

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE  
REGULAR SESSION, 2016  
FIFTY-SEVENTH DAY

---

Charleston, W. Va., Wednesday, March 9, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Pastor Jake Steele, Wayne Methodist Church, Wayne, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Craig Blair, a senator from the fifteenth district.

Pending the reading of the Journal of Tuesday, March 8, 2016,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 39**, Regulating off-road motorcycles within Hatfield-McCoy Recreation Area.

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

**Eng. Senate Bill 94**, Designating State Police Superintendent as administrator and enforcer of motor vehicle inspection program.

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

**Eng. Senate Bill 323**, Correcting statute subsection designations regarding trespassing on property.

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

**Eng. Senate Bill 329**, Eliminating sunset provision for commission to study residential placement of children.

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. Senate Bill 334**, Identifying coyote as fur-bearing animal and woodchuck as game animal.

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

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

On page two, section two, line twenty-three, after “(m)” by inserting the words “canis latrans var., more commonly known as”;

And,

On page two, section two, line twenty-seven, after the words “(h) the” by inserting the words “marmota monax, more commonly known as”.

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

Engrossed Senate Bill 334, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 334) 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 with its House of Delegates amended title, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 343**, Authorizing prosecuting attorneys designate law-enforcement officers and investigators as custodians of records.

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

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

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 section, designated §52-2-11, to read as follows:

## **ARTICLE 2. GRAND JURIES.**

### **§52-2-11. Materials subpoenaed by grand jury; authorizing custodian possession and use thereof.**

(a) For purposes of this section:

(1) "Prosecuting attorney" means a prosecuting attorney, assistant prosecuting attorney or duly appointed special prosecuting attorney.

(2) "Investigator" means an investigator employed by a prosecuting attorney's office or an employee of a state agency authorized by the provisions of this code to perform criminal investigations.

(b) Notwithstanding any provision of this code to the contrary, records, items or other evidence subpoenaed, received and ratified by a grand jury may, in the discretion of the prosecuting attorney, be permitted to be delivered to a designated law-enforcement officer or investigator who may serve as the custodian of the records, items or other evidence. The designated custodian conducting an investigation to which the subpoenaed records, items or other evidence are relevant may keep, review and analyze the records and otherwise use the subpoenaed materials for legitimate investigative purposes. Should circumstances arise which require the designation of a successor custodian, the successor custodian shall comply with the provisions of subsection (c) of this section.

(c) Prior to providing a subpoenaed record, item or other evidence to a designated custodian as authorized by subsection (a) of this section, the prosecuting attorney shall prepare and have the law-enforcement officer or investigator execute a disclosure statement acknowledging that the record, item or other evidence is secret under Rule 6(e) of the West Virginia Rules of Criminal Procedure. The prosecuting attorney shall file all disclosure statements, under seal, with the clerk of the circuit court. The existence or contents of any record, item or other evidence subject to the provisions of this section may be disclosed to another law-enforcement officer or investigator for legitimate investigative purposes with the written authorization of the prosecuting attorney and that officer's or investigator's execution of a disclosure statement.

(d) The designated custodian may retain the record, item or other evidence in his or her possession, care, custody or control until the termination of the investigation or prosecution.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 343**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §52-2-11, relating to grand juries generally; defining terms; authorizing prosecuting attorneys to designate law-enforcement officers or investigators as custodians of records, documents and other evidence subpoenaed, that has been received, reviewed and ratified by the grand jury; authorizing designated custodians conducting an investigation to keep, review and analyze records, items or other evidence and to otherwise use the subpoenaed materials for legitimate investigative purposes; allowing for successor custodians;

requiring custodians to execute disclosure statements to preserve grand jury secrecy; requiring the prosecuting attorney to file all disclosure statements, under seal, with the clerk of the circuit court; authorizing custodians to share subpoenaed materials with other law-enforcement officers and investigators for legitimate investigative purposes with the written authorization of the prosecuting attorney and that officer's or investigator's execution of a disclosure statement; and providing that a designated custodian may retain the record, item or other evidence in his or her possession, care, custody or control until the termination of the investigation or prosecution.

On motion of Senator Carmichael, the Senate refused to concur in the foregoing House amendments to the bill (Eng. Com. Sub. for S. B. 343) and requested the House of Delegates to recede therefrom.

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

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

**Eng. Senate Bill 346**, Updating projects managed by Project Management Office.

A message from The Clerk of the House of Delegates announced the amendment by that body to the title of the bill, 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 349**, Updating meaning of federal adjusted gross income.

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

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

**Eng. Senate Bill No. 349**—A Bill to amend and reenact §11-21-9 and §11-21-71a of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Personal Income Tax; updating the meaning of federal taxable income and certain other terms used in West Virginia Personal Income Tax; changing certain due dates; and specifying effective dates.

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

Engrossed Senate Bill 349, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 349) passed with its House of Delegates amended title.

Senator Carmichael moved that the bill take effect from passage.

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

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 349) 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 amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 104**, Classifying Marshall University Forensic Science Center as a criminal justice agency.

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

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

On page two, section twenty-four-c, line fifteen, by striking out all of subsection (e);

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 104**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-24c, relating to declaring the Forensic DNA Analysis Laboratory of the Marshall University Forensic Science Center to be engaged in administration of criminal justice as that term is defined in 28 C. F. R. 20.3(b); requiring Marshall University Forensic Science Center and the West Virginia State Police to confer as to available grants and similar possible funding sources and applications therefor; affording West Virginia State Police primacy of decision-making over Marshall University Forensic Science Center as to which entity may apply for certain grants; and directing West Virginia State Police and Marshall University Forensic Science Center to execute an agreement to ensure compliance with the section provisions.

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

Engrossed Committee Substitute for Senate Bill 104, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 104) passed with its House of Delegates amended 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 concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 400**, Reducing amount of sales tax proceeds dedicated to School Major Improvement Fund.

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

**Eng. Senate Bill 415**, Lengthening maximum term of negotiable certificates of deposit municipal funds can hold.

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

**Eng. Senate Bill 426**, Continuing Office of Coalfield Community Development.

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

**Eng. Senate Bill 439**, Eliminating requirement that budget director approve requisitions for personal services payment under certain circumstances.

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

**Eng. Senate Bill 461**, Updating WV Workforce Investment Act to the WV Workforce Innovation and Opportunity Act.

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

**Eng. Senate Bill 469**, Clarifying what personal funds are exempt from levy following judgment.

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

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

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

That §38-5A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §38-8-1 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 38. LIENS.**

### **ARTICLE 5A. SUGGESTIONS OF SALARY AND WAGES OF PERSONS ENGAGED IN PRIVATE EMPLOYMENT.**

**§38-5A-3. Application for suggestee execution against salary or wages; extent of lien and continuing levy; exemption; priority among suggestee executions.**

(a) A judgment creditor may apply to the court in which the judgment was recovered or a court having jurisdiction of the same, without notice to the judgment debtor, for a suggestee execution against any money due or to become due within one year after the issuance of such execution to the judgment debtor as salary or wages arising out of any private employment. If satisfactory proof shall be made, by affidavit or otherwise, of such facts and the fact that the amount due or to become due as salary or wages after the deduction of all state and federal taxes exceeds in any week ~~thirty~~ fifty times the federal minimum hourly wage then in effect, the court, if not a court of record, or if a court of record the clerk thereof, shall issue a suggestee execution against the salary or wages of the judgment debtor and upon presentation of such execution by the officer to whom delivered for collection to the person or persons from which such salary or wages are due and owing or thereafter may become due and owing to the judgment debtor, the execution and the expenses thereof shall become a lien and continuing levy upon the salary or wages due or to become due to the judgment debtor within one year after the issuance of the same, unless sooner vacated or modified as hereinafter provided, to an amount equal to twenty percent thereof and no more, but in no event shall the payments in satisfaction of such an execution reduce the amount payable to the judgment debtor to an amount per week that is less than ~~thirty~~ fifty times the federal minimum hourly wage then in effect. Only one such execution shall be satisfied, at one time, except that in the event two or more such executions have been served and satisfaction of the one having priority is completed without exhausting the amount of the salary or wages then due and payable that is subject to suggestion under this article the balance of such amount shall be paid in satisfaction, in the order of their priority, of junior suggestee executions against such salary or wages theretofore served.

(b) The suggestee execution by the judgment creditor provided in this section shall include, to the extent possible, the present address, the last four digits of the Social Security number and date of birth of the judgment debtor, which information shall be made available for the purpose of properly identifying the judgment debtor whose salary or wages are being levied upon.

## **ARTICLE 8. EXEMPTIONS FROM LEVY.**

### **§38-8-1. Exemptions of personal property.**

(a) Any individual residing in this state, or the dependent of such individual, may set apart and hold as exempt from execution or other process the following personal property:

(1) Such individual's interest, not to exceed \$5,000 in value, in one motor vehicle;

(2) Such individual's interest, not to exceed \$8,000 in aggregate value, in household goods, furniture, toys, animals, appliances, books and wearing apparel that are held primarily for the personal, family or household use of such individual;

(3) Such individual's aggregate interest, not to exceed \$3,000, in any implements, professional books or tools of such individual's trade;

(4) Such individual's funds on deposit in a federally insured financial institution, ~~wages or salary not to exceed the greater of: (i) \$1,100; or (ii) one hundred twenty-five percent of the amount of the annualized federal poverty level of such individual's household divided by the number of pay periods for such individual per year; and~~

(5) Funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP), in the name of such individual: *Provided*, That the amount is exempt only to the extent it is not, or has not been, subject to an excise or other tax on excess contributions under Section 4973 or Section 4979 of the Internal Revenue Code of 1986, or both sections, or any successor provisions, regardless of whether the tax is or has been paid.

(b) Notwithstanding the foregoing, in no case may an individual residing in this state, or the dependent of such individual, exempt from execution or other process more than \$15,000 in the aggregate in personal property listed in subdivisions (1), (2), (3) and (4), subsection (a) of this section.

(c) Wages or salary are automatically exempt from execution or other process but only to the extent set forth in section three, article five-a of this chapter. No person may file for an exemption of wages or salary pursuant to this section in an amount above that set forth in section three, article five-a of this chapter.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 469**—A Bill to amend and reenact §38-5A-3 and §38-8-1 of the Code of West Virginia, 1931, as amended all relating to suggestions of salary and wages of persons engaged in private employment and exemptions from levy; increasing the amount of salary or wages that are protected from a suggestee execution from thirty times the federal minimum hourly wage then in effect to fifty times the federal minimum hourly wage then in effect; removing wages and salary from items subject to the one-time, \$15,000 exemption; providing that wages and salary are automatically exempted from levy execution up to a certain amount; and clarifying that wages and salary above that automatic exemption may not be exempted from levy.

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

Engrossed Senate Bill 469, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 469) passed with its House of Delegates amended 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 concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 474**, Exempting DEP construction and reclamation contracts from review and approval.

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

**Eng. Senate Bill 515**, Authorizing payment of certain claims against state.

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

**Eng. Com. Sub. for Senate Bill 581**, Eliminating sunset provision terminating pilot domestic violence court program.

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

**Eng. Com. Sub. for Senate Bill 591**, Relating to voter registration list maintenance and combined voter registration and driver licensing fund.

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

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

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

That §3-2-3, §3-2-4a, §3-2-12 and §3-2-23 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said Code be amended by adding thereto a new section, designated as §3-2-23s, all to read as follows:

## **ARTICLE 2. REGISTRATION OF VOTERS.**

### **§3-2-3. State authority relating to voter registration; chief election official.**

(a) The Secretary of State, as chief election official of the state as provided in section six, article one-a of this chapter, shall have general supervision of the voter registration procedures and practices and the maintenance of voter registration records in the state and shall have authority to require reports and investigate violations to ensure the proper conduct of voter registration throughout the state and all of its subdivisions. Upon written notice to the clerk of the county commission of a county of the need for voter registration record maintenance and the failure of that clerk to complete such maintenance within ninety days of the notice, the Secretary of State may make changes in the voter registration data necessary to comply with list maintenance requirements of sections four-a, twenty-three, twenty-five, twenty-six and twenty-seven of this article: *Provided*, that the secretary shall send the notice by certified mail, return receipt requested.

(b) The Secretary of State, as chief election official of the state, is responsible for implementing, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the state level that contains the name and registration information of every legally registered voter in the state and assigns a unique identifier to each legally registered voter in the state.

(c) The Secretary of State is hereby designated as the chief election official responsible for the coordination of this state's responsibilities under 42 U.S.C. §1973gg, *et seq.*, the "National Voter Registration Act of 1993". The Secretary of State shall have general supervision of voter registration procedures and practices at agencies and locations providing services as required by the provisions of this article and shall have the authority to propose procedural, interpretive and legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code for application for registration, transmission of applications, reporting and maintenance of records required by the provisions of this article and for the development, implementation and application of other provisions of this article.

### **§3-2-4a. Statewide voter registration database.**

(a) The Secretary of State shall implement and maintain a single, official, statewide, centralized, interactive computerized voter registration database of every legally registered voter in the state, as follows:

(1) The statewide voter registration database shall serve as the single system for storing and managing the official list of registered voters throughout the state.

(2) The statewide voter registration database shall contain the name, registration information and voter history of every legally registered voter in the state.

(3) In the statewide voter registration database, the Secretary of State shall assign a unique identifier to each legally registered voter in the state.

(4) The statewide voter registration database shall be coordinated with other agency databases within the state and elsewhere, as appropriate.

(5) The Secretary of State, any clerk of the county commission, or any authorized designee of the Secretary of State or clerk of the county commission, may obtain immediate electronic access to the information contained in the statewide voter registration database.

(6) The clerk of the county commission shall electronically enter voter registration information into the statewide voter registration database on an expedited basis at the time the information is provided to the clerk.

(7) The Secretary of State shall provide necessary support to enable every clerk of the county commission in the state to enter information as described in subdivision (6) of this subsection.

(8) The statewide voter registration database shall serve as the official voter registration list for conducting all elections in the state.

(b) The provisions of subdivision (6), subsection (a) of this section notwithstanding, the Secretary of State or any clerk of a county commission shall perform maintenance with respect to the statewide voter registration database on a regular basis as follows:

(1) If an individual is to be removed from the statewide voter registration database he or she shall be removed in accordance with the provisions of 42 U. S. C. §1973gg, *et seq.*, the National Voter Registration Act of 1993.

(2) The Secretary of State shall coordinate the statewide voter registration database with state agency records and shall establish procedures for the removal of names of individuals who are not qualified to vote due to felony status or death. No state agency may withhold information regarding a voter's status as deceased or as a felon unless ordered by a court of law.

(c) The list maintenance performed under subsection (b) of this section shall be conducted in a manner that ensures that:

(1) The name of each registered voter appears in the statewide voter registration database;

(2) Only voters who are not registered, who have requested in writing that their voter registration be canceled, or who are not eligible to vote are removed from the statewide voter registration database;

(3) Duplicate names are eliminated from the statewide voter registration database; and

(4) Deceased individuals' names are eliminated from the statewide voter registration database.

(d) The Secretary of State and the clerks of all county commissions shall provide adequate technological security measures to prevent the unauthorized access to the statewide voter registration database established under this section.

(e) The Secretary of State shall ensure, and may perform such maintenance necessary to ensure, that voter registration records in the state are accurate and updated regularly, including the following:

(1) A system of file maintenance that makes a reasonable effort to remove registrants who are ineligible to vote from the official list of eligible voters. Under the system, consistent with 42 U. S. C. §1973gg, *et seq.*, registrants who have not responded to a notice sent pursuant to section twenty six, article two of this chapter, who have not otherwise updated their voter registration address, and who have not voted in two consecutive general elections for federal office shall be removed from the official list of eligible voters, except that no registrant may be removed solely by reason of a failure to vote;

(2) By participation in programs across state lines to share data specifically for voter registration to ensure that voters who have moved across state lines or become deceased in another state are removed in accordance with state law and 42 U. S. C. §1973gg, *et seq.*; and

(3) Through safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.

(f) Applications for voter registration may be accepted only when the following information is provided:

(1) Except as provided in subdivision (2) of this subsection and notwithstanding any other provision of law to the contrary, an application for voter registration may not be accepted or processed unless the application includes:

(A) In the case of an applicant who has been issued a current and valid driver's license, the applicant's driver's license number;

(B) In the case of an applicant who has been issued an identification card by the Division of Motor Vehicles, the applicant's identification number; or

(C) In the case of any other applicant, the last four digits of the applicant's Social Security number; and

(2) If an applicant for voter registration has not been issued a current and valid driver's license, Division of Motor Vehicles identification card, or a Social Security number, the Secretary of State shall assign the applicant a number which will serve to identify the applicant for voter registration purposes. The number assigned under this subdivision shall be the unique identifying number assigned under the statewide voter registration database.

(g)(1) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement to match and transfer applicable information in the statewide voter registration database with information in the database of the Division of Motor Vehicles to the extent required to enable each official to verify the accuracy of the information provided on applications for voter registration.

(2) The Secretary of State and the Commissioner of the Division of Motor Vehicles shall enter into an agreement for the Division of Motor Vehicles to provide all name fields, residence and mailing address fields, driver's license or state identification number, last four digits of the Social Security number, date of birth, license or identification issuance and expiration dates, and current record status

of individuals eligible to register to vote to the Secretary of State for the purpose of voter registration list maintenance comparison through an interstate data-sharing agreement designated by the Secretary of State as permitted by subdivision (2), subsection (e) of this section.

(h) The Commissioner of the Division of Motor Vehicles shall enter into an agreement with the Commissioner of Social Security under 42 U. S. C. §401, *et seq.*, the Social Security Act. All fees associated with this agreement shall be paid for from moneys in the fund created under section twelve of this article.

**§3-2-12. Combined voter registration and driver licensing fund; transfer of funds.**

(a) Fifty cents of each license fee collected pursuant to the provisions of section one, article three, chapter seventeen of this code shall be paid into the State Treasury to the credit of a special revenue fund to be known as the Combined Voter Registration and Driver Licensing Fund. The moneys so credited to such fund may be used by the Secretary of State for the following purposes:

(1) Printing and distribution of combined driver licensing or other agency applications and voter registration forms, or for the printing of voter registration forms to be used in conjunction with driver licensing or other agency applications;

(2) Printing and distribution of mail voter registration forms for purposes of this article;

(3) Supplies, postage and mailing costs for correspondence relating to voter registration for agency registration sites and for the return of completed voter registration forms to the appropriate state or county election official;

(4) Reimbursement of postage and mailing costs incurred by clerks of the county commissions for sending a verification mailing, confirmation of registration or other mailings directly resulting from an application to register, change or update a voter's registration through a driver licensing or other agency;

(5) Reimbursement to state funded agencies designated to provide voter registration services under this chapter for personnel costs associated with the time apportioned to voter registration services and assistance;

(6) The purchase, printing and distribution of public information and other necessary materials or equipment to be used in conjunction with voter registration services provided by state funded agencies designated pursuant to the provisions of this article;

(7) The development of a statewide program of uniform voter registration computerization for use by each county registration office and the Secretary of State, purchase of uniform voter registration software, payment of software installation costs and reimbursement to the county commissions of not more than fifty percent of the cost per voter for data entry or data conversion from a previous voter registration software program;

(8) Payment of up to fifty percent of the costs of conducting a joint program with participating counties to identify ineligible voters by using the United States postal service information as provided in section twenty-five of this article: *Provided*, That such assistance shall be available only to counties which maintain voter registration lists on the statewide uniform voter data system; ~~and~~

(9) Payment of any dues or fees associated with a program to match and transfer data to and from other states;

(10) Resources related to voter registration and list maintenance; and

~~(9)~~ (11) Payment or reimbursement of other costs associated with implementation of the requirements of the National Voter Registration Act of 1993 (42 U. S. C. 1973gg): *Provided*, That revenue received by the fund in any fiscal year shall first be allocated to the purposes set forth in subdivisions (1) through ~~(8)~~ (10), inclusive, of this subsection.

(b) The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code to provide for the administration of the fund established in subsection (a) of this section.

(c) Any balance in the fund created by subsection (a) of this section which exceeds \$100,000 as of June 30, 2017, and on June 30 of each year thereafter, shall be transferred to the General Revenue Fund.

### **§3-2-23a. Cancellation of registration of deceased or ineligible voter**

The Secretary may propose legislative rules regarding the maintenance of the security and privacy of the voter registration records and the procedures to be followed by clerks of the county commission and the Secretary to make changes in voter registration records, including cancellations.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 591**—A Bill to amend and reenact §3-2-3, §3-2-4a, and §3-2-12 of the Code of West Virginia, 1931, as amended, and to amend said Code by adding thereto a new section, designated as §3-2-23a; all relating to additional duties for the Secretary of State relating to voter registration; authorization of the Secretary of State to undertake voter registration list maintenance; voter registration list maintenance generally; authorizing the Secretary of State to undertake voter registration list maintenance in a county if within ninety days of providing written notice to the clerk of the county commission of the need for voter registration list maintenance the clerk has failed to complete such maintenance; delineating notice requirements; the Combined Voter Registration and Driver Licensing Fund; authorizing Secretary of State to enter into agreement with Division of Motor Vehicles for Division of Motor Vehicles to provide certain information; setting forth information to be provided by Division of Motor Vehicles; permitting Secretary of State to use information for voter registration list maintenance comparison through interstate data-sharing agreement as designated by Secretary of State; identifying additional permissible uses of funds in Combined Voter Registration and Driver Licensing Fund; providing for periodic transfer of funds from that fund to the General Revenue Fund under certain circumstances; cancellation of registration of deceased or ineligible voters generally; and providing rule-making authority to the Secretary of State to accomplish the provisions of the bill.

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

**Eng. Com. Sub. for Senate Bill 591**—A Bill to amend and reenact §3-2-3, §3-2-4a, and §3-2-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated as §3-2-23a, all relating generally to creation and maintenance of voter registration lists generally; creating additional duties for Secretary of State relating to voter registration; authorizing Secretary of State to undertake voter registration list maintenance in a county under certain circumstances; requiring Secretary of State to provide written notice to clerk of county commission of need for voter registration record maintenance and allow ninety days before undertaking voter registration list maintenance in a county; delineating notice requirements; clarifying duty of Secretary of State to perform certain ongoing voter registration database maintenance; directing Secretary of State to enter into agreement with Division of Motor Vehicles for Division of

Motor Vehicles to provide certain information regarding persons eligible to vote; setting forth information to be provided by Division of Motor Vehicles; permitting Secretary of State to use information for voter registration list maintenance comparison through interstate data-sharing agreement as designated by Secretary of State; identifying additional permissible uses of funds in Combined Voter Registration and Driver Licensing Fund; providing for periodic transfer of funds from that fund to General Revenue Fund under certain circumstances; authorizing cancellation of registration of deceased or ineligible voters; and granting certain rule-making authority to Secretary of State.

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

Engrossed Committee Substitute for Senate Bill 591, as amended, was then put upon its passage.

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

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 591) passed with its Senate amended title.

Senator Carmichael moved that the bill take effect from passage.

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

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 591) takes effect from passage.

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

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

**Eng. Com. Sub. for Senate Bill 592**, Relating to pipeline safety.

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

**Eng. Senate Bill 648**, Allowing local authorities permit flashing traffic signals during low traffic times.

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

**Eng. Senate Bill 656**, Creating Upper Kanawha Valley Resiliency and Revitalization Program.

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

**Eng. Senate Bill 678**, Relating to ownership and use of conduit providing telephone service.

### **Executive Communications**

Senator Cole (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, regarding annual reports, which communication was received:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 8, 2016

### **EXECUTIVE MESSAGE NO. 3 2016 REGULAR SESSION**

The Honorable William P. Cole, III  
President, Senate of West Virginia  
State Capitol, Rm 229M  
Charleston, West Virginia 25305

Dear Mr. President:

Pursuant to the provisions of section twenty, article one, chapter five of the Code of West Virginia, I hereby certify that the following annual reports have been received in the Office of the Governor:

Accountancy, West Virginia Board of; Annual Report FY June 30, 2014 – June 30, 2015

Acupuncture, West Virginia Board of; Annual Report 2014-2015 Fiscal Year

Aeronautic Commission, West Virginia; Annual Report 2015

Alcohol Beverage Control Administration, West Virginia Department of Revenue; Annual Report FY 2015

Architects Board, State of West Virginia; Annual Report Fiscal Years 2013 & 2014; 2014 Fiscal year fee schedule

Attorney General, Office of the; Annual Report 2015

Barbers & Cosmetologists, Board of; Annual Report 2015

Benedum Foundation; Annual Report 2014

Boxley; Sustainability Report 2014

Chiropractic, West Virginia Board of; Biennium Report July 1, 2013-June 30, 2015

Citizen Review Panel, West Virginia; Annual Report October 1, 2014-September 30, 2015

Closing the Expectations Gap: Achieve- National Education Summit on High Schools; Annual Report 2014

Coal Mine Health & Safety, Board of; Annual Report 2015

Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee; Annual Report 2015

Consumer Advocate Division, Public Service Commission; Annual Report 2016

Consumer Protection and Antitrust Division, West Virginia Attorney General; Annual Report November 20, 2014-November 19, 2015

Consumer Advocate, West Virginia Insurance Commission, Office of the; Annual Report 2015

Contractors Association of West Virginia; Annual Report 2015

Corrections, West Virginia Department of Military Affairs and Public Safety, Division of; Annual Report 2015

Counseling, West Virginia Board of; Annual Report 2013-2015

Crime Victims Compensation Fund, Court of Claims; Annual Report 2015

Deaf and Hard of Hearing, West Virginia Commission for the; Annual Report 2015

Dietitians, West Virginia Board of Licensed; Annual Report FY 2015

Drinking Water Treatment Revolving Fund, West Virginia; Annual Report year ending June 30, 2015

Energy, West Virginia Division of; Annual Report December 2014-November 2015

Engineers, West Virginia Board of Registration for Professional; Annual Report 2015

Entrepreneurial Studies & Development, Center of; WV Listening Tour Summary Report 2014

Environmental Protection, Department of; Annual Report Fiscal Year 2013-14

Family Protection Services Board; Annual Report 2013-2014

Financial Institutions, West Virginia Division of; Annual Report FY June 30, 2015

Fire Commission, West Virginia State; Annual Report FY 2015

Greater Kanawha Valley Foundation; Annual Report 2015 Annual Report

Grievance Board, West Virginia Department of Administration, Public Employees; Annual Report 2015

Health Care Authority, West Virginia; Annual Report 2015

Hearing Aid Dealers Licensure Board, West Virginia; Annual Report Fiscal Year 2014-2015

Herbert Henderson Office of Minority Affairs; Annual Report 2015

Infrastructure & Jobs Development Council, West Virginia; Annual Report year ended June 30, 2015

Insurance Commissioner, West Virginia Office of; Annual Report 2014

Interstate Insurance Product Regulation Commission (IIPRC); Annual Report 2014 period ending December 31, 2014

Interstate Mining Compact Commission; Annual Report 2014

James "Tiger" Morton Catastrophic Illness Commission; Annual Report 2015

JP Morgan Chase and Co.; Annual Report 2014

Lincoln Primary Care Center, Inc.; Annual Report 2015

Lottery, West Virginia; Annual Report FY June 30, 2015 and 2014

Martin Luther King Jr., State Holiday Commission; Annual Report 2015

Massage Therapy Licensure Board, West Virginia; Annual Report 2015 Fiscal Year

Medical Imaging & Radiation Therapy Technology BOE, West Virginia; Annual Report FY 2014-2015

Medical Malpractice Report, Insurance Commissioner, State of West Virginia; Annual Report 2015

Medicine, West Virginia Board of; Biennium Report July 1, 2013-June 30, 2015

Miners' Health, Safety and Training, West Virginia Department of Commerce, West Virginia Office of; Annual Report FY 2014

Municipal Home Rule Board; Annual Report January 1, 2015-December 31, 2015

National Guard Youth Foundation; Mid-Year-Report 2015

National Shooting Sports Foundation, Inc.; Impact Report on Firearms & Ammunition Industry 2014

National Shooting Sports Foundation, Inc.; Annual Report 2015

Natural Resources, West Virginia Division of; Annual Report 2014-2015

Nurses Board, West Virginia Registered; Biennium Report July 1, 2013-June 30, 2015

Nursing Home & Assisted Living Facilities in West Virginia; Annual Report October 1, 2013 – September 30, 2014

Nursing Home Administrators Licensing Board, West Virginia; Annual Report FY 2015

Ohio River Valley Water Sanitation Commission; Annual Report FY 2015

Potomac River Basin, Interstate Commission on the; Financial Statement October 1, 2013-September 30, 2014

Privacy Office, West Virginia State; Annual Report 2015

Public Defender Services, West Virginia Department of Administration; Annual Report FY-2015

Public Utility Assessments, State of West Virginia; Tax Year 2016

Racing Commission, Department of Revenue, West Virginia; Annual Report 2014

Real Estate Appraiser Licensing and Certification Board, West Virginia; Annual Report FY 2014-2015

Real Estate Commission, Annual Report 2015

Region 4 Planning and Development Council; Comprehensive Economic Development Strategy (CEDS) Five Year Plan 2014-2018

Rehabilitation Facilities, West Virginia Association of; Annual Report FY 2015

Rehabilitation Services, WV Statewide Independent Living Council, West Virginia Department of; Annual Report 2015

Rehabilitation Services, West Virginia Division of; Annual Report 2015

Retirement Board, WV State Police Disability Experience, West Virginia Consolidated Public; Annual Report FY 2015

Sanitarians, West Virginia Board of; Annual Report 2015

Statewide Independent Living Council; Annual Report Fiscal Year 2014, October 1, 2013-September 30, 2014

Tax Department, West Virginia State Tax; Expenditure Study 2016

Tax Department, West Virginia; 51<sup>st</sup> Biennial Report

Tax Increment Financing: Development Office: Department of Commerce; Annual Report 2014 year ended June 30, 2014

Treasury Investments, West Virginia Board of; Annual Report year ended June 30, 2015

Veterinary Medicine, West Virginia Board of; Biennium Report July 1, 2013-June 30, 2015

Water & Waste Management's Groundwater Program, West Virginia Department of Environmental Protection, Division of; Biennial Report, July 2, 2013- June 30, 2015

Water Development Authority, West Virginia; Annual Report FY 2015

Water Development Authority, West Virginia, West Virginia; Annual Report year ended June 30, 2015

West Virginia Association of Counties; Annual Report FY 2014-2015

Women's Commission, West Virginia; Annual Report 2015

Youth Services, Department of Health and Human Resources, Bureau of Children and Families, West Virginia; Annual Report FY 2014

Very truly yours,

Earl Ray Tomblin  
Governor

cc: Clark Barnes, Clerk, Senate of West Virginia  
Division of Culture and History

Senator Cole (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, submitting the annual probation and parole report, which was received:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 8, 2016

**EXECUTIVE MESSAGE NO. 4  
2016 REGULAR SESSION**

The Honorable William P. Cole, III  
President, Senate of West Virginia  
State Capitol, Rm 228M  
Charleston, West Virginia 25305

Dear Mr. President:

In accordance with the provisions of section 11, article 7 of the Constitution of the State of West Virginia, and section 16, article 1, chapter 5 of the Code of West Virginia, I hereby report that I granted no pardons or reprieves, nor commuted punishment to any person, nor remitted any fines or penalties, during the period of March 14, 2015 through March 8, 2016.

Very truly yours,

Earl Ray Tomblin  
Governor

cc: Clark Barnes, Senate of West Virginia  
Division of Archives and History

Senator Cole (Mr. President) next laid before the Senate the following communication from His Excellency, the Governor:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

March 9, 2016

**EXECUTIVE MESSAGE NO. 5  
2016 REGULAR SESSION**

TO: The Honorable Members of the  
West Virginia Senate

Ladies and Gentlemen:

I respectfully withdraw the following nomination for your advice and consent from Executive Message No. 2 dated March 2, 2016; the nominee has declined her appointment:

405. For Member, State Personnel Board, Anna Dailey, Charleston, Kanawha County, for the term ending June 30, 2017.

Thank you for correcting your records.

Sincerely,

Earl Ray Tomblin  
Governor

Which communication was received and referred to the Committee on Confirmations.

The Clerk then presented communications from His Excellency, the Governor, advising that on March 8, 2016, he had approved **Enr. Committee Substitute for Senate Bill 421**, **Enr. Committee Substitute for Senate Bill 594** and **Enr. Committee Substitute for House Bill 4163**.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 8th day of March, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(H. B. 4235)**, Relating to the publication requirements of the administration of estates.

And,

**(H. B. 4362)**, Establishing a felony offense of strangulation.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 9th day of March, 2016, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for Com. Sub. S. B. No. 27)**, Permitting county commissions hire outside attorneys for collection of taxes through courts.

**(Com. Sub. for S. B. No. 254)**, Not allowing county park commissions to prohibit firearms in facilities.

**(Com. Sub. for S. B. No. 379)**, Relating to candidate filing fees.

**(S. B. No. 509)**, Removing 10-day requirement Division of Labor has to inspect amusement rides and attractions.

And,

**(Com. Sub. for H. B. 4228)**, Relating to transportation network companies.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
John B. McCuskey,  
*Chair, House Committee.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2205**, Creating the crime of prohibited sexual contact by a psychotherapist.

And has amended same.

**Eng. Com. Sub. for House Bill 4174**, Exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4575**, Creating criminal offenses relating to money laundering.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 2205, 4174 and 4575) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4013**, Requiring a person desiring to vote to present documentation identifying the voter.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4013) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4035**, Permitting pharmacists to furnish naloxone hydrochloride.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 4537**, Relating to the regulation of chronic pain clinics.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4035 and 4537) were taken up for immediate consideration, second committee references dispensed with, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4038**, Relating to insurance requirements for the refilling of topical eye medication.

And has amended same.

And,

**Eng. Com. Sub for House Bill 4040**, Regulating step therapy protocols in health benefit plans.

And has amended same.

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

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4038 and 4040) contained in the preceding report from the Committee on Health and Human Resources were each taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4314**, Prohibiting the sale of powdered or crystalline alcohol.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4314) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on Education has had under consideration

**Eng. House Bill 4316**, Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification.

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

Respectfully submitted,

Dave Sypolt,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4316) contained in the preceding report from the Committee on Education was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 4323**, Relating to the reporting of emergency incidents by well operators and pipeline operators.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4323) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4352**, Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources.

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,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4352) was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. Com. Sub. for House Bill 4176**, Permitting the Regional Jail and Correctional Facility Authority to participate in the addiction treatment pilot program.

And,

**Eng. Com. Sub for House Bill 4463**, Permitting the practice of telemedicine.

And reports the same back with the recommendation that they each do pass; but under the original double committee references first be referred to the Committee on the Judiciary.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, Engrossed Committee Substitute for House Bill 4176 contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time, ordered to second

reading and, under the original double committee reference, was then referred to the Committee on the Judiciary.

At the request of Senator Carmichael, unanimous consent being granted, Engrossed Committee Substitute for House Bill 4463 contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Thereafter, at the request of Senator Carmichael, unanimous consent was granted to dispense with the second committee reference of Engrossed Committee Substitute for House Bill 4463.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4594**, Relating to predoctoral psychology internship qualifications.

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 Government Organization.

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4594) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, second committee reference dispensed with, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4618**, Relating to limitations on use of a public official's name or likeness.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4618) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 4655**, Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials.

With amendments from the Committee on Banking and Insurance pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on the Judiciary on March 8, 2016;

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. House Bill 4662**, Permitting the Superintendent of the State Police to collect \$3 dollars from the sale of motor vehicle inspection stickers.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4662) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Transportation and Infrastructure pending.

Senator Ferns, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

**Eng. House Bill 4728**, Relating to schedule three controlled substances.

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

Respectfully submitted,

Ryan J. Ferns,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4728) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time and ordered to second reading.

Senator Walters, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. House Bill 4733**, Relating to requiring the Commissioner of Highways to develop a statewide communications plan known as the Comprehensive Public Involvement Plan.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Government Organization.

Respectfully submitted,

Chris Walters,  
*Chair.*

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. H. B. 4733) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, ordered to second reading and, under the original double committee reference, was then referred to the Committee on Government Organization, with amendments from the Committee on Transportation and Infrastructure pending.

The Senate proceeded to the sixth order of business.

Senators Williams and Stollings offered the following resolution:

**Senate Concurrent Resolution 65**—Requesting Division of Highways name bridge number 16-48-28.54 EB & WB (16A132, 16A133) (39.06601, -78.66368), locally known as Sauerkraut Run EB & WB, carrying US 48 (Cor. H) over County Route 23/9 and Sauerkraut Run in Hardy County, the “John and Wilbur Hahn Dutch Hollow Pioneers Bridge”.

Whereas, John and Wilbur Hahn, the youngest sons of Lorenza and Amanda Rebecca Michael Hahn, family of five girls and three boys, went to school at Maple Grove, where they only had school for about four months. The Hahns trace their ancestry back to the Rhine Valley of Germany and immigrants from there who arrived in the United States sometime in the mid-to late 1800s. The Hahns came over on a boat with members of the Michael family and branches of both families settled in Dutch Hollow. They farmed and, when the demand arose, cut timber in the woods around their homesteads. John, who is deceased, and Wilbur, who is age ninety, carried on that pioneering tradition of farming and pulpwood sawmill from 1939. They owned and operated a small gasoline-powered sawmill on their farm, with some help from John’s son Mickey in Dutch Hollow, Hardy County, despite the changes brought to the industry by modern technology. The brothers have remained part of a close-knit family, still enjoying Sunday dinners with relatives at the Hahn farmhouse, located near the site of the sawmill; and

Whereas, Naming bridge 16-48-28.54 EB & WB (16A132, 16A133) (39.06601, -78.66368), locally known as Sauerkraut Run EB & WB, carrying US 48 (Cor. H) over County Route 23/9 and Sauerkraut Run in Hardy County, the “John and Wilbur Hahn Dutch Hollow Pioneers Bridge” is an appropriate recognition of their family’s pioneering contributions to their state, community and Hardy County; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the bridge 16-48-28.54 EB &WB (16A132, 16A133) (39.06601, -78.66368), locally known as Sauerkraut Run EB & WB, carrying US 48 (Cor. H) over County Route 23/9 and Sauerkraut Run in Hardy County, the “John and Wilbur Hahn Dutch Hollow Pioneers Bridge”; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the “John and Wilbur Hahn Dutch Hollow Pioneers Bridge”; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and Wilbur Hahn and his family and the families of John Hahn.

Which, under the rules, lies over one day.

Senators Snyder, Stollings, Romano and Unger offered the following resolution:

**Senate Concurrent Resolution 66**—Requesting the Joint Committee on Government and Finance to establish a select committee to study all aspects of the lottery, gaming and live racing industry in West Virginia.

Whereas, West Virginia’s lottery, gaming and live racing industries have become significant revenue sources for the State of West Virginia, as well as providing thousands of jobs to West Virginians; and

Whereas, The live racing industry has a long and storied history, beginning in 1787 when George Washington’s youngest brother Charles raced horses through the streets of what would become Charles Town, West Virginia; and

Whereas, Formal horse racing tracks were established in West Virginia some years later, with the racetrack at Charles Town opening in 1933 and the precursor to Mountaineer Racetrack being founded in 1937. West Virginia greyhound racing followed with the opening of Wheeling Downs, a facility which found its racing origin in 1937 and in 1985, Tri-State Greyhound Park, now, Mardi Gras Casino and Racetrack, opened; and

Whereas, In an effort to protect and preserve West Virginia’s celebrated racing industry and the thousands of jobs associated therewith, the West Virginia Legislature voted to allow slot-machine style video lottery in 1994, and casino-style table games in 2007, at our state’s four racetracks, with approval by the local electorate, in accord with the provisions of article twenty-two-c, chapter twenty-nine of the West Virginia Code; and

Whereas, Each of the four counties in West Virginia where a racetrack is located ultimately exercised their referendum rights under section seven, article twenty-two-c, chapter twenty-nine of the code, and voted to approve racetrack video lottery and table games at their respective racetrack facilities based on the promise that a portion of the revenues generated would be used to preserve and protect live racing, as well promote the industry of breeding thoroughbred horses and greyhounds while creating greenspace; and

Whereas, Invariably, after five years, section seven, article twenty-two-c, chapter twenty-nine of the code also provides for a subsequent local county recall referendum to revisit the decision by local voters to approve casino style gaming at the racetrack venues; and

Whereas, The “racinos” in West Virginia not only employ thousands of West Virginians and generate hundreds of millions of dollars of revenue for state government, the statutory structure by which they are licensed and operate, has fostered the development of live racing and breeding of thoroughbreds and greyhounds as an industry as provided for in statute; and

Whereas, Many individuals, companies, partnerships and entities have made and continue to make substantial investments in West Virginia based on the statutory framework designed to preserve and protect live racing and promote the industry of breeding of thoroughbred horses and greyhound racing stock; and

Whereas, In addition to supplementing racing and local governments, moneys generated by gaming at our state’s racetracks have been used to bolster our state’s general revenue fund as well as the state’s Development Office Promotion Fund, debt reduction funds, State Capitol improvements, the Division of Tourism, and to finance public school construction through the West Virginia School Building Authority, fund the Promise Scholarship Program, contribute to racetrack employee pensions and capital improvements for racetrack facilities; and

Whereas, West Virginia’s “racino” model proved most successful, becoming a reliable source of income for the state, but now the model is confronted with declining levels of performance for West Virginia; and

Whereas, Until recent years, West Virginia’s four “racinos” benefitted from modest market competition in neighboring states, thereby claiming a large portion of the gaming market east of the Mississippi River; and

Whereas, Our surrounding states have learned from our successful gaming regulations and have implemented similar models, allowing for new casino properties to open near to West Virginia’s borders in Ohio, Pennsylvania and Maryland; and

Whereas, Though West Virginia’s four “racinos” once enjoyed little competition for regional gaming dollars, there are now approximately twenty new casinos in neighboring states with which West Virginia’s “racinos” must compete for revenues and others under yet to become active which increases the competition for regional gaming dollars; and

Whereas, Due to this competition, racing and gaming revenues upon which our state has become so dependent are decreasing at a rapid pace, which creates a diminishing amount of money for all of the distributees of money generated by “racinos” and allocated in accordance with current law; and

Whereas, In addition to the loss of revenues for the state, the jobs of thousands of West Virginia families who rely on the live racing and gaming industries for their livelihood are also at risk; and

Whereas, There may be opportunities to capture additional revenues from the live racing, gaming and lottery enterprises in West Virginia, including models from other jurisdictions involving off-track betting; Automated Deposit Wagering or ADW to allow for convenient pari-mutuel wagering; equi-lottery; marketing West Virginia’s casino and live racing enterprises to regional and national markets; evaluating and improving marketing strategies of the West Virginia Lottery; evaluating the operational efficiencies and effectiveness of the West Virginia Lottery, including a comparative analysis with similar sized lottery operations of the various states as to cost and number of employees; to evaluate privatization opportunities within the gambit of West Virginia Lottery operations from the perspective of overall effectiveness, cost savings and productivity; review and analyze the findings of the 2015 Report of the Select Committee of the West Virginia Racing Commission containing recommendations for enhancement of live racing in West Virginia; and in general review in the entirety role of, efficiency, cost and effectiveness of state government in overseeing gaming, lottery

and live racing activities in West Virginia to provide greater understanding by legislative policymakers of such activities in order to better serve all of West Virginia citizens; and

Whereas, In recognition of the vitally important component they represent of the West Virginia economic and revenue base, the time has come to revisit the state's gaming, lottery and live racing industry structures to determine a course of action that is in the best interest of West Virginia and its people; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance establish a select committee to study all aspects of the lottery, gaming and live racing industry in West Virginia; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance establish a select committee consisting of ten members, being five from the House of Delegates and five from the Senate with no more than three members from each house from a single political party, to be responsible for a comprehensive study of West Virginia's racing and gaming industries as provided herein below, including recommending to and coordinating professional services procured in furtherance of the objectives herein described, conducting live hearings at sites determined by the committee to be optimum for gaining knowledge essential to making informed decisions regarding the areas of inquiry referenced herein, and receiving the testimony of persons directly involved in all aspects of the lottery, gaming and live racing industry in West Virginia; and, be it

*Further Resolved,* That the select committee is hereby requested to perform a comprehensive study of West Virginia's gaming, lottery and live racing industries, which said study shall include, but not be limited to, the following objectives: (1) A review of all related laws, rules, regulations and operations associated with all facets of the West Virginia Lottery, including the advisability of privatization of operational aspects of lottery operations; (2) a review of the 2015 Report of the Select Committee of the West Virginia Racing Commission and the recommendations therein contained, along with all laws, rules and regulations of live racing of greyhounds and thoroughbred horses, with recommendations for the modernization and streamlining of the same and maximization of revenues for West Virginia and for live racing interests, including recommendations which enhance the convenience of the consuming public to engage in pari-mutuel wagering on races conducted at West Virginia's racetracks consistent with the convenience they enjoy to place bets on races in foreign jurisdictions; (3) a review of all laws, rules and regulations associated with the business of both greyhound breeding and thoroughbred breeding, with recommendations for modernization and streamlining of the same consistent with providing continuing viable opportunities for these activities as a component of West Virginia's live racing industry and the jobs it represents; (4) a comprehensive review of the flow of revenues generated from racetrack video lottery, table games and any other sources contributing to money administered by the West Virginia Lottery in the form of excess lottery proceeds as a means of information for state policymakers; (5) a comprehensive investigation of appropriate governing structures for live racing and gaming activities from neighboring jurisdictions and beyond, with a recommendation of revisions and/or statutory overhaul of the governance of all forms of gaming in West Virginia, including general lottery, adult video lottery, racetrack video lottery and table games; (6) a comparative analysis of the job functions of the West Virginia Racing Commissions with comparable agencies in jurisdictions with a similar racing presence to determine the appropriateness of staff and funding levels with recommendations as to appropriate levels of each; (7) an analysis of the staff and funding levels associated with administration of all facets of the West Virginia Lottery, recognizing its unique configuration of administering conventional lottery operations, adult video lottery, racetrack video lottery and table games, and recommendations for economizing the operations of the West Virginia Lottery consistent with best industry practices; (8) an analysis of innovative and creative additions to West Virginia's gaming mix, including innovative and creative ways of more efficiently and profitably administering West Virginia's gaming activities,

of providing for convenient consumer access to products offered within the array of gaming products offered by West Virginia, to provide policymakers on the status of Internet gaming as a potential offering in West Virginia, and to identify any and all prospects which may enhance revenue generation by the entirety of West Virginia's gaming activities of all descriptions through new and additional games or manner of delivery of products to the lottery and gaming consuming public; (9) the continuing legal effects, if any, of referendums on gaming heretofore undertaken to approve such in Jefferson, Hancock, Ohio and Kanawha counties, as well as the legal effects, if any, to reexercise those rights as provided in statute; and to provide all and any suggestions for the improvement, modernization, efficiency and economization of West Virginia's entire complement of gaming activities, including live racing; and, be it

*Further Resolved*, That stakeholder representatives in all facets of West Virginia's gaming industry of lottery, "racinos", live racing, greyhound breeding and thoroughbred breeding, along with the solicitation of input from citizens living in communities which host live racing activities, be actively engaged as part of any study process through formal information gathering such as open meetings, public hearings, and surveys constructed to gather such citizen input; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2017, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

*Further Resolved*, That the expenses necessary to conduct this study, to prepare a report and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Palumbo, Stollings and Unger offered the following resolution:

**Senate Resolution 62**—Congratulating the Charleston Catholic golf team for winning the 2015 Class A State Championship.

Whereas, The Charleston Catholic golf team had a spectacular year on their way to winning the school's fifth consecutive state championship; and

Whereas, By capturing the state golf championship, Charleston Catholic became the first school in state history to win five consecutive state titles in any division; and

Whereas, The Charleston Catholic golf team is led by coach William "Bill" Gillispie and includes team members: Nick Casingal, Alexander Giatras, Cameron Blakely and Nate DeTemple; and

Whereas, The Charleston Catholic golf team overcame adversity and a two-stroke deficit after the first day of the state tournament, in route to winning the title by seven shots; and

Whereas, The 2015 Charleston Catholic golf team will go down in state history as one of the best high school golf teams ever assembled in the state of West Virginia; and

Whereas, The 2015 Charleston Catholic golf team is a shining example to all West Virginians of what can be accomplished with dedication, commitment and teamwork; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the Charleston Catholic golf team for winning the 2015 Class A State Championship; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the Charleston High School golf team.

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

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

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

**Com. Sub. for House Concurrent Resolution 5**, U.S. Army PV2 Eskridge A. Waggoner Memorial Bridge.

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

The following amendment to the resolution, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

On page two, in the first Further Resolved clause, by striking out "PV2" and inserting in lieu thereof "PVT".

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 5), as amended, 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 17**, SGT Larry Joseph Whitt Bridge.

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

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

On page two, in the Resolved clause, before "SGT" by inserting the words "U. S. Army";

On page two, in the first Further Resolved clause, before "SGT" by inserting the words "U. S. Army";

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Com. Sub. for House Concurrent Resolution No. 17**—Requesting the Division of Highways name Greenville Road Bridge, located in Logan County near the town of Man which traverses Rock House Creek, the "U. S. Army SGT Larry Joseph Whitt Memorial Bridge".

The question being on the adoption of the resolution (Com. Sub. for H. C. R. 17), as amended, 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.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 2904**, Requiring the clerk of a county commission to maintain a county ordinance book.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2904) passed with its title.

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

**Eng. Com. Sub. for House Bill 4171**, Relating to the public school calendar.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Palumbo—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4171) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Palumbo—2.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4171) takes effect from passage.

*Ordered*, That The Clerk communicate to the House of Delegates the action of the Senate and request concurrence in changed effective date.

**Eng. Com. Sub. for House Bill 4188**, Relating to the development and implementation of a program to facilitate commercial sponsorship of rest areas.

Having been read a third time on yesterday, Tuesday, March 8, 2016, and now coming up in regular order, was reported by the Clerk.

On motion of Senator Carmichael, the bill was referred to the Committee on Rules.

**Eng. House Bill 4246**, Changing the Martinsburg Public Library to the Martinsburg-Berkeley County Public Library.

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: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Laird, Leonhardt, Maynard, Miller, Mullins, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Walters, Woelfel, Yost and Cole (Mr. President)—26.

The nays were: Beach, Kessler, Kirkendoll, Palumbo, Plymale, Snyder, Unger and Williams—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4246) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

On this question, the yeas were: Ashley, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Laird, Leonhardt, Maynard, Miller, Mullins, Prezioso, Romano, Stollings, Sypolt, Takubo, Trump, Walters, Woelfel, Yost and Cole (Mr. President)—26.

The nays were: Beach, Kessler, Kirkendoll, Palumbo, Plymale, Snyder, Unger and Williams—8.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4246) takes effect from passage.

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

**Eng. House Bill 4309**, Increasing criminal penalties for conviction of certain offenses of financial exploitation of an elderly person.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4309) passed.

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

**Eng. House Bill 4309**—A Bill to amend the Code of West Virginia, 1931, by adding thereto a new article, designated §55-71-1, §55-71-2, §55-71-3, §55-71-4, §55-71-5 and §55-71-6; and to amend and reenact §61-2-29b of said code, all relating generally to protections against financial exploitation of elderly persons, protected persons and incapacitated adults; establishing a cause of action against a person who commits an act of financial exploitation against an elderly person, protected person or incapacitated adult; defining terms; restricting certain defenses which, standing alone, are based on legal relationship to an elderly person, protected person or incapacitated adult; providing for court-authorized remedies; authorizing the award of punitive damages; providing for award of costs and attorneys' fees; establishing the standard of proof; establishing the statute of limitations for actions brought under the article; authorizing the court to freeze assets and order injunctive relief; providing options the court may exercise if a person violates an injunction; providing a penalty for violating an injunction; clarifying criminal penalties for conviction of certain offenses of financial exploitation of an elderly person, protected person or incapacitated adult; and increasing the criminal penalty for the offense of financial exploitation of \$1,000 or more.

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

**Eng. House Bill 4340**, Amending licensing requirements for an act which may be called Lynette's Law.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4340) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

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

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4340) takes effect from passage.

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

**Eng. House Bill 4345**, Repealing the West Virginia Permitting and Licensing Information 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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4345) passed with its title.

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

**Eng. House Bill 4378**, Relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4378) passed.

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

**Eng. House Bill 4378**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §44A-3-17 and §44A-3-18, all relating to access to and receipt of certain information regarding a protected person by certain relatives of the protected person; authorizing relatives of a protected person to petition the circuit court for access and information about a protected person; defining “relative”; providing a relative may petition the court for an order granting access to a protected person; setting forth time standards in which to conduct a hearing after a petition is filed; providing for an emergency hearing under particular circumstances; providing for service of a petition upon a guardian and setting time standards for service thereof; providing for the entry of an order by the court following notice and hearing conducted thereon; providing standards for a court to observe and implement in issuing a ruling on a petition; providing the court may award attorney’s fees and costs be paid to a prevailing party; setting forth particular duties for a guardian to provide relatives notice about a protected person’s condition and circumstances; authorizing court to retain jurisdiction; regarding dissemination of information about a protected person to relatives; and providing a guardian method whereby may be relieved of responsibility for providing information regarding a protected person to a relative.

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

**Eng. Com. Sub. for House Bill 4383**, Making individuals responsible for the costs relating to the filing of excessive false complaints.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4383) passed.

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

**Eng. Com. Sub. for House Bill 4383**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-30-1, relating to excessive filing of false complaints; defining terms; providing for the discretionary suspension of investigatory obligations by agencies or departments under certain circumstances; setting forth time frames for determination of excessive false complaints; requiring false complaints, as defined, be shown by clear and convincing evidence; limiting the time frame investigatory obligations may be suspended; requiring the agency or department of the state to keep written records related to false complaints; providing for exceptions in the agency's or department's sole discretion; providing for written notice of determinations that a complaint was a false complaint; providing that a copy of this article accompany notices; providing that written notice also be provided to the Governor, Speaker of the House and President of the Senate; providing for exceptions to this article for emergency investigations and the West Virginia State Police; providing for civil actions; establishing burden of proof and remedies for civil actions; and preserving other available remedies of an agency or department.

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

**Eng. House Bill 4417**, Increasing wages protected from garnishment.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4417) passed with its title.

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

**Eng. Com. Sub. for House Bill 4448**, Clarifying that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse 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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4448) passed with its title.

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

**Eng. Com. Sub. for House Bill 4612**, Relating generally to tax increment financing and economic opportunity development districts.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—32.

The nays were: Facemire and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4612) passed.

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

**Eng. Com. Sub. for House Bill 4612**—A Bill to amend and reenact §7-11B-3, §7-11B-4, §7-11B-14, §7-11B-21 and §7-11B-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §7-11B-29 and §7-11B-30; to amend and reenact §7-22-5, §7-22-7, §7-22-8, §7-22-12 and §7-22-14 of said code; to amend said code by adding thereto two new sections, designated §7-22-23 and §7-22-24; to amend and reenact §8-38-5, §8-38-7, §8-38-8, §8-38-12 and §8-38-14 of said code; to amend said code by adding thereto two new sections, designated §8-38-23 and §8-38-24; and to amend and reenact §11-10-11a of said code, all relating generally to tax increment financing; authorizing tax increment financing for the funding road projects in West Virginia; permitting certain agreements between the Division of Highways and counties or municipalities regarding development districts; permitting financing of certain projects by proceeds of tax increment financing obligations; permitting road construction projects be done jointly by counties and municipalities under certain circumstances; establishing procedures and requirements for applications and the management of projects and districts; providing that projects are public improvements and subject to certain requirements; permitting the Division of Highways to propose certain projects; establishing procedures for the West Virginia Development Office and the Tax Commissioner regarding applications and their review; permitting audits in certain circumstances; establishing a procedure for adding or removing property from an economic opportunity development district; requiring procedures relating to taxpayers; providing for

confidentiality; providing that roads to be part of the state road system; requiring legislative rulemaking; permitting a fee to be assessed; making findings; and defining terms.

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

**Eng. House Bill 4651**, Relating to professional examination requirements for hearing-aid dealers and fitters.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4651) passed with its title.

Senator Carmichael moved that the bill take effect from passage.

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

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4651) takes effect from passage.

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

**Eng. House Bill 4739**, Unclaimed Life Insurance Benefits 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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel and Cole (Mr. President)—32.

The nays were: Laird and Yost—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4739) passed.

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

**Eng. House Bill 4739**—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §33-13D-1 and §33-13D-2, relating to the creation of the Unclaimed Life Insurance Benefits Act; defining terms; regulating insurer conduct generally; requiring insurers to perform an annual comparison of its insureds' Policies, Retained Asset Accounts and Account Owners against a Death Master File; requiring insurers to conduct a comparison against a Death Master File on policies issued as of 1986 and all policies issued thereafter; establishing a two year requirement from the effective date of this article; requiring the Insurance Commissioner promulgate rules related to Death Master File comparisons for policies issued prior to 1986 if the commissioner determines that reliable technology and data exist to make such comparison accurate and cost-effective; providing that the annual comparison of insureds' Policies, Retained Asset Accounts and Account Owners against a Death Master File shall not apply to those accounts for which the insurer is receiving premiums from outside the policy value, by check, bank draft, payroll deduction or any other similar method of payment within eighteen months immediately preceding the Death Master File comparison; requiring insurers to implement procedures to account for incomplete identifying information such as nicknames, maiden names or other identifying information; requiring reasonable steps to be taken to locate and contact beneficiaries or other authorized representatives regarding the insurer's claims process; clarifying that benefits shall first be paid to beneficiaries and, if beneficiaries cannot be found, paid to the state as unclaimed property; permitting insurers to release such identifying information as may be necessary to help identify or locate beneficiaries; authorizing the Insurance Commissioner to issue orders related to requirements imposed on insurers and imposing a hardship burden on insurers seeking orders adjusting their obligations; and authorizing the Insurance Commissioner to promulgate rules that may be reasonably necessary to implement the Unclaimed Life Insurance Benefits Act.

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

**Eng. House Bill 4740**, Permitting that current members of the National Guard or Reserves may be excused from jury duty.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4740) passed.

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

**Eng. House Bill 4740**—A Bill to amend and reenact §52-1-11 of the Code of West Virginia, 1931, as amended, relating to excuses from jury service; and permitting that current members of the National Guard or reserves may be excused from jury duty.

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

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

Pending announcement of a meeting of a standing committee of the Senate, including a minority party caucus,

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

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

**Com. Sub. for Senate Bill 269**, Budget Bill.

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

**Eng. House Bill 2494**, Creating a provisional plea process in criminal cases.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended, by adding thereto a new section, designated §61-11-22a to read as follows:

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

#### **§61-11-22a. Deferred adjudication.**

(a) Upon the entry of a guilty plea to a felony or misdemeanor before a circuit or magistrate court of this state entered in compliance with the provisions of West Virginia Rule of Criminal Procedure 11 or Rule 10 of the West Virginia Rules of Criminal Procedure for Magistrate Courts and applicable judicial decisions, the court may, upon motion, defer acceptance of the guilty plea and defer further adjudication thereon and release the defendant upon such terms and conditions as the court deems just and necessary. Terms and conditions may include, but are not limited to, periods of incarceration, drug and alcohol treatment, counseling and participation in programs offered under articles eleven-a, eleven-b and eleven-c, chapter sixty-two of this code.

(b) If the offense to which the plea of guilty is entered is a felony, the circuit court may defer adjudication for a period not to exceed five years. If the offense to which the plea of guilty is entered is a misdemeanor, the court may defer adjudication for a period not to exceed two years.

(c) If the defendant complies with the court-imposed terms and conditions he or she shall be permitted to withdraw his or her plea of guilty and the matter dismissed or, as may be agreed upon by the court and the parties, enter a plea of guilty or no contest to a lesser offense.

(d) In the event the defendant is alleged to have violated the terms and conditions imposed upon him or her by the court during the period of deferral the prosecuting attorney may file a motion to accept the defendant's plea of guilty and, following notice, a hearing shall be held on the matter.

(e) In the event the court determines that there is reasonable cause to believe that the defendant violated the terms and conditions imposed at the time the plea was entered, the court may accept the defendant's plea to the original offense and impose a sentence in the court's discretion in accordance with the statutory penalty of the offense to which the plea of guilty was entered or impose such other terms and conditions as the court deems appropriate.

(f) The procedures set forth in this section are separate and distinct from that set forth in West Virginia Rule of Criminal Procedure 11(a)(2).

The bill (Eng. H. B. 2494), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2826**, Requiring the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; "Sarah Nott's Law".

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

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

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

#### **ARTICLE 4. STATE ROAD SYSTEM.**

##### **§17-4-49. Same — Points of commercial, etc.; access to comply; plans, objections and procedures for new points; review of and changes in existing points; commissioner's preliminary determination; requiring notice.**

(a) No new points of access to and from state highways from and to real property used or to be used for commercial, industrial or mercantile purposes may be opened, constructed or maintained without first complying with this section and sections forty-seven and forty-eight of this article. Access points opened, constructed or maintained without compliance are unauthorized.

(b) Plans for any new point of access shall be submitted to the Commissioner of Highways directly and the following rules shall apply:

(1) Notice of the proposed new point of access shall be filed with the commissioner, along with a plan of the proposed new point of access.

(2) The commissioner shall review the plan to ensure compliance with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article.

(3) If the commissioner objects to a plan, he or she shall reduce his or her objections to the proposed new point of access to writing and promptly furnish notice of the objection to the owner or owners of the real property affected and advise the owner or owners of the right to demand a hearing on the proposed plan and the objections. If a plan is not objected to within six weeks from the time it is filed with the commissioner, it is considered approved by the commissioner.

(4) In any case where the commissioner objects to the proposed new point of access, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on such objections.

(c) (1) Existing points of access to and from state highways from and to real property used for commercial, industrial or mercantile purposes may be reviewed by the commissioner to determine whether such points of access comply with the policies stated in section forty-seven of this article and with any regulations issued by the commissioner under section forty-eight of this article. The commissioner may direct reasonable changes in existing points of access to and from state highways from and to property used for commercial, industrial or mercantile purposes if he or she determines from accident reports or traffic surveys that the public safety is seriously affected by such points of access and that such reasonable changes would substantially reduce the hazard to public safety. When such changes require construction, reconstruction or repair, such work shall be done at state expense as any other construction, reconstruction or repair.

(2) If the commissioner makes a preliminary determination that any changes should be made, the following rules apply:

(A) The commissioner shall reduce his or her preliminary determination to writing and promptly furnish notice of such preliminary determination to the owner or owners of the real property affected and of their right to demand a hearing on the preliminary determination. The commissioner's notice shall include a description of suggested changes suitable for reducing the hazard to the public safety.

(B) In any case where the commissioner makes a preliminary determination that any changes should be made, the owner or owners of the real property affected shall have reasonable opportunity for a hearing on the preliminary determination.

(d) For points of access existing on or before July 1, 2016, to and from state highways from and to real property used for commercial, industrial or mercantile purposes if the access is more than fifty feet wide, the access is along a state highway with a speed limit of more than forty-five miles per hour and the commissioner deems it appropriate due to heavy traffic or other circumstances, the commissioner shall either place "no parking" signs at each side of the driveway entrance fronting the state highway or clearly mark that right-of-way with yellow paint with the words "no parking" or both to provide notice that parking is prohibited.

(e) For points of access approved by the commissioner after July 1, 2016, to and from state highways from and to real property used for commercial, industrial or mercantile purposes if the access is more than fifty feet wide, the access is along a state highway with a speed limit of more than forty-five miles per hour and the commissioner deems it appropriate due to heavy traffic or other circumstances, the owner or owners of the real property shall be required to place "no parking" signs at each side of the driveway entrance fronting the state highway or clearly mark that right-of-way with yellow paint with the words "no parking" or both to provide notice that parking is prohibited. This subsection and subsection (d) of this section shall be known as "Sarah Nott's Law".

The bill (Eng. Com. Sub. for H. B. 2826), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4014**, Preventing the State Board of Education from implementing common core academic standards and assessments.

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

The following amendments to the bill, from the Committee on Education, were reported by the Clerk and considered simultaneously:

On pages five through eleven, section five, lines eighty-four through two hundred thirty, by striking out all of subsection (d) and (e) and inserting in lieu thereof the following:

(d) West Virginia Academic Standards. —

(1) Legislative authority – Sections one, two and twelve, article XII of the Constitution of the State of West Virginia impose a duty upon the Legislature, as a separate but equal branch of government:

(A) To “provide, by general law, for a thorough and efficient system of free schools”;

(B) To prescribe by law the duties of the state board in the general supervision of free public schools;

(C) To prescribe by law the powers and duties of the state superintendent; and

(D) To foster and encourage moral, intellectual, scientific and agricultural improvement in schools.

(2) For purposes of this subsection, “academic standards” are concise, written descriptions of what students are expected to know and be able to do at a specific stage of their education. Academic standards describe what students should have learned by the end of a course, grade level or grade span.

(3) The Legislature recognizes that on December 15, 2015, the state board adopted what it represented were academic standards no longer aligned with Common Core State Standards and renamed them “West Virginia College–and–Career–Readiness Standards for English Language Arts (Policy 2520.1A)” and “West Virginia College–and–Career–Readiness Standards for Mathematics (Policy 2520.1B)”.

(4) The Legislature hereby establishes an Academic Standards Evaluation Panel. The panel shall consist of six appointed members and one ex officio member. The deans responsible for the math programs, the deans responsible for the English programs and the deans responsible for the engineering programs at West Virginia University and Marshall University shall each appoint one member. The Chancellor of the Higher Education Policy Commission, or his or her designee, shall serve as an ex officio member and be responsible for facilitating the work of the panel. The Academic Standards Evaluation Panel shall:

(A) Using the West Virginia College–and–Career–Readiness Standards for English Language Arts and Mathematics as a framework, evaluate and recommend revisions to the standards based on empirical research and data to ensure grade-level alignment to the standards of states with a proven track record of consistent high-performing student achievement in English Language Arts on the National Assessment of Educational Progress; and in Mathematics, on both the National Assessment of Educational Progress and Trends in Math and Science Study International Assessment;

(B) Review the Next Generation Content Standards and Objectives for Science in West Virginia Schools and recommend revisions that it considers appropriate;

(C) Remove common core strategies that require instructional methods;

(D) Use facilities, staff and supplies provided by the Higher Education Policy Commission;

(E) Submit its evaluation and recommended revisions to the state board and the Legislative Oversight Commission on Education Accountability by October 1, 2016.

(5) The state board shall withdraw from the Memorandum of Agreement entered into with the Council of Chief State School Officers and the National Governors Association for Best Practices, which required the state board to agree that common core represents eighty-five percent of West Virginia’s standards in English Language Arts and Mathematics and withdraw as a governing state in the Smarter Balanced Assessment Consortium.

(6) Any academic standard adopted by the state board shall meet the following criteria:

(A) Be age level and developmentally appropriate, particularly as it relates to sequencing of content standards and the measurement of student academic performance;

(B) Be free of instructional strategies;

(C) Meet national and international benchmarks empirically proven to increase and sustain student achievement; and

(D) Be based solely on academic content.

(7) The Legislative Oversight Commission on Education and Accountability shall review any proposed rules relating to academic standards to determine whether the board has exceeded the scope of its statutory authority in approving the proposed legislative rule and whether the proposed legislative rule is in conformity with the legislative intent of the provisions of this subsection. The Legislative Oversight Commission on Education and Accountability may, at its discretion, hold public hearings, recommend to the board any changes needed to comply with the legislative intent of this subsection and make recommendations to the Legislature for any statutory changes needed to clarify the legislative intent of this statute.

~~(d)(e) Comprehensive statewide student assessment program. — The state board shall establish a comprehensive statewide student assessment program to assess student performance and progress in grades three through through twelve. The assessment program is subject to the following:~~

~~(1) The state board shall promulgate a rule in accordance with the provisions of article three-b, chapter twenty-nine-a of this code establishing the comprehensive statewide student assessment program;~~

~~(2) Prior to the 2014-2015 school year, the state board shall align the comprehensive statewide student assessment for all grade levels in which the test is given with the college-readiness standards adopted pursuant to section thirty-nine, article two of this chapter or develop other aligned tests to be required at each grade level so that progress toward college readiness in English/language arts and math can be measured.~~

~~(3) The state board may require that student proficiencies be measured through the ACT EXPLORE and the ACT PLAN assessments or other comparable assessments, which are approved by the state board and provided by future vendors;~~

(1) For federal and state accountability purposes, the state board shall review and approve a summative assessment system for administration to all public school students, beginning in school year 2016-2017, in grades three through eight and once in early high school that assesses students in English, reading, writing, science and mathematics: *Provided*, That the assessment in science may only be administered once during the grade span of three through five and once during the grade span of six through eight. The assessment shall include those students as required by the federal Individuals with Disabilities Education Act and by Title I of the Elementary and Secondary Education Act. The summative assessment system must meet the following requirements:

(A) Be a vertically-scaled, benchmarked, standards-based system of summative assessments;

(B) Document student progress toward national college and career readiness benchmarks derived from empirical research and state standards;

(C) Be capable of measuring individual student performance in English, reading, writing, science and mathematics: *Provided*, That the assessment in science may only be administered once during the grade span of three through five and once during the grade span of six through eight;

(D) Be available in paper-and-pencil and computer-based formats;

(E) Be a predictive measure of student progress toward a national college readiness assessment used by higher education institutions for admissions purposes; and

(F) Be aligned or augmented to align with the standards in effect at the time the test is administered.

(2) The state board shall review and approve a college readiness assessment to be administered to all students in the eleventh grade for the first time in school year 2016-2017 and subsequent years. The eleventh grade college readiness assessment shall be administered at least once to each eleventh grade student and shall meet the following requirements:

(A) Be a standardized, curriculum-based, achievement college entrance examination;

(B) Assess student readiness for first-year, credit-bearing coursework in postsecondary education;

(C) Test in the areas of English, reading, writing, science and mathematics;

(D) Have content area benchmarks for measuring student achievement;

(E) Be administered throughout the United States;

(F) Be relied upon by institutions of higher education for admissions; and

(G) Be aligned or augmented to align with the standards in effect at the time the test is administered.

(3) The state board shall review and approve career readiness assessments and assessment-based credentials that measure and document foundational workplace skills. The assessments shall be administered to public secondary school students in grades eleven or twelve for the first time in school year 2016-2017 and subsequent years: *Provided*, That the career readiness assessment is voluntary and may only be administered to students who elect to take the assessment. The assessment-based credential shall be available to any student who achieves at the required level on the assessments. The assessments shall meet the following requirements:

(A) Be a standardized, criterion-referenced, measure of broadly relevant foundational workplace skills;

(B) Assess and document student readiness for a wide range of jobs;

(C) Measure skills in all or any of the following areas:

(i) Applied mathematics;

(ii) Locating information; or

(iii) Reading for information;

(D) Align with research-based skill requirement profiles for specific industries and occupations;

(E) Lead to a work readiness certificate for students who meet the minimum proficiency requirements on the component assessments; and

(F) Be available in paper-and-pencil and computer-based formats.

(4) The state board shall not acquire or implement any assessment instrument or instruments developed to specifically align with the Common Core State Standards including Smarter Balanced Assessment or Partnership for Assessment of Readiness for College and Careers (PARCC).

(5) For any online assessment, the state board shall provide online assessment preparation to ensure that students have the requisite digital literacy skills necessary to be successful on the assessment.

(6) The state board shall develop a plan and make recommendations regarding end-of- course assessments and student accountability measures and submit its findings to the Legislative Oversight Commission on Education and Accountability by December 31, 2016.

(7) The state board shall develop a policy which sets forth accountability measures for students taking the comprehensive statewide assessment.

(8) Any summative assessment approved by the state board shall take no more than two percent of a student's instructional time.

~~(4)~~ (9) The state board may require that student proficiencies be measured through the West Virginia writing assessment at any grade levels determined by the state board to be appropriate.

~~(6)~~ (10) The state board may provide through ~~the statewide assessment program~~ policy other optional testing or assessment instruments applicable to grade levels kindergarten through eight and grade eleven which may be used by each school to promote student achievement. The state board annually shall publish and make available, electronically or otherwise, to school curriculum teams and teacher collaborative processes the optional testing and assessment instruments.;

And,

On page eighteen, section five, line four hundred eighteen, after the word "appeals." by striking out the remainder of the subdivision.

At the request of Senator Plymale, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4014) was advanced to third reading with the Education committee amendments pending and the right reserved to consider other amendments to the bill on that reading.

**Eng. Com. Sub. for House Bill 4080**, Department of Veterans' Assistance, rule relating to VA headstones or markers.

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

**Eng. Com. Sub. for House Bill 4168**, Creating a special motor vehicle collector license plate.

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

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

**Eng. Com. Sub. for House Bill 4265**, Relating to payment by the West Virginia Municipal Bond Commission or state sinking fund commission or the governing body issuing the bonds.

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

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

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

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 3. COUNTY PROPERTY.**

#### **§7-3-9. Form and payment of bonds; use of proceeds of bonds.**

Any county commission issuing revenue bonds under the provisions of this article shall thereafter, so long as any such bonds remain outstanding, operate and maintain said courthouse, hospital, other public buildings, jail or regional correctional center, to provide revenues sufficient to pay all operating costs, provide a sinking fund for, and to retire such bonds and pay the interest thereon as the same may become due. The amounts, as and when so set apart by said county commission, shall be remitted to the West Virginia Municipal Bond Commission at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and with the order pursuant to which the bonds have been issued. The West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any order passed pursuant to the provisions of this article, and shall invest all sinking funds, as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the county commission directly thereto. Revenue bonds issued under the provisions of this article are hereby declared to be and to have all the qualities of negotiable instruments. Such bonds shall bear interest at the rate or rates set by the county commission, not to exceed twelve percent per annum, payable semiannually, and shall mature at any time fixed by the county commission, in not more than thirty years from their date. Such bonds shall be sold at a price not lower than a price which, when computed upon standard tables of bond values, will show a net return of not more than thirteen percent per annum to the purchaser upon the amount paid therefor. Such bonds may be made redeemable at the option of the county commission at such price and under terms and conditions as said county commission may fix, by its order, prior to the issuance of such bonds. Revenue bonds issued hereunder shall be payable at the office of the State Treasurer, or a designated bank or trust company within or without the State of West Virginia.

In case any of the officers whose signatures appear on such bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes the same as if they had remained in office until such delivery. The county commission shall by order entered prior to the issuance of said bonds, fix the denominations, times and places of payment of such bonds, the principal and interest of which shall be payable in lawful money of the United States of America. The proceeds of such bonds shall be used solely for the payment of the cost of land, buildings, furniture and equipment thereon, and shall be checked out by the county commission under such restrictions as are contained in the order providing for the issuance of said bonds. If the proceeds of such bonds issued for any courthouse, hospital, other public buildings, jail or regional correctional center, shall exceed the cost thereof, the surplus shall be paid into the fund herein provided for the payment of principal and interest upon such bonds. Such fund may be used for the purchase or redemption of any of the outstanding bonds payable from such fund at the market price, but at not exceeding the price at which any of such bonds shall in the same year be redeemable, as fixed by the commission in its said order, and all bonds redeemed or purchased shall forthwith be canceled, and shall not again be issued.

Prior to the preparation of definitive bonds, the county commission may, under like restrictions, issue temporary bonds, or interim certificates, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. Such bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specified and required by this article.

## CHAPTER 8. MUNICIPAL CORPORATIONS.

### ARTICLE 16. MUNICIPAL PUBLIC WORKS; REVENUE BOND FINANCING.

#### **§8-16-17. Sinking fund; ~~sinking fund commission~~ West Virginia Municipal Bond Commission; transfer of funds; purchase of outstanding bonds.**

Before the issuance of any such bonds, the governing body or bodies shall, by ordinance or ordinances, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said works, and shall set aside and pledge a sufficient amount of the net revenues of the works hereby defined to mean the revenues of the works remaining after the payment of the reasonable expenses of repair (including replacements), maintenance and operation, such amount to be paid by the board into the sinking fund at intervals, to be determined by ordinance or ordinances adopted prior to the issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided, which margin, together with unused surplus of such margin carried forward from the preceding year and the amounts set aside as reserves out of the proceeds from the sale of the bonds, or from the revenues of said works, or from both, shall equal ten percent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the works. Prior to the issuance of the bonds, the board may, by ordinance or ordinances, be given the right to use or direct the trustee or the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. After the payments into the sinking fund as herein required and after reserving an amount deemed by the board sufficient for repair (including replacements), maintenance and operation for an ensuing period of not less than twelve months and for depreciation, the board may at any time in its discretion transfer all or any part of the balance of the net revenues into the sinking fund or into a fund for improvement, renovation, extension, enlargement, increase or equipment for or to the works, or the governing body or bodies may, notwithstanding the provisions of section twenty, article thirteen of this chapter, transfer all or any part of the balance of the net revenues to the general or any special fund of the municipality or municipalities and use such revenues for any purpose for which such general or special fund may be expended.

All amounts for the sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission at such periods as shall be designated in the ordinance or ordinances, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the ordinance or ordinances pursuant to which such bonds have been issued. The ~~state sinking fund commission~~ West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any ordinance or ordinances passed or adopted pursuant to the provisions of this

article and shall invest all sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

## **ARTICLE 27. INTERGOVERNMENTAL RELATIONS – URBAN MASS TRANSPORTATION SYSTEMS.**

### **§8-27-16. Sinking fund; ~~sinking fund commission~~ West Virginia Municipal Bond Commission; purchase of outstanding bonds.**

Before the issuance of any bonds under the provisions of this article, the authority shall, by resolution, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banking institutions or trust companies for making payment of such bonds and interest, out of the net revenues of said system, and, in this connection, shall set aside and pledge a sufficient amount of the net revenues of the system for such purpose, such net revenues being hereby defined to mean the revenues of the system remaining after the payment of the reasonable expense of administration, maintenance, repair and operation, such amount to be paid by such authority into the sinking fund at intervals, to be determined by resolution adopted prior to the issuance of the bonds, for: (a) The interest upon such bonds as such interest shall fall due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or, if all the bonds mature at one time, the proper maintenance of a sinking fund sufficient for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as provided in this article. Such required payments shall constitute a first charge upon all the net revenues of such authority. Prior to the issuance of any bonds, the authority may, by resolution, be given the right to use or direct the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission to use such sinking fund, or any part thereof, in the purchase of any of the outstanding bonds payable therefrom, at the market prices thereof, but not exceeding the price, if any, at which the same shall in the same year be payable or redeemable, and all bonds redeemed or purchased shall forthwith be cancelled, and shall not again be issued. In addition to the payments into the sinking fund provided for above, the authority may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by such authority sufficient for maintenance, repair and operation for an ensuing period of not less than twelve months and for depreciation, into the sinking fund.

The amounts of the balance of the net revenues as and when so set apart shall be remitted to the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission at such periods as shall be designated in the resolution, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this article and the resolution pursuant to which such bonds have been issued. The ~~state sinking fund commission~~ West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any resolution adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the authority directly thereto.

## **CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.**

### **ARTICLE 2A. ATHLETIC ESTABLISHMENTS.**

**§10-2A-16. Sinking fund.**

At or before the issuance of any such bonds, the board shall, by resolution, provide for a sinking fund for the payment of the bonds and the interest thereon, and the payment of the charges of banks or trust companies for making payment of such bonds, and interest, out of the net revenues of said athletic establishment, and shall set aside and pledge a sufficient amount of the net revenues of the athletic establishment to be paid by the board into such sinking fund at intervals to be determined by resolution adopted prior to the issuance of the bonds, for: (a) The interest upon such bonds as the same becomes due; (b) the necessary fiscal agency charges for paying bonds and interest; (c) the payment of the bonds as they fall due, or if all bonds mature at one time, the maintenance of a proper sinking fund for the payment thereof at such time; and (d) a margin for safety and for the payment of premium upon bonds retired by call or purchase as herein provided for, which margin, together with unused surplus of such margin carried forward from the preceding year, shall equal ten per cent of all other amounts so required to be paid into the sinking fund. Such required payments shall constitute a first charge upon all the net revenues of the athletic establishment. Net revenues as used herein shall mean the revenues of the athletic establishment remaining after the payment of reasonable expense of operation, repairs, maintenance, insurance and all other reasonable costs of maintaining and operating the same required to be paid from the revenues thereof. After the payment into the sinking fund as herein required, the board may at any time in its discretion transfer all or any part of the balance of the net revenues, after reserving an amount deemed by the board sufficient for operation, repairs, maintenance and depreciation for an ensuing period of not less than twelve months, into the sinking fund or into a fund for extensions, improvements and additions to such athletic establishment. All amounts for sinking fund and interest, as and when set apart for the payment of same, shall be remitted to the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission at such periods as shall be designated in the resolution, but in any event at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission, consistent with provisions of this article and the order pursuant to which such bonds have been issued. The ~~state sinking fund commission~~ West Virginia Municipal Bond Commission is hereby authorized to act as fiscal agent for the administration of such sinking fund under any resolution adopted pursuant to the provisions of this article and shall invest all sinking funds as provided by general law. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the board directly thereto.

**CHAPTER 17. ROADS AND HIGHWAYS.****ARTICLE 17. TOLL BRIDGES.****§17-17-22. Tolls to be charged for bond payment; intrastate and interstate bridges included in one issue; purchase of existing bridges; disposition of tolls.**

Tolls shall be fixed, charged and collected for transit over such bridges and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges for which a single issue of bonds is issued, as to provide a fund sufficient to pay the principal and interest of such issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America now in force or hereafter to be enacted or made. Two or more bridges may be included in one issue of bonds, and intrastate and interstate bridges may be grouped in the same issue: *Provided*, That no existing bridge or bridges shall be acquired by purchase, eminent domain, or otherwise, unless the state road commissioner shall have determined that the income therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest and sinking fund requirements of

any bonds to be issued to pay the purchase price thereof, or, if such existing bridge or bridges are to be combined with any other bridge or bridges, either then existing or thereafter to be constructed or acquired by purchase, eminent domain, or otherwise, as provided in section twenty-three-b following, unless the state road commissioner shall have determined that the income from such combined bridges, based upon the toll receipts for the next preceding fiscal or calendar year in the case of any existing bridge or bridges and upon estimates of future toll receipts in the case of any bridge or bridges to be constructed, will be sufficient to pay all expenses of operating and maintaining such combined bridges, in addition to the interest and sinking fund requirements of any bonds issued to pay the purchase price of such existing bridge or bridges and the interest and sinking fund requirements of any bonds issued to pay the cost of construction, acquiring, modernizing, repairing, reconstructing or improving any bridge or bridges and approaches thereto, with which such existing bridge or bridges are to be so combined. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof, as may be necessary to pay such cost of maintaining, repairing and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the ~~sinking fund commission~~ West Virginia Municipal Bond Commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired or improved, under the provisions of this article and forming a connecting link between two or more state highways, or providing a river crossing for a state highway, are hereby adopted as a part of the state road system, but no such bridge or bridges shall be constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired or improved, under the provisions of this article without the approval in writing of the state road commissioner and the Governor. If there be in the funds of the ~~state sinking fund commission~~ West Virginia Municipal Bond Commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing or improving, such bridge or bridges, the state road commissioner is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

**§17-17-34. Same — Retiring bonds; remittance to sinking fund.**

Every municipality or county court issuing bonds, or other evidences of indebtedness, under the provisions of this act, shall thereafter, so long as any such bonds or other evidences of indebtedness remain outstanding, operate and maintain its bridge so as to provide, charge, collect and account for revenues therefrom as will be sufficient to pay all operating costs, provide a depreciation fund, retire the bonds or other evidences of indebtedness, and pay the interest requirements as the same may become due. The ordinance or order pursuant to which any such bonds or other evidences of indebtedness are issued shall pledge the revenues derived from the bridge to the purposes aforesaid, and shall definitely fix and determine the amount of revenues which shall be necessary and set apart in a special fund for the bond requirements. The amounts, as and when so set apart into said special fund for the bond requirements, shall be remitted to the ~~state sinking fund commission~~ West Virginia

Municipal Bond Commission at least thirty days previous to the time interest or principal payments become due, to be retained and paid out by said commission consistent with the provisions of this act and the ordinance or order pursuant to which such bonds or other evidences of indebtedness have been issued. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental agency or department thereof may be made by the governing body directly thereto.

The bill (Eng. Com. Sub. for H. B. 4265), as amended, was then ordered to third reading.

**Eng. House Bill 4315**, Relating to air-ambulance fees for emergency treatment or air transportation.

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

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

**Eng. House Bill 4334**, Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority.

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

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

**Eng. House Bill 4351**, Transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture.

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

**Eng. Com. Sub. for House Bill 4360**, Increasing the criminal penalty for the unlawful practice of law.

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

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

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

## **ARTICLE 2. ATTORNEYS-AT-LAW.**

### **§30-2-4. Practice without license or oath; penalty; qualification after institution of suits.**

(a) It shall be ~~is~~ unlawful for any ~~natural~~ person to practice or appear as an attorney-at-law for another in a court of record in this state or to make it a business to solicit employment for any attorney, ~~or to furnish an attorney or counsel to render legal services,~~ or to hold himself or herself out to the public or any member thereof as being entitled to practice law, or in any other manner to assume, use or advertise the title of lawyer, ~~or attorney and counselor-at-law, or counselor, or attorney and counselor,~~ or equivalent terms in any language, in such manner as to convey the impression that he or she is a legal practitioner of law, or in any manner to advertise that he or she, either alone or together with other persons, has, owns, conducts or maintains a law office, without first having been duly and regularly licensed and admitted to practice law in ~~a court of record~~ the courts of this State,

and without having subscribed and taken the oath required by the ~~next preceding section~~ provisions of section three of this article.

(b) Any person violating the provisions of this section subsection (a) of this section shall be is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 \$5,000, or confined in jail not more than ninety days, or both fined and confined, and on any subsequent offense, is guilty of a misdemeanor and shall be fined not more than \$10,000, or confined in jail not more than one year, or both fined and confined: but this penalty shall not be incurred by any attorney who institutes suits in the circuit courts after obtaining a license, if he or she shall qualify at the first term thereafter of a circuit court of any county of the circuit in which he or she resides: Provided, That nothing herein prohibits a lawyer from advertising services or hiring a person to assist in advertising services as permitted by the Rules of Professional Conduct.

The bill (Eng. Com. Sub. for H. B. 4360), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4365**, Relating to the certificate of need process.

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

At the request of Senator Ferns, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendments to the bill were withdrawn.

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

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

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 2D. CERTIFICATE OF NEED.**

#### **§16-2D-1. Legislative findings.**

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

(1) That the offering or development of all health services shall be accomplished in a manner which is orderly, economical and consistent with the effective development of necessary and adequate means of providing for the health services of the people of this state and to avoid unnecessary duplication of health services, and to contain or reduce increases in the cost of delivering health services.

(2) That the general welfare and protection of the lives, health and property of the people of this state require that the type, level and quality of care, the feasibility of providing such care and other criteria as provided for in this article, including certificate of need standards and criteria developed by the authority pursuant to provisions of this article, pertaining to health services within this state, be subject to review and evaluation before any health services are offered or developed in order that appropriate and needed health services are made available for persons in the area to be served.

#### **§16-2D-2. Definitions.**

As used in this article:

(1) "Affected person" means:

(A) The applicant;

(B) An agency or organization representing consumers;

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

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

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

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

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

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

(I) An organization representing health care providers.

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

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

(4) "Applicant" means a person proposing a proposed health service;

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

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

(7) "Behavioral health services" means services provided for the care and treatment of persons with mental illness in an inpatient or outpatient setting.

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

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

(10) "Capital expenditure" means:

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

(i) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance; or (ii) is made to obtain either by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

(B)(i) Exceeds the expenditure minimum; (ii) is a substantial change to the bed capacity of the facility with respect to which the expenditure is made; or (iii) is a substantial change to the services of such facility;

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

(D) A series of expenditures, if the sum total exceeds the expenditure minimum and if determined by the state agency to be a single capital expenditure subject to review. In making this determination, the state agency shall consider: Whether the expenditures are for components of a system which is required to accomplish a single purpose; or whether the expenditures are to be made within a two-year period within a single department such that they will constitute a significant modernization of the department.

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

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

(13) "Diagnostic imaging" means the use of radiology, ultrasound, mammography, fluoroscopy, nuclear imaging, densitometry to create a graphic depiction of the body parts;

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

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

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

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

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

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

(A) Home health aide services;

(B) Physical therapy;

(C) Speech therapy;

(D) Occupational therapy;

(E) Nutritional services; or

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

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

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

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

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

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

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

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

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

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

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

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

(31) "Physician" means an individual who is licensed by the Board of Medicine or the Board of Osteopathy to practice in West Virginia.

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

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

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

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

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

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

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

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

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

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

(43) "Substantial change to the health services" means:

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

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

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

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

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

(a) The authority shall:

(1) Administer the certificate of need program;

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

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

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

(b) The authority may:

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

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

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

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

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

**§16-2D-4. Rule-making Authority.**

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

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

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

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

(4) The required information in a letter of intent;

(5) Process for an expedited certificate of need;

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

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

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

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

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

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

(a) All fees and other moneys, except administrative fines, received by the board shall be deposited in a separate special revenue fund in the State Treasury which is continued and shall be known as the "Certificate of Need Program Fund". Expenditures from this fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions of article two, chapter eleven-b of this code: *Provided*, That for the fiscal year ending June 30, 2017, expenditures are authorized from collections rather than pursuant to appropriation by the Legislature.

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

**§16-2D-6. Changes to certificate of need standards.**

(a) When the authority proposes a change to the certificate of need standards, it shall file with the Secretary of State, for publication in the State Register, a notice of proposed action, including the text of all proposed changes, and a date, time and place for receipt of general public comment. To comply with the public comment requirement of this section, the authority may hold a public hearing or schedule a public comment period for the receipt of written statements or documents.

(b) When changing the certificate of need standards, the authority shall identify relevant criteria contained in section twelve and apply those relevant criteria to the proposed health service in a manner that promotes the public policy goals and legislative findings contained in section one.

(c) The authority shall form task forces to assist it in satisfying its review and reporting requirements. The task forces shall be comprised of representatives of consumers, business, providers, payers and state agencies.

(d) The authority shall coordinate the collection of information needed to allow the authority to develop recommended modifications to certificate of need standards.

(e) The authority may consult with or rely upon learned treatises in health planning, recommendations and practices of other health planning agencies and organizations, recommendations from consumers, recommendations from health care providers, recommendations from third-party payors, materials reflecting the standard of care, the authority's own developed expertise in health planning, data accumulated by the authority or other local, state or federal agency

or organization and any other source deemed relevant to the certificate of need standards proposed for change.

(f) All proposed changes to the certificate of need standards, with a record of the public hearing or written statements and documents received pursuant to a public comment period, shall be presented to the Governor. Within thirty days of receiving the proposed amendments or modifications, the Governor shall either approve or disapprove all or part of the amendments and modifications and, for any portion of amendments or modifications not approved, shall specify the reason or reasons for disapproval. Any portions of the amendments or modifications not approved by the Governor may be revised and resubmitted.

(g) The certificate of need standards adopted pursuant to this section which are applicable to the provisions of this article are not subject to article three, chapter twenty-nine-a of this code. The authority shall follow the provisions set forth in this section for giving notice to the public of its actions, holding hearings or receiving comments on the certificate of need standards. The certificate of need standards in effect on July 1, 2016, and all prior versions promulgated and adopted in accordance with the provisions of this section are and have been in full force and effect from each of their respective dates of approval by the Governor.

(h) After approval from the Governor, the authority shall prepare a report detailing its review findings and submit the report to the Legislative Oversight Commission on Health and Human Resources Accountability with its annual report before January 1, each year.

#### **§16-2D-7. Determination of reviewability.**

person may make a written request to the authority for it to determine whether a proposed health service is subject to the certificate of need or exemption process. The authority may require that a person submit certain information in order to make this determination. A person shall pay a \$100 fee to the authority to obtain this determination. A person is not required to obtain this determination before filing an application for a certificate of need or an exemption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) The acquisition of major medical equipment;

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

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

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

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

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

(2) Providing radiation therapy;

(3) Providing computed tomography;

(4) Providing positron emission tomography;

(5) Providing cardiac surgery;

(6) Providing fixed magnetic resonance imaging;

(7) Providing comprehensive medical rehabilitation;

(8) Establishing an ambulatory care center;

(9) Establishing an ambulatory surgical center;

(10) Providing diagnostic imaging;

(11) Providing cardiac catheterization services;

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

- (13) Providing megavoltage radiation therapy;
- (14) Providing surgical services;
- (15) Establishing operating rooms;
- (16) Adding acute care beds;
- (17) Providing intellectual developmental disabilities services;
- (18) Providing organ and tissue transplants;
- (19) Establishing an intermediate care facility for individuals with intellectual disabilities;
- (20) Providing inpatient services;
- (21) Providing hospice services;
- (22) Establishing a home health agency; and
- (23) Providing personal care services.

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

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

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

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

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

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

(4) An opioid treatment facility or program.

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

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

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

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

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

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

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

(1) File an exemption application;

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

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

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

(c) Notwithstanding section eight and ten and except as provided in section nine, these health services are exempt from the certificate of need process:

(1) A computed tomography scanner that is installed in a private office practice where at minimum seventy five percent of the scans are for the patients of the practice and the fair market value of the installation and purchase is less than \$250,000 for calendar year 2016. The authority shall adjust the dollar amount specified in this subdivision annually and publish an update of the amount on or before December 31, of each year. The adjustment of the dollar amount shall be based on the DRI inflation index published in the Global Insight DRI/WEFA Health Care Cost Review. The authority may at any time request from the private office practice information concerning the number of patients who have been provided scans;

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

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

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

(ii) Provide a proposed health service area.

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

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

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

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

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

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

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

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

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

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

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

(9) The replacement of major medical equipment with like equipment;

(10) Renovations within a hospital. The renovations may not expand the health care facility's current square footage, incur a substantial change to the health services, or a substantial change to the bed capacity;

(11) Renovations to a skilled nursing facility;

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

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

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

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

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

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

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

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

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

(21) Providing behavioral health services;

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

(23) The transfer or acquisition of intermediate care or skilled nursing beds from an existing health care facility to a nursing home providing intermediate care and skilled nursing services.

(24) The construction, development, acquisition or other establishment by a health care facility of a nonhealth related project;

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

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

(27) Assisted living facilities and services; and

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

**§16-2D-12. Minimum criteria for certificate of need reviews.**

(a) A certificate of need may only be issued if the proposed health service is:

(1) Found to be needed; and

(2) Consistent with the state health plan, unless there are emergency circumstances that pose a threat to public health.

(b) The authority may not grant a certificate of need unless, after consideration of the appropriateness of the use of existing facilities within this state providing services similar to those being proposed, the authority makes each of the following findings in writing:

(1) That superior alternatives to the services in terms of cost, efficiency and appropriateness do not exist within this state and the development of alternatives is not practicable;

(2) That existing facilities providing services within this state similar to those proposed are being used in an appropriate and efficient manner;

(3) That in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable; and

(4) That patients will experience serious problems in obtaining care within this state of the type proposed in the absence of the proposed health service.

(c) In addition to the written findings required in this section, the authority shall make a written finding regarding the extent to which the proposed health service meets the needs of the medically underserved population, except in the following cases:

(1) Where the proposed health service is one described in subsection (d) of this section to eliminate or prevent certain imminent safety hazards or to comply with certain licensure or accreditation standards; or

(2) Where the proposed health service is a proposed capital expenditure not directly related to the provision of health services or to beds or to major medical equipment.

(d) Notwithstanding the review criteria in subsection (b), an application for a certificate of need shall be approved, if the authority finds that the facility or service with respect to which such capital expenditure is proposed to be made is needed and that the obligation of such capital expenditure is consistent with the state health plan, for a capital expenditure which is required:

(1) To eliminate or prevent imminent safety hazards as defined by federal, state or local fire building or life safety codes, statutes or rules.

(2) To comply with state licensure standards; or

(3) To comply with accreditation or certification standards. Compliance with which is required to receive reimbursement under Title XVIII of the Social Security Act or payments under the state plan for medical assistance approved under Title XIX of such act.

(e) In the case where an application is made by a health care facility to provide ventilator services which have not previously been provided for a nursing facility bed, the authority shall consider the application in terms of the need for the service and whether the cost exceeds the level of current Medicaid services. A facility providing ventilator services, may not provide a higher level of services for a nursing facility bed without demonstrating that the change in level of service by provision of the additional ventilator services will result in no additional fiscal burden to the state.

(f) The authority shall consider the total fiscal liability to the state for a submitted application.

(g) Criteria for reviews may vary according to the purpose for which a particular review is being conducted or the types of health services being reviewed.

(h) An application for a certificate of need may not be made subject to any criterion not contained in this article or in the certificate of need standards.

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

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

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

(1) Submit a letter of intent ten days prior to submitting the certificate of need application. The information required within the letter of intent shall be detailed by the authority in legislative rule;

(2) Submit the appropriate application fee;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **§16-2D-14. Procedure for an uncontested application for a certificate of need.**

The authority shall review an uncontested certificate of need application within sixty days from the date the application is batched. An uncontested application is deemed approved if the review is not completed within sixty days from the date the application is batched, unless an extension, up to fifteen days is requested by the applicant.

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

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

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

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

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

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

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

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

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

(a) The authority's final decision shall upon request of an affected person be reviewed by the Office of Judges. The request shall be received within thirty days after the date of the authority's decision. The appeal hearing shall commence within thirty days of receipt of the request.

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

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

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

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

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

**§16-2D-17. Nontransference, time period compliance and withdrawal of certificate of need.**

(a) A certificate of need is nontransferable and is valid for a maximum of one year from the date of issuance. Upon the expiration of the certificate or during the certification period, the person proposing the proposed health service shall provide the authority information on the development of the project as the authority may request. The authority shall periodically monitor capital expenditures obligated under certificates, determine whether sufficient progress is being made in meeting the timetable specified in the approved application for the certificate and whether there has been compliance with the application and any conditions of certification. The certificate of need may be extended by the authority for additional periods of time as are reasonably necessary to expeditiously complete the project.

(b) A certificate of need may no longer be in effect, and may no longer be required, after written notice of substantial compliance with the approved application and any conditions of certification is issued to the applicant, after the activity is undertaken for which the certificate of need was issued, and after the authority is provided written notice of such undertaking.

(c) A person proposing a proposed health service may not be issued a license, if applicable, until the authority has issued a written notice of substantial compliance with the approved application and any conditions of certification, nor may a proposed health service be used until the person has received such notice. A proposed health service may not be found to be in substantial compliance with the approved application and any conditions of certification if there is a substantial change in the approved proposed health service for which change a certificate of need has not been issued.

(d) (1) A certificate of need may be withdrawn by the authority for:

(A) Noncompliance with any conditions of certification;

(B) A substantial change in an approved proposed health service for which change a certificate of need has not been issued;

(C) Material misrepresentation by an applicant upon which the authority relied in making its decision; or

(D) Other reasons that may be established by the authority in legislative rules adopted pursuant to section four of this article.

(2) Any decision of the authority to withdraw a certificate of need shall be based solely on:

(A) The provisions of this article and on legislative rules adopted in accordance with section four of this article; and

(B) The record established in administrative hearing held with respect to the authority's proposal to withdraw the certificate.

(3) In the case of a proposed withdrawal of a certificate of need:

(A) After commencement of an administrative hearing on the authority's proposal to withdraw a certificate of need and before a decision is made on withdrawal, there may be no ex parte contacts between:

(i) The holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal; and

(ii) Any person in the authority who exercises responsibility respecting withdrawal of the certificate;

(B) The authority shall follow the review procedure established in section thirteen; and

(C) Appeals of withdrawals of certificates of need shall be made pursuant to section sixteen of this article.

(4) A proposed health service may not be acquired, offered, or developed within this state if a certificate of need authorizing that proposed health service has been withdrawn by the authority and the acquisition, offering, or developing of the proposed health service is subject to review under this article.

**§16-2D-18. Denial or revocation of license for operating without certificate.**

A person who violates the provisions of this article is subject to denial or revocation of a license, in whole or in part, to operate a proposed health service or health care facility. Upon a showing to the authority that a person is offering or developing a proposed health service without having first obtained a certificate of need or that a person is otherwise in violation of the provisions of this article, the authority shall provide a person with written notice which shall state the nature of the violation and the time and place at which the person shall appear to show good cause why its license should not be revoked or denied, at which time and place the person shall be afforded a reasonable opportunity to present testimony and other evidence in support of the person's position. If, thereafter, the authority determines that the person's license to operate the health service or health care facility should be revoked or denied, the authority shall issue a written order to the appropriate licensing agency of the state, requiring that the person's license to operate the proposed health service or health care facility be revoked or denied. The order is binding upon the licensing agency.

**§16-2D-19. Injunctive relief; civil penalty.**

(a) A person who acquires, offers or develops a proposed health service for which a certificate of need is required without first having a certificate of need therefore or violates any other provision of this article, or any legislative rule promulgated thereunder, the authority may maintain a civil action in the circuit court of the county where the violation has occurred, or where the person may be found, to enjoin, restrain or prevent the violation. An injunction bond is not required to be filed.

(b) The authority may assess a civil penalty for violation of this article.

(c) Upon the authority determining that there is probable cause to believe that a person is in violation of the provisions of this article, or any lawful rule promulgated thereunder, the authority shall provide the person with written notice which states the nature of the alleged violation and the time and place at which an administrative hearing shall take place. The hearing shall be conducted in accordance with the administrative hearing provisions of article five, chapter twenty-nine-a of this code.

(d) If the authority determines that the person is in violation of the provisions of this article or legislative rule, the authority shall assess a civil penalty of not less than \$500 nor more than \$25,000.

(e) In determining the amount of the penalty, the authority shall consider the degree and extent of harm caused by the violation and the cost of rectifying the damage.

(f) A person assessed shall be notified of the assessment in writing, and the notice shall specify the reasons for the assessment. If the person assessed fails to pay the amount of the assessment to the authority within thirty days, the authority may institute a civil action in the circuit court of the county where the violation has occurred, or where the person may be found to recover the amount of the assessment. In the civil action, the scope of the court's review of the authority's action, which shall

include a review of the amount of the assessment, shall be as provided in article five, chapter twenty-nine-a of this code for the judicial review of contested administrative cases.

**§16-2D-20. Statute of limitations.**

The authority has a period of three years to correct violations of the provisions of this article. The three-year period begins from the date the authority knows or should have known of the violation. Each new act of a continuing violation shall provide a basis for restarting the calculation of the limitations period.

At the request of Senator Carmichael, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4365) was advanced to third reading with Senator Carmichael's amendment pending and the right reserved to consider other amendments to the bill on that reading.

**Eng. House Bill 4411**, Relating to penalty for illegally taking native brook trout.

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

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

On page one, section five-a, line seven, by striking out the words "taken illegally, \$100 for each native brook trout" and inserting in lieu thereof the words "that exceeds the creel limit, \$100 for the first five illegally taken and \$20 for each thereafter;"

The bill (Eng. H. B. 4411), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4487**, Relating to state retirement systems.

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

On motions of Senators Kessler and Kirkendoll, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page twenty-one, after section seventeen-a, by adding a new section, designated section six, to read as follows:

**ARTICLE 7D. VOLUNTARY TRANSFER FROM TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM TO STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7D-6. Service credit in State Teachers Retirement System following transfer; conversion of assets; adjustments.**

(a) Any member who has affirmatively elected to transfer to the state Teachers Retirement System within the period provided in section seven of this article whose assets have been transferred from the Teachers' Defined Contribution Retirement System to the state Teachers Retirement System pursuant to the provisions of this article and who has not made any withdrawals or cash-outs from his or her assets is, depending upon the percentage of actively contributing members affirmatively electing to transfer, entitled to service credit in the State Teachers Retirement System in accordance with the provisions of subsection (c) of this section.

(b) Any member who has made withdrawals or cash-outs will receive service credit based upon the amounts transferred. The board shall make the appropriate adjustment to the service credit the member will receive.

(c) More than seventy-five percent of actively contributing members of the Teachers' Defined Contribution Retirement System affirmatively elected to transfer to the state Teachers Retirement System within the period provided in section seven of this article. Therefore, any member of the Defined Contribution Retirement System who decides to transfer to the State Teachers Retirement System, calculates his or her service credit in the State Teachers Retirement System as follows:

(1) For any member affirmatively electing to transfer, the member's State Teachers Retirement System credit shall be seventy-five percent of the member's Teachers' Defined Contribution Retirement System service credit, less any service previously withdrawn by the member or due to a qualified domestic relations order and not repaid;

(2) To receive full credit in the State Teachers Retirement System for service in the Teachers' Defined Contribution Retirement System for which assets are transferred, members who affirmatively elected to transfer and who provided to the board a signed verification of cost for service credit purchase form by the effective date of the amendments to this section enacted in the 2009 regular legislative session shall pay into the State Teachers Retirement System a one and one-half percent contribution by no later than July 1, 2015, or no later than ninety days after the postmarked date on a final and definitive contribution calculation from the board, whichever is later. This contribution shall be calculated as one and one-half percent of the member's estimated total earnings for which assets are transferred, plus interest of four percent per annum accumulated from the date of the member's initial participation in the Defined Contribution Retirement System through June 30, 2009: *Provided*, That any member who transferred and provided to the board a signed verification of cost for service credit purchase form by June 30, 2009, but was unable to complete the purchase of the one and one-half percent contribution, or any member who did not request a verification of cost letter but attempted to purchase the one and one-half percent contribution and was denied in writing by the board on or before December 31, 2009, may request the board on or before ~~April 15, 2015~~ April 15, 2016, to recalculate the contribution for ~~2015~~ 2016. To receive full credit, the member shall pay into the State Teachers Retirement System the recalculated purchase amount by ~~July 1, 2015~~ July 1, 2016, or no later than sixty days after the postmarked date on a contribution recalculation from the board, whichever is later. The recalculated contribution shall include the interest loss at the actuarial rate of seven and one-half percent. The board's executive director may correct clerical errors.

(A) For a member contributing to the Defined Contribution Retirement System at any time during the 2008 fiscal year and commencing membership in the State Teachers Retirement System on July 1, 2008, or August 1, 2008, as the case may be:

(i) The estimated total earnings shall be calculated based on the member's salary and the member's age nearest birthday on June 30, 2008;

(ii) This calculation shall apply both an annual backward salary scale from that date for prior years' salaries and a forward salary scale for the salary for the 2008 fiscal year.

(B) The calculations in paragraph (A) of this subdivision are based upon the salary scale assumption applied in the West Virginia Teachers Retirement System actuarial valuation as of July 1, 2007, prepared for the Consolidated Public Retirement Board. This salary scale shall be applied regardless of breaks in service.

(d) All service previously transferred from the State Teachers Retirement System to the Teachers' Defined Contribution Retirement System is considered Teachers' Defined Contribution Retirement System service for the purposes of this article.

(e) Notwithstanding any provision of this code to the contrary, the retirement of a member who becomes eligible to retire after the member's assets are transferred to the State Teachers Retirement System pursuant to the provisions of this article may not commence before September 1, 2008:

*Provided*, That the Consolidated Public Retirement Board may not retire any member who is eligible to retire during the calendar year 2008 unless the member has provided a written notice to his or her county board of education by July 1, 2008, of his or her intent to retire.

(f) The provisions of section twenty-eight-e, article seven-a of this chapter do not apply to the amendments to this section enacted during the 2009 regular legislative session, ~~or~~ the 2015 regular legislative session or the 2016 regular legislative session.;

And,

By striking out the enacting section and inserting in lieu thereof the following:

That §5-10-2 and §5-10-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-7A-17a of said code be amended and reenacted; and that §18-7D-6 of said code be amended and reenacted, all to read as follows:

Following discussion,

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

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

The question being on the adoption of the amendment offered by Senators Kessler and Kirkendoll to the bill, the same was put and did not prevail.

The bill (Eng. Com. Sub. for H. B. 4487) was then ordered to third reading.

**Eng. Com. Sub. for House Bill 4502**, Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses.

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

**Eng. Com. Sub. for House Bill 4507**, Providing an employer may grant preference in hiring to a veteran or disabled veteran.

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

**Eng. Com. Sub. for House Bill 4517**, Limiting the ability of an agent under a power of attorney to take self-benefiting actions.

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

**Eng. Com. Sub. for House Bill 4519**, Allowing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System.

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

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

On page thirteen, section thirty-three, line eighteen, after the word "of" by inserting the word "election".

The bill (Eng. Com. Sub. for H. B. 4519), as amended, was then ordered to third reading.

**Eng. House Bill 4578**, Creating a criminal offense of conspiracy to violate the drug laws.

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

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

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

#### **ARTICLE 4. OFFENSES AND PENALTIES.**

##### **§60A-4-414. Conspiracy.**

(a) Any person who conspires with one or more other persons to commit a violation of subdivision (i), subsection (a), section four hundred one, subdivision (1), subsection (b), section four hundred nine or section four hundred eleven of this article shall, if one or more of such persons commit any act in furtherance of the conspiracy, be guilty of a felony and, upon conviction, be fined not less than \$10,000 nor more than \$50,000, or imprisoned in a state correctional facility for a determinate period not to exceed five years, or both fined and imprisoned.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who acts as a co-conspirator in violation of the provisions of subsection (a) of this section and who acts as an organizer, leader, financier or manager of a conspiracy involving three or more co-conspirators shall be guilty of a felony and, upon conviction, be fined not less than \$50,000 nor more than \$100,000 or imprisoned in a state correctional facility for a determinate period not to exceed fifteen years, or both fined and imprisoned.

(c) For purposes of subsection (a) of this section, acts done in furtherance of a conspiracy by a co-conspirator are attributable to co-conspirators, whether or not said co-conspirators had actual knowledge of the act.

(d) Prosecution under the provisions of this section precludes a prosecution for a violation of the provisions of section thirty-one, article ten, chapter sixty-one of this code, based upon the same underlying conduct.

Following discussion,

At the request of Senator Kessler, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the Judiciary committee amendment pending.

**Eng. Com. Sub. for House Bill 4636**, Increasing the penalties for violating the Whistle-blower Law.

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

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

On page one, section six, line eleven, after the word "information," by striking out the remainder of the subsection and inserting in lieu thereof the following: the court may order the person's

suspension from public service for not more than six months. The public body may also issue appropriate discipline against the person, up to and including termination.

The bill (Eng. Com. Sub. for H. B. 4636), as amended, was then ordered to third reading.

**Eng. House Bill 4734**, Relating to mine subsidence insurance.

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

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

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

That §33-30-6 and §33-30-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:.

The bill (Eng. H. B. 4734), as amended, was then ordered to third reading.

**Eng. House Bill 4738**, Relating to the offense of driving in an impaired state.

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. Com. Sub. for House Bill 4053**, Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions.

**Eng. Com. Sub. for House Bill 4060**, Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety.

**Eng. Com. Sub. for House Bill 4237**, Supporting and Strengthening Families Act.

**Eng. Com. Sub. for House Bill 4301**, Relating to a framework for initiating comprehensive transformation of school leadership.

**Eng. Com. Sub. for House Bill 4307**, Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas.

**Eng. Com. Sub. for House Bill 4317**, Limiting factors in parenting plans.

**Eng. Com. Sub. for House Bill 4435**, Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.

**Eng. House Bill 4461**, Relating to School Building Authority School Major Improvement Fund eligibility.

**Eng. Com. Sub. for House Bill 4554**, Allowing an increase of gross weight limitations on certain roads in Greenbrier County.

**Eng. Com. Sub. for House Bill 4586**, Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways.

And,

**Eng. Com. Sub. for House Bill 4606**, Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Woelfel.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Thursday, March 10, 2016, at 11 a.m.

---

## SENATE CALENDAR

Thursday, March 10, 2016  
11:00 AM

---

### SPECIAL ORDER OF BUSINESS

Thursday, March 10, 2016 - 11:00 A.M.

Consideration of executive nominations

---

### UNFINISHED BUSINESS

- S. C. R. 65 - John and Wilbur Hahn Dutch Hollow Pioneers Bridge.
- S. C. R. 66 - Requesting study of lottery, gaming and live racing industries in WV.

### THIRD READING

- Eng. Com. Sub. for S. B. 269 - Budget Bill.
- Eng. H. B. 2494 - Creating a provisional plea process in criminal cases - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 2826 - Requiring the Commissioner of the Division of Highways to approve points of access to and from state highways to real property used or to be used for commercial, industrial or mercantile purposes; "Sarah Nott's Law" - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4014 - Preventing the State Board of Education from implementing common core academic standards and assessments - (Com. amend. and title amend. pending) - (With right to amend) (original similar to SB499).
- Eng. Com. Sub. for H. B. 4080 - Department of Veterans' Assistance, rule relating to VA headstones or markers (original similar to SB245).
- Eng. Com. Sub. for H. B. 4265 - Relating to payment by the West Virginia Municipal Bond Commission or state sinking fund commission or the governing body issuing the bonds (original similar to SB340).
- Eng. H. B. 4334 - Clarifying the requirements for a license to practice as an advanced practice registered nurse and expanding prescriptive authority - (Com. amend. and title amend. pending) - (With right to amend) (original similar to SB17, SB519).

- Eng. H. B. 4351 - Transferring the Cedar Lakes Camp and Conference Center from the West Virginia Board of Education to the Department of Agriculture (original similar to SB392).
- Eng. Com. Sub. for H. B. 4360 - Increasing the criminal penalty for the unlawful practice of law - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4365 - Relating to the certificate of need process - (Com. amend. pending) - (With right to amend) (original similar to SB467).
- Eng. H. B. 4411 - Relating to penalty for illegally taking native brook trout - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4487 - Relating to state retirement systems (original similar to HB4187).
- Eng. Com. Sub. for H. B. 4502 - Allowing reciprocity agreements with contiguous states to establish regulations, licensing requirements and taxes for small businesses.
- Eng. Com. Sub. for H. B. 4507 - Providing an employer may grant preference in hiring to a veteran or disabled veteran - (Com. title amend. pending).
- Eng. Com. Sub. for H. B. 4517 - Limiting the ability of an agent under a power of attorney to take self-benefiting actions.
- Eng. Com. Sub. for H. B. 4519 - Allowing certain municipalities to elect to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System.
- Eng. Com. Sub. for H. B. 4636 - Increasing the penalties for violating the Whistle-blower Law.
- Eng. H. B. 4734 - Relating to mine subsidence insurance - (Com. title amend. pending).
- Eng. H. B. 4738 - Relating to the offense of driving in an impaired state.

## **SECOND READING**

- Eng. Com. Sub. for H. B. 2205 - Creating the crime of prohibited sexual contact by a psychotherapist - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4013 - Requiring a person desiring to vote to present documentation identifying the voter - (Com. amend. and title amend. pending) (original similar to SB5).
- Eng. Com. Sub. for H. B. 4035 - Permitting pharmacists to furnish naloxone hydrochloride - (Com. amend. and title amend. pending) (original similar to HB4399).
- Eng. Com. Sub. for H. B. 4038 - Relating to insurance requirements for the refilling of topical eye medication - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4040 - Regulating step therapy protocols in health benefit plans - (Com. amend. and title amend. pending).

- Eng. Com. Sub. for H. B. 4053 - Department of Environmental Protection, Air Quality, rule relating to the control of annual nitrogen oxide emissions - (Com. amend. and title amend. pending) (original similar to SB176).
- Eng. Com. Sub. for H. B. 4060 - Relating generally to the promulgation of administrative rules by the Department of Military Affairs and Public Safety - (Com. amend. and title amend. pending) (original similar to SB211).
- Eng. Com. Sub. for H. B. 4168 - Creating a special motor vehicle collector license plate - (Com. amends. pending).
- Eng. Com. Sub. for H. B. 4174 - Exempting activity at indoor shooting ranges from the prohibition of shooting or discharging a firearm within five hundred feet of any church or dwelling house - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4237 - Supporting and Strengthening Families Act - (Com. amend. and title amend. pending) (original similar to SB319).
- Eng. Com. Sub. for H. B. 4301 - Relating to a framework for initiating comprehensive transformation of school leadership.
- Eng. Com. Sub. for H. B. 4307 - Clarifying that a firearm may be carried for self defense in state parks, state forests and state recreational areas - (Com. amend. and title amend. pending) (original similar to SB122).
- Eng. Com. Sub. for H. B. 4314 - Prohibiting the sale of powdered or crystalline alcohol - (Com. amend. and title amend. pending).
- Eng. H. B. 4315 - Relating to air-ambulance fees for emergency treatment or air transportation (original similar to SB456).
- Eng. H. B. 4316 - Relating to reimbursement of certification fee for National Board for Professional Teaching Standards certification.
- Eng. Com. Sub. for H. B. 4317 - Limiting factors in parenting plans - (Com. amends. and title amend. pending).
- Eng. Com. Sub. for H. B. 4323 - Relating to the reporting of emergency incidents by well operators and pipeline operators - (Com. amends. and title amend. pending) (original similar to SB445).
- Eng. Com. Sub. for H. B. 4352 - Relating to the selling of certain state owned health care facilities by the Secretary of the Department of Health and Human Resources.
- Eng. Com. Sub. for H. B. 4435 - Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects.
- Eng. H. B. 4461 - Relating to School Building Authority School Major Improvement Fund eligibility.
- Eng. Com. Sub. for H. B. 4463 - Permitting the practice of telemedicine (original similar to SB320).

- Eng. Com. Sub. for H. B. 4537 - Relating to the regulation of chronic pain clinics - (Com. amend. and title amend. pending) (original similar to SB569).
- Eng. Com. Sub. for H. B. 4554 - Allowing an increase of gross weight limitations on certain roads in Greenbrier County - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4575 - Creating criminal offenses relating to money laundering - (Com. amend. and title amend. pending).
- Eng. H. B. 4578 - Creating a criminal offense of conspiracy to violate the drug laws - (Com. amend. and title amend. pending).
- Eng. Com. Sub. for H. B. 4586 - Ensuring that the interest of protected persons, incarcerated persons and unknown owners are protected in condemnation actions filed by the Division of Highways.
- Eng. H. B. 4594 - Relating to predoctoral psychology internship qualifications.
- Eng. Com. Sub. for H. B. 4606 - Relating to the recusal of certain public officials from voting for appropriation of moneys to nonprofit entities - (Com. amend. and title amend. pending).
- Eng. H. B. 4618 - Relating to limitations on use of a public official's name or likeness - (Com. amend. and title amend. pending).
- Eng. H. B. 4655 - Prohibiting insurers, vision care plan or vision care discount plans from requiring vision care providers to provide discounts on noncovered services or materials - (Com. amend. and title amend. pending).
- Eng. H. B. 4728 - Relating to schedule three controlled substances.

**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2016**

---

**Thursday, March 10, 2016**

8:30 a.m.	Government Organization	(Room 208W)
9 a.m.	Finance	(Room 451M)
9 a.m.	Judiciary	(Room 208W)