

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-THIRD LEGISLATURE
SECOND EXTRAORDINARY SESSION, 2017

MONDAY, OCTOBER 16, 2017

Pursuant to the proclamation of His Excellency, the Governor, the Honorable Jim Justice, dated the twelfth day of October, two thousand seventeen, convening the eighty-third Legislature of West Virginia in extraordinary session today (Monday, October 16, 2017), under the provisions of section seven, article seven of the Constitution of West Virginia, the Senate assembled in its chamber in the state capitol in the City of Charleston at 12 Noon, and was called to order by its President, the Honorable Mitch Carmichael.

Prayer was offered by the Honorable Charles S. Trump IV, a senator from the fifteenth district.

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

The following communication was reported by the Clerk:

THE SENATE OF WEST VIRGINIA

COMMITTEE ON FINANCE

CHARLESTON

August 20, 2017

The Honorable Mitch B. Carmichael
President of the West Virginia Senate
State Capitol
Charleston, West Virginia 25305-0800

Dear President Carmichael:

Please accept this letter as official notice of my resignation as a member of the West Virginia Senate, effective at midnight on August 20, 2017.

It has been a great honor and privilege to serve in the Legislature for the past 23 years and represent the citizens of Putnam County and the 4th Senatorial District. I look forward to continuing my public service as Chief of Staff for Governor Justice.

We have great challenges facing our state and it is my hope that I can work in harmony with the Legislature to address these challenges in a thoughtful and expedient manner, so that we may bring prosperity to the citizens of West Virginia.

Sincerely,

Mike Hall

cc: Clark S. Barnes, Clerk of the Senate

Executive Communications

The following communication from His Excellency, the Governor, was reported by the Clerk:

Jim Justice

Governor of West Virginia

September 5, 2017

The Honorable Mac Warner
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Secretary Warner:

Pursuant to W. Va. Code § 3-10-5, I have this day appointed Mark A. Drennan, 297 Glen Oaks Court, Hurricane, Putnam County, West Virginia 25526, as a Senator representing the Fourth Senatorial District, to fill the vacancy created by the resignation of the Honorable Mike Hall from this day through the remainder of the unexpired term of said office.

Sincerely,

Jim Justice
Governor

cc: President of the Senate
Speaker of the House
Clerk of the Senate
Clerk of the House of Delegates
West Virginia Ethics Commission

The several oaths of office prescribed the Constitution were administered by the Honorable Mitch Carmichael, President of the Senate, to Mark A. Drennan, of the County of Putnam, on September 11, 2017.

The following communication was next reported by the Clerk:

The Senate of West Virginia**Charleston**

TO: THE OFFICE OF THE PRESIDENT OF THE WEST VIRGINIA SENATE

RE: Resignation from the Senate

I have often contemplated the use of the word “bittersweet”, and it is today that I truly understand the significance of such a word. I have such a feeling today as I submit to you my resignation from the State Senate of West Virginia effective by September 30, 2017.

When I was elected to this great body I was so very proud to be given such an opportunity to serve the people of West Virginia. One of the most thrilling moments in my life was the cold January day when I was sworn into office. I was humbled and felt so honored to be able to work to make differences for this State.

I will continue to be able to proceed with that task of trying to make differences for this State as I join the Governor’s office in working toward a future of our State through the promotion and development of Agriculture and the economic benefit it can provide for our people.

The future is always challenging, and I look forward the to the new challenges. The past service and relationships with my colleagues in the Senate will always remain so very much of who I am. My love of the Senate and its rich traditions will always be ingrained into my being. In closing this letter, I would like to quote one of my favorite leaders, Joe Biden. In his farewell address to the US Senate he closed with these words: *“I say for the last time, and with confidence in all of you, optimism in our future, and a heart with more gratitude than I can express: I yield the floor.”* Mr. President that is exactly how I feel today. Mr. President I yield my place on the floor with this resignation to the next Senator from my district.

With Warm regards,

Ronald. F. [Ron] Miller
10th District State Senator
West Virginia Legislature

Executive Communications

The following communication from His Excellency, the Governor, was reported by the Clerk:

Jim Justice

Governor of West Virginia

October 16, 2017

The Honorable Mac Warner
Secretary of State
State Capitol
Charleston, West Virginia 25305

Dear Secretary Warner:

Pursuant to W. Va. Code § 3-10-5, I have this day appointed Stephen Baldwin, 237 Locust Street, Ronceverte, Greenbrier County, West Virginia 24970, as a Senator representing the Tenth Senatorial District, to fill the vacancy created by the resignation of the Honorable Ron Miller from this day through the remainder of the unexpired term of said office.

Sincerely,

Jim Justice
Governor

cc: President of the Senate
Speaker of the House
Clerk of the Senate
Clerk of the House of Delegates
West Virginia Ethics Commission

The several oaths of office prescribed the Constitution were administered by the Honorable Mitch Carmichael, President of the Senate, to Stephen Baldwin, of the County of Greenbrier, on October 16, 2017.

On the call of the roll, the following answered to their names:

Senators Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President).

Thirty-three members having answered to their names, the President declared the presence of a quorum.

Executive Communications

Senator Carmichael (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, convening the Legislature in extraordinary session, which was read by the Clerk:

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

Charleston

A P R O C L A M A T I O N

By the Governor

I, JIM JUSTICE, by virtue of the authority vested in the Governor by Section 7, Article VII, of the Constitution of West Virginia, do hereby call the West Virginia Legislature to convene in Extraordinary Session at Noon on the sixteenth day of October, Two Thousand Seventeen, in its chambers in the State Capitol, City of Charleston, for the limited purpose of considering and acting upon the following matters:

FIRST: A bill exempting military retirement from state personal income tax after specified date.

SECOND: A bill increasing amount of credit allowed against personal and corporation net income taxes for qualified historic rehabilitation expenditures.

THIRD: Legislation authorizing and appropriating the expenditure of public funds to pay the expenses for the Extraordinary Session.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



DONE at the Capitol in the City of Charleston, State of West Virginia, this twelfth day of October, in the year of our Lord, Two Thousand Seventeen, and in the One Hundred Fifty-Fifth year of the State.

**JIM JUSTICE
GOVERNOR**

By the Governor

**MAC WARNER
SECRETARY OF STATE**

Senator Carmichael (Mr. President) then laid before the Senate the following supplements to the proclamation dated October 12, 2017, from His Excellency, the Governor, which were read by the Clerk:

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

Charleston

A P R O C L A M A T I O N

By the Governor

I, JIM JUSTICE, by virtue of the authority vested in the Governor by Section 7, Article VII, of the Constitution of West Virginia, do hereby **AMEND** the Proclamation dated the twelfth day of October, Two Thousand Seventeen, calling the Legislature of West Virginia to convene in Extraordinary Session at Noon on the sixteenth day of October, Two Thousand Seventeen, by adding items four, five and six:

FOURTH: A bill allowing certain tax information to be shared with designated employees of Commissioner of Highways.

FIFTH: A bill implementing special hiring procedures for personnel positions in the Division of Highways and the Tax Commissioner.

SIXTH: A bill amending the West Virginia Jobs Act.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



DONE at the Capitol in the City of Charleston, State of West Virginia, this thirteenth day of October, in the year of our Lord, Two Thousand Seventeen, and in the One Hundred Fifty-Fifth year of the State.

**JIM JUSTICE
GOVERNOR**

By the Governor

**MAC WARNER
SECRETARY OF STATE**

STATE OF WEST VIRGINIA

EXECUTIVE DEPARTMENT

Charleston

A P R O C L A M A T I O N

By the Governor

I, JIM JUSTICE, by virtue of the authority vested in the Governor by Section 7, Article VII, of the Constitution of West Virginia, do hereby **AMEND** the Proclamation dated the twelfth day of October, Two Thousand Seventeen, calling the Legislature of West Virginia to convene in Extraordinary Session at Noon on the sixteenth day of October, Two Thousand Seventeen, and amended by subsequent Proclamation dated the thirteenth day of October, Two Thousand Seventeen by adding items seven, as follows:

SEVENTH: A bill finding and declaring certain claims against the state and its agencies to be moral obligations of the state.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



DONE at the Capitol in the City of Charleston, State of West Virginia, this sixteenth day of October, in the year of our Lord, Two Thousand Seventeen, and in the One Hundred Fifty-Fifth year of the State.

**JIM JUSTICE
GOVERNOR**

By the Governor**MAC WARNER
SECRETARY OF STATE**

At the request of Senator Ferns, unanimous consent being granted, Senator Ferns offered the following resolution from the floor:

Senate Resolution 201—Raising a committee to inform the House of Delegates the Senate has assembled in extraordinary session.

Resolved by the Senate:

That a committee of three be appointed by the President to inform the House of Delegates that the Senate has assembled in extraordinary session, with a quorum present, and is ready to proceed with the business for which the extraordinary session was called by His Excellency, the Governor.

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

Whereupon, the President appointed as members of such committee the following:

Senators Weld, Azinger and Baldwin.

Subsequently, Senator Weld, from the committee to notify the House of Delegates the Senate has assembled in extraordinary session, and is ready to proceed with the business of the session, announced that the committee had discharged its duties.

A message from the House of Delegates, by

Delegates Harshbarger, Sypolt and Hartman, announced that the House of Delegates has assembled in extraordinary session, with a quorum present, and is ready to proceed with the business stated in the proclamation convening the Legislature.

At the request of Senator Ferns, unanimous consent being granted, Senator Ferns offered the following resolution from the floor:

Senate Resolution 202—Raising a committee to wait upon the Governor.

Resolved by the Senate:

That a committee of three on the part of the Senate, to join with a similar committee on the part of the House of Delegates, be appointed by the President to notify His Excellency, the Governor, that at his call the Legislature has assembled in extraordinary session, with a quorum of each house present; and is ready to receive any communication or message he may be pleased to present under section seven, article seven of the Constitution of West Virginia, which provides that no business except that stated in his proclamation be considered.

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

Whereupon, the President appointed as members of such committee the following:

Senators Smith, Drennan and Plymale.

A message from the House of Delegates, by

Delegates Blair, Frich and Lynch, announced that the Speaker had appointed them a committee of three to join with a similar committee on the part of the Senate to wait upon the Governor, under the provisions of Senate Resolution 202. Senate and House members of this select committee then proceeded to the executive offices.

Subsequently, Senator Smith reported that the joint Senate and House committee had performed the duty assigned to it.

On motion of Senator Ferns, the Senate recessed until 2 p.m. today.

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

On motions for leave, severally made, the following bills were introduced and read by their titles:

By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):

Senate Bill 2001—A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exempting military retirement income from personal income tax after specified date.

Referred to the Committee on Finance.

By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):

Senate Bill 2002—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5cc, relating generally to allowing certain tax information to be shared with designated employees of Commissioner of Highways pursuant to written agreement.

At the request of Senator Ferns, unanimous consent being granted, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Ferns, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Ferns, Gaunch, Karnes, Mann, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—30.

The nays were: None.

Absent: Clements, Facemire, Jeffries and Maroney—4.

The bill (S. B. 2002) was then read a second time.

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11-10-5cc; and that §11-10-11 of said code be amended and reenacted, all to read as follows:

ARTICLE 10. TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-5cc. Disclosure of certain tax information to Commissioner of Highways.

(a) Notwithstanding any provision of this article to the contrary, the Tax Commissioner may enter into a written agreement with the Commissioner of Highways of this state to disclose to designated employees of the Division of Highways:

(1) Whether a bidder for a contract with the Division of Highways has a current business registration certificate under article twelve of this chapter;

(2) Whether a contractor with the Division of Highways, or any subcontractor of that contractor, has had its current business registration certificate revoked or suspended under article twelve of this chapter;

(3) Whether a cease and desist order has been issued under article twelve of this chapter to a contractor working on a project for the Division of Highways or a subcontractor of that contractor working on a road construction or repair project;

(4) Whether a contractor bidding on a contract for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(5) Whether a contractor who has a contract with the Division of Highways for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(6) Whether a subcontractor of any contractor who has a contract with the Division of Highways for a road construction project or repair project appears to be in compliance with the employer withholding tax requirements of this state as set forth in article twenty-one of this chapter based on information in Tax Division databases;

(7) Whether a bidder for a highway construction contract is in good standing with the Tax Commissioner;

(8) Whether a contractor or subcontractor working on a project for the Division of Highways is in good standing with the Tax Commissioner and, if not in good standing, an explanation of why the contractor or subcontractor is not in good standing; and

(9) Whether a bidder, contractor or subcontractor currently has pending before the Office of Tax Appeals a contest concerning any assessment for additional tax or denial of a claim for refund or credit.

(b) For purposes of this section, the term “good standing” means that the bidder, contractor or subcontractor has: (1) Filed all required tax returns due for taxes administered under this article; (2) paid all taxes shown to be due in the filed returns, including any interest and additions to tax; and (3) paid all withholding taxes for employees of the bidder, contractor or subcontractor required to be paid under this code.

(c) An agreement executed under subsection (a) of this section may be amended, from time to time, by the Tax Commissioner and the Commissioner of Highways.

(d) Information in the hands of the Commissioner of Highways or his or her designees pursuant to an agreement under this section shall enjoy the same level of confidentiality and protection as the information would enjoy in the hands of the Tax Commissioner.

§11-10-11. Collection of tax.

(a) *General.* — The Tax Commissioner shall collect the taxes, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable. In addition to all other remedies available for the collection of debts due this state, the Tax Commissioner may proceed by foreclosure of the lien provided in section twelve, or by levy and distraint under section thirteen.

(b) *Prerequisite to final settlement of contracts with nonresident contractor; user personally liable.* —

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter shall withhold payment, in the final settlement of the contract, of a sufficient amount, not exceeding six percent of the contract price, as will in the person's opinion be sufficient to cover the taxes, until the receipt of a certificate from the Tax Commissioner to the effect that the above-referenced taxes imposed against the nonresident contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided in subdivision (1) of this subsection, that person is personally liable for the payment of all taxes attributable to the contract, not to exceed six percent of the contract price. The taxes attributable shall be recoverable by the Tax Commissioner by appropriate legal proceedings, which may include issuance of an assessment under this article.

(c) *Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.* — The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the Tax Commissioner to the effect that every tax administered under this article imposed against any corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(d) *Prerequisite to final settlement of contract with this state or political subdivision; penalty.* — All state, county, district and municipal officers and agents making contracts on behalf of this state or any political subdivision thereof shall withhold payment, in the final settlement of any contract, until the receipt of a certificate from the Tax Commissioner to the effect that the taxes imposed by articles thirteen, twenty-one and twenty-four of this chapter against the contractor, or required to be withheld by the contractor, have been paid or provided for. If the transaction

embodied in the contract or the subject matter of the contract is subject to county or municipal business and occupation tax, then the payment shall also be withheld until receipt of a release from the county or municipality to the effect that all county or municipal business and occupation taxes levied or accrued against the contractor have been paid. Any official violating this section is subject to a civil penalty of \$1,000, recoverable as a debt in a civil action brought by the Tax Commissioner.

(e) *Limited effect of Tax Commissioner's certificates.* — The certificates of the Tax Commissioner provided in subsections (b), (c) and (d) of this section shall not bar subsequent investigations, assessments, refunds and credits with respect to the taxpayer.

(f) *Payment when person sells out or quits business; liability of successor; lien.* —

(1) If any person subject to any tax administered under this article sells out his, her or its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall become due and payable immediately and that person shall, within thirty days after selling out his, her or its business or stock of goods or ceasing to do business, make a final return or returns and pay any tax or taxes which are due. The unpaid amount of any tax is a lien upon the property of that person.

(2) The successor in business of any person who sells out his, her or its business or stock of goods, or ceases doing business, is personally liable for the payments of tax, additions to tax, penalties and interest unpaid after expiration of the thirty-day period allowed for payment: *Provided*, That if the business is purchased in an arms-length transaction, and if the purchaser withholds so much of the consideration for the purchase as will satisfy any tax, additions to tax, penalties and interest which may be due until the seller produces a receipt from the Tax Commissioner evidencing the payment thereof, the purchaser is not personally liable for any taxes attributable to the former owner of the business unless the contract of sale provides for the purchaser to be liable for some or all of the taxes. The amount of tax, additions to tax, penalties and interest for which the successor is liable is a lien on the property of the successor, which shall be enforced by the Tax Commissioner as provided in this article.

(g) *Priority in distribution of estate or property in receivership; personal liability of fiduciary.* — All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person, firm or corporation, in priority to all claims, except taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article. Any trustee, receiver, administrator, executor or person charged with the administration of an estate who violates the provisions of this section is personally liable for any taxes accrued and unpaid under this article, which are chargeable against the person, firm or corporation whose estate is in administration.

(h) *Injunction.* — If the taxpayer fails for a period of more than sixty days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the Tax Commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies with the provisions of this article or any other articles. No bond is required of the Tax Commissioner in any action instituted under this subsection.

(i) *Costs.* — In any proceeding under this section, upon judgment or decree for the Tax Commissioner, he or she shall be awarded his or her costs.

(j) *Refunds; credits; right to offset.* —

(1) Whenever a taxpayer has a refund or credit due it for an overpayment of any tax administered under this article, the Tax Commissioner may reduce the amount of the refund or credit by the amount of any tax administered under this article, whether it be the same tax or any other tax, which is owed by the same taxpayer and collectible as provided in subsection (a) of this section.

(2) The Tax Commissioner may enter into agreements with the Internal Revenue Service that provide for offsetting state tax refunds against federal tax liabilities; offsetting federal tax refunds against state tax liabilities; and establishing the amount of the offset fee per transaction which both agencies may charge each other: *Provided*, That offsets under subdivision (1) of this subsection shall occur prior to offset under this subdivision. At the times moneys are received as a result of an offset of a taxpayer's federal tax refund under the provisions of section 6402(e) of the Internal Revenue Code, the taxpayer is given credit against state tax liability for the amount of the offset less a deduction for the offset fee imposed by the Internal Revenue Service: *Provided however*, That the amount of the offset fee imposed by the Internal Revenue Service shall be added to the taxes, interest and penalties owed by the taxpayer to this state: *Provided further*, That the amount of the offset fee imposed by the Tax Commissioner shall be deducted from the moneys retained from the taxpayer's state tax refund and then deposited in the special revolving fund which is hereby created and established in the state Treasury and designated as the Tax Offset Fee Administration Fund: *And provided further*, That the fees deposited in the Tax Offset Fee Administration Fund may be expended by the Tax Commissioner for the general administration of the taxes administered under the authority of this article.

(k) *Spouse relieved of liability in certain cases.* —

(1) *In general.* — Under regulations prescribed by the Tax Commissioner, if:

(A) A joint personal income tax return has been made for a taxable year;

(B) On the return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse;

(C) The other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was a substantial understatement; and

(D) Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement, then the other spouse is relieved of any liability for tax, including interest, additions to tax, and other amounts for the taxable year to the extent the liability is attributable to the substantial understatement.

(2) *Grossly erroneous items.* — For purposes of this subsection, the term "grossly erroneous items" means, with respect to any spouse:

(A) Any item of gross income attributable to a spouse which is omitted from gross income; and

(B) Any claim of a deduction, credit or basis by a spouse in an amount for which there is no basis in fact or law.

(3) *Substantial understatement.* — For purposes of this subsection, the term “substantial understatement” means any understatement, as defined in regulations prescribed by the Tax Commissioner which exceed \$500.

(4) Understatement must exceed specified percentage of spouse’s income.

(A) *Adjusted gross income of \$20,000 or less.* — If the spouse’s adjusted gross income for the readjustment year is \$20,000 or less, this subsection applies only if the liability described in subdivision (1) of this subsection is greater than ten percent of the adjusted gross income.

(B) *Adjusted gross income of more than \$20,000.* — If the spouse’s adjusted gross income for the readjustment year is more than \$20,000, paragraph (A) of this subdivision is applied by substituting “twenty-five percent” for “ten percent”.

(C) *Readjustment year.* — For purposes of this paragraph, the term “readjustment year” means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) *Computation of spouse’ adjusted gross income.* — If the spouse is married to another spouse at the close of the readjustment year, the spouse’s adjusted gross income shall include the income of the new spouse whether or not they file a joint return.

(E) *Exception for omissions from gross income.* — This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

(5) *Adjusted gross income.* — For purposes of this subsection, the term “adjusted gross income” means the West Virginia adjusted gross income of the taxpayer, determined under article twenty-one of this chapter.

Following discussion,

The question being on the adoption of Senator Trump’s amendment to the bill (S. B. 2002), the same was put and prevailed.

The bill, as amended, was ordered to engrossment and third reading.

Engrossed Senate Bill 2002 was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Clements, Facemire and Jeffries—3.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 2002) passed.

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

Eng. Senate Bill 2002—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-10-5cc; and to amend and reenact §11-10-11 of said code, all relating generally to allowing certain tax information to be shared with designated employees of Commissioner of Highways pursuant to written agreement; specifying information that may be disclosed; defining “good standing”; permitting agreement to be amended from time to time; clarifying scope of confidentiality and protection of information in hands of Commissioner of Highways; and clarifying that failure to remit personal income taxes required to be withheld by a contractor is grounds for withholding payment in final settlement of a contract.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Ferns, Gaunch, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—31.

The nays were: None.

Absent: Clements, Facemire and Jeffries—3.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 2002) takes effect from passage.

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

By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):

Senate Bill 2003—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §29-6-4a and §29-6-4b, all relating generally to requiring the Commissioner of Highways and Tax Commissioner to implement special hiring procedure for personnel positions in their respective divisions; establishing requirements for this special hiring procedure; exempting Division of Highways and Tax Division from certain hiring procedures; instituting new procedures; authorizing new schedules of compensation; exempting Division of Personnel from certain grievance claims; providing for retention of due process, anti-favoritism and anti-discrimination requirements; requiring the Commissioner of Highways to propose legislative rules; and authorizing the Tax Commissioner to propose emergency rules.

At the request of Senator Ferns, unanimous consent being granted, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

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

The Senate then proceeded to the thirteenth order of business.

Senator Carmichael (Mr. President) announced changes to the standing and select committees of the Senate for the eighty-third Legislature and, at the request of Senator Ferns, and by unanimous consent, the complete list was ordered printed in the Journal as follows:

STANDING AND SELECT COMMITTEES OF THE SENATE**2017**

AGRICULTURE AND RURAL DEVELOPMENT

Senators Sypolt (*Chair*), Rucker (*Vice Chair*), Clements, Cline, Mann, Maynard, Smith, Baldwin, Beach, Ojeda and Woelfel.

BANKING AND INSURANCE

Senators Mullins (*Chair*), Azinger (*Vice Chair*), Clements, Drennan, Mann, Maroney, Swope, Sypolt, Facemire, Palumbo, Prezioso, Romano and Woelfel.

CONFIRMATIONS

Senators Boley (*Chair*), Ferns (*Vice Chair*), Azinger, Blair, Boso, Gaunch, Palumbo, Plymale and Prezioso.

ECONOMIC DEVELOPMENT

Senators Maroney (*Chair*), Maynard (*Vice Chair*), Boso, Cline, Drennan, Mann, Smith, Swope, Takubo, Baldwin, Jeffries, Romano, Stollings and Woelfel.

EDUCATION

Senators Mann (*Chair*), Karnes (*Vice Chair*), Azinger, Boley, Cline, Drennan, Rucker, Swope, Trump, Beach, Plymale, Romano, Stollings and Unger.

ENERGY, INDUSTRY AND MINING

Senators Smith (*Chair*), Sypolt (*Vice Chair*), Boley, Cline, Drennan, Ferns, Mann, Mullins, Swope, Facemire, Jeffries, Ojeda and Woelfel.

ENROLLED BILLS

Senators Maynard (*Chair*), Azinger, Gaunch, Palumbo and Prezioso.

FINANCE

Senators Blair (*Chair*), Mullins (*Vice Chair*), Boley, Boso, Drennan, Ferns, Gaunch, Mann, Maroney, Sypolt, Takubo, Facemire, Palumbo, Plymale, Prezioso, Stollings and Unger.

GOVERNMENT ORGANIZATION

Senators Gaunch (*Chair*), Maynard (*Vice Chair*), Boso, Clements, Maroney, Smith, Sypolt, Takubo, Weld, Baldwin, Facemire, Jeffries, Palumbo and Woelfel.

HEALTH AND HUMAN RESOURCES

Senators Takubo (*Chair*), Maroney (*Vice Chair*), Azinger, Clements, Karnes, Rucker, Trump, Weld, Palumbo, Plymale, Prezioso, Stollings and Unger.

INTERSTATE COOPERATION

Senators Cline (*Chair*), Azinger (*Vice Chair*), Maroney, Maynard, Sypolt, Palumbo and Unger.

JUDICIARY

Senators Trump (*Chair*), Weld (*Vice Chair*), Azinger, Clements, Cline, Ferns, Karnes, Maynard, Rucker, Smith, Swope, Baldwin, Beach, Jeffries, Ojeda, Romano and Woelfel.

MILITARY

Senators Weld (*Chair*), Boley (*Vice Chair*), Azinger, Clements, Cline, Sypolt, Facemire, Ojeda and Palumbo.

NATURAL RESOURCES

Senators Maynard (*Chair*), Mann (*Vice Chair*), Cline, Karnes, Rucker, Smith, Sypolt, Takubo, Beach, Facemire, Prezioso, Stollings and Woelfel.

PENSIONS

Senators Karnes (*Chair*), Gaunch (*Vice Chair*), Maroney, Mullins, Weld, Plymale and Romano.

RULES

Senators Carmichael (*Chair*), Blair, Boley, Ferns, Gaunch, Sypolt, Trump, Palumbo, Plymale, Prezioso and Stollings.

TRANSPORTATION AND INFRASTRUCTURE

Senators Boso (*Chair*), Swope (*Vice Chair*), Gaunch, Maroney, Maynard, Rucker, Beach, Jeffries and Plymale.

WORKFORCE

Senators Swope (*Chair*), Weld (*Vice Chair*), Boso, Karnes, Mullins, Rucker, Smith, Beach, Jeffries, Ojeda and Stollings.

SELECT COMMITTEE ON TAX REFORM

Senators Karnes (*Chair*), Blair (*Vice Chair*), Boso, Ferns, Gaunch, Jeffries and Plymale.

The President then announced the appointment of Senator Weld, of the County of Brooke, as the majority whip of the Senate.

On motion of Senator Ferns, the Senate adjourned until tomorrow, Tuesday, October 17, 2017, at 12 Noon.

TUESDAY, OCTOBER 17, 2017

The Senate met at 12 Noon.

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

Prayer was offered by the Honorable C. Edward Gaunch, a senator from the eighth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ron Stollings, a senator from the seventh district.

Pending the reading of the Journal of Monday, October 16, 2017,

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

The Clerk presented the following communications from various state agencies as required by the provisions of law:

Economic Development Authority (§31-15-29)

Environmental Protection, Department of

Oil and Gas Operating Permit and Processing Fund (§22-6-29)

Oil and Gas Reclamation Fund (§22-6-29)

Special Reclamation Fund Advisory Council (§22-1-17)

Occupational Therapy, Board of (§30-1-12)

The Senate proceeded to the third order of business.

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

Eng. Senate Bill 2002, Allowing certain tax information be shared with designated DOH employees.

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

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

On page one, section five-cc, line four, by striking out the word “may” and inserting in lieu thereof the word “shall”;

On page two, section five-cc, line fifteen, by striking out the words “appears to be” and inserting in lieu thereof the word “is”;

And,

On page two, section five-cc, line twenty-two, by striking out the words “appears to be” and inserting in lieu thereof the word “is”.

On motion of Senator Ferns, the following amendments to the House of Delegates amendments to the bill (Eng. S. B. 2002) were reported by the Clerk, considered simultaneously, and adopted:

On page two, section five-cc, subsection (a), subdivision (4), by striking out the word “is” and inserting in lieu thereof the words “appears to be”;

And,

On page two, section five-cc, subsection (a), subdivision (6), by striking out the word “is” and inserting in lieu thereof the words “appears to be”.

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

Engrossed Senate Bill 2002, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 2002) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 2002) takes effect from passage.

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

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bills were introduced and read by their titles:

By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):

Senate Bill 2004—A Bill to amend and reenact §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating generally to tax credits for rehabilitation of historic buildings and structures; increasing the amount of tax credit against personal and corporate net income taxes from ten percent to twenty-five percent for expenditures made on or after December 31, 2017; providing for the use of tax credit on or after January 1, 2020; prohibiting eligibility for credit if the taxpayer is in arrears on certain tax payments; providing rule-making authority to the Tax Commissioner; amending carry back and carry forward provisions for tax credit; limiting the maximum amount available for tax credit per project and in the aggregate per West Virginia state fiscal year; requiring the state Historic Preservation Officer to reserve a certain amount of available tax credits for projects where proposed tax credits will not exceed \$500,000 per project; authorizing the state Historic Preservation Officer to reallocate unused credits reserved for certain projects; providing procedures for the issuance of tax credit reservations and certificates by the state Historic Preservation Officer; requiring the state Historic Preservation Officer to prescribe and publish a form and instructions for applications for credits; providing for an application fee payable to the state Historic Preservation Officer; requiring the state Historic Preservation Officer to review and act upon applications within thirty days of receipt; and providing a sunset provision.

Referred to the Committee on Finance.

By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):

Senate Bill 2005—A Bill finding and declaring a claim against the state and its agency to be a moral obligation of the state; and directing the Auditor to issue warrants for the payment thereof.

At the request of Senator Ferns, unanimous consent being granted, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Ferns, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

The bill was read a second time and ordered to engrossment and third reading.

Engrossed Senate Bill 2005 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 2005) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 2005) takes effect from passage.

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

By Senators Carmichael (Mr. President) and Prezioso (By Request of the Executive):

Senate Bill 2006—A Bill to amend and reenact §21-1C-2, §21-1C-4 and §21-1C-6 of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Jobs Act; defining terms; requiring Workforce West Virginia to provide a waiver to an employer if unable to refer certain amount of qualified job applicants to the employer within three business days; increasing and adding civil penalties for violations; providing for written notice of violation to employer for violations; creating a special revenue account; and other technical corrections.

Referred to the Committee on the Judiciary.

At the request of Senator Ferns, unanimous consent being granted, Senator Ferns offered the following resolution from the floor:

Senate Concurrent Resolution 201—Authorizing adjournments of the Senate and House of Delegates.

Resolved by the Legislature of West Virginia:

That during this Second Extraordinary Session of the Eighty-Third Legislature, the House of Delegates is hereby authorized to adjourn *sine die* in advance of the Senate, and while remaining in session to consider executive nominations, the Senate is hereby authorized to adjourn, as needed, for more than three days, pursuant to Section 23, Article VI of the Constitution of the State of West Virginia.

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

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

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

The Senate proceeded to the ninth order of business.

Senate Bill 2003, Implementing special hiring procedures for DOH and Tax Division.

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

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

Senator Ferns called attention to today being the birthday of the senior senator from the fifteenth and on behalf of the Senate extended felicitations and good wishes to Senator Blair, with Senator Ferns leading members in singing "Happy Birthday".

On motion of Senator Ferns, the Senate recessed until 3 p.m. today.

Upon expiration of the recess, the Senate reconvened and, at the request of Senator Ferns, unanimous consent being granted, returned to the ninth order of business.

Senate Bill 2003, Implementing special hiring procedures for DOH and Tax Division.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §11B-1-8; and that said code be amended by adding thereto a new section, designated §17-2A-24, all to read as follows:

CHAPTER 11. DEPARTMENT OF REVENUE.

ARTICLE 1. DEPARTMENT OF REVENUE.

§11B-1-8. Special employment procedures for Tax Division Personnel.

(a) Legislative findings and intent. —

(1) The Tax Division of the Department of Revenue has approximately one hundred vacancies. The Legislature finds that the division has long had difficulty filling positions which are essential to efficiently and effectively administering, collecting and enforcing the tax laws of this state. The Legislature finds that, to address this problem, the hiring and retention processes of the division must be streamlined to effectively and efficiently meet personnel needs while still affording applicants and employees the due process protections of classified service.

(2) The ratification of the Roads to Prosperity Amendment of 2017 to the Constitution of West Virginia will result in substantially increased funding for roads and highways in the state and the opportunity for in-state and out-of-state contractors to bid on road projects. The need to ensure that all businesses are in compliance with the tax laws of this state will exacerbate the division's staffing shortage.

(3) The purpose of this section is to allow the division to employ qualified applicants in vacant and new personnel positions within the division in a timely manner and to ensure that the division maintains an adequate workforce to effectively and fairly administer, collect and enforce the tax laws of this state.

(b) Definitions. — As used in this section:

(1) "Commissioner" means the Commissioner of the Tax Division of the Department of Revenue or his or her designee; and

(2) "Division" means the Tax Division of the Department of Revenue.

(c) Special employment procedure; requirements. — The commissioner shall implement the special merit based application and appointment procedure authorized by the provisions of this section for all the employees of the division to ensure and provide for the selection and retention of competent and qualified personnel. The special application and employment procedure established pursuant to this section shall be effective on and after December 1, 2017, and shall be subject to the following requirements:

(1) The Division of Personnel shall provide competitive registers of eligible applicants when requested by the division to do so within five business days of receipt of the request;

(2) Any position to be filled internally shall be posted for seven calendar days before the division may select an applicant. For positions to be filled with applicants from outside of the division, the public service announcement shall be posted for not less than fourteen calendar days;

(3) Postings shall be active for up to one year;

(4) Notwithstanding any provision of law or rule promulgated under the provisions of this code, the division may employ any person listed on the register for employment as a Tax and Revenue Auditor 1, Tax and Revenue Auditor 2, Tax and Revenue Auditor 3, Revenue Agent 1, Revenue Agent 2, Investigator 2 or Investigator 3 without regard to the person's position on the applicable register;

(5) The division shall have full authority to evaluate applicants for employment or promotion within the division to positions within the classified service and classified-exempt service. The division shall have sole authority to determine whether applicants for positions with the division meet minimum position requirements;

(6) The division shall have full authority to make classification determinations for positions within the division by using the classification system approved by the State Personnel Board. The division may independently submit to the State Personnel Board recommendations for the approval of new division classifications or the amendment of current division classifications;

(7) The division shall have full authority to exercise its discretion regarding the application of the Division of Personnel's system of compensation for positions within the classified and classified-exempt service: *Provided*, That application of this subdivision shall be uniform. The division may independently submit to the State Personnel Board recommendations for the approval of a special pay scale for the division's personnel;

(8) Notwithstanding any provision of the code or of any rule to the contrary, the Division of Personnel shall not be a mandatory party to any public employee grievance filed against the division. The Division of Personnel shall not be a signatory to, and may not override or otherwise challenge, the division's decisions regarding settlement terms and conditions in employee grievances or other legal proceedings;

(9) The Division of Personnel shall facilitate or perform any lawful action necessary to initiate or complete the division's employment transactions, including, but not limited to, posting positions on applicable systems, initiating public service announcements when requested by the division, and processing necessary forms;

(10) The division shall comply with all applicable record retention requirements provided by law;

(11) The division is authorized to declare any positions effectively vacant due to employee separations, which were not processed prior to the division being placed under the wvOASIS system, vacant and subject to being filled pursuant to the provisions of this section;

(12) The division shall have the flexibility to utilize all vacant position numbers when posting to fill a vacancy and to post vacant positions utilizing multiple classifications with corresponding job descriptions when the commissioner determines it to be necessary and in the best interest of the division; and

(13) For purposes of this section, a vacancy created when an employee of the division separates or goes on terminal leave may be posted upon receipt of the notice that the employee separated or commenced such leave.

(d) *Exemption from regular application and appointment requirements.* — When seeking applications or making appointments pursuant to the special procedure authorized by subsection (c) of this section, the division is not required to comply with Division of Personnel procedures for seeking applications and making appointments to classified service positions as provided by the provisions of articles six and six-a, chapter twenty-nine of this code or in any other provision of this code, including those procedures promulgated in procedural or legislative rules promulgated by the commissioner pursuant to article three, chapter twenty-nine-a of this code, except that this section does not exempt the division from provisions of this code, prohibiting nepotism, favoritism,

discrimination or unethical practices related to appointment, or the public employee grievance system.

(e) The commissioner may promulgate emergency rules and shall propose legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement and comply with the provisions of this section.

(f) The provisions of this section shall apply notwithstanding the provisions of article six or article six-a, chapter twenty-nine of this code to the contrary.

(g) Classified employees of the division shall continue to be covered by the civil service system and may utilize any applicable public employee grievance process.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. THE WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-24. Special employment procedures for Division of Highways Personnel.

(a) Legislative findings and intent. —

(1) The Legislature previously commissioned a performance audit to assess and improve the effectiveness and efficiency of the core operations of the Division of Highways. The Division of Highways has long had difficulty filling positions which are essential to constructing and maintaining the state's highways and bridges. The Legislature finds that the hiring and retention processes of the division must be streamlined to effectively and efficiently meet personnel needs while still affording applicants and employees the due process protections of classified service.

(2) The Legislature has recently approved increased funding for the division which will exacerbate its staffing shortage of hundreds of positions.

(3) The purpose of this section is to allow the Division of Highways to employ qualified applicants to vacant and new personnel positions in the division in a timely manner and to ensure that the Division of Highways has an adequate workforce sufficient to maintain safe roadways for the citizens of West Virginia.

(b) Definitions. — As used in this section:

(1) "Commissioner" means the Commissioner of the Division of Highways or his or her designee; and

(2) "Division" means the Division of Highways.

(c) Special employment procedure; requirements. — The commissioner shall implement the special merit-based application and appointment procedure authorized by the provisions of this section for all the employees of the division to ensure and provide for the selection and retention of competent and qualified personnel. The special application and employment procedure established pursuant to this section shall be effective on and after December 1, 2017, and shall be subject to the following requirements:

(1) The Division of Personnel shall provide competitive registers of eligible applicants when requested by the division to do so within five business days of receipt of the request;

(2) Any position to be filled internally shall be posted for seven calendar days before the division may select an applicant. For positions to be filled with an applicant from outside of the division, the public service announcement shall be posted for not less than fourteen calendar days;

(3) Postings shall be active for up to one year;

(4) Notwithstanding any provision of law or of any rule promulgated under the provisions of this code, the division may employ any person listed on the Transportation Worker I register for employment as a Transportation Worker I without regard to the person's position on said register;

(5) The division shall have full authority to evaluate applicants for employment or promotion within the division to positions within the classified service and classified-exempt service. The division shall have sole authority to determine whether applicants for positions with the division meet minimum position requirements;

(6) The division shall have full authority to make classification determinations for positions within the division by using the classification system approved by the State Personnel Board. The division may independently submit to the State Personnel Board recommendations for the approval of new division classifications or the amendment of current division classifications;

(7) The division shall have full authority to exercise its discretion regarding the application of the Division of Personnel's system of compensation for positions in the division within the classified and classified-exempt service: *Provided*, That application of the provisions of this subdivision shall be uniform. The division may independently submit to the State Personnel Board recommendations for the approval of a special pay scale for the division's personnel;

(8) Notwithstanding any provision of the code or of any rule to the contrary, the Division of Personnel shall not be a mandatory party to any public employee grievance filed against the division. The Division of Personnel shall not be a signatory to, and may not override or otherwise challenge, the division's decisions regarding settlement terms and conditions in employee grievances or other legal proceedings;

(9) The Division of Personnel shall facilitate or perform any lawful action necessary to initiate or complete the division's employment transactions, including, but not limited to, posting positions on applicable systems, initiating public service announcements when requested by the division, and processing necessary forms;

(10) The division shall comply with all applicable record retention requirements provided by law;

(11) The division is authorized to declare any positions effectively vacant due to employee separations, which were not processed prior to the division being placed under the wvOASIS system, vacant and subject to being filled pursuant to the provisions of this section;

(12) The division shall have the flexibility to utilize all vacant position numbers when posting to fill a vacancy and to post vacant positions utilizing multiple classifications with corresponding

job descriptions when the commissioner determines it to be necessary and in the best interest of the agency; and

(13) For purposes of this section, a vacancy created when an employee of the division separates or goes on terminal leave may be posted upon receipt of the notice that the employee has separated or commenced such leave.

(d) Exemption from regular application and appointment requirements. — When seeking applications or making appointments pursuant to the special procedure authorized by subsection (c) of this section, the division is not required to comply with Division of Personnel procedures for seeking applications and making appointments to classified service positions as provided by the provisions of articles six and six-a, chapter twenty-nine of this code or any other provision of this code, including those procedures promulgated by legislative rules, subject however to the following exceptions:

(1) This section does not exempt the division from provisions of this code, prohibiting nepotism, favoritism, discrimination or unethical practices related to employment and promotion, or the public employee grievance system; and

(2) The provisions of this section may not be applied to hiring procedures applicable to any division classified service position or employee in any manner that disqualifies the division for eligibility for any federal highway funds or assistance.

(e) Rules. — The commissioner may promulgate emergency rules and shall propose legislative rules pursuant to the provisions of article three, chapter twenty-nine-a of this code as may be necessary to implement and comply with the provisions of this section.

(f) The provisions of this section shall apply notwithstanding any provisions of article six or six-a, chapter twenty-nine of this code to the contrary.

(g) Classified employees of the division shall continue to be covered by the civil service system and may utilize any applicable public employee grievance process.

The bill (S. B. 2003), as amended, was then ordered to engrossment and third reading.

On motion of Senator Ferns, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

Engrossed Senate Bill 2003 was then read a third time and put upon its passage.

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

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

The nays were: None.

Absent: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 2003) passed.

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

Eng. Senate Bill 2003—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11B-1-8; and to amend said code by adding thereto a new section, designated §17-2A-24, all relating generally to employment procedures of the Division of Highways and the Tax Division of the Department of Revenue; authorizing the Tax Commissioner and the Commissioner of Highways to implement special employment procedures for personnel positions in their respective divisions; making legislative findings; defining terms; establishing requirements for the special employment procedures; exempting Tax Division of the Department of Revenue and Division of Highways from certain other employment procedures; permitting recommendations for new schedules of compensation; exempting Division of Personnel from involvement in certain grievance claims or settlements; directing Division of Personnel to facilitate special employment procedures; requiring Division of Personnel to perform any lawful action necessary to initiate or complete employment transactions of the Division of Highways or the Tax Division under newly established employment procedures; providing for continued application of due process; maintaining efficacy of code provisions prohibiting nepotism, favoritism and discrimination under the special employment procedures; authorizing the Commissioner of Highways and the Tax Commissioner to promulgate emergency rules; and requiring the Commissioner of Highways and the Tax Commissioner to propose legislative rules for the implementation of the special employment procedures authorized for their respective agencies.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 2003) takes effect from passage.

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

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

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

Eng. House Bill 201—A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exempting military retirement income from personal income tax after specified date.

At the request of Senator Ferns, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Ferns, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

The bill was read a second time and ordered to third reading.

Having been engrossed, the bill (Eng. H. B. 201) was then read a third time and put upon its passage.

Senator Ojeda requested a ruling from the Chair as to whether he should be excused from voting under Senate Rule 43, as he is a military member.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 201) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 201) 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 passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

Eng. House Bill 203—A Bill to amend and reenact §11-21-8a and §11-21-8e of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-23a and §11-24-23e of said code, all relating generally to tax credits for rehabilitation of historic buildings and structures; increasing the amount of tax credit against personal and corporate net income taxes from ten percent to twenty-five percent for expenditures made on or after December 31, 2017; providing for the use of tax credit on or after January 1, 2020; prohibiting eligibility for credit if the taxpayer is in arrears or delinquent on certain tax payments; directing rule-making by the Tax Commissioner; eliminating allowance of tax credits after December 31, 2022; allowing prior authorized tax credits to be claimed; limiting the maximum amount available for tax credit per project and in the aggregate per West Virginia state fiscal year; requiring the state historic preservation officer to reserve a certain amount of available tax credits for projects where proposed tax credits will not exceed \$500,000 per project; authorizing the state historic preservation officer to reallocate unused credits reserved for certain projects; modifying carry-back and carry-forward provisions for tax credits; providing requirements and procedures for the allocation and issuance of tax credit reservations and certificates by the state historic preservation officer; establishing requirements to claim tax credits; requiring the state historic preservation officer to prescribe and publish a form and instructions for applications for credits; providing for an application fee payable to the state historic preservation officer; establishing and providing for the administration of and expenditures from a special revenue account; and providing time limits for certain actions of the state historic preservation officer.

At the request of Senator Ferns, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Ferns, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

The bill was read a second time and ordered to third reading.

Having been engrossed, the bill (Eng. H. B. 203) was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 203 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 203) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 203) takes effect from passage.

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

Thereafter, at the request of Senator Weld, and by unanimous consent, the remarks by Senators Ferns and Jeffries regarding the passage of Engrossed House Bill 203 were ordered printed in the Appendix to the Journal.

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

Eng. House Bill 205—A Bill to amend and reenact §21-1C-2, §21-1C-4, and §21-1C-6 of the Code of West Virginia, 1931, as amended, all relating generally to the West Virginia Jobs Act; defining terms; requiring Workforce West Virginia to provide a waiver to an employer if unable to refer certain amount of qualified job applicants to the employer within three business days; increasing and adding civil penalties for violations; providing for written notice of violation to employer for violations; creating a special revenue account; and other technical corrections.

At the request of Senator Ferns, and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

On motion of Senator Ferns, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

The bill was read a second time and ordered to third reading.

Having been engrossed, the bill (Eng. H. B. 205) was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 205) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Karnes, Mann, Maroney, Maynard, Mullins, Ojeda, Palumbo, Plymale, Prezioso, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Clements—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 205) takes effect from passage.

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

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

Upon expiration of the recess, the Senate reconvened and, without objection, returned to the third order of business.

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

Eng. Senate Bill 2002, Allowing certain tax information be shared with designated DOH employees.

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

Eng. Senate Bill 2003, Implementing special hiring procedures for DOH and Tax Division.

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

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

On page six, section eight, line seventy-seven, by striking out the words “articles six and six-a” and inserting in lieu thereof the words “article six”;

On page six, section eight, lines eighty-six and eighty-seven, by striking out the words “or article six-a”;

On page nine, section twenty-four, line seventy-three, by striking out the words “articles six and six-a” and inserting in lieu thereof the words “article six”;

And,

On page nine, section twenty-four, line eighty-six, by striking out the words “or article six-a”.

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

Engrossed Senate Bill 2003, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Baldwin, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Mann, Maynard, Plymale, Prezioso, Romano, Swope, Sypolt, Trump, Unger, Weld and Carmichael (Mr. President)—21.

The nays were: None.

Absent: Azinger, Beach, Clements, Karnes, Maroney, Mullins, Ojeda, Palumbo, Rucker, Smith, Stollings, Takubo and Woelfel—13.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 2003) passed with its title.

Senator Ferns moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Blair, Boley, Boso, Cline, Drennan, Facemire, Ferns, Gaunch, Jeffries, Mann, Maynard, Plymale, Prezioso, Romano, Smith, Swope, Sypolt, Trump, Unger, Weld and Carmichael (Mr. President)—23.

The nays were: None.

Absent: Beach, Clements, Karnes, Maroney, Mullins, Ojeda, Palumbo, Rucker, Stollings, Takubo and Woelfel—11.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 2003) takes effect from passage.

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

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

Eng. Senate Bill 2005, Finding and declaring claim against state.

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

Senate Concurrent Resolution 201, Authorizing adjournments of Senate and House of Delegates.

Under authority of Senate Concurrent Resolution 201, hereinbefore adopted,

On motion of Senator Ferns, the Senate adjourned until Monday, November 13, 2017, at 12 Noon.
