directed to the commission with a brief description of the project, a verified statement by the board members that the public service district has complied with chapter five-g of this code, and further explanation of ability to evaluate their own engineering contract, including, but not limited to:~~

~~(b) In the even that the public service district has significant insufficiencies in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, a bondholder may petition the circuit court of Kanawha County for such redress as will bring the accounts into compliance with bond covenants pledged by the district.~~

~~(1) Experience with the same engineering firm; or~~

~~(2) Completion of a construction project requiring engineering services. The district shall also forward an executed copy of the engineering contract to the commission after receiving approval of the waiver.~~

~~(c) An engineering contract that meets one or more of the following criteria is exempt from the waiver or approval requirements:~~

~~(1) A contract with a public service district that is a Class A utility on April 1, 2003, or subsequently becomes a Class A utility as defined by commission rule;~~

~~(2) A contract with a public service district that does not require borrowing and that can be paid out of existing rates;~~

~~(3) A contract where the payment of engineering fees are contingent upon the receipt of funding, and commission approval of the funding, to construct the project which is the subject of the contract; or~~

~~(4) A contract that does not exceed \$15,000.~~

~~(d) Requests for approval or waivers of engineering contracts shall be deemed granted thirty days after the filing date unless the staff of the Public Service Commission or a party files an objection to the request. If an objection is filed, the Public Service Commission shall issue its decision within one hundred twenty days of the filing date. In the event objection is received to a request for a waiver, the application shall be considered a request for waiver as well as a request for approval in the event a waiver is not appropriate.~~

~~(e) Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the Public Service Commission in accordance with the provision of chapter twenty-four of this code when a public service district is seeking to acquire or construct public service property.~~

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 1. GENERAL PROVISIONS.

§24-1-1. Legislative purpose and policy; plan for internal reorganization; promulgation of plan as rule; cooperation with Joint Committee on Government and Finance.

(a) It is the purpose and policy of the Legislature in enacting this chapter to confer upon the Public Service Commission of this state the authority and duty to enforce and regulate the practices, services and rates of public utilities in order to:

(1) Ensure fair and prompt regulation of public utilities in the interest of the using and consuming public;

(2) Provide the availability of adequate, economical and reliable utility services throughout the state;

(3) Encourage the well-planned development of utility resources in a manner consistent with state needs and in ways consistent with the productive use of the state's energy resources, such as coal;

(4) Ensure that rates and charges for utility services are just, reasonable, applied without unjust discrimination or preference, applied in a manner consistent with the purposes and policies set forth in article two-a of this chapter and based primarily on the costs of providing these services;

(5) Encourage energy conservation and the effective and efficient management of regulated utility enterprises; and

(6) Encourage removal of artificial barriers to rail carrier service, stimulate competition, stimulate the free flow of goods and passengers throughout the state and promote the expansion of the tourism industry, thereby improving the economic condition of the state.

(b) The Legislature creates the Public Service Commission to exercise the legislative powers delegated to it. The Public Service Commission is charged with the responsibility for appraising and balancing the interests of current and future utility service customers, the general interests of the state's economy and the interests of the utilities subject to its jurisdiction in its deliberations and decisions.

(c) The Legislature directs the Public Service Commission to identify, explore and consider the potential benefits or risks associated with emerging and state-of-the-art concepts in utility management, rate design and conservation. The commission may conduct inquiries and hold hearings regarding such concepts in order to provide utilities subject to its jurisdiction and other interested persons the opportunity to comment, and shall report to the Governor and the Legislature regarding its findings and policies to each of these areas not later than the first day of

the regular session of the Legislature in the year 1985, and every two years thereafter.

(d) It is legislative policy to ensure that the Legislature and the general public become better informed regarding the regulation of public utilities in this state and the conduct of the business of the Public Service Commission. To aid in the achievement of this policy, the Public Service Commission annually shall present to the Joint Committee on Government and Finance, created by article three, chapter four of this code, or a subcommittee designated by the joint committee, a management summary report which describes in a concise manner:

(1) The major activities of the commission for the year especially as such activities relate to the implementation of the provisions of this chapter;

(2) Important policy decisions reached and initiatives undertaken during the year;

(3) The current balance of supply and demand for natural gas and electric utility services in the state and forecast of the probable balance for the next ten years; and

(4) Other information considered by the commission to be important including recommendations for statutory reform and the reasons for such recommendations.

(e) In addition to any other studies and reports required to be conducted and made by the Public Service Commission pursuant to any other provision of this section, the commission shall study and initially report to the Legislature no later than the first day of the regular session of the Legislature in the year 1980 upon:

(1) The extent to which natural gas wells or wells heretofore supplying gas utilities in this state have been capped off or shut in; the number of such wells; their probable extent of future production and the reasons given and any justification for capping off or shutting in such wells; the reasons, if any, why persons engaged or heretofore engaged in the development of gas wells in this state or the Appalachian areas have been discouraged from drilling, developing or selling the production of such wells; and whether there are fixed policies by any utility or group of utilities to avoid the purchase of natural gas produced in the Appalachian region of the United States generally and in West Virginia specifically.

(2) The extent of the export and import of natural gas utility supplies in West Virginia.

(3) The cumulative effect of the practices mentioned in subdivisions (1) and (2) of this subsection upon rates theretofore and hereafter charged gas utility customers in West Virginia.

In carrying out the provisions of this section the commission shall have jurisdiction over such persons, whether public utilities or not, as may be in the opinion of the commission necessary to the exercise of its mandate and may compel attendance before it, take testimony under oath and compel the production of papers or other documents. Upon reasonable request by the commission, all other state agencies shall cooperate with the commission in carrying out the provisions and requirements of this subsection.

(f) No later than the first day of the regular session of the Legislature in the year 1980, the Public Service Commission shall submit to the Legislature a plan for internal reorganization which plan shall specifically address the following:

(1) A division within the Public Service Commission which shall include the office of the commissioners, the hearing examiners and such support staff as may be necessary to carry out the functions of decision-making and general supervision of the commission, which functions shall not include advocacy in cases before the commission;

(2) The creation of a division which shall act as an advocate for the position of and in the interest of all customers;

(3) The means and procedures by which the division to be created pursuant to the

provisions of subdivision (2) of this subsection shall protect the interests of each class of customers and the means by which the commission will assure that such division will be financially and departmentally independent of the division created by subdivision (1) of this subsection;

(4) The creation of a division within the Public Service Commission which shall assume the duties and responsibilities now charged to the commissioners with regard to motor carriers which division shall exist separately from those divisions set out in subdivisions (1) and (2) of this subsection and which shall relieve the commissioners of all except minimal administrative responsibilities as to motor carriers and which plan shall provide for a hearing procedure to relieve the commissioners from hearing motor carrier cases;

(5) Which members of the staff of the Public Service Commission shall be exempted from the salary schedules or pay plan adopted by the civil service commission and identify such staff members by job classification or designation, together with the salary or salary ranges for each such job classification or designation;

(6) The manner in which the commission will strengthen its knowledge and independent capacity to analyze key conditions and trends in the industries it regulates extending from general industry analysis and supply-demand forecasting to continuing and more thorough scrutiny of the capacity planning, construction management, operating performance and financial condition of the major companies within these industries.

Such plan shall be based on the concept that each of the divisions mentioned in subdivisions (1), (2) and (4) of this subsection shall exist independently of the others and the plan shall discourage ex parte communications between them by such means as the commission shall direct, including, but not limited to, separate clerical and professional staffing for each division. Further, the Public Service Commission is directed to incorporate within the said plan to the fullest extent possible the recommendations presented to the subcommittee on the Public Service Commission of the Joint Committee on Government and Finance in a final report dated February, 1979, and entitled "A Plan for Regulatory Reform and Management Improvement".

The commission shall, before January 5, 1980, adopt said plan by order, which order shall promulgate the same as a rule of the commission to be effective upon the date specified in said order, which date shall be no later than December 31, 1980. Certified copies of such order and rule shall be filed on the first day of the 1980 regular session of the Legislature, by the chairman of the commission with the clerk of each house of the Legislature, the Governor and the Secretary of State. The chairman of the commission shall also file with the Office of the Secretary of State the receipt of the clerk of each house and of the Governor, which receipt shall evidence compliance with this section.

Upon the filing of a certified copy of such order and rule, the clerk of each house of the Legislature shall report the same to their respective houses and the presiding officer thereof shall refer the same to appropriate standing committee or committees.

Within the limits of funds appropriated therefor, the rule of the Public Service Commission shall be effective upon the date specified in the order of the commission promulgating it unless an alternative plan be adopted by general law or unless the rule is disapproved by a concurrent resolution of the Legislature adopted prior to adjournment *sine die* of the regular session of the Legislature to be held in the year 1980: *Provided*, That if such rule is approved in part and disapproved in part by a concurrent resolution of the Legislature adopted prior to such adjournment, such rule shall be effective to the extent and only to the extent that

the same is approved by such concurrent resolution.

The rules promulgated and made effective pursuant to this section shall be effective notwithstanding any other provisions of this code for the promulgation of rules or regulations.

(g) The Public Service Commission is hereby directed to cooperate with the Joint Committee on Government and Finance of the Legislature in its review, examination and study of the administrative operations and enforcement record of the Railroad Safety Division of the Public Service Commission and any similar studies.

(h) (1) The Legislature hereby finds that rates for natural gas charged to customers of all classes have risen dramatically in recent years to the extent that such increases have adversely affected all customer classes. The Legislature further finds that it must take action necessary to mitigate the adverse consequences of these dramatic rate increases.

(2) The Legislature further finds that the practices of natural gas utilities in purchasing high-priced gas supplies, in purchasing gas supplies from out-of-state sources when West Virginia possesses abundant natural gas, and in securing supplies, directly or indirectly by contractual agreements including take-or-pay provisions, indefinite price escalators or most-favored nation clauses have contributed to the dramatic increase in natural gas prices. It is, therefore, the policy of the Legislature to discourage such purchasing practices in order to protect all customer classes.

(3) The Legislature further finds that it is in the best interests of the citizens of West Virginia to encourage the transportation of natural gas in intrastate commerce by interstate or intrastate pipelines or by local distribution companies in order to provide competition in the natural gas industry and in order to provide natural gas to consumers at the lowest possible price.

(i) The Legislature further finds that transactions between utilities and affiliates are a contributing factor to the increase in natural gas and electricity prices and tend to confuse consideration of a proper rate of return calculation. The Legislature, therefore, finds that it is imperative that the Public Service Commission have the opportunity to properly study the issue of proper rate of return for lengthy periods of time and to limit the return of a utility to a proper level when compared to return or profit that affiliates earn on transactions with sister utilities.

(j) The Legislature further finds that water and sewer utilities that are political subdivision of the states providing separate or combined services and having annual gross revenues of \$3 million or more are most fairly and effectively regulated by the local governing body with respect to rates, borrowing and capital projects. Therefore, notwithstanding any contrary provisions of this section, the jurisdiction of the Public Service Commission over water and sewer utilities that are political subdivisions of the state is limited to that granted specifically in this code.

§24-1-1b. Supplemental rule for reorganization.

The Public Service Commission shall, by general order, create a division within its staff which shall, upon written request of the governing body of a political subdivision that operates a water, sewer and/or stormwater utility, provide legal, operational, engineering, financial, rate making and accounting advice and assistance to water, sewer and/or stormwater utilities that are political subdivisions of the state, and may perform or participate in the studies required under section one-b, article thirteen-a, chapter sixteen of this code.

§24-1-2. Definitions.

Except where a different meaning clearly appears from the context, the words "public utility" when used in this chapter shall mean and include any person or persons, or association of

persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service. Whenever in this chapter the words "commission" or "Public Service Commission" occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the Public Service Commission of West Virginia. Whenever used in this chapter, "customer" shall mean and include any person, firm, corporation, municipality, public service district or any other entity who purchases a product or services of any utility and shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale. Whenever in this chapter the words "governing body" occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the municipal body charged with the authority and responsibility of enacting ordinances of the municipality, as defined in section two, article one, chapter eight of this code, or a public service board of a public service district, as defined in section three, article thirteen a, chapter sixteen of this code.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-1. Jurisdiction of commission; waiver of jurisdiction.

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor or otherwise, by express or otherwise, by land, water or air, whether wholly or partly by land, water or air; transportation of oil, gas or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas or electricity by municipalities or others; sewer systems servicing twenty-five or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of article thirteen-a, chapter sixteen of this code; toll bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*; That natural gas producers who provide natural gas service to not more than twenty-five residential customers are exempt from the jurisdiction of the commission with regard to the provisions of such residential service: *Provided further*; That upon request of any of the customers of such natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates and charges of such producer and for such length of time as the commission may consider to be proper: *And provided further*; ~~That the jurisdiction the commission may exercise over the rates and charges of municipally operated public utilities is limited to that authority granted the commission in section four-b of this article: *And provided further*; That the decision-making authority granted to the commission in sections four and four-a of this article shall, in respect to an application filed by a public service district, be delegated to a single hearing examiner appointed from the commission staff, which hearing examiner shall be authorized to carry out all decision-making~~

~~duties assigned to the commission by said sections, and to issue orders having the full force and effect of orders of the commission.~~

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined services and having annual combined gross revenues of \$3 million or more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and described in section five of this article

(2) Regulation of measurements, practices, acts or services, as granted and described in section seven of this article;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in section eight of this article;

(4) Submission of information to the commission regarding rates, tolls, charges or practices, as granted and described in section nine of this article;

(5) Authority to subpoena witnesses, take testimony and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in section ten of this article; and

(6) Investigation and resolution of disputes involving political subdivisions of the state regarding inter-utility agreements, service areas and contested utility combinations

(7) Customers of water and sewer utilities operated by a political subdivision of the state and customers of stormwater utilities operated by a public service district may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints.

~~(b)~~ (c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) Said area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

~~(c)~~ (d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article as if the certificate of public convenience and necessity for such facility were a siting certificate issued under said section and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(2) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, shall not be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility, regardless of whether such facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: *Provided*, That such owner or operator shall be subject to subdivision (5) of this subsection if a material modification of such facility is made or constructed.

(4) Any person, corporation or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility, that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both such sales at retail and such sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity pursuant to the provisions of section eleven of this article. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission shall be subject to subsections (e), (f), (g), (h), (i) and (j), section eleven-c of this article and shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such facility except for the making or constructing of a material modification thereof as provided in subdivision (5) of this subsection.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the

modification from the commission pursuant to the provisions of section eleven-c of this article in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of section eleven of this article and, except for the provisions of section eleven-c of this article, shall not otherwise be subject to the jurisdiction of the commission or to the provisions of this chapter with respect to such modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to section eleven of this article to construct an electric generating facility described in this subsection or to make or construct a material modification of such electric generating facility as an application for a siting certificate pursuant to section eleven-c of this article if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by, and described in this subsection, shall not be deemed to affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of such facility and any affiliated public utility subject to the provisions of this chapter.

§24-2-2. General power of commission to regulate public utilities.

(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and timetables in effect and used by the public utility or other person to be filed with the commission, and all other information desired by the commission relating to the investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the Supreme Court of Appeals directly, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost of the service. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the order, or until revoked or modified by the commission, unless the order is suspended, modified or revoked by order or decree of a court of competent jurisdiction: *Provided*, That in the case of utilities used by emergency shelter providers, the commission shall prescribe such rates, charges or tolls that are the lowest available. "Emergency shelter provider" means any nonprofit entity which provides temporary emergency housing and services to the homeless or to victims of domestic violence or other abuse.

(b) Notwithstanding any other provision of this code to the contrary, rates are not discriminatory if, when considering the debt costs associated with a future water or sewer project which would not benefit existing customers, the commission establishes rates which ensure that the future

customers to be served by the new project are solely responsible for the debt costs associated with the project.

(c) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state providing a separate or combined services and having annual combined gross revenues of \$3 million or more shall be limited to those powers enumerated in subsection (b), section one of this article.

§24-2-3. General power of commission with respect to rates.

(a) The commission shall have power to enforce, originate, establish, change and promulgate tariffs, rates, joint rates, tolls and schedules for all public utilities except for water and/or sewer utilities that are political subdivisions of this state providing a separate or combined services and having annual combined gross revenues of \$3 million or more: *Provided*, That the commission may exercise such rate authority over ~~municipal~~ municipally owned electric or natural gas utilities only under the circumstances and limitations set forth in section four-b of this article. And whenever the commission shall, after hearing, find any existing rates, tolls, tariffs, joint rates or schedules enacted or maintained by a utility regulated under the provisions of this section to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this chapter, the commission shall by an order fix reasonable rates, joint rates, tariffs, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any provisions of law, and the said commission, in fixing the rate of any railroad company, may fix a fair, reasonable and just rate to be charged on any branch line thereof, independent of the rate charged on the main line of such railroad.

(b) In determining just and reasonable rates, the commission may audit and investigate management practices and policies, or have performed an audit and investigation of such practices and policies, in order to determine whether the utility is operating with efficiency and is utilizing sound management practices. The commission shall adopt rules and regulations setting forth the scope, frequency and application of such audits and investigations to the various utilities subject to its jurisdiction. The commission may include the cost of conducting the management audit in the cost of service of the utility.

(c) In determining just and reasonable rates, the commission shall investigate and review transactions between utilities and affiliates. The commission shall limit the total return of the utility to a level which, when considered with the level of profit or return the affiliate earns on transactions with the utility, is just and reasonable.

§24-2-4a. Procedure for changing rates after June 30, 1981.

(a) After June 30, 1981, no public utility subject to this chapter, except for water and/or sewer utilities that are political subdivisions of the state providing separate or combined services and having annual gross revenue of \$3 million or more from its separate or combined services, shall change, suspend or annul any rate, joint rate, charge, rental or classification except after thirty days' notice to the commission and the public, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges shall go into effect; but the commission may enter an order suspending the proposed rate as hereinafter provided. The proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time, and kept open to public inspection: *Provided*, That the commission may, in its discretion, and for good cause shown, allow changes upon less time than the notice herein specified, or may modify the requirements

of this section in respect to publishing, posting and filing of tariffs, either by particular instructions or by general order.

(b) Whenever there shall be filed with the commission any schedule stating a change in the rates or charges, or joint rates or charges, or stating a new individual or joint rate or charge or joint classification or any new individual or joint regulation or practice affecting any rate or charge, the commission may either upon complaint or upon its own initiative without complaint enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice; and, if the commission so orders, it may proceed without answer or other form of pleading by the interested parties, but upon reasonable notice, and, pending such hearing and the decisions thereon, the commission, upon filing with such schedule and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than two hundred seventy days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided*, That in the case of a public utility having two thousand five hundred customers or less and which is not a political subdivision principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred twenty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than two thousand five hundred customers, but not more than five thousand customers, and which is not a political subdivision principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred fifty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and in the case of a public utility having more than five thousand customers, but not more than seven thousand five hundred customers, and which is not a political subdivision principally owned by any other public utility corporation or public utility holding corporation, the commission may suspend the operation of such schedule and defer the use of such rate, charge, classification, regulation or practice, but not for a longer period than one hundred eighty days beyond the time when such rate, charge, classification, regulation or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, charge, classification, regulation or practice goes into effect, the commission may make such order in reference to such rate, charge, classification, regulation or practice as would be proper in a proceeding initiated after the rate, charge, classification, regulation or practice had become effective: *Provided, however*; That, in the case of rates established or proposed that increase by less than twenty-five percent of the gross revenue of the regulated public service district, there shall be no suspension period in the case of rates established by a public service district pursuant to section nine, article thirteen-a, chapter sixteen of this code, and the proposed rates of public service districts shall go into effect upon the date of filing with the commission, subject to refund modification at the conclusion of the commission proceeding. In the case of

rates established or proposed that increase by more than twenty-five percent of the gross revenue of the public service district, the district may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon the date of filing with the commission. The public service district shall provide notice by Class 1 legal advertisement in a newspaper of general circulation in its service territory of the percentage increase in rates at least fourteen days prior to the effective date of the increased rates. Any refund determined to be determined to be due and owing as a result of any difference between any final rates approved by the commission and the rates placed into effect subject to refund shall be refunded by the public service district as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully credited by credit within six months after entry of the commission's final order shall be directly refunded to the customer by check: *Provided, further*, That if any such hearing and decision thereon is not concluded within the periods of suspension, as above stated, such rate, charge, classification, regulation or practice shall go into effect at the end of such period not subject to refund: *And provided further*, That if any such rate, charge, classification, regulation or practice goes into effect because of the failure of the commission to reach a decision, the same shall not preclude the commission from rendering a decision with respect thereto which would disapprove, reduce or modify any such proposed rate, charge, classification, regulation or practice, in whole or in part, but any such disapproval, reduction or modification shall not be deemed to require a refund to the customers of such utility as to any rate, charge, classification, regulation or practice so disapproved, reduced or modified. The fact of any rate, charge, classification, regulation or practice going into effect by reason of the commission's failure to act thereon shall not affect the commission's power and authority to subsequently act with respect to any such application or change in any rate, charge, classification, regulation or practice. Any rate, charge, classification, regulation or practice which shall be approved, disapproved, modified or changed, in whole or in part, by decision of the commission shall remain in effect as so approved, disapproved, modified or changed during the period or pendency of any subsequent hearing thereon or appeal therefrom. Orders of the commission affecting rates, charges, classifications, regulations or practices which have gone into effect automatically at the end of the suspension period are prospective in effect only. (c) At any hearing involving a rate sought to be increased or involving the change of any rate, charge, classification, regulation or practice, the burden of proof to show the justness and reasonableness of the increased rate or proposed increased rate, or the proposed change of rate, charge, classification, regulation or practice shall be upon the public utility making application for such change. The commission shall, whenever practicable and within budgetary constraints, conduct one or more public hearings within the area served by the public utility making application for such increase or change, for the purpose of obtaining comments and evidence on the matter from local ratepayers.

(d) Each public utility subject to the provisions of this section shall be required to establish, in a written report which shall be incorporated into each general rate case application, that it has thoroughly investigated and considered the emerging and state-of-the-art concepts in the utility management, rate design and conservation as reported by the commission under subsection (c), section one, article one of this chapter, as alternatives to, or in mitigation of, any rate increase. The utility report shall contain as to each concept considered the reasons for adoption or rejection of each. When in any case pending before the commission all evidence shall have been taken and the hearing completed, the commission shall render a decision in such case. The

failure of the commission to render a decision with respect to any such proposed change in any such rate, charge, classification, regulation or practice within the various time periods specified in this section after the application therefor shall constitute neglect of duty on the part of the commission and each member thereof.

(e) Where more than twenty members of the public are affected by a proposed change in rates, it shall be a sufficient notice to the public within the meaning of this section if such notice is published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the community where the majority of the resident members of the public affected by such change reside or, in case of nonresidents, have their principal place of business within this state.

(f) The commission may order rates into effect subject to refund, plus interest in the discretion of the commission, in cases in which the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress, or in which the costs upon which these rates are based are subject to modification by the commission or another regulatory commission and to refund to the public utility. In such case the commission may require such public utility to enter into a bond in an amount deemed by the commission to be reasonable and conditioned upon the refund to the persons or parties entitled thereto of the amount of the excess if such rates so put into effect are subsequently determined to be higher than those finally fixed for such utility.

(g) No utility regulated under the provisions of this section may make application for a general rate increase while another general rate application is pending before the commission and not finally acted upon, except pursuant to the provisions of subsection (f) of this section. The provisions of this subsection shall not be construed so as to prohibit any such rate application from being made while a previous application which has been finally acted upon by the commission is pending before or upon appeal to the West Virginia Supreme Court of Appeals.

§24-2-4b. Procedures for changing rates of electric and natural gas cooperatives, local exchange services of telephone cooperatives and municipally operated public utilities.

(a) The rates and charges of electric cooperatives, natural gas cooperatives and ~~municipally operated public utilities~~, except for municipal water and/or sewer utilities that are political subdivisions of the state with annual combined gross revenue of less than \$3 million dollars, except for municipally operated commercial solid waste facilities as defined in section two, article fifteen, chapter twenty-two of this code, and the rates and charges for local exchange services provided by telephone cooperatives are not subject to the rate approval provisions of section four or four-a of this article, but are subject to the limited rate provisions of this section.

(b) All rates and charges set by electric cooperatives, natural gas cooperatives and municipally operated public utilities that are political subdivisions of the state providing water, sewer, electric and natural gas services and all rates and charges for local exchange services set by telephone cooperatives shall be just, reasonable, applied without unjust discrimination ~~or preference between~~ or preference for any customer or class of customer and based primarily on the costs of providing these services. All rates and charges shall be based upon the measured or reasonably estimated cost of service, and the equitable sharing of those costs between customers based upon the cost of providing the service received by the customer, including a reasonable plant-in-service depreciation expense. The rates and charges shall be adopted by the electric, natural gas, ~~or telephone cooperative~~ or political subdivision's governing board or body and, in

the case of the municipally operated public utility, by municipal ordinance to be effective not sooner than forty-five days after adoption. The 45-day waiting period may be waived by public vote of the governing body if that body finds and declares the public utility that is a political subdivision of the state to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the utility to deliver continued and compliant public services:

Provided, That notice of intent to effect a rate change shall be specified offline on the monthly billing statement of the customers of the utility for the month next preceding the month in which the rate change is to become effective ~~or~~ and the utility governing body shall give its customers and, in the case of a cooperative, its customers, members and stockholders, other reasonable notices as will allow filing of timely objections to the proposed rate change or and full participation in municipal rate legislation through the provision of a public forum in which customers may comment upon the proposed rate change prior to an enactment vote. The rates and charges or ordinance shall be filed with the commission, together with any information showing the basis of the rates and charges and other information as the commission considers necessary. Any change in the rates and charges with updated information shall be filed with the commission. If a petition, as set out in subdivision (1), (2) or (3), subsection (c) of this section, is received and the electric cooperative, natural gas cooperative or telephone cooperative or municipality has failed to file with the commission the rates and charges with information showing the basis of rates and charges and other information as the commission considers necessary, the suspension period limitation of one hundred twenty days and the one hundred-day period limitation for issuance of an order by a hearing examiner, as contained in subsections (d) and (e) of this section, is tolled until the necessary information is filed. The electric cooperative, natural gas cooperative, telephone cooperative or municipality shall set the date when any new rate or charge is to go into effect.

(c) The commission shall review and approve or modify the rates and charges of electric cooperatives, natural gas cooperatives, telephone cooperatives, or municipal electric or natural gas utilities and municipally owned water and/or sewer utilities that are political subdivisions of the state and having less than \$3 million dollars of annual combined gross revenues upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing the rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by the municipally operated electric or natural gas public utility or municipally owned water and/or sewer utility having less than \$3 million dollars annual combined gross revenues or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state;

(2) Any customer who is served by a municipally operated or natural gas public utility and who resides outside the corporate limits and who is affected by the change in the rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. The petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers of the municipally owned electric or natural gas public utility who is affected by the change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between a customer or group of customers and other customers of the municipal utility. The petition shall be

accompanied by evidence of discrimination.

(d) (1) The filing of a petition with the commission signed by not less than twenty-five percent of the customers served by the municipally operated electric or natural gas public utility or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state under ~~subdivision (1)~~ subsection (c) of this section shall suspend the adoption of the rate change contained in the ordinance or resolution for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein.

(2) Upon sufficient showing of discrimination by customers outside the municipal boundaries or a customer or a group of customers within the municipal boundaries under a petition filed under subdivision (2) or (3), subsection (c) of this section, the commission shall suspend the adoption of the rate change contained in the ordinance for a period of one hundred twenty days from the date the rates or charges would otherwise go into effect or until an order is issued as provided herein. A municipal rate ordinance enacted pursuant to the provisions of this section and municipal charter or state code that establishes or proposes a rate increase that results in an increase of less than twenty-five percent of the gross revenue of the utility shall be presumed valid and rates shall be allowed to go into effect, subject to refund, upon the date stated in that ordinance. In the case of rates established or proposed that increase by more than twenty-five percent of the gross revenue of the municipally operated public utility, the utility may apply for, and the commission may grant, a waiver of the suspension period and allow rates to be effective upon enactment.

(e) The commission shall forthwith appoint a hearing examiner from its staff to review the grievances raised by the petitioners. The hearing examiner shall conduct a public hearing and shall, within one hundred days from the date the rates or charges would otherwise go into effect, unless otherwise tolled as provided in subsection (b) of this section, issue an order approving, disapproving or modifying, in whole or in part, the rates or charges imposed by the electric, natural gas or telephone cooperative or by the municipally operated public utility pursuant to this section.

(f) Upon receipt of a petition for review of the rates under the provisions of subsection (c) of this section, the commission may exercise the power granted to it under the provisions of section three of this article, consistent with the applicable rate provisions of section twenty, article ten, chapter eight of this code, section four, article nineteen of said chapter and section sixteen, article thirteen, chapter sixteen of this code. The commission may determine the method by which the rates are reviewed and may grant and conduct a de novo hearing on the matter if the customer, electric, natural gas or telephone cooperative or municipality requests a hearing.

~~(g) A municipal utility shall be required to refund revenues collected from rates enacted that are disapproved or modified upon subsequent order of the commission entered in a proceeding under this section. Any refund determined to be due and owing as a result of any difference between the municipal rates placed into effect subject to refund and any final rates approved the commission shall be refunded by the municipal utility as a credit against each customer's account for a period of up to six months after entry of the commission's final order. Any remaining balance which is not fully refunded by credit within six months after entry of the commission's final order shall be directly refunded to the individual customer by check.~~

(h) ~~(g)~~ The commission may, upon petition by a ~~municipality~~ or an electric, natural gas

or telephone cooperative, or municipal electric or natural gas public utility allow an interim or emergency rate to take effect, subject to refund or future modification, if it is determined that the interim or emergency rate is necessary to protect the municipality from financial hardship attributable to the purchase of the utility commodity sold, or the commission determines that a temporary or interim rate increase is necessary for the utility to avoid financial distress. In such cases, the commission shall waive the 45-day waiting period provided for in subsection (b) of this section and the one hundred twenty-day suspension period provided for in subsection (d) of this section.

(h) The commission shall, upon written request of the governing body of a political subdivision, provide technical assistance to the governing body in its deliberations regarding a proposed rate increase.

(i) Notwithstanding any other provision, the commission has no authority or responsibility with regard to the regulation of rates, income, services or contracts by municipally operated public utilities for services which are transmitted and sold outside of the State of West Virginia.

(j) Notwithstanding any other provision of this code to the contrary, the jurisdiction of the commission over water and/or sewer utilities that are political subdivisions of the state and having annual gross combined revenues of \$3 million or more shall be limited to those powers enumerated in subsection (b), section one of this article.

§24-2-7. Unreasonable, etc., regulations, practices and services; receivership; procedures respecting receivership; appointment and compensation of receiver; liquidation.

(a) Whenever, under the provisions of this chapter, the commission shall find any regulations, measurements, practices, acts or service to be unjust, unreasonable, insufficient or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or shall find that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed and followed in the state in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable.

(b) If the Public Service Commission shall determine that any utility is unable or unwilling to adequately serve its customers or has been actually or effectively abandoned by its owners, or that its management is grossly and willfully inefficient, irresponsible or unresponsive to the needs of its customers, the commission may petition to the circuit court of any county wherein the utility does business for an order attaching the assets of the utility and placing such utility under the sole control and responsibility of a receiver. If the court determines that the petition is proper in all respects and finds, after a hearing thereon, that the allegations contained in the petition are true, it shall grant the same and shall order that the utility be placed in receivership. The court, in its discretion and in consideration of the recommendation of the commission, shall appoint a receiver who shall be a responsible individual, partnership or corporation knowledgeable in public utility affairs and who shall maintain control and responsibility for the running and management of the affairs of ~~such~~ the utility. In so doing, the receiver shall operate the utility so as to preserve the assets of the utility and to serve the best interests of its customers. The receiver shall be compensated from the assets of said utility in an amount to be determined by the court.

(c) Control of and responsibility for said utility shall remain in the receiver until the same can, in the best interest of the customers, be returned to the owners, transferred to other owners or assumed by another utility or public service corporation: *Provided*, That if the court after hearing, determines that control of and responsibility for the affairs of the utility should not, in the best interests of its customers, be returned to the legal owners thereof, the receiver shall proceed to liquidate the assets of ~~such~~ the utility in the manner provided by law.

(d) The laws generally applicable to receivership shall govern receiverships created pursuant to this section.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) A public utility, person or corporation other than a political subdivision of the state providing water, sewer and/or stormwater services and having annual gross combined revenues of \$3 million dollars or more may not begin the construction of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in section one, article two of this chapter, nor apply for, nor obtain any franchise, license or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing such construction franchise, license or permit.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: *Provided*, That the commission, after it gives proper notice and if no substantial protest is received within thirty days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within thirty days, to the application. The notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person or corporation subject to the provisions of this section other than a political subdivision of the state providing water and/or sewer services having combined annual gross revenue of \$3 million dollars or more shall give the commission at least thirty days' notice of the filing of any application for a certificate of public convenience and necessity under this section: *Provided*, That the commission may modify or waive the thirty-day notice requirement and shall waive the thirty-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or section eleven-a of this article within two hundred seventy days of the filing of the application and within ninety days after final submission of any such application for decision following a hearing: *Provided*, That if the application is for authority to construct a water and sewer project and the projected total cost is less than \$10 million, the commission shall render its final decision within two hundred twenty-five days of the filing of the application.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to article fifteen-a, chapter thirty-one of this code within one hundred eighty days after filing of the application: *Provided*, That if a substantial protest is received within thirty days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within two hundred seventy days or two hundred twenty-five days of the

filing of the application, whichever is applicable as determined in subsection (d) of this section.

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or section eleven-a of this article is greater than \$50 million, the commission shall render its final decision on any such application filed under the provisions of this section or section eleven-a of this article within four hundred days of the filing of the application and within ninety days after final submission of any such application for decision after a hearing.

(g) If a decision is not rendered within the time frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe rules as it may deem proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline or local distribution company for the transportation in intrastate commerce of natural gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline or other seller to the person; or

(2) Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person or corporation proposing any electric power project that requires a certificate under this section is not required to obtain such certificate before applying for or obtaining any franchise, license or permit from any municipality or other governmental agency.

(l) Water, sewer and/or stormwater utilities that are political subdivisions of the state and having combined gross revenues of \$3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide notice to both current customers and those citizens who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the monthly billing statement of the customers of the utility for the month next preceding the month in which the contemplated construction is to be before the governing body on first reading.

(2) Adequate prior public notice of the contemplated construction by causing to be published as a Class I legal advertisement of the proposed action, in compliance with the provisions of article three, chapter fifty-nine of the code. The publication area for publication shall be all territory served by the district. If the political subdivision provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed construction, the current rates, fees and charges, the proposed changes to said rates, fees and charges; the date, time, and place of both a public hearing on the proposal and the proposed final vote on adoption; and, the place or places within the political subdivision where the proposed construction and the rates, fees and charges may be inspected by the public. A reasonable

number of copies of the proposal shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the political subdivision and be heard with respect to the proposed construction and the proposed rates, fees and charges.

(4) The proposed construction and the proposed rates, fees and charges shall be read at two meetings of the governing body with at least two weeks intervening between each meeting. The public hearing may be conducted with or following the second reading.

(5) Enactment of the proposed construction and the proposed rates, fees and charges shall follow an affirmative vote of the governing body and shall be effective no sooner than forty-five days following the action of the governing body. If the political subdivision proposes rates that will go into effect prior than the completion of construction of the proposed project, the 45-day waiting period may be waived by public vote of the governing body only if the political subdivision finds and declares the political subdivision to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the political subdivision to deliver continued and compliant public services: *Provided That*, in no event shall the rate become effective prior to the date that the County Commission has entered an order approving the action of the public service district board.

(6) Rates, fees and charges approved by an affirmative vote of the public services district board shall be forwarded in writing to the county commission appointing the approving board. The county commission shall, within forty-five of receipt of the proposed rates, fees and charges, take action to approve or reject the proposed rates, fees and charges. After forty-five days, and absent action by the county commission, the proposed rates, fees and charges shall be effective with no further action by the board or county commission. In any event this forty-five day period may be extended by official action of both the board proposing the rates, fees and charges and the appointing county commission.

(7) The county commission shall provide notice to the public by a Class 1 legal advertisement of the proposed action, in compliance with the provisions of article three (Sec. §59-3-1 et seq.), chapter fifty nine of this code, of the meeting where it shall consider the proposed increases in rates, fees and charges no later than one week prior to the meeting date.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-5. Schedule of rates to be filed with commission.

Every public utility ~~subject to the provisions of this chapter~~ shall file with the commission, and keep open to public inspection, schedules showing all the rates, charges and tolls for service to be rendered by it or by other persons, firms or corporations in connection with it: *Provided*, That the reports and tariffs filed by interstate carriers with the Public Service Commission may be copies of its reports and tariffs filed with the Interstate Commerce Commission; but nothing herein shall preclude the Public Service Commission from requiring interstate carriers to furnish information bearing upon any complaint or question pending before said Public Service Commission and with which it has a right to deal.

On motions of Senators Snyder and Blair, the following amendments to Senator M. Hall's amendment to the bill (Com. Sub. for S. B. No. 234) was reported by the Clerk, considered simultaneously, and adopted:

On page eight, section nine, subsection (a), subdivision (2), after the words “ district with” by inserting the words “at least 4,500 customers and”;

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On page twenty-five, section one, subsection (j), after the word "having" by inserting the words "at least 4,500 customers and";

On page twenty-eight, section one, subsection (b), after the word "having" by inserting the words "at least 4,500 customers and";

On page thirty-four, section two, subsection (c), after the word "having" by inserting the words "at least 4,500 customers and";

On page thirty-four, section three, subsection (a), after the word "having" by inserting the words "at least 4,500 customers and";

On page thirty-five, section four-a, subsection (a), after the word "having" by inserting the words "at least 4,500 customers and";

On page forty-one, section four-b, subsection (a), after the word "with" by inserting the words "at least 4,500 customers and";

On page forty-three, section four-b, subsection (c), after the word "than" by inserting the words "4,500 customers or";

On page forty-three, section four-b, subsection (a), subdivision (1), after the word "than" by inserting the words "4,500 customers or";

On page forty-six, section four-b, subsection (j), after the word "having" by inserting the words "at least 4,500 customers and";

On page forty-seven, section eleven, subsection (a), after the word "having" by inserting the words "at least 4,500 customers and";

On page forty-eight, section eleven, subsection (c), after the word "having" by inserting the words "at least 4,500 customers and";

And,

On page fifty, section eleven, subsection (l), after the word "having" by inserting the words "at least 4,500 customers and".

The question now being on the adoption of Senator M. Hall's amendment to the bill, as amended, the same was put and prevailed.

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

Engrossed Committee Substitute for Senate Bill No. 234 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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--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. 234) passed.

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

Eng. Com. Sub. for Senate Bill No. 234--A Bill to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-19 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §16-13A-1a, §16-13A-9 and §16-13A-25 of said code; to amend and reenact §24-1-1, §24-1-1b and §24-1-2 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, §24-2-7 and §24-2-11 of said code; and

to amend and reenact §24-3-5 of said code, all relating to modifying the jurisdiction of the Public Service Commission as it pertains to certain water and sewer utilities owned or operated by political subdivisions of the state; relating to the authority of bondholders to petition the Public Service Commission for redress when there is a deficiency in bond revenue or bond reserve accounts or is otherwise in breach of bond covenants; expanding jurisdiction of the Public Service Commission to provide assistance to public service districts and municipal corporations regarding proposed rate changes; providing for a working capital allowance; expanding powers of certain public service boards; providing mechanism for Public Service Commission to address deficiencies in the measurements, practices acts or services provided by certain public utility that is a political subdivision of the state; and providing mechanisms for various functions of political subdivisions related to water and sewer services.

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. 320, Standardizing notification process for revocation of certificates of authority.

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

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

The nays were: None.

Absent: Plymale--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. 320) 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. 325, Relating to filing of candidates' financial disclosure statements.

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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--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. 325) 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. 352, Expanding scope of cooperative associations to goods and services including recycling.

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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump,

Unger, Walters, Woelfel, Yost and Cole (Mr. President)--32.

The nays were: Williams--1.

Absent: Plymale--1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 352) 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. 363, Establishing maximum rates and service limitations for reimbursement of health care services by Court of Claims.

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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--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. 363) passed.

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

Eng. Senate Bill No. 363--A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §14-2A-19b, relating to allowing the Court of Claims to establish maximum rates and service limitations for reimbursement of health care services; requiring rates to be filed with Joint Committee on Government and Finance; setting effective date for changes to rates and limitations; prohibiting payment from other sources, as well as claimants; and authorizing court to review claims.

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. 366, Creating Patient Protection and Transparency Act.

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

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

The nays were: None.

Absent: Plymale--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. 366) 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. 385, Regulating transportation network companies.

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

At the request of Senator Carmichael, unanimous consent being granted, further consideration of

the bill was deferred until the conclusion of bills on today's first reading calendar.

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

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, Facemire, Ferns, D. Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--29.

The nays were: Carmichael, Gaunch, M. Hall and Unger--4.

Absent: Plymale--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. 446) passed with its title.

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

(Senator Boley in the Chair.)

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

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 3, 2015, for amendments to be received on third reading, was reported by the Clerk.

On motion of Senator Trump, the following amendment to the bill was reported by the Clerk: On page eight, section eight, lines nineteen and twenty, after the words "vehicle inventory" by inserting the following: "including motor homes and travel trailers, regardless of gross vehicle weight".

Senator Cole (Mr. President) 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 motion prevailed.

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

On motion of Senator Trump, the following amendments to the bill (Eng. Com. Sub. for S. B. No. 453) were next reported by the Clerk, considered simultaneously, and adopted:

On page seventeen, section ten, line nine, after the word "affiliates." by inserting the following:

If a manufacturer, factory branch, distributor, or distributor branch offers incentives or other payments to a consumer or dealer paid on individual vehicle sales under a program offered after the effective date of this subdivision and available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image elements required by and approved by the manufacturer, factory branch, distributor or distributor branch and completed within ten years preceding the program shall be deemed to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed with that ten year period. This subsection shall not apply to a program that is in effect with more than one dealer in the state on the effective date of this subsection, nor to any renewal of such program, nor to a modification that is not a substantial modification of a material term or condition of such program.;

And,

On page thirty, section twelve-a, lines thirteen through seventeen, by striking out all of

subsection (3) and inserting in lieu thereof a new subsection, designated subsection (3), to read as follows:

(3) If a manufacturer and new motor vehicle dealer are in parties to a property use agreement, the dealer agreement between the manufacturer and new motor vehicle dealer is terminated by a manufacturer or by a successor manufacturer or by operation of law and the reason for the termination is not a reason described in paragraphs one through five, inclusive, subdivision (c), section seven of this article, the property use agreement terminates and ceases to be effective at the time the dealer agreement is terminated.

There being no further amendments offered,

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

Engrossed Committee Substitute for Senate Bill No. 453 was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill No. 453 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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Yost--32.

The nays were: None.

Absent: Plymale--1.

Excused from voting: Cole (Mr. President)--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. 453) passed with its title.

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

Thereafter, at the request of Senator Unger, and by unanimous consent, the remarks by Senator Kessler regarding the passage of Engrossed Committee Substitute for Senate Bill No. 453 were ordered printed in the Appendix to the Journal.

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

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

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Tuesday, March 3, 2015, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, further consideration of the bill and the pending unreported Judiciary committee amendment was deferred until the conclusion of bills on today's first reading calendar, following consideration of Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 385, already placed in that position.

Eng. Com. Sub. for Senate Bill No. 542, Clarifying provisions of Consumer Credit and Protection Act relating to debt collection.

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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

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The nays were: None.

Absent: Plymale--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. 542) 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. 582, Relating to Herbert Henderson Office of Minority Affairs.

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

Pending discussion,

The question being "Shall Engrossed Senate Bill No. 582 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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--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. 582) 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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 582) takes effect from passage.

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 Gaunch, and by unanimous consent, the remarks by Senators Trump and Miller regarding the passage of Engrossed Senate Bill No. 582 were ordered printed in the Appendix to the Journal.

Senate Bill No. 583, Increasing tax rate on providers of certain nursing facility services.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 3, 2015, for amendments to be received on third reading, was reported by the Clerk.

There being no amendments offered,

The bill was ordered to engrossment.

Engrossed Senate Bill No. 583 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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--32.

The nays were: Unger--1.

Absent: Plymale--1.

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So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 583) passed with its title.

Senator Carmichael moved that the bill take effect July 1, 2015.

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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--32.

The nays were: Unger--1.

Absent: Plymale--1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. No. 583) takes effect July 1, 2015.

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

Eng. Senate Bill No. 584, Transferring Cedar Lakes Camp and Conference Center to private, nonstock, not-for-profit corporation.

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, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: None.

Absent: Plymale--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. 584) passed with its title.

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

Senate Bill No. 585, Relating to regulation of transportation network and taxicab companies.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 3, 2015, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Carmichael, unanimous consent being granted, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar, following consideration of Engrossed Committee Substitute for Senate Bill No. 541, already placed in that position.

The Senate proceeded to the ninth order of business.

Eng. House Bill No. 2879, Relating to certain limitations on amount of state funds on deposit in any depository.

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

The Senate proceeded to the tenth order of business.

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

Eng. House Bill No. 2760, Making a supplementary appropriation to the Bureau of Senior Services, Lottery Senior Citizens Fund.

Eng. House Bill No. 2764, Making a supplementary appropriation to the State Department of

Education, School Building Authority.

Eng. House Bill No. 2770, Making a supplementary appropriation from the State Fund, State Excess Lottery Revenue Fund, to the Division of Human Services.

And,

Eng. House Bill No. 2933, Making a supplementary appropriation to the Department of Administration, Public Defender Services.

At the request of Senator D. Hall, and by unanimous consent, Senator D. Hall addressed the Senate regarding the results of several recent winter storms in Southern West Virginia.

Thereafter, at the request of Senator Walters, and by unanimous consent, the remarks by Senator D. Hall were ordered printed in the Appendix to the Journal.

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

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

Upon expiration of the recess, the Senate reconvened.

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

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

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

Senator Trump moved to table the bill.

The question being on the adoption of Senator Trump's aforesaid motion, the same was put and prevailed and the bill (Eng. Com. Sub. for Com. Sub. for S. B. No. 385) was laid upon the table.

Action as to Engrossed Committee Substitute for Senate Bill No. 385 having been concluded, the Senate returned to the consideration of

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

On third reading, coming up in deferred order, with an unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Tuesday, March 3, 2015, for further amendments to be received on third reading, was again reported by the Clerk.

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

On motions of Senators Trump and Kessler, the following amendment to the bill was reported by the Clerk:

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

That §3-8-1a, §3-8-2, §3-8-3, §3-8-4, §3-8-5, §3-8-5a, §3-8-5b, §3-8-7, §3-8-8, §3-8-9, §3-8-10, §3-8-12 and §3-8-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto five new sections, designated §3-8-1b, §3-8-1c, §3-8-5c, §3-8-8a and §3-8-9a, all to read as follows:

ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.

§3-8-1a. Definitions.

As used in this article, the following terms have the following definitions:

(1) "Ballot issue" means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits or any other question that is placed before the voters for a binding decision.

(2) "Billboard advertisement" means a commercially available outdoor advertisement, sign or

similar display regularly available for lease or rental to advertise a person, place or product.

(3) “Broadcast, cable or satellite communication” means a communication that is publicly distributed by a television station, radio station, cable television system or satellite system.

(4) “Candidate” means an individual who:

(A) Has filed a certificate of announcement under section seven, article five of this chapter or a municipal charter;

(B) Has filed a declaration of candidacy under section twenty-three, article five of this chapter;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county or municipal office or party office to be filled at any primary, general or special election.

(5) “Candidate’s committee” or “candidate committee” means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(6) “Clearly identified” means that the name, nickname, photograph, drawing or other depiction of the candidate appears or the identity of the candidate is otherwise apparent through an unambiguous reference, such as “the Governor”, “your Senator” or “the incumbent” or through an unambiguous reference to his or her status as a candidate, such as “the Democratic candidate for Governor” or “the Republican candidate for Supreme Court of Appeals House of Delegates”.

~~(7) “Contribution” means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance or promise of money or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election or defeat of a candidate. An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation. *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.~~

(8) ~~(7)~~ “Corporate political action committee” means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(9) ~~(8)~~ “Direct costs of purchasing, producing or disseminating electioneering communications” means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs and postage; or

(B) The cost of air time on broadcast, cable or satellite radio and television stations, the costs of disseminating printed materials, studio time, use of facilities and the charges for a broker to purchase air time.

~~(10)~~ ~~(9)~~ “Disclosure date” means either of the following:

(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of \$5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling \$5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications.

~~(11)~~ (10) “Election” means any primary, general or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term “nomination” as used in this article.

~~(12)~~ (11) (A) “Electioneering communication” means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement or published in any newspaper, magazine or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election at which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election at which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate: *Provided, That for purposes of the general election of 2008 the amendments to this article are effective October 1, 2008.*

(B) “Electioneering communication” does not include:

(i) A news story, commentary or editorial disseminated through the facilities of any broadcast, cable or satellite television or radio station, newspaper, magazine or other periodical publication not owned or controlled by a political party, political committee or candidate: *Provided, That a news story disseminated through a medium owned or controlled by a political party, political committee or candidate is nevertheless exempt if the news is:*

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing or listening area;

(ii) Activity by a candidate committee, party executive committee or political party caucus committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to section five of this article or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided, That independent expenditures by a party executive committee or caucus committee or a political action committee required to be reported pursuant to subsection (b), section two of this article are not exempt from the reporting requirements of this section;*

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization, in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate or his or her status as a candidate; or

(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

~~(13)~~ (12) "Expressly advocating" means any communication that:

(A) Uses phrases such as "vote for the Governor", "reelect your Senator", "support the ~~Democratic nominee~~ incumbent candidate for Supreme Court", "cast your ballot for the Republican challenger for House of Delegates", "Smith for House", "Bob Smith in '04", "vote Pro-Life" or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as pro-life or pro-choice, "vote against Old Hickory", "defeat" accompanied by a picture of one or more candidates, or "reject the incumbent";

(B) Communications of campaign slogans or individual words, that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc., which say "Smith's the One", "Jones '06", "Baker", etc; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

~~(14)~~ (13) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

~~(15)~~ (14) "Fundraising event" means an event such as a dinner, reception, testimonial, cocktail party, auction or similar affair through which contributions are solicited or received by such means as the purchase of a ticket, payment of an attendance fee or by the purchase of goods or services.

~~(16)~~ (15) "Independent expenditure" means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate's authorized political committee or a political party committee or its agents.

Supporting or opposing the election of a clearly identified candidate includes supporting or opposing the candidates of a political party. An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

~~(17)~~ (16) "Mass mailing" means a mailing by United States mail, facsimile or electronic mail of more than five hundred pieces of mail matter of an identical or substantially similar nature within any thirty-day period. For purposes of this subdivision "substantially similar" includes communications that contain substantially the same template or language, but vary in nonmaterial respects such as communications customized by the recipient's name, occupation or

geographic location.

~~(18)~~ (17) “Membership organization” means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors and the ability to hold office, to its members and which uses a majority of its membership dues for purposes other than political purposes. “Membership organization” does not include organizations that grant membership upon receiving a contribution.

(18) “Membership organization political action committee” means a political action committee that is a separate segregated fund of a membership organization that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

(19) “Name” means the full first name, middle name or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

(20) “Person” means an individual, corporation, partnership, committee, association and any other organization or group of individuals.

(21) “Political action committee” means a committee organized by one or more persons for the purpose of supporting or opposing the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined by subdivision ~~(8)~~ (7) of this section;

(B) A membership organization political action committee, as that term is defined by subdivision (18) of this section;

(C) An unaffiliated political action committee, as that term is defined by subdivision (29) of this section.

(22) “Political committee” means any candidate’s committee, political action committee or political party committee, as defined in subdivision (5), (21) or (25) of this section.

(23) “Political party” means a political party as that term is defined by section eight, article one of this chapter or any committee established, financed, maintained or controlled by the party, including any subsidiary, branch or local unit thereof and including national or regional affiliates of the party.

(24) “Political party caucus” means the committees that are established by the Republican and Democrat caucuses of both the West Virginia House of Delegates and the West Virginia State Senate, or by any other political party recognized by the State of West Virginia.

~~(24)~~ (25) “Political party committee” means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination or defeat of a candidate in any election.

~~(25)~~ (26) “Political purposes” means supporting or opposing the nomination, election or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party and determining the advisability of becoming a candidate under the precandidacy financing provisions of this chapter.

~~(26)~~ (27) “Targeted to the relevant electorate” means that a communication ~~which~~ refers to a clearly identified candidate for statewide office or the Legislature and ~~which~~ can be received by one hundred forty thousand or more individuals in the state in the case of a candidacy for statewide office, eight thousand two hundred twenty or more individuals in the district in the

case of a candidacy for the State Senate and two thousand four hundred ten or more individuals in the district in the case of a candidacy for the House of Delegates.

~~(27)~~ (28) “Telephone bank” means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions or trained volunteers.

~~(28) "Two-year election cycle" means the twenty-four month period that begins the day after a general election and ends on the day of the subsequent general election.~~

(29) “Unaffiliated political action committee” means a political action committee that is not affiliated with a corporation or a membership organization.

§3-8-1b. Political contribution defined.

(a) “Political contribution” means:

(1) Any gift, subscription, loan, advance, deposit of money or payment or anything of value given to any entity that is registered or is required to be registered as a political committee at the time the political contribution is made, or that is given to be used specifically for making political contributions to other recipients or for making political expenditures; or

(2) Any political expenditure, as that term is defined in section one-c of this article, that is made in coordination with a candidate, candidate committee or party committee.

(b) The term “political contribution” does not include:

(1) Any gift, subscription, loan, advance, deposit of money or payment or anything of value made or given as part of a bona fide commercial transaction, including, but not limited to, any loans, refunds, rebates or discounts offered to the general public or similar customers on substantially the same material terms;

(2) The payment by any corporation or membership organization for the costs of establishing, administering, and soliciting contributions from its restricted class to its separate segregated fund;

(3) The payment by any corporation or membership organization for the costs of communicating with its restricted class about any subject;

(4) The appearance of a candidate at any residence or the facilities of any corporation, membership organization, social or civic organization, or educational institution to speak about the candidate's campaign: *Provided*, That the use of such venue is furnished by the venue's owner and is not paid for by a third party;

(5) The costs of hosting a debate or candidates' forum: *Provided*, That at least two opposing candidates with respect to any given office sought are invited with the same or similar advance notice and method of invitation;

(6) The preparation and distribution of voter guides, subject to the following:

(A) The sponsor may include in the voter guide similar biographical information on each featured candidate, such as education, employment positions, offices held and community involvement;

(B) Comparable information shall be provided on each candidate featured in the voter guide for a particular office or each candidate featured shall be provided an equal opportunity to respond to questions;

(C) No featured candidate may receive greater prominence in the voter guide than any other candidate, or substantially more space for descriptions of his or her positions or responses; and

(D) The sponsor of the voter guide shall not include the sponsor's own message meeting the definition of a political expenditure under section one-c of this article;

(7) The value of services provided without compensation by any individual who volunteers on behalf of any candidate, candidate committee, party committee or other political committee, or any unreimbursed payment for expenses related to the volunteer activity;

(8) Any cost incurred for covering or carrying a news story, commentary or editorial by a broadcasting station or cable television operator, Internet website, or newspaper or other periodical publication, including an Internet or other electronic publication: *Provided*, That the cost for the news story, commentary or editorial is not paid for by, and the medium is not owned or controlled by, a candidate, candidate committee, party committee or other political committee; and

(9) The payment for or provision of legal and accounting services rendered to a candidate, candidate committee, party committee or other political committee if the services are solely for the purpose of ensuring compliance with or challenging the constitutional validity or interpretation of the provisions of this chapter;

(c) The term “political contribution” may not be construed to include any transactions not specifically listed in subsection (b) of this section if those contributions do not otherwise meet the definition of “political contribution” as set forth in subsection (a) of this section.

§3-8-1c. Political expenditure defined.

(a) “Political expenditure” means the payment for:

(1) Any communication that constitutes express advocacy or electioneering communications, as those terms are defined in subdivisions (11) and (12), section one-a of this article; or

(2) The republication of campaign materials for any candidate, candidate committee, party committee or political committee, except for:

(A) The republication of materials in a voter guide described under subdivision (6), subsection (b), section one-b of this article;

(B) The republication of campaign materials commenting or explaining a candidate's position on any issue that does not otherwise in express terms call for the election or defeat of any clearly identified candidate; or

(C) The republication of publicly available photographs or video footage of a candidate that is devoid of any text or audio content in or from the original material.

(b) The term “political expenditure” does not include anything that is excluded from the definition of a “political contribution”, as set forth in subsection (b), section one-b of this article of the definition of “political contribution.”

(c) A “political expenditure” is “made in coordination” or otherwise considered to be coordinated if:

(1) The communication is paid for, in whole or in part, by a person other than a candidate, candidate committee or party committee; and

(2) It satisfies at least one of the following conduct standards:

(A) The political expenditure is created, produced, distributed or undertaken at the request or suggestion of a candidate, candidate committee, party committee; or

(B) The political expenditure is created, produced, distributed or undertaken at the suggestion of a person paying for the expenditure and the candidate, candidate committee or party committee affirmatively assents to the suggestion.

(d) A “political expenditure” is not “made in coordination” or otherwise considered to be coordinated if any of the following occur:

(1) A candidate committee or a political party committee responds to an inquiry about the

candidate's or political party committee's positions on legislative or policy issues, including substantive discussion of the legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs;

(2) Information or materials used in the creation, production, distribution or undertaking of the political expenditure was obtained from a publicly available source;

(3) A candidate endorses another candidate;

(4) A candidate solicits funds for another candidate, a political committee, a party committee or organizations eligible to receive tax-deductible donations under 26 U. S. C. §170 (or any successor provision) and regulations of the U. S. Department of Treasury;

(5) A candidate is clearly identified only in his or her capacity as the owner or operator of a business that existed prior to the candidacy, if the communication does not refer to an election or another candidate who seeks the same office as that candidate; or

(6) A commercial vendor, former employee or political committee has established and implemented a firewall that meets the following requirements: *Provided*, That the communication does not qualify for this exemption if specific information indicates that, despite the firewall, information about a candidate's, candidate committee's, measure committee's, or party committee's campaign plans, projects, activities or needs that is material to the creation, production or distribution of the political expenditure was used or conveyed to the person paying for the political expenditure:

(A) The firewall must be designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants currently or previously providing services to a candidate or party committee, or a candidate committee or measure committee supporting or opposing a candidate or measure clearly identified in the political expenditure; and

(B) The firewall must be described in a written policy that is distributed to all relevant employees, consultants and clients affected by the policy.

(e) Political expenditures may only be made in coordination with a candidate or candidate's committee as set forth in section nine-a of this article.

(f) Any political expenditure that is made in coordination with a candidate or candidate's committee must contain a disclaimer that clearly identifies that the expenditure is coordinated.

§3-8-2. Accounts for receipts and expenditures in elections; requirements for reporting independent expenditures.

(a) Except for: (1) Candidates for party committeeman and committeewoman; ~~and~~ (2) federal committees required to file under the provisions of 2 U. S. C. §434; and (3) candidates for delegate to a national convention, all candidates for nomination or election and all persons supporting, aiding or opposing the nomination, election or defeat of any candidate shall keep for a period of six months records of receipts and expenditures which are made for political purposes: *Provided*, That any federal committee that makes state level independent expenditures or engages in state level electioneering communications is not exempt from the recordkeeping and reporting provisions of this article. All of the receipts and expenditures are subject to regulation by the provisions of this article. Verified financial statements of the records and expenditures shall be made and filed as public records by all candidates and by their financial agents, representatives or any person acting for and on behalf of any candidate and by the treasurers of all political party committees.

(b) ~~(1)~~ In addition to any other reporting required by the provisions of this chapter, any

person who makes independent expenditures in an aggregate amount or value in excess of \$1,000 during a calendar year shall file a disclosure statement, on a form prescribed by the Secretary of State, that contains all of the requirements set forth in section eight-a of this article. following information:

(A) ~~The name of (i) the person making the expenditure; (ii) the name of any person sharing or exercising direction or control over the activities of the person making the expenditure; and (iii) the name of the custodian of the books and accounts of the person making the expenditure;~~

(B) ~~If the person making the expenditure is not an individual, the principal place of business of the partnership, corporation, committee, association, organization or group which made the expenditure;~~

(C) ~~The amount of each expenditure of more than \$1,000 made during the period covered by the statement and the name of the person to whom the expenditure was made;~~

(D) ~~The elections to which the independent expenditure pertain, the names, if known, of the candidates referred to or to be referred to therein, whether the expenditure is intended to support or oppose the identified candidates and the amount of the total expenditure reported pursuant to paragraph (C) of this subdivision spent to support or oppose each of the identified candidates;~~

(E) ~~The name and address of any person who contributed a total of more than \$250 between the first day of the preceding calendar year, and the disclosure date, and whose political contributions were made for the purpose of furthering the expenditure.~~

(F) ~~With regard to the contributors required to be listed pursuant to paragraph (E) of this subdivision, the statement shall also include:~~

(i) ~~The month, day and year that the contributions of any single contributor exceeded \$250;~~

(ii) ~~If the contributor is a political action committee, the name and address the political action committee registered with the Secretary of State, county clerk or municipal clerk;~~

(iii) ~~If the contributor is an individual, the name and address of the individual, his or her occupation, the name and address of the individual's current employer, if any, or, if the individual is self-employed, the name and address of the individual's business, if any;~~

(iv) ~~A description of the contribution, if other than money; and~~

(v) ~~The value in dollars and cents of the contribution.~~

(G) (1) ~~A certification that such independent expenditure was not "made in coordination" or otherwise a coordinated contribution as defined in section one-c of this article.~~

(2) ~~Any person who makes a contribution for the purpose of funding an independent expenditure under this subsection shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.~~

(3) ~~The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, or on behalf of, or for, or against each candidate, as reported under this subsection, and for periodically publishing such indices on a timely preelection basis.~~

(c) (1) ~~A person, including a political committee, who makes or contracts to make independent expenditures aggregating \$1,000 or more for any statewide, legislative or multicounty judicial candidate or \$500 or more for any county office, single-county judicial~~

~~candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, after the fifteenth day, but more than twelve hours, before the date of an election, shall file a report on a form prescribed by the Secretary of State, describing the expenditures within twenty-four hours: *Provided*, That a person making expenditures in the amount of \$1,000 or more for any statewide or legislative candidate on or after the fifteenth day but more than twelve hours before the day of any election shall report such expenditures in accordance with section two-b of this article and shall not file an additional report as provided herein.~~

~~(2) Any person who files a report under subdivision (1) of this subsection, shall file an additional report within twenty-four hours after each time the person makes or contracts to make independent expenditures aggregating an additional \$500 with respect to the same election, for any county office, single-county judicial candidate, committee supporting or opposing a candidate on the ballot in more than one county, or any municipal candidate on a municipal election ballot, as that to which the initial report relates.~~

~~(d) (1) A person, including a political committee, who makes or contracts to make independent expenditures aggregating \$10,000 or more at any time up to and including the fifteenth day before the date of an election shall file a report on a form prescribed by the Secretary of State, describing the expenditures within forty-eight hours.~~

~~(2) A person who files a report under subdivision (1) of this subsection, the person shall file an additional report within forty-eight hours after each time the person makes or contracts to make independent expenditures aggregating an additional \$10,000 with respect to the same election as that to which the initial report relates.~~

~~(e) (c) Any communication paid for by an independent expenditure must include a clear and conspicuous public notice that:~~

~~(1) Clearly states that the communication is not authorized by the candidate or the candidate's committee; and~~

~~(2) Clearly identifies the person making the expenditure, as required by section fourteen of this article: *Provided*, That if the communication appears on or is disseminated by broadcast, cable or satellite transmission, the statement required by this subsection must be both spoken clearly and appear in clearly readable writing at the end of the communication.~~

~~(f) (d) Any person who has spent a total of \$5,000 or more for the direct costs of purchasing, producing or disseminating electioneering communications during any calendar year shall maintain all financial records and receipts related to such expenditure for a period of six months following the filing of a disclosure pursuant to subsection (a) of this section and, upon request, shall make such records and receipts available to the Secretary of State or county clerk for the purpose of an audit as provided in section seven of this article.~~

~~(g) (e) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500, or confined in jail for not more than one year, or both fined and confined.~~

~~(h) (f) (1) Any person who is required to file a statement under this section may file the statement by facsimile device or electronic mail, in accordance with such rules as the Secretary of State may promulgate.~~

~~(2) The Secretary of State shall make any document filed electronically pursuant to this subsection accessible to the public on the Internet not later than twenty-four hours after the document is received by the secretary.~~

(3) In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified under any of the methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.

(+) (g) This section does not apply to candidates for federal office.

(+) (h) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

§3-8-3. Committee treasurers; required to receive and disburse funds.

Every political committee shall appoint and retain a treasurer to receive, keep and disburse all sums of money which may be collected or received by such committee, or by any of its members, for election expenses, and, unless such treasurer is first appointed and thereafter retained, it shall be unlawful for any such committee or any of its members to collect, receive or disburse money for any such purposes. All moneys collected or received by any such committee, or by any of its members, for election expenses shall be paid over to, and pass through the hands of, the treasurer, and shall be disbursed by ~~him~~ the treasurer, and it shall be unlawful for any such committee, or any of its members, to disburse any money for election expenses unless such money shall be paid to, and disbursed by, the treasurer. The same person may be designated to act as treasurer for two or more political party committees. This section creates no obligation upon any entity or individual, other than a political committee as defined in this article.

§3-8-4. Treasurers and financial agents; written designation requirements.

(a) No person may act as the treasurer of any political action committee or political party committee supporting, aiding or opposing the nomination, election or defeat of any candidate for an office encompassing an election district larger than a county unless a written statement of organization, on a form to be prescribed by the Secretary of State, is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a treasurer and is received by the Secretary of State before midnight, eastern standard time, of that day or, if mailed, is postmarked before that hour. The form shall include the name of the political action committee or political party committee; the name of the treasurer; the mailing address, telephone number and e-mail address, if applicable, of the committee and of the treasurer if different from the committee information; the chairman of the committee; the affiliate organization, if any; type of committee affiliation, as defined in subdivisions (21) and ~~(24)~~ (25), section one-a of this article, if any; and whether the committee will participate in statewide, county or municipal elections. The form shall be certified as accurate and true and signed by the chairman and the treasurer of the committee: *Provided*, That a change of treasurer or financial agent may be made at any time by filing a written statement with the Secretary of State.

(b) No person may act as the treasurer for any candidate for nomination or election to any statewide office, or to any office encompassing an election district larger than a county or to any legislative office unless a written statement designating that person as the treasurer or financial agent is filed with the Secretary of State at least twenty-eight days before the election at which that person is to act as a treasurer and is received by the Secretary of State before midnight, eastern standard time, of that day or if mailed, is postmarked before that hour: *Provided*, That a change of treasurer or financial agent may be made at any time by filing a

written statement with the Secretary of State.

(c) No person may act as treasurer of any committee or as financial agent for any candidate to be nominated or elected by the voters of a county or a district therein, except legislative candidates, or as the financial agent for a candidate for the nomination or election to any other office, unless a written statement designating him or her as the treasurer or financial agent is filed with the clerk of the county commission at least twenty-eight days before the election at which he or she is to act and is received before midnight, eastern standard time, of that day or if mailed, is postmarked before that hour: *Provided*, That a change of treasurer may be made at any time by filing a written statement with the clerk of the county commission.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) of this section, a filing designating a treasurer for a state or county political executive committee may be made anytime before the committee either accepts or spends funds. Once a designation is made by a state or county political executive committee, no additional designations are required under this section until a successor treasurer is designated. A state or county political executive committee may terminate a designation made pursuant to this section by making a written request to terminate the designation and by stating in the request that the committee has no funds remaining in the committee's account. This written request shall be filed with either the Secretary of State or the clerk of the county commission as provided by subsections (a), (b) and (c) of this section.

(e) This section creates no obligation upon any entity or person other than a political action committee, political party committee, candidate, or treasurer or financial agent for any candidate as described in this section.

§3-8-5. Detailed accounts and verified financial statements required.

(a) Every candidate, treasurer, person and association of persons, organization of any kind, including every membership organization or corporation, directly, or by an independent expenditure, supporting a political committee established pursuant to paragraph (C), subdivision (1), subsection ~~(b)~~(c), section eight of this article or engaging in other activities permitted by this section and also including the treasurer or equivalent officer of the association or organization, expressly advocating the election or defeat of a clearly identified candidate for state, district, county or municipal office, and the treasurer of every political committee shall keep detailed accounts of every sum of money or other thing of value received by him or her, including all loans of money or things of value and of all expenditures and disbursements made, liabilities incurred, by the candidate, financial agent, person, association or organization or political committee, for political purposes, or by any of the officers or members of the committee, or any person acting under its authority or on its behalf.

(b) Every ~~person or association of persons~~ candidate or political committee required to keep detailed accounts under this section shall file with the officers hereinafter prescribed a detailed itemized sworn statement:

(1) Of all financial transactions, whenever the total exceeds \$500, which have taken place before the last Saturday in March, to be filed within six days thereafter and annually whenever the total of all financial transactions ~~relating to an election~~ for each candidate or political committee exceeds \$500;

(2) Of all financial transactions which have taken place before the ~~fifteenth-tenth~~ day preceding each primary or other election and subsequent to the previous statement, if any, to be filed within four business days after the ~~fifteenth-tenth~~ day;

(3) Of all financial transactions which have taken place before the thirteenth day after

each primary or other election and subsequent to the previous statement, if any, to be filed within twenty business days after the thirteenth day; and

(4) Of all financial transactions, whenever the total exceeds \$500 or whenever any loans are outstanding, which have taken place before the forty-third day preceding the general election day, to be filed within four business days after the forty-third day.

(c) Every person who announces as a write-in candidate for any elective office and his or her financial agent or election organization of any kind shall comply with all of the requirements of this section after public announcement of the person's candidacy has been made.

(d) For purposes of this section, the term "financial transactions" includes all political contributions or loans received and all repayments of loans or expenditures made to ~~promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election or defeat of any candidate to be voted on~~ political committee.

(e) Candidates for the office of conservation district supervisor elected pursuant to the provisions of article twenty-one-a, chapter nineteen of this code are required to file only the reports required by subdivisions (2) and (3), subsection (b) of this section immediately prior to and after the primary election. ~~Provided, That during the election in the year 2008, the statements required by this subsection shall be filed immediately prior to and after the general election.~~

§3-8-5a. Information required in financial statement.

(a) Each financial statement required by the provisions of this article, other than a disclosure of electioneering communications pursuant to section two-b of this article, shall contain only the following information:

(1) The name, residence and mailing address and telephone number of each candidate, financial agent, treasurer or person and the name, address and telephone number of each association, organization or committee filing a financial statement.

(2) The balance of cash and any other sum of money on hand at the beginning and the end of the period covered by the financial statement.

(3) The name of any person making a political contribution and the amount of the contribution. If the total contributions of any one person in any one election cycle amount to more than \$250, the residence and mailing address of the contributor and, if the contributor is an individual, his or her major business affiliation and occupation shall also be reported. A contribution totaling more than \$50 of currency of the United States or currency of any foreign country by any one contributor is prohibited and a violation of section five-d of this article. The statement on which contributions are required to be reported by this subdivision may not distinguish between contributions made by individuals and contributions made by partnerships, firms, associations, committees, organizations or groups.

(4) The total amount of political contributions received during the period covered by the financial statement.

(5) The name, residence and mailing address of any individual or the name and mailing address of each lending institution making a loan or of the spouse cosigning a loan, as appropriate, the amount of any loan received, the date and terms of the loan, including the interest and repayment schedule, and a copy of the loan agreement.

(6) The name, residence and mailing address of any individual or the name and mailing address of each partnership, firm, association, committee, organization or group having previously made or cosigned a loan for which payment is made or a balance is outstanding at the

end of the period, together with the amount of repayment on the loan made during the period and the balance at the end of the period.

(7) The total outstanding balance of all loans at the end of the period.

(8) The name, residence and mailing address of any person to whom each expenditure was made or liability incurred, including expenditures made on behalf of a candidate or political committee that otherwise are not made directly by the candidate or political committee, together with the amount and purpose of each expenditure or liability incurred and the date of each transaction.

(9) The total expenditure for the nomination, election or defeat of a candidate or any person supporting, aiding or opposing the nomination, election or defeat of any candidate in whose behalf an expenditure was made or a contribution was given for the primary or other election.

(10) The total amount of expenditures made during the period covered by the financial statement.

(b) Any unexpended balance at the time of making the financial statements herein provided for shall be properly accounted for in that financial statement and shall appear as a beginning balance in the next financial statement.

(c) Each financial statement required by this section shall contain a separate section setting forth the following information for each fundraising event held during the period covered by the financial statement:

(1) The type of event, date held and address and name, if any, of the place where the event was held.

(2) All of the information required by subdivision (3), subsection (a) of this section.

(3) The total of all moneys received at the fundraising event.

(4) The expenditures incident to the fundraising event.

(5) The net receipts of the fundraising event.

(d) When any lump sum payment is made to any advertising agency or other disbursing person who does not file a report of detailed accounts and verified financial statements as required in this section, such lump sum expenditures shall be accounted for in the same manner as provided for herein.

(e) Any political contribution or political expenditure made, pursuant to section ten of this article, by or on behalf of a candidate for public office to any other candidate or committee for a candidate for any public office in the same election shall be accounted for in accordance with the provisions of this section.

(f) No person may make any political contribution except from his, her or its own funds, unless such person discloses in writing to the person required to report under this section the name, residence, mailing address, major business affiliation and occupation of the person which furnished the funds to the contributor. All such disclosures shall be included in the statement required by this section.

(g) Any firm, association, committee or fund permitted by section eight of this article to be a political committee shall disclose on the financial statement its corporate or other affiliation.

(h) No political contribution may be made, directly or indirectly, in a fictitious name, anonymously or by one person through an agent, relative or other person so as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment of the contributor's identity.

(i) No person may accept any political contribution for ~~the purpose of influencing the nomination, election or defeat of a~~ any candidate or for the passage or defeat of any ballot issue unless the identity of the donor and the amount of the contribution is known and reported.

(j) When any person receives an anonymous contribution which cannot be returned because the donor cannot be identified, that contribution shall be donated to the General Revenue Fund of the state. Any anonymous contribution shall be recorded as such on the candidate's financial statement, but may not be expended for election expenses. At the time of filing, the financial statement shall include a statement of distribution of anonymous contributions, which total amount shall equal the total of all anonymous contributions received during the period.

(k) Any membership organization which raises funds for political purposes by payroll deduction, assessing them as part of its membership dues or as a separate assessment, may report the amount raised as follows:

(1) If the portion of dues or assessments designated for political purposes equals \$25 or less per member over the course of a calendar year, the total amount raised for political purposes through membership dues or assessments during the period is reported by showing the amount required to be paid by each member and the number of members.

(2) If the total payroll deduction for political purposes of each participating member equals \$25 or less over the course of a calendar or fiscal year, as specified by the organization, the organization shall report the total amount received for political purposes through payroll deductions during the reporting period and, to the maximum extent possible, the amount of each yearly payroll deduction contribution level and the number of members contributing at each such specified level. The membership organization shall maintain records of the name and yearly payroll deduction amounts of each participating member.

(3) If any member contributes to the membership organization through individual voluntary contributions by means other than payroll deduction, membership dues or assessments as provided in this subsection, the reporting requirements of subdivision (3), subsection (a) of this section shall apply. Funds raised for political purposes must be segregated from the funds for other purposes and listed in its report.

(l) Notwithstanding the provisions of section five of this article or of the provisions of this section to the contrary, an alternative reporting procedure may be followed by a political party committee in filing financial reports for fundraising events if the total profit does not exceed \$5,000 per year. A political party committee may report gross receipts for the sale of food, beverages, services, novelty items, raffle tickets or memorabilia, except that any receipt of more than \$50 from an individual or organization shall be reported as a contribution. A political party committee using this alternative method of reporting shall report:

- (i) (1) The name of the committee;
- (ii) (2) The type of fund-raising activity undertaken;
- (iii) (3) The location where the activity occurred;
- (iv) (4) The date of the fundraiser;
- (v) (5) The name of any individual who contributed more than \$50 worth of items to be sold;
- (vi) (6) The name and amount received from any person or organization purchasing more than \$50 worth of food, beverages, services, novelty items, raffle tickets or memorabilia;
- (vii) (7) The gross receipts of the fundraiser; and

~~(viii)~~ (8) The date, amount, purpose and name and address of each person or organization from whom items with a fair market value of more than \$50 were purchased for resale.

§3-8-5b. Where financial statements shall be filed; filing date prescribed.

(a) The financial statements provided for in this article shall be filed, by or on behalf of candidates, with:

(1) The Secretary of State for legislative offices, circuit judge, family court judge, and for statewide and other offices to be nominated or elected by the voters of a political division greater than a county;

(2) The clerk of the county commission by candidates for offices to be nominated or elected by the voters of a single county or a political division within a single county, except for legislative offices, circuit judge and family court judge; or

(3) The proper municipal officer by candidates for office to be nominated or elected to municipal office.

~~(b) The statements may be filed by mail, in person, or by facsimile or other electronic means of transmission: *Provided*, That the financial~~ Financial statements filed by or on behalf of candidates for Governor, Secretary of State, Attorney General, Auditor, Treasurer, Commissioner of Agriculture, State Senate, House of Delegates, and Supreme Court of Appeals, circuit judge and family court judge shall be filed electronically by the means of an Internet program to be established by the Secretary of State. Candidates for House of Delegates, State Senate, circuit judge and family court judge may file financial statements in person, or by facsimile or other electronic means of submission until the total amount of contributions received by the candidate exceeds \$10,000 for the election cycle. The Secretary of State shall charge a \$25 processing fee for any financial statements that are not filed electronically.

(c) Committees required to report electronically may apply to the state Election Commission for an exemption from mandatory electronic filing in the case of hardship. An exemption may be granted at the discretion of the State Election Commission.

(d) Candidates for all other offices than those identified in subsection (b) of this section may file statements by mail, in person or by facsimile or other electronic means of transmission. For purposes of this article, the filing date of a financial statement shall, in the case of mailing, be the date of the postmark of the United States Postal Service, and in the case of hand delivery or delivery by facsimile or other electronic means of transmission, the date delivered to the office of the Secretary of State or to the office of the clerk of the county commission, in accordance with the provisions of subsection (a) of this section, during regular business hours of such office.

(e) The sworn financial statements required to be filed by this section with the Secretary of State shall be posted on the Internet by the Secretary of State within ten business days from the date the financial statement was filed.

(f) The Secretary of State shall maintain an online searchable database accessible to the public on the Secretary of State's website. The database shall include the ability to search contribution and expenditure data submitted by candidates and political action committees. Information capable of search shall include, but not be limited to, a contributor's first name, last name, city, state, occupation, employer, contribution amount, date, expenditure payee, payer, city state, purpose and amount.

§3-8-5c. Contribution limitations to candidate committees; indexing of candidate's committee thresholds; prohibition against contributions by foreign nationals.

(a) Except as provided in section eight of this article, a person, political party or political action committee may not:

(1) Contribute more than \$2,700, as adjusted pursuant to subsection (c) of this section, directly to a candidate's committee for a candidate seeking nomination; or

(2) Contribute more than \$2,700, as adjusted pursuant to subsection (c) of this section, directly to a candidate's committee for a candidate seeking election: *Provided*, That no candidate may receive contributions for the general election until he or she has been nominated.

(b) The contribution limits contained in subsection (a) of this section apply only to elections to be held after the effective date of this section, and do not apply to candidate committees that were created for elections held prior to the effective date of this section.

(c) Notwithstanding the provisions of subsection (a) of this section to the contrary, an individual may not, directly or indirectly, make contributions to a state party executive committee, or subsidiary thereof, or state party legislative caucus committee which, in the aggregate, exceed the value of \$10,000 in any calendar year: *Provided*, That a person may not earmark or otherwise designate any portion of a contribution made pursuant to this section to be used to support or oppose the election of a particular candidate: *Provided, however*, That any such designation or earmark that accompanies a contribution made pursuant to this subsection shall not be binding on the entity that receives the contribution.

(d) On the last day of every calendar year in which an election for House of Delegates is held, the Secretary of State shall adjust the dollar values for the fixed dollar amounts for limitations on contributions under this chapter by comparing the percentage increase or decrease in the consumer price index by the corresponding consumer price index since the same date after the last such regular election year, as determined by the most comprehensive index of consumer prices available for West Virginia from the Bureau of Labor Statistics of the United States Department of Labor. The Secretary of State shall multiply these thresholds by that percentage change in the consumer price index, and shall round up each dollar value adjustment made to the nearest \$100. The State Election Commission shall announce the adjustments made under this subsection within thirty days after the relevant index of consumer prices is published.

(e) *Prohibition against contributions by foreign nationals. --*

(1) It shall be unlawful for:

(A) A foreign national, directly or indirectly, to make:

(i) A contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a state or local election;

(ii) A contribution or donation to a committee of a political party; or

(iii) A political expenditure, independent expenditure or disbursement for an electioneering communication, as those terms are defined in this article; or

(B) A person to solicit, accept or receive a contribution or donation described in subparagraph (i) or (ii), paragraph (A) of this subdivision.

(2) As used in this section, the term "foreign national" means:

(A) A foreign principal, as such term is defined in 22 U. S. C. § 611(b), which includes:

(i) A government of a foreign country;

(ii) A foreign political party;

(iii) A person outside of the United States, unless it is established that such person:

(I) Is an individual and a citizen of the United States; or

(II) That such person is not an individual and is organized under or created by the laws of

the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(iv) A partnership, association, corporation, organization or other combination of persons organized under the laws of or having its principal place of business in a foreign country; and

(B) An individual who is not a citizen of the United States or a national of the United States, as defined in 8 U. S. C. §1101(a)(22), and who is not lawfully admitted for permanent residence, as defined by 8 U. S. C. §1101(a)(20).

§3-8-7. Failure to file statement; delinquent or incomplete filing; criminal and civil penalties.

(a) Any ~~person, candidate, financial agent~~ or treasurer of a political party committee who fails to file a sworn, itemized statement required by this article within the time limitations specified in this article or who willfully files a grossly incomplete or grossly inaccurate statement shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500, or confined in jail for not more than one year, or both, in the discretion of the court. Sixty days after any primary or other election, the Secretary of State, or county clerk, or municipal recorder, as the case may be, shall give notice of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of any grossly incomplete or grossly inaccurate statement to the prosecuting attorney of the county where the person, candidate, financial agent, or treasurer resides, is located or has its principal place of business.

(b) (1) Any ~~person, candidate, financial agent~~ or treasurer of a political party committee who fails to file a sworn, itemized statement as required in this article or who files a grossly incomplete or grossly inaccurate statement ~~may~~ shall be assessed a civil penalty by the Secretary of State of ~~\$25~~ \$10 a day for each day after the due date the statement is delinquent, grossly incomplete or grossly inaccurate. Sixty days after any primary or other election, the county clerk shall give notice to the Secretary of State of any failure to file a sworn statement or the filing of any grossly incomplete or grossly inaccurate statement by any person, candidate, financial agent or treasurer of a political party committee and forward copies of such delinquent, incomplete or inaccurate statements to the Secretary of State.

(2) A civil penalty assessed pursuant to this section shall be payable to the state of West Virginia and is collectable as authorized by law for the collection of debts.

(3) The Secretary of State may negotiate and enter into settlement agreements for the payment of civil penalties assessed as a result of the filing of a delinquent, grossly incomplete or inaccurate statement.

(4) The Secretary of State shall publish online a list of all late filing violators for each deadline in an election cycle. This list shall be maintained and be publicly available online to include late activity for the previous five years to the current year.

~~(4)~~ (5) The Secretary of State and county clerk may review and audit any sworn statement required to be filed pursuant to this article. The State Election Commission shall propose legislative rules for promulgation, in accordance with chapter twenty-nine-a of this code, to establish procedures for the assessment of civil penalties as provided in this section.

~~(c) No candidate nominated at a primary election who has failed to file a sworn statement, as required by this article, shall have his or her name placed on the official ballot for the ensuing election, unless there has been filed by or on behalf of such candidate, or by his or~~

~~her financial agent, if any, the financial statement relating to nominations required by this article.~~

(1) Any candidate, whether nominated by primary election or appointed by executive committee or executive committee chair, who has failed to file any sworn statement as required by this article, relating to the immediately preceding primary election for any office by the eighty-fourth day before the general election, is disqualified and may not have his or her name appear on the general election ballot. The provisions of subsection (d), section five-b of this article notwithstanding, any sworn statement filed after the deadline required by section five of this article must be received in the office indicated by subsection (a), section five-b of this article by the close of business on the eighty-fourth day before the general election.

(2) It is unlawful to issue a commission or certificate of election, or to administer the oath of office, to any person elected to any public office who has failed to file a any sworn statement as required by this article and no person may enter upon the duties of his or her office until he or she has filed such statement, nor may he or she receive any salary or emolument for any period prior to the filing of such the statement.

§3-8-8. Corporation and membership organization contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

(a) An officer, agent or person acting on behalf of any membership organization or any corporation, whether incorporated under the laws of this or any other state or of a foreign country, may not pay, give, lend or authorize to be paid any money or other thing of value belonging to the corporation to any candidate or candidate's campaign for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(b) A person may not solicit or receive any payment, contribution or other thing from any membership organization or corporation or from any officer, agent or other person acting on behalf of the membership organization or corporation to any candidate or candidate's campaign for nomination or election to any statewide office or any other elective office in the state or any of its subdivisions.

(c) (1) The provisions of this section do not prohibit a membership organization or corporation from soliciting, through any officer, agent or person acting on behalf of the membership organization or corporation, contributions to a separate segregated fund to be used for political purposes. Any separate segregated fund is considered a political action committee for the purpose of this article and is subject to all reporting requirements applicable to political action committees;

(2) It is unlawful for:

(A) A membership organization, corporation or separate segregated fund to make a primary or other election contribution or expenditure by using money or anything of value secured: (i) By physical force, job discrimination or financial reprisal; (ii) by the threat of force, job discrimination or financial reprisal; or (iii) as a condition of employment;

(B) Any person soliciting a membership organization member, stockholder or executive or administrative personnel and members of their families for a contribution to a membership organization, corporation or separate segregated fund to fail to inform the person solicited of the political purposes of the separate segregated fund at the time of the solicitation;

(C) Any person soliciting any other person for a contribution to a membership organization, corporation or separate segregated fund to fail to inform the person solicited at the time of the solicitation of his or her right to refuse to contribute without any reprisal;

(D) A separate segregated fund established by a membership organization or corporation:

(i) To solicit contributions to the fund from any person other than the membership organization's members or the corporation's stockholders, and their families and its their executive or administrative personnel and their families; or (ii) to contribute any membership organization or corporate funds;

(E) A separate segregated fund established by a membership organization or corporation to receive contributions to the fund from any person other than the membership organization's members or corporation's stockholders, and their immediate families and its their executive or administrative personnel and their immediate families;

(F) A membership organization or corporation to engage in job discrimination or to discriminate in job promotion or transfer because of a member's or an employee's failure to make a contribution to the membership organization or corporation or a separate segregated fund;

(G) A separate segregated fund to make any contribution, directly or indirectly, in excess of \$1,000 the amounts permitted in section five-c of this article in connection with or on behalf of any campaign for nomination or election to any elective office in the state or any of its subdivisions, or in connection with or on behalf of any committee or other organization or person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any such office;

(H) A membership organization or corporation to pay, give or lend or to authorize payment, giving or lending of any moneys or other things of value belonging to the membership organization or corporation to a separate segregated fund for the purpose of making a contribution to a candidate or a candidate's committee. This provision does not prohibit a separate segregated fund from using the property, real or personal, facilities and equipment of a membership organization or corporation solely to establish, administer and solicit contributions to the fund, subject to the rules of the State Election Commission as provided in subsection (d) of this section: *Provided*, That any such membership organization or corporation shall also permit any group of its employees represented by a bona fide political action committee to use the real property of the membership organization or corporation solely to establish, administer and solicit contributions to the fund of the political action committee, subject to the rules of the State Election Commission promulgated in accordance with said subsection.

(3) For the purposes of this section, the term "executive or administrative personnel" means individuals employed by a membership organization or corporation who are paid on a salary rather than hourly basis and who have policy-making, managerial, professional or supervisory responsibilities.

(d) Any person, membership organization or corporation violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000. A membership organization or corporation may not reimburse any person the amount of any fine imposed pursuant to this section.

(e) To ensure uniform administration and application of the provisions of this section and of those of the Federal Election Campaign Act Amendments of 1976 relating to membership organization and corporate contributions, the State Election Commission shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section consistent, insofar as practicable, with the rules and regulations promulgated by the Federal Election Commission to carry out similar or identical provisions of 2 U. S. C. §441b.

(f) In addition to the powers and duties set forth in article one-a of this chapter, the State Election Commission has the following powers and duties:

(1) To investigate, upon complaint or on its own initiative, any alleged violations or irregularities of this article.

(2) To administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

(3) To involve the aid of any circuit court in the execution of its subpoena power.

(4) To report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury such alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(g) The Attorney General shall, when requested, provide legal and investigative assistance to the State Election Commission.

(h) Any investigation, either upon complaint or initiative, shall be conducted in an executive session of the State Election Commission and shall remain undisclosed except upon an indictment by a grand jury.

(i) Any person who discloses the fact of any complaint, investigation or report or any part thereof, or any proceedings thereon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and shall be confined in jail not less than six months nor more than one year.

~~(j) The amendments to this section enacted during the second extraordinary session of 2008 are intended to conform to the existing proscription to constitutionally permissible limits and not to create a new offense or offenses.~~

~~(k) The effective date of the amendments to this section enacted during the second extraordinary legislative session of 2008 is October 1, 2008.~~

§3-8-8a. Disclosure requirements for covered organizations.

(a) *Disclosure statement.* --

(1) Any covered organization that makes political disbursements aggregating more than \$1,000 in a calendar year shall, not later than forty-eight hours after the \$1,000 threshold is met, file a statement with the Secretary of State that contains the information described in subdivision (2) of this subsection. Subsequent reports shall be filed within forty-eight hours of each additional campaign-related political expenditure aggregating more than \$1,000:

(A) In the case of the first statement filed under this subsection, for the period beginning on the first day of the preceding calendar year and ending on the first such disclosure date; and

(B) In the case of any subsequent statement filed under this subsection, for the period beginning on the previous disclosure date and ending on such disclosure date.

(2) The information to be included in the statement required by this subsection is as follows:

(A) The name of the covered organization and the principal place of business of that organization.

(B) The amount of each campaign-related disbursement made by that organization during the period covered by the statement of more than \$1,000.

(C) In the case of a campaign-related disbursement that is not a covered transfer, the election to which the campaign-related disbursement pertains and, if the disbursement is made

for a public communication, the name of any candidate identified in that communication and whether that communication is in support of or in opposition to that candidate.

(D) A certification by the chief executive officer or the head of the covered organization that the campaign-related disbursement is not made in cooperation, consultation or concert with or at the request or suggestion of a candidate, authorized committee or agent of a candidate, political party, or agent of a political party.

(E) If the covered organization makes campaign-related disbursements exclusively using funds in a segregated bank account consisting of funds that were contributed, donated, transferred or paid directly to that account by persons other than the covered organization that controls the account, for each contribution, donation, transfer, payment of dues or other payment to the account:

(i) The name and address of each person who made that contribution, donation, transfer, payment of dues or other payment during the period covered by the statement: *Provided*, That if an individual's contribution is \$250 or less, then the individual's name alone should be reported;

(ii) The date and amount of that contribution, donation, transfer, payment of dues or other payment; and

(iii) The aggregate amount of all those contributions, donations, transfers, payments of dues and other payments made by the person during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(F) Subject to subdivision (4) of this subsection, if the covered organization makes campaign-related disbursements using funds other than funds in a segregated bank account described in paragraph (E) of this subdivision, for each contribution, donation, transfer or payment of dues to the covered organization:

(i) The name and address of each person who made that contribution, donation, transfer or payment of dues during the period covered by the statement: *Provided*, That if an individual's contribution is \$250 or less, then the individual's name alone should be reported;

(ii) The date and amount of that contribution, donation, transfer or payment of dues; and

(iii) The aggregate amount of all those contributions, donations, transfers and payments of dues made by the person during the period beginning on the first day of the preceding calendar year and ending on the disclosure date.

(3) *Exceptions.* --

(A) The requirement to include in a statement filed under subdivision (1) of this subsection the information described in subdivision (1) of this subsection does not apply to amounts received by the covered organization in the ordinary course of any trade or business conducted by the covered organization or in the form of investments in the covered organization.

(B) *Donor restriction on use of funds.* -- The requirement to include in a statement submitted under subdivision (1) of this subsection the information described in paragraph (F), subdivision (2) of this subsection does not apply if:

(i) The person described in that subdivision prohibited, in writing, the use of the contribution, donation, transfer, payment of dues or other payment made by that person for campaign-related disbursements; and

(ii) The covered organization agreed to follow the prohibition and deposited the contribution, donation, transfer, payment of dues or other payment in an account which is segregated from any account used to make campaign-related disbursements.

(4) *Disclosure date.* --

(A) Except as provided in paragraph (B) of this subdivision, the term “disclosure date” means:

(i) The first date during any calendar year by which a person has made campaign-related disbursements aggregating more than \$1,000; and

(ii) Each date following the date described in subparagraph (i) of this paragraph during that calendar year by which a person has made campaign-related disbursements aggregating more than \$1,000.

(B) In the case of a statement filed with respect to a campaign-related disbursement which is a covered transfer described in paragraph (E), subdivision (1), subsection (f) of this section, the term “disclosure date” means the date on which the covered organization making that transfer knew or should have known that the recipient of that transfer made campaign-related disbursements in an aggregate amount of \$50,000 or more during the two-year period beginning on the date of the transfer.

(b) *Coordination with other provisions.* -- A segregated bank account referred to in paragraph (E), subdivision (2), subsection (a) of this section may be treated as a separate segregated fund for purposes of section 527(f)(3) of the Internal Revenue Code of 1986.

(c) *Filing.* -- Statements required to be filed under subsection (a) of this section shall be subject to the requirements of subsection (h), section two of this article to the same extent and in the same manner as if those reports had been required under said section.

(d) *Campaign-related disbursement defined.* -- As used in this section, the term “campaign-related disbursement” means a disbursement by a covered organization for any of the following:

(1) An independent expenditure consisting of a public communication, as defined in section two of this article;

(2) An electioneering communication, as defined in section two of this article; or

(3) A covered transfer.

(e) *Covered organization defined.* -- In this section, the term “covered organization” means any of the following:

(1) A membership organization, corporation and any other legal entity, including, but not limited to, a limited liability company, limited liability partnership, cooperative, estate, trust, partnership or other legal entity authorized to exist by the laws of this state, another state or the federal government;

(2) An organization described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of that code;

(3) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this article, except as provided in subdivision (4) of this subsection; or

(4) A political committee with an account established for the purpose of accepting donations or contributions that do not comply with the contribution limits or source prohibitions under this article, but only with respect to the accounts established for that purpose.

(f) *Covered transfer defined.* --

(1) *General.* -- In this section, the term “covered transfer” means any transfer or payment of funds by a covered organization to another person if the covered organization:

(A) Designates, requests or suggests that the amounts be used for:

(i) Campaign-related disbursements other than covered transfers; or

(ii) Making a transfer to another person for the purpose of making or paying for that campaign-related disbursements;

(B) Made that transfer or payment in response to a solicitation or other request for a donation or payment for:

(i) The making of or paying for campaign-related disbursements other than covered transfers; or

(ii) Making a transfer to another person for the purpose of making or paying for those campaign-related disbursements;

(C) Engaged in discussions with the recipient of the transfer or payment regarding:

(i) The making of or paying for campaign-related disbursements other than covered transfers; or

(ii) Donating or transferring any amount of that transfer or payment to another person for the purpose of making or paying for those campaign-related disbursements;

(D) Made campaign-related disbursements other than a covered transfer in an aggregate amount of \$50,000 or more during the two- year period ending on the date of the transfer or payment, or knew or had reason to know that the person receiving the transfer or payment made those disbursements in that an aggregate amount during that two-year period; or

(E) Knew or had reason to know that the person receiving the transfer or payment would make campaign-related disbursements in an aggregate amount of \$50,000 or more during the two-year period beginning on the date of the transfer or payment.

(2) The term “covered transfer” does not include any of the following:

(A) A disbursement made by a covered organization in the ordinary course of any trade or business conducted by the covered organization or in the form of investments made by the covered organization.

(B) A disbursement made by a covered organization if:

(i) The covered organization prohibited, in writing, the use of that disbursement for campaign-related disbursements; and

(ii) The recipient of the disbursement agreed to follow the prohibition and deposited the disbursement in an account which is segregated from any account used to make campaign-related disbursements.

(3) *Exception for certain transfers among affiliates.* --

(A) The term “covered transfer” does not include an amount transferred by one covered organization to another covered organization which is treated as a transfer between affiliates under paragraph (B) of this subdivision if the aggregate amount transferred during the year by that covered organization to that same covered organization is equal to or less than \$50,000.

(B) A transfer of amounts from one covered organization to another covered organization shall be treated as a transfer between affiliates if:

(i) One of the organizations is an affiliate of the other organization; or

(ii) Each of the organizations is an affiliate of the same organization; except that the transfer shall not be treated as a transfer between affiliates if one of the organizations is established for the purpose of making campaign-related disbursements.

(C) For purposes of paragraph (B) of this subdivision, a covered organization is an affiliate of another covered organization if:

(i) The governing instrument of the organization requires it to be bound by decisions of the other organization;

(ii) The governing board of the organization includes persons who are specifically designated representatives of the other organization or are members of the governing board, officers or paid executive staff members of the other organization, or whose service on the governing board is contingent upon the approval of the other organization; or

(iii) The organization is chartered by the other organization.

(D) This subdivision applies with respect to an amount transferred by a covered organization to an organization described in paragraph (3), section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of that code in the same manner as this paragraph applies to an amount transferred by a covered organization to another covered organization.

(g) Any person who makes a contribution for the purpose of funding an independent expenditure under this section shall, at the time the contribution is made, provide his or her name, address, occupation, his or her current employer, if any, or, if the individual is self-employed, the name of his or her business, if any, to the recipient of the contribution.

(h) The Secretary of State shall expeditiously prepare indices setting forth, on a candidate-by-candidate basis, all independent expenditures separately, made by, or on behalf of, or for, or against each candidate, as reported under this subsection, and periodically publish such indices on a timely preelection basis.

(i) Any person who willfully fails to comply with this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500, or confined in jail for not more than one year, or both fined and confined.

(j) (1) Any person who is required to file a statement under this section may file the statement by facsimile device or electronic mail, in accordance with such rules as the Secretary of State may promulgate.

(k) The Secretary of State shall make any document filed electronically pursuant to this subsection accessible to the public on the Internet not later than twenty-four hours after the document is received by the secretary.

(l) The Secretary of State may promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section. In promulgating a rule under this subsection, the secretary shall provide methods, other than requiring a signature on the document being filed, for verifying the documents covered by the rule. Any document verified under any of the methods shall be treated for all purposes, including penalties for perjury, in the same manner as a document verified by signature.

§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.

(a) No financial agent or treasurer of a political committee shall pay, give or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment and other furnishing of offices to be used as political headquarters and for the payment of necessary ~~clerks, stenographers, typists, janitors and messengers~~ employees actually employed therein;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment and

furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary ~~clerks, stenographers and typists~~ employees actually employed;

(3) For printing and distributing books, pamphlets, circulars and other printed matter and radio and television broadcasting and painting, printing and posting signs, banners and other advertisements, including contributions to charitable, educational or cultural events, for the promotion of the candidate, or the candidate's name or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents and committees and for stationery, postage, telegrams, telephone, express, freight and public messenger service;

(6) For preparing, circulating and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments and any information relating to any political issue, candidate or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase "conducting of public opinion poll or polls" shall mean and be limited to the gathering, collection, collation and evaluation of information reflecting public opinion, needs and preferences as to any candidate, group of candidates, party, issue or issues. No such poll shall be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition or other matter to be voted on by the public at any election: *Provided*, That nothing herein shall prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For payment for food and drink for campaign-related purposes and for entertaining of campaign volunteers;

(12) For payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;

(13) For the payment of any fees associated with the campaign, except that a candidate may not pay any fines assessed against the candidate or the candidate's committee pursuant to this article;

(14) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9) and (10) of this subsection;

(15) For the purchase of memorials, flowers or citations by political party executive committees or political action committees representing a political party;

~~(13)~~ (16) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within thirty days thereafter;

~~(14)~~ (17) For the payment of dues or subscriptions to any national, state or local committee of any political party without limitation;

(18) For transfers to any national, state or local committee of any political party when that committee is acting in the role of a vendor: *Provided*, That no such transfer shall involve any coordination between the candidate and the political party committee;

~~(15)~~ (19) For contributions to a county party executive committee, state party executive committee or a state party legislative caucus political committee;

(20) For any political expenditure; and

~~(16)~~ (21) For contributions to a candidate committee: *Provided*, That a candidate committee may not contribute to another candidate committee except as otherwise provided by section ten of this article.

(b) A political action committee may not contribute to another political action committee or receive contributions from another political action committee: *Provided*, That a political action committee may receive contributions from its national affiliate, if any.

(c) Every liability incurred and payment made shall be for the fair market value of the services rendered.

(d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by section five-a of this article, the financial statements required by section five of this article at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent or treasurer of a political party committee.

(e) Any candidate may designate a financial agent by a writing duly subscribed by ~~him~~ the candidate which shall be in such form and filed in accordance with the provisions of section four of this article.

§3-8-9a. Expenditures by political party committees, political party caucuses and state candidates.

(a) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the state committee of a political party and political party caucus may make expenditures in an amount not to exceed \$20,000 in connection with the general election campaign of candidates for Governor, Attorney General, Auditor, Commissioner of Agriculture, Secretary of State, Treasurer, State Senate and House of Delegates.

(b) For purposes of this section, all communications that are made in coordination with a candidate or candidate's committee must include a statement clearly identifying that the communications were made in coordination with the candidate or candidate's committee.

§3-8-10. Use of excess campaign contributions.

(a) Notwithstanding any provision of this code to the contrary, amounts received by a candidate as contributions that are in excess of any amount necessary to defray his or her expenditures may be:

(1) Used by the candidate to defray any usual and customary expenses incurred in connection with his or her duties as a holder of public office; and

(2) Contributed by the candidate, after the general election, to:

(A) Any charitable organization or subsequent campaign by the same candidate, without limitation;

- (B) Any national committee in accordance with federal requirements;
- (C) Any state party executive committee or state party legislative caucus committee in an amount not to exceed ~~\$15,000~~ \$20,000 in a calendar year; or
- (D) Any local committee of any political party in an amount not to exceed \$20,000; or
- (E) Any other candidate for public office in accordance with the existing limitations on contributions.

(b) The State Election Commission shall promulgate emergency and legislative rules, in accordance with the provisions of chapter twenty-nine-a of this code, to establish guidelines for the administration of this section.

§3-8-12. Additional acts forbidden; circulation of written matter; newspaper advertising; solicitation of contributions; intimidation and coercion of employees; promise of employment or other benefits; public contractors; penalty.

(a) A person may not publish, issue or circulate, or cause to be published, issued or circulated, any anonymous letter, circular, placard, radio or television advertisement or other publication supporting or aiding the election or defeat of a clearly identified candidate.

(b) An owner, publisher, editor or employee of a newspaper or other periodical may not insert, either in its advertising or reading columns, any matter, paid for or to be paid for, which tends to influence the voting at any election, unless directly designating it as a paid advertisement and stating the name of the person authorizing its publication and the candidate in whose behalf it is published.

(c) A person may not, in any room or building occupied for the discharge of official duties by any officer or employee of the state or a political subdivision of the state, solicit orally or by written communication delivered within the room or building, or in any other manner, any contribution of money or other thing of value for any party or political purpose, from any postmaster or any other officer or employee of the federal government, or officer or employee of the state, or a political subdivision of the state. An officer, agent, clerk or employee of the federal government, or of this state, or any political subdivision of the state, who may have charge or control of any building, office or room, occupied for any official purpose, may not knowingly permit any person to enter any building, office or room, occupied for any official purpose for the purpose of soliciting or receiving any political assessments from, or delivering or giving written solicitations for, or any notice of, any political assessments to, any officer or employee of the state, or a political subdivision of the state.

(d) Except as provided in section eight of this article, a person entering into any contract with the state or its subdivisions, or any department or agency of the state, either for rendition of personal services or furnishing any material, supplies or equipment or selling any land or building to the state, or its subdivisions, or any department or agency of the state, if payment for the performance of the contract or payment for the material, supplies, equipment, land or building is to be made, in whole or in part, from public funds may not, during the period of negotiation for or performance under the contract or furnishing of materials, supplies, equipment, land or buildings, directly or indirectly, make any contribution to any political party, committee or candidate for public office or to any person for political purposes or use; nor may any person or firm solicit any contributions for any purpose during any period.

(e) A person may not, directly or indirectly, promise any employment, position, work, compensation or other benefit provided for, or made possible, in whole or in part, by act of the Legislature, to any person as consideration, favor or reward for any political activity for the

support of or opposition to any candidate, or any political party in any election.

(f) Except as provided in section eight of this article, a person may not, directly or indirectly, make any contribution in excess of the ~~value of \$1,000~~ amounts permitted by section five-c of this article in connection with any campaign for nomination or election to or on behalf of any statewide office, in connection with any other campaign for nomination or election to or on behalf of any other elective office in the state or any of its subdivisions, or in connection with or on behalf of any person engaged in furthering, advancing, supporting or aiding the nomination or election of any candidate for any of the offices.

(g) A political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) may not solicit or accept contributions until it has notified the Secretary of State of its existence and of the purposes for which it was formed. ~~During the two-year election cycle, a political organization (as defined in Section 527 (e) (1) of the Internal Revenue Code of 1986) may not accept contributions totaling more than \$1,000 from any one person prior to the primary election and contributions totaling more than \$1,000 from any one person after the primary and before the general election.~~

(h) ~~It is unlawful for any person to create, establish or organize more than one political organization (as defined in Section 527(e)(1) of the Internal Revenue Code of 1986) with the intent to avoid or evade the contribution limitations contained in subsection (g) of this section.~~

(i) ~~(h)~~ Notwithstanding the provisions of subsection (f) of this section to the contrary, a person may not, directly or indirectly, make contributions to a state party executive committee or state party legislative caucus committee which, in the aggregate, are in excess of the amounts permitted by section five-c of this article in any calendar year.

(j) ~~(i)~~ The limitations on contributions contained in this section do not apply to transfers between and among a state party executive committee or a state party's legislative caucus political committee from national committees of the same political party: *Provided*, That transfers permitted by this subsection may not exceed \$50,000 in the aggregate in any calendar year to any state party executive committee or state party legislative caucus political committee: *Provided, however*, That the moneys transferred may only be used for voter registration and get-out-the-vote activities of the state committees.

(k) ~~(j)~~ A person may not solicit any contribution, other than contributions to a campaign for or against a county or local government ballot issue, from any nonelective salaried employee of the state government or of any of its subdivisions: *Provided*, That in no event may any person acting in a supervisory role solicit a person who is a subordinate employee for any contribution. A person may not coerce or intimidate any nonelective salaried employee into making a contribution. A person may not coerce or intimidate any nonsalaried employee of the state government or any of its subdivisions into engaging in any form of political activity. The provisions of this subsection may not be construed to prevent any employee from making a contribution or from engaging in political activity voluntarily without coercion, intimidation or solicitation.

(l) ~~A person may not solicit a contribution from any other person without informing the other person at the time of the solicitation of the amount of any commission, remuneration or other compensation that the solicitor or any other person will receive or expect to receive as a direct result of the contribution being successfully collected. Nothing in this subsection may be construed to apply to solicitations of contributions made by any person serving as an unpaid volunteer.~~

~~(m)~~ (k) A person may not place any letter, circular, flyer, advertisement, election paraphernalia, solicitation material or other printed or published item tending to influence voting at any election in a roadside receptacle unless it is: (1) Approved for placement into a roadside receptacle by the business or entity owning the receptacle; and (2) contains a written acknowledgment of the approval. This subsection does not apply to any printed material contained in a newspaper or periodical published or distributed by the owner of the receptacle. The term "roadside receptacle" means any container placed by a newspaper or periodical business or entity to facilitate home or personal delivery of a designated newspaper or periodical to its customers.

~~(n)~~ (l) Any person violating any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or confined in jail for not more than one year, or both fined and confined.

~~(o)~~ (m) The provisions of subsection (k) of this section permitting contributions to a campaign for or against a county or local government ballot issue shall become operable on and after January 1, 2005.

~~(p)~~ (n) The limitations on contributions established by subsection (g) of this section do not apply to contributions made for the purpose of supporting or opposing a ballot issue, including a constitutional amendment.

§3-8-14. Publication and distribution of statements and solicitations; charge for newspaper or magazine space.

(a) Whenever a political committee makes a disbursement for the purpose of financing any communication through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing or any other type of general public political advertising, or whenever any person makes a disbursement for a campaign-related disbursement, or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, mailing or any other type of general public political advertising or makes a disbursement for an electioneering communication, that communication:

(1) If paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by that authorized political committee;

(2) If paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication is paid for by those other persons and authorized by that authorized political committee; or

(3) If not authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state the name and permanent street address, telephone number or World Wide Web address of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(b) No person who sells space in a newspaper or magazine to a candidate or to the agent of a candidate, for use in connection with that candidate's campaign, may charge any amount for that space which exceeds the amount charged for comparable use of that space for other purposes.

(c) *Specification.* -- Any printed communication described in subsection (a) of this section shall:

(1) Be of sufficient type size to be clearly readable by the recipient of the communication;

(2) Be contained in a printed box set apart from the other contents of the communication; and

(3) Be printed with a reasonable degree of color contrast between the background and the printed statement.

(d) *Additional requirements.* --

(1) *Communications by candidates or authorized persons.* --

(A) *By radio.* -- Any communication described in subdivision (1) or (2), subsection (a) of this section which is transmitted through radio shall include, in addition to the requirements of that subdivision, an audio statement by the candidate that identifies the candidate and states that the candidate has approved the communication.

(B) *By television.* -- Any communication described in subdivision (1) or (2), subsection (a) of this section which is transmitted through television shall include, in addition to the requirements of that subdivision, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement:

(i) Shall be conveyed by:

(I) An unobscured, full-screen view of the candidate making the statement; or

(II) The candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(ii) Shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds.

(2) *Communications by certain political committees.* -- Any communication described in subdivision (3), subsection (a) of this section which, except to the extent provided in the last sentence of this subdivision, is paid for by a political committee, including a political committee of a political party, and which is transmitted through radio or television shall include, in addition to the requirements of that paragraph, in a clearly spoken manner, the following audio statement: “_____ is responsible for the content of this advertising.” The foregoing blank shall be filled in with the name of the political committee paying for the communication and the name of any connected organization of the payor. If transmitted through television, the statement shall be conveyed by an unobscured, full-screen view of a representative of the political committee making the statement, or by a representative of that political committee or other person in voice-over, and shall also appear in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least four seconds. This subdivision does not apply to a communication paid for, in whole or in part, with a payment which is treated as a campaign-related disbursement under section eight-a and with respect to which a covered organization files a statement under that section.

(e) *Communications by others.* --

(1) Any communication described in subdivision (3), subsection (a) of this section which is transmitted through radio or television, other than a communication to which subdivision (2), subsection (d) of this section applies, shall include, in addition to the requirements of that subdivision, the following:

(A) The individual disclosure statement described in paragraph (A), subdivision (2) of this subsection if the person paying for the communication is an individual, or the organizational disclosure statement described in paragraph (B), subdivision (2) of this subsection if the person paying for the communication is not an individual.

(B) If the communication is transmitted through television and is paid for, in whole or in part, with a payment which is treated as a campaign-related disbursement under section eight-a of this article the top five contributors list, if applicable, unless, on the basis of criteria established in rules promulgated by the Secretary of State, the communication is of such short duration that including the top five contributors list in the communication would constitute a hardship to the person paying for the communication by requiring a disproportionate amount of the content of the communication to consist of the top five contributors list.

(C) If the communication is transmitted through radio and is paid for, in whole or in part, with a payment which is treated as a campaign-related disbursement under section eight-a of this section the top two contributors list, if applicable, unless, on the basis of criteria established in rules promulgated by the secretary, the communication is of such short duration that including the top two contributors list in the communication would constitute a hardship to the person paying for the communication by requiring a disproportionate amount of the content of the communication to consist of the top two contributors list.

(2) *Disclosure statements described.* --

(A) *Individual disclosure statements.* -- The individual disclosure statement described in this paragraph is the following:

“I am _____, and I approve this message.” The foregoing blank filled in with the name of the applicable individual.

(B) *Organizational disclosure statements.* The organizational disclosure statement described in this paragraph is the following: “I am _____, the _____ of _____, and _____ approves this message.”, with:

- (i) The first blank to be filled in with the name of the applicable individual;
- (ii) The second blank to be filled in with the title of the applicable individual; and
- (iii) The third and fourth blanks each to be filled in with the name of the organization or other person paying for the communication.

(3) *Method of conveyance of statement.* --

(A) In the case of a communication to which this subsection applies which is transmitted through radio, the disclosure statements required under subdivision (1) of this subsection shall be made by audio by the applicable individual in a clearly spoken manner.

(B) In the case of a communication to which this subsection applies which is transmitted through television, the information required under subdivision (1) of this subsection:

- (i) Shall appear in writing at the end of the communication or in a crawl along the bottom of the communication in a clearly readable manner, with a reasonable degree of color contrast between the background and the printed statement, for a period of at least six seconds; and
- (ii) Shall also be conveyed by an unobscured, full-screen view of the applicable individual or by the applicable individual making the statement in voice-over accompanied by a clearly identifiable photograph or similar image of the individual, except in the case of a top five contributors list.

(4) *Definitions.* -- In this subsection:

(A) “Applicable individual” means, with respect to a communication to which this subsection applies:

- (i) If the communication is paid for by an individual, the individual involved;
- (ii) If the communication is paid for by a corporation, the chief executive officer of the corporation or, if the corporation does not have a chief executive officer, the highest ranking

official of the corporation; and

(iii) If the communication is paid for by any other person, the highest ranking official of that person.

(B) “Campaign-related disbursement” and “covered organization” have the meanings given them in section eight-a of this article.

(C) “Top five contributors list” means, with respect to a communication paid for, in whole or in part, with a payment which is treated as a campaign-related disbursement under section eight-a, a list of the five persons who provided the largest payments of any type in an aggregate amount equal to or exceeding \$1,000 which are required under subsection (a), section eight-a of this article to be included in the reports filed by a covered organization with respect to that communication during the twelve-month period ending on the date of the disbursement and the amount of the payments each such person provided. If two or more people provided the fifth largest of those payments, the covered organization involved shall select one of those persons to be included on the top five contributors list.

(D) “Top two contributors list” means, with respect to a communication paid for, in whole or in part, with a payment which is treated as a campaign related disbursement under section eight-a of this article a list of the persons who provided the largest and the second largest payments of any type in an aggregate amount equal to or exceeding \$1,000 which are required under subsection (a) of that section to be included in the reports filed by a covered organization with respect to that communication during the twelve-month period ending on the date of the disbursement and the amount of the payments each such person provided. If two or more persons provided the second largest of those payments, the covered organization involved shall select one of those persons to be included on the top two contributors list.

Following discussion,

The question being on the adoption of the amendment offered by Senators Trump and Kessler to the bill, the same was put and prevailed.

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

Engrossed Committee Substitute for Senate Bill No. 541 was then read a third time and put upon its passage.

Pending discussion,

Senator Karnes moved the previous question, which motion prevailed.

The previous question having been ordered, that being on the passage of Engrossed Committee Substitute for Senate Bill No. 541.

On the passage of the bill, the yeas were: Blair, Boley, Boso, Carmichael, Ferns, Gaunch, D. Hall, M. Hall, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Nohe, Palumbo, Plymale, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--28.

The nays were: Beach, Facemire, Karnes, Laird, Prezioso and Unger--6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. No. 541) passed.

On motions of Senators Trump and Kessler, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for Senate Bill No. 541--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, §3-8-7, §3-8-8, §3-8-9, §3-8-10, §3-8-12 and §3-8-14

of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §3-8-1b, §3-8-1c, §3-8-5c, §3-8-8a and §3-8-9a, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying what committees qualify 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, in person or by facsimile or other electronic means; establishing a processing fee for financial statements not filed electronically; requiring Secretary of State to maintain an online searchable database; setting contribution limits for candidate nomination and general election; prohibiting contribution of monies to general election campaign prior to candidate's nomination; providing for indexing of contribution limits; setting contribution limits to state party executive committee, or subsidiary thereof, or state party legislative caucus committee; prohibiting contributions by foreign nationals; directing Secretary of State to publish an online list of late filing violators; prohibiting contributions to candidates or candidate committees by corporations or membership organizations; clarifying and modifying disclosure requirements for covered organizations; identifying additional lawful election expenses; permitting coordinated contributions by state political party committees and political party caucuses for certain elections; identifying additional lawful expenditures for excess campaign funds; creating criminal offenses and setting penalties; setting requirements for disclosures on certain communications; and setting requirements for the sale of newspaper or magazine space to candidates or their agents.

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 Kirkendoll, and by unanimous consent, the remarks by Senators Romano, Trump and Kessler regarding Engrossed Committee Substitute for Senate Bill No. 541 were ordered printed in the Appendix to the Journal.

Action as to Engrossed Committee Substitute for Senate Bill No. 541 having been concluded, the Senate returned to the consideration of

Senate Bill No. 585, Relating to regulation of transportation network and taxicab companies.

On third reading, coming up in deferred order, with the right having been granted on yesterday, Tuesday, March 3, 2015, for amendments to be received on third reading, was again reported by the Clerk.

On motion of Senator Trump, 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 the Code of West Virginia, 1931, as amended, be 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, §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 and §17H-2-18, all to read as follows:

**CHAPTER 17H. TRANSPORTATION NETWORK AND TAXICAB COMPANIES.
ARTICLE 1. REGULATION OF TRANSPORTATION NETWORK COMPANIES.**

§17H-1-1. Definitions.

As used in this article:

(a) "Transportation network company" or "TNC" means an entity licensed pursuant to this article and operating in West Virginia that uses a digital network or software application service to connect passengers to transportation network company services provided by transportation network company drivers. A TNC is not deemed to own, control, operate or manage the vehicles used by TNC drivers and is not a taxicab company or a for-hire vehicle owner.

(b) "Transportation network company (TNC) driver" means an individual who operates a motor vehicle that is:

- (1) Owned, leased or otherwise authorized for use by the individual;
- (2) Not a taxicab; and
- (3) Used to provide transportation network company services.

(c) "Transportation network company (TNC) service" means transportation of a passenger between points chosen by the passenger and prearranged with a TNC driver through the use of a TNC digital network or software application. TNC services begin when a TNC driver accepts a request for transportation received through the TNC's digital network or software application service, continue while the TNC driver transports the passenger in the TNC driver's vehicle and end when the passenger exits the TNC driver's vehicle. TNC service is not a taxicab or street hail service.

§17H-1-2. Exemption from Public Service Commission regulation.

TNCs or TNC drivers are not common carriers by motor vehicle or contract carriers by motor vehicle, or motor carriers, as defined in section two, article one, chapter twenty-four-a of this code, nor do they provide taxicab service. It is the express intent of this Legislature to exclude and exempt TNCs and TNC drivers from regulation of the Public Service Commission.

§17H-1-3. TNC permit required; permit fee; and use of fees.

(a) A person may not operate a TNC in West Virginia without first having obtained a permit from the Division of Motor Vehicles pursuant to this article.

(b) The Division of Motor Vehicles shall issue a permit to each applicant that meets the requirements for a TNC set forth in this article and has paid an annual permit fee of \$5,000 to the Division of Motor Vehicles. Any fees collected under the provisions of this article shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code. The Division of Motor Vehicles shall use the fees collected for the payment of the costs and expenses necessary for the administration of this article.

§17H-1-4. Agent.

A TNC shall maintain an agent for service of process in the state of West Virginia.

§17H-1-5. Fare charged for services.

A TNC may charge a fare for the TNC services provided to passengers: *Provided*, That if a fare is charged, the TNC shall disclose to passengers the fare calculation method on its website or within the software application service. The TNC shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TNC driver's vehicle.

§17H-1-6. Identification of TNC vehicles and drivers.

The TNC's software application or website shall display a picture of the TNC driver, and the license plate number of the motor vehicle to be used for providing the TNC service before the passenger enters the TNC driver's vehicle.

§17H-1-7. Electronic receipt.

Within a reasonable period of time following the completion of a trip, a TNC shall transmit an electronic receipt to the passenger that lists:

- (a) The origin and destination of the trip;
- (b) The total time and distance of the trip; and
- (c) An itemization of the total fare paid, if any.

§17H-1-8. TNC and TNC driver insurance requirements.

(a) TNCs and TNC drivers shall comply with the automobile liability insurance requirements of this section.

(b) The following automobile liability insurance requirements apply during the time that a TNC driver is logged into the TNC's digital network and available to receive requests for transportation, but is not providing TNC services:

(1) Primary automobile insurance recognizes that the driver is a transportation network company driver and covers the driver's provision of TNC services while the driver is logged into the TNC's digital network.

(2) The primary automobile liability insurance required in subdivision (1) of this subsection shall meet at least the minimum coverage requirements of section two, article four, chapter seventeen-d and subsection (b), section thirty-one, article six, chapter thirty-three, both of this code: *Provided*, That the minimum coverage shall not be less than the amount of \$50,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$100,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$25,000 because of injury to or destruction of property of others in any one accident.

(3) The automobile liability insurance required in subsection (b) of this section may be satisfied by any of the following:

- (A) Automobile liability insurance maintained by the TNC driver; or
- (B) Automobile liability insurance maintained by the TNC; or
- (C) Any combination of subparagraphs (A) and (B).

(c) While a TNC driver is providing TNC services, the TNC shall:

(1) Provide primary automobile liability insurance that recognizes the TNC driver's provision of TNC services;

(2) Provide automobile liability insurance of at least \$1 million for death, personal injury and property damage;

(3) Provide uninsured motorist coverage as required by subsection (b), section thirty-one, article six, chapter thirty-three of this code;

(4) The coverage requirements of this subsection may be satisfied by any of the following:

- (A) Automobile liability insurance maintained by the TNC driver; or
- (B) Automobile liability insurance maintained by the TNC; or
- (C) Any combination of paragraphs (A) and (B).

(d) In every instance where insurance maintained by a TNC driver to fulfill the insurance

requirements of this section has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by a TNC shall provide the coverage required by this section beginning with the first dollar of a claim.

(e) Insurance required by this section may be placed with an insurer authorized to do business in this state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-three of this code.

(f) Insurance required by this section satisfies the financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of this code.

§17H-1-9. TNC and insurer disclosure requirements.

(a) The TNC shall disclose in writing to TNC drivers the following before they are allowed to accept a request for TNC services on the TNC's digital network:

(1) The insurance coverage and limits of liability that the TNC provides while the TNC driver uses a personal vehicle in connection with a TNC's digital network;

(2) That the TNC driver's own insurance policy, depending on its terms, may not provide coverage while the TNC driver uses a vehicle in connection with a TNC's digital network; and

(3) That the TNC driver should identify each vehicle used to provide TNC services to his or her insurer.

(b) In a claims coverage investigation, the TNC's insurer and any insurer providing coverage under this section shall cooperate to facilitate the exchange of information, including the precise times that a TNC driver logged on and off of the TNC's digital network in the 24-hour period immediately preceding the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any insurance policy each party issued or maintained.

§17H-1-10. Zero tolerance for drug or alcohol use.

(a) The TNC shall implement a zero tolerance policy on the use of drugs or alcohol while a TNC driver is providing TNC services or is logged into the TNC's digital network but is not providing TNC services, and shall provide notice of this policy on its website. The website shall set forth procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of a passenger complaint alleging a violation of the zero tolerance policy, the TNC shall immediately suspend the TNC driver's access to the TNC's digital platform, and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(c) The TNC shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a passenger complaint is received by the TNC.

§17H-1-11. TNC driver requirements.

(a) Prior to permitting an individual to act as a TNC driver on its digital platform, the TNC shall:

(1) Require the individual to submit an application to the TNC, which includes information regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance and other information required by the TNC;

(2) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include review of a:

(A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and

(B) National Sex Offender Registry database;

(3) Obtain and review a driving history research report for the applicant.

(b) The TNC shall deny the application an individual to act as a TNC driver on its digital platform who:

(1) Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period, including, but not limited to, attempting to evade the police, reckless driving or driving on a suspended or revoked license;

(2) Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, theft, acts of violence or acts of terror;

(3) Is a match in the National Sex Offender Registry database;

(4) Does not possess a valid driver's license;

(5) Does not possess proof of registration for the motor vehicles used to provide TNC services;

(6) Does not possess proof of automobile liability insurance for the motor vehicles used to provide TNC services; or

(7) Is not at least nineteen years of age.

§17H-1-12. Vehicle safety.

The TNC shall require that any motor vehicle that a TNC driver will use to provide TNC services meets the inspection requirements of section four, article sixteen, chapter seventeen-c of this code or the inspection requirements of the state in which the motor vehicle is registered.

§17H-1-13. Street hails prohibited.

A TNC driver shall exclusively accept rides booked through a TNC's digital network or software application service and may not solicit or accept street hails.

§17H-1-14. No cash trips.

The TNC shall adopt a policy prohibiting solicitation or acceptance of cash payments from passengers and notify TNC drivers of the policy. TNC drivers may not solicit or accept cash payments from passengers. Any payment for TNC services shall be made only electronically using the TNC's digital network or software application.

§17H-1-15. No discrimination; accessibility.

(a) The TNC shall adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity with respect to passengers and potential passengers and notify TNC drivers of the policy.

(b) TNC drivers shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity.

(c) TNC drivers shall comply with all applicable laws relating to accommodation of service animals.

(d) A TNC shall not impose additional charges for providing TNC services to persons with physical disabilities because of those disabilities.

(e) A TNC shall provide passengers an opportunity to indicate that they require a wheelchair-accessible vehicle. If a TNC cannot arrange wheelchair-accessible TNC service in

any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

§17H-1-16. Records.

A TNC shall maintain:

(a) Individual trip records for at least one year from the date each trip was provided; and

(b) TNC driver records at least until the one-year anniversary of the date on which a TNC driver's activation on the TNC digital network has ended.

§17H-1-17. Personally identifiable information.

A TNC may not disclose a passenger's personally identifiable information to a third party unless: The passenger consents, disclosure is required by a legal obligation, disclosure is required to protect or defend the terms of use of the TNC service or to investigate violations of those terms. A TNC may also share a passenger's name and telephone number with the TNC driver providing TNC services to the passenger in order to facilitate correct identification of the passenger by the TNC driver or to facilitate communication between the passenger and the TNC driver.

§17H-1-18. Rules; controlling authority.

The Commissioner of the Division of Motor Vehicles may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the implementation and exercise of the authority granted by this article and the oversight of TNCs and TNC drivers. Notwithstanding any other provision of law, TNCs and TNC drivers are governed exclusively by this article and any rules promulgated by the Division of Motor Vehicles consistent with this article. A municipality or other local entity may not impose a tax on, or require a license for, a TNC or TNC driver or subject a TNC to the municipality or other local entity's rate, entry, operational or other requirements.

ARTICLE 2. TAXICAB COMPANIES.

§17H-2-1. Definitions.

As used in this article:

(a) "Taxicab" means a motor vehicle equipped with at least (3) doors and having a seating capacity of less than 15 passengers.

(b) "Taxicab company" means an entity licensed pursuant to this article and operating in West Virginia that uses a dispatch system, hail system, digital network or software application service or any other means to connect passengers to taxicab services provided by taxicab drivers or individual taxicab drivers. A taxicab company is not a transportation network company, pursuant to chapter seventeen-h of this code.

(c) "Taxicab driver" or "TD" means an individual who operates a motor vehicle that is owned or leased by the taxicab company.

(d) "Individual taxicab driver" or "ITD" means an individual operating his own vehicle in connection with a taxicab company's dispatch system, hail system, digital network or software application service.

(e) "Taxicab service" means transportation of a passenger between points chosen by the passenger and arranged with a TD or ITD through the use of a taxicab company dispatch system, hail system, digital network or software application. Taxicab services begin when a TD or ITD accepts a request for transportation received through the taxicab company's dispatch system, hail system, digital network or software application service, continue while the TD or ITD transports the passenger in the TD's or ITD's vehicle, and end when the passenger exits the TD's or ITD's

vehicle. Taxicab service does not include transportation network service under this chapter.

§17H-2-2. Exemption from Public Service Commission regulation.

On the effective date of this article, notwithstanding any other provisions of the laws of the state of West Virginia to the contrary, no taxicab company or taxicab service is subject to Public Service Commission jurisdiction under this code and is not subject to Public Service Commission motor carrier rules.

§17H-2-3. Taxicab company permit required; permit fee.

(a) A person may not operate a taxicab company in West Virginia without first having obtained a permit from the Division of Motor Vehicles pursuant to this article.

(b) The Division of Motor Vehicles shall issue a permit to each applicant that meets the requirements for a taxicab company set forth in this article and has paid an annual permit fee of \$5,000 to the Division of Motor Vehicles. Any fees collected under the provisions of this article shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code. Fees collected shall be used by the Division of Motor Vehicles for the payment of the costs and expenses necessary for the administration of this article.

§17H-2-4. Agent.

A taxicab company shall maintain an agent for service of process in the State of West Virginia.

§17H-2-5. Fare charged for services.

A taxicab company may charge a fare for the taxicab services provided to passengers: *Provided*, That if a fare is charged, the taxicab company shall disclose to passengers the fare calculation method on its website or within the software application service. The taxicab company shall also provide passengers with the applicable rates being charged and the option to receive an estimated fare before the passenger enters the TD's or ITD's vehicle.

§17H-2-6. Identification of taxicab company vehicles and drivers.

The taxicab company's software application or website shall display a picture of the TD or ITD and the license plate number of the motor vehicle utilized for providing the taxicab service before the passenger enters the TD's or ITD's vehicle when the passenger books a trip using a software system.

§17H-2-7. Electronic receipt.

When a passenger uses a software system, within a reasonable period of time following the completion of a trip, a taxicab company shall transmit an electronic receipt to the passenger that lists:

- (a) The origin and destination of the trip;
- (b) The total time and distance of the trip; and
- (c) An itemization of the total fare paid, if any.

§17H-2-8. Insurance requirements for taxicab company and TD and ITD.

(a) Taxicab company and TDs and ITDs shall comply with the automobile liability insurance requirements of this section.

(b) The following automobile liability insurance requirements apply during the time that an ITD is using his or her personal vehicle and logged into the taxicab company's digital network and available to receive requests for transportation, but is not providing taxicab services.

- (1) Primary automobile insurance recognizes that the driver is an ITD and covers the

driver's provision of TNC services while the driver is logged into the taxicab service's digital network.

(2) The primary automobile liability insurance required in subdivision (1) of this subsection shall meet at least the minimum coverage requirements of section two, article four, chapter seventeen-d and subsection (b), section thirty-one, article six, chapter thirty-three, both of this code: *Provided*, That the minimum coverage shall not be less than the amount of \$50,000 because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of \$100,000 because of bodily injury to or death of two or more persons in any one accident, and in the amount of \$25,000 because of injury to or destruction of property of others in any one accident.

(3) The automobile liability insurance required in subdivision (1) of this subsection may be satisfied by any of the following:

- (A) Automobile liability insurance maintained by the TD or ITD; or
- (B) Automobile liability insurance maintained by the taxicab company; or
- (C) Any combination of paragraphs (A) and (B) of this subdivision.

(c) While an ITD is providing taxicab services while using his or her personal vehicle, the taxicab company shall:

(1) Provide primary automobile liability insurance that recognizes the ITD's provision of taxicab services;

(2) Provide automobile liability insurance of at least \$1 million for death, personal injury and property damage;

(3) Provide uninsured motorist coverage as required by subsection (b), section thirty-one, article six, chapter thirty-three of this code;

(4) The coverage requirements of this subsection may be satisfied by any of the following:

- (A) Automobile liability insurance maintained by the ITD; or
- (B) Automobile liability insurance maintained by the taxicab company; or
- (C) Any combination of paragraphs (A) and (B) of this subdivision.

(d) In every instance where insurance maintained by the ITD to fulfill the insurance requirements of this section has lapsed, failed to provide the required coverage, denied a claim for the required coverage or otherwise ceased to exist, insurance maintained by a taxicab company shall provide the coverage required by this section beginning with the first dollar of a claim.

(e) The following automobile liability insurance requirements apply at all times for taxicabs owned or leased by taxicab companies:

(1) A minimum of \$100,000 limit for bodily injuries to or death of one person;

(2) A minimum of \$200,000 limit for bodily injuries to or death of all persons injured or killed in any one accident;

(3) A minimum of \$25,000 limit for loss or damage in any one accident to property of others (excluding cargo).

(f) Insurance required by this section may be placed with an insurer authorized to do business in this state or with a surplus lines insurer eligible under section five, article twelve-c, chapter thirty-three of this code.

(g) Insurance required by this section satisfies the financial responsibility requirement for a motor vehicle under article four, chapter seventeen-d of this code.

§17H-2-9. Taxicab company and insurer disclosure requirements.

(a) The taxicab company shall disclose in writing to ITDs the following before they are allowed to accept a request for taxicab services on the taxicab company's digital network:

(1) The insurance coverage and limits of liability that the taxicab company provides while the ITD uses a personal vehicle in connection with a taxicab company's digital network;

(2) That the ITD's own insurance policy may not provide coverage while the ITD uses a personal vehicle in connection with a taxicab company's digital network depending on its terms; and

(3) That the ITD should identify each vehicle used to provide taxicab services to his or her insurer.

(b) In a claims coverage investigation, taxicab company's and any insurer providing coverage under this section shall cooperate to facilitate the exchange of information, including the precise times that a TD or ITD logged on and off of the taxicab company's digital network in the 24-hour period immediately preceding the accident and disclose to one another a clear description of the coverage, exclusions and limits provided under any insurance policy each party issued or maintained.

§17H-2-10. Zero tolerance for drug or alcohol use.

(a) The taxicab company shall implement a zero tolerance policy on the use of drugs or alcohol while a TD or ITD is providing taxicab services or is logged into the taxicab company's digital network but is not providing taxicab services and shall provide notice of this policy on its website, as well as procedures to report a complaint about a driver with whom a passenger was matched and whom the passenger reasonably suspects was under the influence of drugs or alcohol during the course of the trip.

(b) Upon receipt of such passenger complaint alleging a violation of the zero tolerance policy, the taxicab company shall immediately suspend such TD's or ITD's access to the taxicab company's digital platform and shall conduct an investigation into the reported incident. The suspension shall last the duration of the investigation.

(c) The taxicab company shall maintain records relevant to the enforcement of this requirement for a period of at least two years from the date that a passenger complaint is received by the taxicab company.

§17H-2-11. Taxicab driver and individual taxicab driver requirements.

(a) Prior to permitting an individual to act as a TD or ITD on its dispatch system, hail system or digital platform, the taxicab company shall:

(1) Require the individual to submit an application to the taxicab company, which includes information regarding his or her address, age, driver's license, driving history, motor vehicle registration, automobile liability insurance and other information required by the taxicab company;

(2) Conduct, or have a third party conduct, a local and national criminal background check for each applicant that shall include review of a:

(A) Multi-State/Multi-Jurisdiction Criminal Records Locator or other similar commercial nationwide database with validation (primary source search); and

(B) National Sex Offender Registry database;

(3) Obtain and review a driving history research report for such individual.

(b) The taxicab company may not permit an individual to act as a TD or ITD on its digital platform who:

(1) Has had more than three moving violations in the prior three-year period, or one major violation in the prior three-year period, including, but not limited to, attempting to evade the police, reckless driving or driving on a suspended or revoked license;

(2) Has been convicted, within the past seven years, of driving under the influence of drugs or alcohol, fraud, sexual offenses, use of a motor vehicle to commit a felony, a crime involving property damage, and/or theft, acts of violence or acts of terror;

(3) Is a match in the National Sex Offender Registry database;

(4) Does not possess a valid driver's license;

(5) Does not possess proof of registration for the motor vehicle(s) used to provide taxicab services;

(6) Does not possess proof of automobile liability insurance for the motor vehicle(s) used to provide taxicab services; or

(7) Is not at least nineteen years of age.

§17H-2-12. Vehicle safety and emissions.

The taxicab company shall require that any motor vehicle that a TD or ITD will use to provide taxicab services meets the inspection requirements of section four, article sixteen, chapter seventeen-c of this code or the inspection requirements of the state in which the motor vehicle is registered.

§17H-2-13. Street hails.

An ITD driver shall exclusively accept rides booked through a taxicab company's dispatch system, hail system or digital platform and may not solicit or accept street hails. Only TDs may solicit or accept street hails.

§17H-2-14. Cash trips.

TDs and ITDs may solicit or accept cash payments from passengers.

§17H-2-15. No discrimination; accessibility.

(a) The taxicab company shall adopt a policy of nondiscrimination on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity with respect to passengers and potential passengers and notify TDs and ITDs of such policy.

(b) TDs and ITDs shall comply with all applicable laws regarding nondiscrimination against passengers or potential passengers on the basis of destination, race, color, national origin, religious belief or affiliation, sex, disability, age, sexual orientation or gender identity.

(c) TDs and ITDs shall comply with all applicable laws relating to accommodation of service animals.

(d) A taxicab company shall not impose additional charges for providing taxicab services to persons with physical disabilities because of those disabilities.

(e) A taxicab company shall provide passengers an opportunity to indicate whether they require a wheelchair-accessible vehicle. If a taxicab company cannot arrange wheelchair-accessible taxicab service in any instance, it shall direct the passenger to an alternate provider of wheelchair-accessible service, if available.

§17H-2-16. Records.

A taxicab company shall maintain:

(a) Individual trip records for at least one year from the date each trip was provided; and

(b) TD or ITD records at least until the one-year anniversary of the date on which a TD's or ITD's activation on the taxicab company digital network has ended.

§17H-2-17. Personally identifiable information.

A taxicab company may not disclose a passenger's personally identifiable information to a third party unless: The passenger consents, disclosure is required by a legal obligation, disclosure is required to protect or defend the terms of use of the taxicab service or to investigate violations of those terms. In addition to the foregoing, a taxicab company is permitted to share a passenger's name and/or telephone number with the TD or ITD providing taxicab services to such passenger in order to facilitate correct identification of the passenger by the TD or ITD or to facilitate communication between the passenger and the TD or ITD.

§17H-2-18. Rules; controlling authority.

The Commissioner of the Division of Motor Vehicles may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code relating to the implementation and exercise of the authority granted by this article and the oversight of taxicab companies and TDs or ITDs. Notwithstanding any other provision of law, taxicab companies and TDs or ITDs are governed exclusively by this article and any rules promulgated by the Division of Motor Vehicles consistent with this article. No municipality or other local entity may impose a tax on, or require a license for, a taxicab company or TD or ITD or subject a taxicab company to the municipality or other local entity's rate, entry, operational or other requirements.

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

Engrossed Senate Bill No. 585 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, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)--33.

The nays were: Takubo--1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. No. 585) passed.

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

Eng. Senate Bill 585--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, §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 and §17H-2-18, all relating to regulation of transportation network companies and regulation of taxicab companies; defining terms; establishing a 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 the regulatory jurisdiction of Public Service Commission; establishing a 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.

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

The Senate proceeded to the thirteenth order of business.

At the request of Senator Plymale, unanimous consent being granted, it was ordered that the Journal show had Senator Plymale been present in the chamber in earlier proceedings today, he would have voted "yea" on the passage of Engrossed Committee Substitute for Senate Bill No. 234, Engrossed Committee Substitute for Senate Bill No. 320, Engrossed Committee Substitute for Senate Bill No. 325, Engrossed Committee Substitute for Committee Substitute for Senate Bill No. 352, Engrossed Senate Bill No. 363, Engrossed Committee Substitute for Senate Bill No. 366, Engrossed Committee Substitute for Senate Bill No. 446, Engrossed Committee Substitute for Senate Bill No. 453, Engrossed Committee Substitute for Senate Bill No. 542, Engrossed Senate Bill No. 582, Engrossed Senate Bill No. 583 and Engrossed Senate Bill No. 584.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Thursday, March 5, 2015, at 11 a.m.
