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March 10, 2018
SIXTIETH DAY

Saturday, March 10, 2018

SIXTIETH DAY

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 10:00 a.m., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Friday, March 9, 2018, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Committee Reports

Delegate Hanshaw, Chair of 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, 2018, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

Com. Sub. for H. B. 2483, Requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday,

Com. Sub. for H. B. 4169, Requiring certain establishments and facilities to post human trafficking assistance notices,

Com. Sub. for H. B. 4238, Authorizing counties and municipalities to establish a joint airport hazard comprehensive plan,

H. B. 4410, Removing the requirement that the State Auditor receive copies of the Limited Video Lottery bids,

H. B. 4436, Clarifying when a minor between the ages of 16 and 18 may be employed by or elected as a member of a volunteer fire department,

H. B. 4402, Relating to the prevention of sexual abuse of children,

Com. Sub. for H. B. 4444, Clarifying the authority of the State Fire Commission in adopting a State Building Code,

And,

H. B. 4624, Relating to West Virginia coordinate systems.

Messages from the Executive

Mr. Speaker, Mr. Armstead, presented a communication from His Excellency, the Governor, advising that on March 9, 2018, he approved **H. B. 2889**, **H. B. 4268** and **H. B. 4385**.

Resolutions Introduced

Mr. Speaker, Mr. Armstead, and Delegates Ambler, Anderson, Bates, Boggs, Butler, Cooper, Cowles, Dean, Ellington, Espinosa, Frich, Gearheart, Harshbarger, Hartman, Householder, Kelly, Lane, Maynard, McGeehan, C. Miller, Moye, Nelson, Paynter, Pethel, Shott, Sobonya, Westfall, Wilson and Zatezalo offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 115 - "Requesting the Joint Committee on Government and Finance study the issue of retirement security and the state taxation of Social Security benefits."

Whereas, 460,494 West Virginians receive Social Security benefits, with the average annual benefit approximately \$15,672; and

Whereas, The majority of West Virginians (57 percent) rely on Social Security for 50 percent or more of their household income, while nearly one-third (30 percent) of state residents rely on Social Security for 90 percent or more of their household income; and

Whereas, West Virginia is one of only four states – along with Vermont, North Dakota and New Mexico – that tax retiree Social Security benefits the same way they are taxed on the federal level; and

Whereas, When a state's tax system is tied to the federal income tax, as is often the case, any additional federal taxation of Social Security benefits automatically translates into an additional state tax burden for individuals as well; and

Whereas, Financial security in retirement requires a strong Social Security system, protection of pension promises, effective retirement plans and savings vehicles, and freedom from employment discrimination; and

Whereas, Measures to increase individuals' retirement savings should be encouraged and such savings should be in addition to, not instead of, the guaranteed benefits provided by Social Security; now, therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is requested to study the issue of retirement security and the state taxation of Social Security benefits; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, 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.

Delegates Nelson, Ambler, Butler, Cooper, Dean, Ellington, Espinosa, Frich, Gearheart, Harshbarger, Hartman, Householder, Kelly, Maynard, McGeehan, C. Miller, Moye, Paynter, Shott, Sobonya, Westfall, Wilson, and Zatezalo offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 116 - "Requesting that the Joint Committee on Government and Finance study the impact on states that require a legislative supermajority to enact tax increases or impose new taxes."

Whereas, The West Virginia Constitution does not require a legislative supermajority vote to pass tax increases or to impose new taxes; and

Whereas, Some other states do require a legislative supermajority vote to pass tax increases or to impose new taxes; and

Whereas, Among the several states that require a legislative supermajority vote to pass tax increases or to impose new taxes, there is an array of unique approaches to the requirement. For example, requirements among the states may dictate either a three-fifths, two-thirds or three-fourths majority vote in both chambers to pass tax increases or impose new taxes; they may limit the requirement to only certain types of taxes, or only to certain sessions of their legislatures; or they may include related provisions requiring statewide votes or sunset provisions; and

Whereas, Legislation proposing to amend the West Virginia Constitution to require a legislative supermajority vote to pass tax increases or to impose new taxes has been introduced for this Legislature's consideration during its current and recent sessions; and

Whereas, During its consideration of these proposed resolutions, the Legislature would benefit from information about the impact of supermajority limitations in the states that impose them, about whether there is a best practice among the states that take differing approaches to imposing the restriction, and other germane matters; now, therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the form, conditions and impact of legislative supermajority requirements on votes to pass tax increases or to impose new taxes in place in other the states; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, 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.

Delegates Nelson, Mr. Speaker, Mr. Armstead, Ambler, Butler, Cooper, Cowles, Dean, Ellington, Espinosa, Foster, Frich, Gearheart, Harshbarger, Hartman, Householder, Kelly, Maynard, McGeehan, C. Miller, Paynter, Shott, Sobonya, Westfall, Wilson and Zatezalo offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 117 - "Requesting that the Joint Committee on Government and Finance study the impact on states that impose tax and expenditure limitations to restrain the growth of state budgets."

Whereas, The West Virginia Constitution does not impose the tax and expenditure limitations to restrain the growth of state budgets that are imposed in several other states; and

Whereas, Among the several states that impose the tax and expenditure limitations to restrain the growth of state budgets, there is an array of unique approaches to the requirement. For example, some states limit the growth of their budgets on the tax side, some on the spending side, some on both. Some limit the growth on the collections of a specific tax. Some limit growth in expenditures from year to year, and some of those states tie the limitation to a economic or other growth index. Some states require refunds in the event revenues or expenditures are exceeded. Some states allow the limitations to be exceeded with voter approval or a supermajority of votes cast in both chambers; and

Whereas, Legislation proposing to amend the West Virginia Constitution to impose the tax and expenditure limitations to restrain the growth of this state's budgets has been introduced for this Legislature's consideration during its current and recent sessions; and

Whereas, During its consideration of these proposed resolutions, the Legislature would benefit from information about the impact of imposing tax and expenditure limitations, about whether there is a best practice among the states that take differing approaches to imposing the limitations, and other germane matters; now, therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the form, conditions and impact of laws that impose tax and expenditure limitations to restrain the growth of state budgets in place in other the states; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2019, 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.

Delegates Nelson, Westfall and Ellington offered the following resolution, which was read by its title and referred to the Committee on Rules:

H. C. R. 118 - "Requesting the Joint Committee on Finance to study the fiscal effects of the discretionary use of a video link between a physician and a patient during telemedicine calls regarding non-emergent acute illnesses."

Whereas, It is believed that there may be many West Virginians who experience a non-emergent acute illness, including, but not limited to, allergies, respiratory infections, bronchitis, colds, ear infections, gastroenteritis, and urinary tract infections; and

Whereas, It is believed that many West Virginians may be elderly, disabled, homebound, at work, live far from the nearest primary care physician, do not have immediate access to transportation, and/or in other circumstances which may render it difficult or otherwise inconvenient for them to visit a primary care physician for treatment of such illness; and

Whereas, It is believed that such West Virginians may benefit from the expanded use of telemedicine to allow them to more conveniently obtain treatment for such illness; and

Whereas, Costs to such West Virginians and costs to the State may be significantly reduced through expanded use of telemedicine to obtain treatment for such illness; and

Whereas, W.Va. Code §30-3-13a currently imposes certain video link requirements on the practice of telemedicine; and

Whereas, It is unknown whether such video link is always necessary to meet the standard of care and whether having no video link may be appropriate for a particular patient presentation in the practice of telemedicine; and

Whereas, It may be beneficial for physicians practicing telemedicine to be given the discretion as to whether a video link must be used to meet the standard of care and appropriate for a particular patient presentation; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Finance is requested to study the fiscal effects of the discretionary use of a video link between a physician and patient in telemedicine calls regarding non-emergent acute illnesses.

Further Resolved, That the Joint Committee on Finance report to the regular session of the Legislature, 2019, 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 Finance.

Conference Committee Report Availability

At 10:41 a.m., the Clerk announced that the report of the Committee of Conference on **S. B. 545**, Relating to driving privileges and requirements for persons under 18, shall be available in the Clerk's Office.

Special Calendar

Third Reading

Com. Sub. for S. B. 152, Budget Bill; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 494**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 152) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 495**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 152) takes effect from its passage.

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

Com. Sub. for S. B. 336, Providing certain DMV applicants ability to contribute to WV Department of Veterans Assistance; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 496**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 336) passed.

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

Messages from the Senate

A message from the Senate, by

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

H. B. 2869, Providing for paid leave for certain state officers and employees during a declared state of emergency.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-15a. Paid leave for ~~disaster service volunteers~~ certain state officers and employees during a declared state of emergency.

~~Any state employee who is a certified disaster service volunteer of the American Red Cross may be granted leave from his or her state employment with pay, for not more than fifteen work days in each year, to participate in specialized disaster relief services for the American Red Cross. Leave shall be granted under this section upon the request of the American Red Cross for the services of that employee and only upon the approval of that employee's immediate supervisor. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority or compensatory time. The state shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from his or her state employment. Any supervisor granting leave to an employee for purposes of participating in specialized disaster relief shall make a report to the Governor which includes the~~

~~name of the employee and the cost of salary and benefits of that employee during the period of the leave. The Governor shall keep a record of the total cost of the salary and benefits of employees who have been granted leave and in no event shall the total cost for all state agencies exceed \$100,000: *Provided*, That upon approval of the Governor and repayment of the cost to the employing agency, from the civil contingent fund, leave may be granted in an excess of a total cost of \$100,000 if a state of emergency has been proclaimed pursuant to section six of this article.~~

(a) Any state employee who is designated an essential member of an emergency aid provider may be granted leave from his or her state employment with pay, for not more than 15 work days in each year, to provide disaster relief or emergency services in areas of the state in which a state of emergency has been declared.

(b) Leave shall be granted under this section upon designation of the employee as an essential member by the chief executive officer or other officer or agent of the emergency aid provider who has authority to act on its behalf, and upon approval of that leave by the employee's immediate supervisor and the head of the state agency for which the employee works: *Provided*, That the state agency head shall, prior to granting leave, first confirm that the total cost ceiling set forth in subsection (c) of this section has not yet been exceeded, and that granting leave to the employee will not adversely impact the ability of the state agency to perform its required duties. Leave shall be granted without loss of pay, annual leave, sick leave, earned overtime compensation, seniority, or compensatory time. The state shall compensate an employee granted leave under this section at the employee's regular rate of pay for those regular work hours during which the employee is absent from his or her state employment.

(c) Any supervisor granting leave to an employee for purposes of participating in disaster relief or emergency services pursuant to this section shall make a report to the Governor which includes the name of the employee and the total cost, if any, to the employing agency attributable to the temporary replacement of the employee granted leave in the circumstance where replacement is necessary. The Governor shall keep a record of the total cost reported, and in no event may the total cost for all state agencies exceed \$300,000 in any fiscal year: *Provided*, That upon approval of the Governor and repayment of the cost to the employing agency, from the Civil Contingent Fund, leave may be granted in an excess of a total cost of \$300,000 in any fiscal year: *Provided, however*, That the total cost of all leave, excluding any repayments from the Civil Contingent Fund, may not exceed a total cost of \$300,000 in any fiscal year.

(d) Notwithstanding the provisions of this section to the contrary, no person may be designated an essential member of an emergency aid provider for purposes of this section, if the person is employed by an emergency aid provider located in, or that customarily serves, an area included within the state of emergency declaration.

(e) As used in this section:

(1) 'Emergency aid provider' means a local organization for emergency services as defined by §15-5-2 of this code or a volunteer fire department that is providing emergency services during a state of emergency as a result of the circumstances that resulted in the declaration of the state of emergency;

(2) 'Essential member' means a person designated by an emergency aid provider whose services are needed to provide emergency services due to the circumstances that resulted in the declaration of the state of emergency;

(3) 'State of emergency' means the situation existing after the occurrence of a disaster or circumstance in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code, or in which a major disaster declaration or emergency declaration has been issued by the President of the United States."

And,

By amending the title of the bill to read as follows:

H. B. 2869 – “A Bill to amend and reenact §15-5-15a of the Code of West Virginia, 1931, as amended, relating to providing paid leave for certain state employees during a declared state of emergency; authorizing state employees designated as essential members of an emergency aid provider be granted leave from state employment with pay to provide disaster relief or emergency services in areas of the state in which a state of emergency has been declared; capping available leave at fifteen work days in each year; setting manner of calculating employee compensation during leave; requiring reporting to Governor; directing Governor to keep record of total cost; setting limit on available leave based on cost to the state; authorizing supplement from Civil Contingent Fund; providing exceptions for availability of leave; and defining terms.”

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

A message from the Senate, by

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

Com. Sub. for H. B. 4001, Relating to eligibility and fraud requirements for public assistance.

Delegate Cowles moved that the House of Delegates refuse to concur in the following amendment of the bill by the Senate and request the Senate to recede therefrom:

On page two, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-6. Powers of secretary.

Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the secretary, in addition to all other powers, duties, and responsibilities granted and assigned to that office in this chapter and elsewhere by law, is authorized to:

(1) Promulgate, amend, revise and rescind department rules respecting the organization and government of the department and the execution and administration of those powers, duties, and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(2) Promulgate, amend, revise, and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and policies, but not inconsistent with state law: *Provided*, That rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of §16-2e-1, *et seq.* of this code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-7 of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven of said article.

(3) Obtain by purchase or lease grounds, buildings, office or other space, equipment, facilities and services as may be necessary for the execution and administration of those powers, duties, and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(4) Sign and execute in the name of the state by the State Department of Health and Human Resources any contract or agreement with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships, or individuals: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed.

(5) Sign and execute a contract to implement professional health care, managed care, actuarial and health care-related monitoring, quality review/utilization, claims processing, and independent professional consultant contracts for the Medicaid program: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed: *Provided, however*, That a contract awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains in full force and effect and the secretary retains sole authority to review, approve, and issue changes to contracts issued under the former purchasing process, and is responsible for challenges, disputes, protests, and legal actions related to such contracts.

(6) Establish such special funds as may be required by the federal Social Security Act, as amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of the benefits and provisions thereof relating to the federal-state assistance and federal assistance programs administered by the department and to make payments into and disbursements out of any such special fund or funds in accordance with the requirements of the federal Social Security Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the State Department of Health and Human Resources, through the secretary, is hereby authorized to accept any and all gifts or grants, whether in money, land, services or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund shall revert to the General Revenue Funds of this state. No expenses incurred pursuant to this special fund shall be a charge against the General Funds of this state.

(7) Establish within the department an Office of Inspector General for the purpose of conducting and supervising investigations, performing inspections, evaluations, and review, and ~~for the purpose of~~ providing quality control for the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, ~~quality control~~ inspection, evaluation, review or other activity oversight of public integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General.

(8) Provide at department expense a program of continuing professional, technical, and specialized instruction for the personnel of the department.

(9) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects, and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in

moving his or her household furniture, effects, and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee shall be paid more frequently than once in 12 months or for any movement other than from one place of employment in this state to another place of employment in this state.

(10) Establish a program to provide reimbursement to employees of the department whose items of personal property, as defined by the department by policy, are damaged during the course of employment or other work-related activity as a result of aggressive behavior by a client or patient receiving services from the department: *Provided*, That such reimbursement is limited to a maximum amount of \$250 per claim.

(11) Establish and maintain such institutions as are necessary for the temporary care, maintenance, and training of children and other persons.

(12) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance and federal assistance and which are not inconsistent with state law.

(13) Organize within the department a Board of Review, consisting of a chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, such Board of Review to have such powers of a review nature and such additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance.

(14) Provide by rules review and appeal procedures within the Department of Health and Human Resources as may be required by applicable federal laws and rules respecting state assistance, federal-state assistance, and federal assistance and as will provide applicants for, and recipients of, all classes of welfare assistance an opportunity to be heard by the Board of Review, a member thereof or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance.

(15) Provide by rules, consistent with requirements of applicable federal laws and rules, application forms and application procedures for the various classes of public assistance.

(16) Provide locations for making applications for the various classes of public assistance.

(17) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of public assistance.

(18) Delegate to the personnel of the department all powers and duties vested in the secretary, except the power and authority to sign contracts and agreements.

(19) Make such reports in such form and containing such information as may be required by applicable federal laws and rules respecting federal-state assistance and federal assistance.

(20) Invoke any legal, equitable, or special remedies for the enforcement of the provisions of this chapter.

(21) Require a provider, subgrantee, or other entity performing services on behalf of the department to comply with all applicable laws, rules, and written procedures pertaining to the program for which the entity is providing or coordinating services, including, but not limited to, policy manuals,

statements of work, program instructions, or other similar agreements. When submitting a claim for payment, the entity shall certify that it has complied with all material conditions for payment. Knowingly and intentionally submitting a claim or billing for services performed in material violation of any law, rule, policy, or other written agreement shall constitute fraud and the agreement for provision of services shall terminate. The entity shall be required to repay the department for any payment under the program for which the provider was not entitled, regardless of whether the incorrect payment was the result of department error, fraud, or other cause. A demand for repayment or termination of agreement for provision of services shall be subject to the due process procedures pursuant to §29A-5-1 et seq. of this code. The provisions of this subsection do not apply to fraud in the Medicaid program.

(22) Develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud. The Secretary shall submit a report containing the pilot program's results and recommendations to the Joint Committee on Government and Finance no later than December 31, 2020.

§9-7-2. Definitions.

For the purposes of this article:

(1) 'Assistance' means money payments, medical care, transportation and other goods and services necessary for the health or welfare of individuals, including guidance, counseling, and other welfare services and shall include all items of any nature contained within the definition of 'welfare assistance' in §9-1-2 of this ~~chapter~~ code.

(2) 'Benefits' means money payments, goods, services, or any other thing of value.

(3) 'Board and Care Facility' means a residential setting where two or more unrelated adults receive nursing services or personal care services.

(4) 'Claim' means an application for payment for goods or services provided under the medical programs of the Department of Health and Human Resources.

(5) 'Entity' means any corporation, association, partnership, limited liability company, or other legal entity.

(6) 'Financial Exploitation' means the intentional misappropriation or misuse of funds or assets of another.

'Fraud' means a knowing misrepresentation, knowing concealment, or reckless statement of a material fact.

(7) 'Medicaid' means that assistance provided under a state plan implemented pursuant to the provisions of subchapter nineteen, chapter seven, Title 42, United States Code, as that chapter has been and may hereafter be amended.

(8) 'Person' means any individual, corporation, association, partnership, proprietor, agent, assignee, or entity.

(9) 'Provider' means any individual or entity furnishing goods or services under the medical programs of the Department of Health and Human Resources.

(10) 'Unit' means the Medicaid Fraud Control Unit established under §9-7-1 of this ~~article~~ code.

§9-7-5. Bribery; false claims; conspiracy; criminal penalties; failure to maintain records.

(a) A person shall not solicit, offer, pay, or receive any unlawful remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from the medical services fund established pursuant to §9-4-2 of this ~~chapter~~ code, which is not authorized by applicable laws or rules and regulations.

(b) A person shall not make or present or cause to be made or presented to the Department of Health and Human Resources a claim under the medical programs of the Department of Health and Human Resources knowing the claim to be false, fraudulent, or fictitious.

(c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fraudulent, or fictitious claim under the medical programs of the Department of Health and Human Resources.

(d) Any person found to be in violation of §9-7-5 (a), §9-7-5(b) or §9-7-5(c) of this ~~section~~ code is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than 10 years or shall be fined not to exceed \$10,000, or both fined and imprisoned.

(e) Any person who, having submitted a claim for or received a benefit, payment, or allowance under the medical programs of the Department of Health and Human Resources, knowingly fails to maintain such records as are necessary to disclose fully the nature of a good or service for which a claim was submitted or benefit, payment, or allowance was received, or such records as are necessary to disclose fully all income and expenditures upon which rate of payment were based, for a period of at least five years following the date on which payment was received, shall be guilty of a misdemeanor and, upon conviction, may be imprisoned in a state correctional facility not to exceed one year or may be fined up to \$1,000, or both fined and imprisoned. Any person who knowingly destroys such records within five years from the date the benefit, payment, or allowance was received, shall be guilty of a felony, and may be imprisoned in a state correctional facility not less than one nor more than 10 years or may be fined not to exceed \$10,000, or both fined and imprisoned.

§9-7-6. Civil remedies; statute of limitations.

~~(a) Any person, firm, corporation, or other entity which willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, devise or artifice on behalf of himself, herself, itself, or others, obtains or attempts to obtain benefits or payments or allowances under the medical programs of the Department of Health and Human Resources to which he or she or it is not entitled, or, in a greater amount than that to which he or she or it is entitled, makes or attempts to make, or causes to be made, a claim for benefits, payments, or allowances under the medical programs of the Department of Health and Human Resources, when such person, firm, corporation, or entity knows, or reasonably should have known, such claim to be false, fictitious, or fraudulent, or fails to maintain such records as are necessary shall be liable to the Department of Health and Human Resources in an amount equal to three times the amount of such benefits, payments, or allowances to which he or she or it is not entitled, and shall be liable for the payment of reasonable attorney fees and all other fees and costs of litigation.~~

(b) No criminal action or indictment need be brought against any person, firm, corporation or other entity as a condition for establishing civil liability hereunder.

(c) A civil action under this section may be prosecuted and maintained on behalf of the Department of Health and Human Resources by the Attorney General and the Attorney General's assistants or a prosecuting attorney and the prosecuting attorney's assistants or by any attorney in contract with or employed by the Department of Health and Human Resources to provide such representation.

(d) Any civil action brought under this section shall be brought within five years from the time the false, fraudulent, or fictitious claim was made. Claims will be judged based on the Medicaid or program rules in existence at the time of the claim submission.

ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.

§9-8-1. Definitions.

As used in this article:

'Able bodied adult' means a person between the ages of 18 and 49 years of age without dependents and who does not meet any of the exemptions set forth in §9-8-2(a) of this code.

'Applicant' or 'recipient' means a person who is applying for, or currently receiving, public assistance in the State of West Virginia from the department.

'Department' means the West Virginia Department of Health and Human Resources.

'Electronic benefit transfer' or 'EBT' means any electronic system which allows the department to issue and track benefits via a magnetically encoded payment card.

'Good cause' means circumstances beyond the household's control, including, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, natural disaster, a declared state of emergency due to inclement weather, or the unavailability of transportation.

'Public assistance' means government benefits provided to qualifying individuals on the basis of need to provide basic necessities to individuals and their families. These shall include, but are not limited to, the following:

(A) Supplemental Nutrition Assistance Program, or SNAP;

(B) Medicaid; and

(C) Temporary Assistance to Needy Families, or TANF.

'Secretary' means the Secretary of the West Virginia Department of Health and Human Resources.

'Work' or 'working' means:

(A) Work in exchange for money;

(B) Work in exchange for goods or services ('in kind' work);

(C) Unpaid work, verified under standards established by the department in rule; or

(D) Any combination thereof.

§9-8-2. Work requirements.

(a) All able bodied adults may receive Supplemental Nutrition Assistance benefits for only three months in each 36-month period. Recipients are exempt from the time limit if they are disabled.

pregnant, responsible for the care of a child, or an incapacitated adult as defined in §61-2-29 of this code, participating regularly in a drug or alcohol treatment program, are receiving unemployment compensation, have been medically certified as unfit for work, are employed or are participating and complying with the requirements of a work, education, or volunteer program for at least 20 hours per week, or are veterans receiving disability compensation from the U.S. Department of Veterans Affairs.

(b) Beginning October 1, 2018, the department shall discontinue and shall not seek federal waivers granted pursuant to 7 U.S.C. §2015(o) for Able Bodied Adults Without Dependents (ABAWD) for any county that cannot be demonstrated to have, through data in conformance with U.S. Bureau of Labor Statistics methodology as specified in 7 CFR §273.24(f)(2), a recent 12-month average unemployment rate above 10 percent; a recent 24-month average unemployment rate 20 percent above the national average for the same 24-month period; qualification for extended unemployment benefits; or designation as a 'labor surplus area' by the U.S. Department of Labor. These waivers exempt able bodied adults with no children from work requirements for receipt of SNAP benefits.

(c) The department shall submit a report to the Legislative Oversight Committee on Health and Human Resources Accountability, no later than October 1, 2020, on the employment impact of ABAWD requirements in those counties where they were implemented as of October 1, 2018. The report shall include, on a county-by-county basis, information on the number of SNAP recipients subject to work requirements; the number exempted from work requirements and the reasons for exemption; the number of applicants denied benefits due to non-compliance with work requirements; the dollar amount of benefits withheld due to non-compliance; the estimated fiscal impact on SNAP retailers of withholding those benefits; the number of recipients who engaged in work, education, or volunteerism in order to maintain benefits; the efforts made to assist recipients with meeting work requirements in order to maintain benefits; and any such recommendations pertaining to work requirements as the department deems advisable.

(d) If a recipient resides in a county subject to the provisions of this article, an applicant shall be deemed as complying with the requirements of a work, education, or volunteer program if any of the following requirements are satisfied:

(1) Working at least 20 hours per week, averaged monthly, or 80 hours a month;

(2) Participating in, and complying with, the requirements of a work force training program of 20 hours per week, as determined by the department in rule;

(3) Volunteering 20 hours a week, as determined by the department in rule;

(4) Any combination of working, volunteering and/or participating in a work program for a total of 20 hours per week, as determined by the department in legislative rule; or

(5) Participating in, and complying with, a workfare program as set out in 7 C.F.R. 273.24(a)(3).

(e) As determined by the department, if a recipient would have worked an average of 20 hours per week but missed some work for good cause, the recipient shall be considered to have met the work requirement if the absence from work is temporary and the recipient retains his or her job. Good cause includes circumstances beyond the household's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, natural disaster, a declared state of emergency due to inclement weather, or the unavailability of transportation.

(f) If the department determines that a waiver, or an amendment to a waiver, is necessary to implement a policy that complies with 7 C.F.R. 273.24, it shall request the waiver or the amendment to the waiver from the United States Department of Agriculture.

(g) The department shall propose legislative rules in accordance with the provisions of this code for a plan for implementation of the requirements set forth in this section in counties that are subject to the requirements set forth in §9-8-2 (d) of this section code.

§9-8-3. Income and identity verification.

(a) By December 31, 2018, the department shall redesign an existing system or establish a new computerized income, asset, and identity eligibility verification system or contract with a third-party vendor to verify eligibility, eliminate the duplication of assistance, and deter waste, fraud, and abuse in each public assistance program which it administers.

(b) The department may contract with a third-party vendor to develop a system to provide a service or verify income, assets, and identity eligibility of applicants to prevent fraud, misrepresentation, and inadequate documentation when determining eligibility for public assistance. This system or service shall be accessed prior to determining eligibility, periodically between eligibility redeterminations, and during eligibility redeterminations and reviews. The department may contract with a vendor to provide information to facilitate reviews of recipient eligibility conducted by the department.

(c) A contract made pursuant to this section may not include a provision that provides the vendor with a monetary incentive for reducing the number of recipients.

(d) Nothing in this article precludes the department from continuing to conduct additional eligibility verification processes currently in practice.

§9-8-4. Eligibility verification.

All applications for benefits must be processed through a system as set forth in this article. Complete applications, including the interview, shall be processed within 10 days of receipt or the maximum period required by federal law. Prior to determining eligibility, the department shall access information for every applicant from federal, state, and other sources: *Provided*, That such access does not violate any federal law.

§9-8-5. Identity authentication.

(a) Prior to awarding public assistance, applicants for benefits must complete a computerized identity authentication process to confirm the identity of the applicant. This shall be done with a knowledge-based questionnaire consisting of financial and/or personal questions. The questionnaire must contain questions tailored to assist persons without a bank account or those who have poor access to financial and banking services or who do not have an established credit history. The questionnaire may be submitted online, in-person, or via telephone.

(b) The department shall submit a report to the Legislative Oversight Committee on Health and Human Resources Accountability regarding the feasibility of implementing the photo EBT card option under 7 U.S.C. § 2016(h)(9). The study shall address certain operational issues to ensure that state implementation would be consistent with all federal requirements, and that program access is protected for participating households, including, but not limited to, allowing the recipient to designate permitted users for purposes of utilizing the photo EBT card.

§9-8-6. Case review.

(a) If the information obtained from the review provided in this article does not result in the department finding a discrepancy or change in an applicant's or recipient's circumstances affecting eligibility, the department shall not take any further action and shall continue processing the application.

(b) If the review results in a discrepancy, the department shall promptly redetermine eligibility.

§9-8-7. Notice and right to be heard.

(a) An applicant shall be given written notice and the opportunity to explain any issues with the application or redetermination as set forth in §9-8-6 of this code. Self-declarations by applicants or recipients shall be accepted as verification of categorical and financial eligibility if no other verification source is available. In cases requiring expedited services an applicant's statement may be temporarily accepted until such time as verification is possible.

(b) The notice given to the applicant or recipient is required to describe the circumstances of the issue, the manner in which the applicant or recipient may respond, and the consequences of failing to take action. If the applicant does not respond timely as required by federal law, the department shall take appropriate action. The department may request additional information as it finds necessary to reach a decision.

(c) An individual may respond in writing, electronically, or verbally. If an individual responds verbally, staff shall note the time and contents of the response in the individual's file. The response by the individual may:

(1) Disagree with the findings of the department. The department shall reinvestigate the matter if the applicant or recipient disagrees. If the department finds that there has been an error, the department shall take immediate action to correct it. If the department determines that there is no error, the department shall determine the effect of the response on the applicant's or recipient's case and take appropriate action. Written notice of the department's action shall be given to the applicant or recipient; or

(2) Agree with the findings of the department. The department shall determine the effect on the applicant's or recipient's case and take appropriate action. Written notice of the department's action shall be given to the applicant or recipient.

(d) If the applicant fails to respond to the notice, the department shall deny or discontinue assistance for failure to verify information. Eligibility for assistance may not be established or reestablished until the issue has been resolved.

§9-8-8. Referrals for fraud, misrepresentation or inadequate documentation.

(a) After the case review as set forth in §9-8-6 of this code, the department shall refer cases of suspected fraud to the Office of Inspector General within the department. That office shall take appropriate action, including civil penalties or referral to an appropriate prosecuting attorney for criminal prosecution.

(b) In cases of substantiated fraud, upon conviction, the state shall review all appropriate legal options. These may include, but are not limited to, removal from other public assistance programs and garnishment of wages or state income tax refunds until the department recovers an equal amount of benefits fraudulently claimed.

(c) The department may refer suspected cases of fraud, misrepresentation, or inadequate documentation to appropriate agencies, divisions, or departments for review of eligibility issues in other public assistance programs. This should also include cases in which an individual is determined to be no longer eligible for the original program.

§9-8-9. Reporting to the Governor and Legislature.

The department shall prepare an annual report by January 15 each year to the Governor and Legislative Oversight Commission on Health and Human Resources Accountability. The report shall contain information on the effectiveness and general findings of the eligibility verification system, including the number of cases reviewed, the number of case closures, the number of referrals for criminal prosecution, recovery of improper payment, collection of civil penalties, the outcomes of cases referred to the Office of Inspector General, and any savings that have resulted from the system.

§9-8-10. Prohibitions on use of electronic benefit transfer cards.

(a) To ensure that public assistance program funds are used for their intended purposes, funds available on electronic benefit transfer cards may not be used to purchase alcohol, liquor or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery tickets, tattoos, travel services provided by a travel agent, money transmission to locations abroad, sexually oriented adult materials, concert tickets, professional or collegiate sporting event tickets, or tickets for other entertainment events intended for the general public.

(b) Electronic benefit transfer card transactions are prohibited at all casinos, gaming establishments, tattoo parlors, massage parlors, body piercing parlors, spas, nail salons, lingerie shops, vapor cigarette stores, psychic or fortune-telling businesses, bail bond companies, video arcades, movie theaters, swimming pools, cruise ships, theme parks, dog or horse racing facilities, pari-mutuel facilities, sexually oriented businesses, retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, and businesses or retail establishments where minors under age 18 are not permitted.

(c) Upon enrollment, the department shall provide all applicants with an itemized list of prohibited purchases, including those specified in this section, and make such list available on the department's website.

(d) If a recipient is found to have violated the provisions of this section, the department shall issue a warning in writing to the recipient. The recipient is subject to disqualification of benefits for up to three months following the first offense, for up to one year following the second offense, and a permanent termination of benefits following the third offense, unless expressly prohibited by federal law.

§9-8-11. Tracking out-of-state spending.

(a) The department shall post on its website and provide to the Joint Committee on Government and Finance a report of Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families benefit spending on or before January 15 of each year.

(b) The report required by this section shall include:

(1) The dollar amount and number of transactions of Supplemental Nutrition Assistance Program benefits that are accessed or spent out-of-state, by state;

(2) The dollar amount and number of transactions of Temporary Assistance for Needy Families benefits that are accessed or spent out-of-state, by state;

(3) The dollar amount, number of transactions and times of transactions of Supplemental Nutrition Assistance Program benefits that are accessed or spent in-state, by retailer, institution or location; and

(4) The dollar amount, number of transactions and times of Temporary Assistance for Needy Families transactions of benefits that are accessed or spent in-state, disaggregated by retailer, institution, or location.

(c) The report required pursuant to this section shall not identify individual recipients.

§9-8-12. Rulemaking.

The secretary may promulgate rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code which he or she finds necessary to effectuate the provisions of this article.

CHAPTER 61. CRIMES AND PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-54. Taking identity of another person; penalty.

Any person who knowingly takes the name, birth date, social security number, or other identifying information of another person, without the consent of that other person, with the intent to fraudulently represent that he or she is the other person for the purpose of making financial or credit transactions in the other person's name, or for the purpose of gaining employment, is guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary not more than five years, or fined not more than \$1,000, or both: *Provided*, That the provisions of this section do not apply to any person who obtains another person's drivers license or other form of identification for the sole purpose of misrepresenting his or her age."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4001 - "A Bill to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §9-7-2, §9-7-5, and §9-7-6 of said code; to amend said code by adding thereto a new article, designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8, §9-8-9, §9-8-10, §9-8-11, and §9-8-12; and to amend and reenact §61-3-54 of said code, all relating to investigations, inspections, evaluations, and review conducted by the Department of Health and Human Resources to prevent fraud and abuse; disenrolling providers who commit fraud and requiring repayment; defining fraud as it relates to Medicaid; authorizing penalties against providers for failure to keep medical records for a specific time period; authorizing a civil cause of action for fraud when a person or entity knew or should have known a claim to be false; enlarging the statute of limitations to file health care fraud civil actions; requiring a data analytics pilot program; requiring a report on the pilot project to the Legislature; defining terms relating to public assistance; requiring the Department of Health and Human Resources to implement work requirements for applicants of Supplemental Nutrition Assistance Program (SNAP); to limit recipients to 3 months of benefits in any 36-month period unless the recipient is working or participating in a work, educational,

or volunteer program for at least 20 hours a week; requiring discontinuance of a federal waiver in certain counties; requiring a study of the impact of the SNAP work requirements in those counties where they were implemented; eliminating the federal waiver statewide within a certain time-period; requiring a report to the Legislature; establishing work requirements; authorizing rulemaking; requiring a design or establishment of a computerized income, asset, and identity verification system for each public assistance program administered by the Department of Health and Human Resources; allowing for contracting with a third-party vendor; setting out required contract terms; requiring accessing information of various federal, state, and miscellaneous sources for eligibility verification; requiring identity authentication as a condition to receive public assistance; requiring the department to study the feasibility of requiring photos on EBT cards; specifying procedures for case review of public assistance benefits; setting forth notice requirements and right to a hearing; requiring referrals for fraud, misrepresentation, and inadequate documentation; authorizing referrals of suspected cases of fraud for criminal prosecution; requiring report to the Governor and Legislature; setting forth prohibitions on the use of an electronic benefit transfer card; tracking out-of-state spending of SNAP and TANF benefits; providing for rulemaking; and providing a penalty for taking the identity of another person for the purpose of gaining employment.”

On this motion, Delegate Longstreth demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 497**), and there were—yeas 62, nays 36, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Boggs, Brewer, Byrd, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hamilton, Hartman, Hicks, Hornbuckle, Iaquina, Longstreth, Love, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Thompson and Williams.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the motion by Delegate Cowles prevailed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4447, Providing for a uniform and efficient system of broadband conduit installation.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

On page two, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 2E. DIG ONCE POLICY.

§17-2E-1. Legislative findings.

(a) The Legislature finds that it is in the public interest to accommodate telecommunications facilities on Division of Highways' right-of-way when the use of the right-of-way does not adversely affect the safety of the traveling public or impair the highway or its aesthetic quality or conflict with any federal, state, or local laws, rules, regulations, or policies.

(b) The Legislature further finds that a broadband connection is an essential part of developing the state and local economies, enhancing the transportation system and creating a safer and more secure environment for our citizens.

(c) The Legislature further finds that expanding telecommunication facilities will allow the state to participate in the E-Rate Program of funding for digital education in America to provide reliable services opportunities for education and training.

(d) The Legislature further finds that fast, reliable broadband connections enhance telemedical opportunities for our rural doctors and hospitals, linking them to our major medical centers. Thereby overcoming distance barriers, and improving access to medical services that often are not consistently available in rural communities.

(e) The Legislature further finds that instituting a dig once policy encourages telecommunications carriers to coordinate installation of broadband conduit to minimize costs to the carriers and minimize disruption and inconvenience to the traveling public.

§17-2E-2. Definitions.

For the purposes of this article:

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

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

'Permit' means an encroachment permit issued by the West Virginia Division of Highways that specifies the requirements and conditions for performing work in a right-of-way.

'Right-of-way' means land, property, or any interest therein acquired or controlled by the West Virginia Division of Highways for transportation facilities or other transportation purposes or specifically acquired for utility accommodation.

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

'Telecommunications carrier' means a telecommunications provider as determined by the Public Service Commission of West Virginia or that meets the definition of telecommunications carrier with respect to the Federal Communications Commission, as contained in 47 U.S.C. §153.

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

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

§17-2E-3. Use of rights-of-way.

(a) Before granting longitudinal access or wireless access to a right-of-way, the Division of Highways shall first enter into an agreement with a telecommunications carrier that is competitively neutral and nondiscriminatory as to other telecommunications carriers. Upon receipt of any required approval or concurrence by the Federal Highway Administration the division may issue a permit granting access under this section: *Provided*, That the Division of Highways shall comply with all applicable federal regulations with respect to approval of an agreement, including, but not limited to, 23 C.F.R. §710.403 and 23 C.F.R. §710.405. The agreement shall be approved by the Commissioner of Highways in order to be effective and, without limitation:

- (1) Specify the terms and conditions for renegotiation of the agreement;
- (2) Set forth the maintenance requirements for each telecommunications facility;
- (3) Be nonexclusive; and
- (4) Be for a term of not more than 30 years.

(b) Unless specifically provided for in an agreement entered into pursuant to §17-2E-3(a) of this code, the Division of Highways may not grant a property interest in a right-of-way pursuant to this article.

(c) A telecommunications carrier shall compensate the Division of Highways for access to a right-of-way for the construction, installation, and maintenance of telecommunication facilities, the use of spare conduit or related facilities of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section. The compensation must be, without limitation:

- (1) At fair market value;
- (2) Competitively neutral;
- (3) Nondiscriminatory;
- (4) Open to public inspection;
- (5) Calculated based on the geographic region of this state, taking into account the population and the impact on private right-of-way users in the region;
- (6) Paid in cash or with in-kind compensation, or a combination of cash and in-kind compensation; and
- (7) Paid in a lump-sum payment or in annual installments, as agreed to by the telecommunications carrier and the Division of Highways.

(d) The division may consider the value and benefits expanding broadband service to the unserved and underserved areas of the state has on economic development and expansion of digital education and telemedical opportunities in the area.

(e) For the purpose of determining the amount of compensation a telecommunications carrier must pay the Division of Highways for the use of spare conduit or excess conduit or related facilities

of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section, the division shall:

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

(2) If compensation is paid in-kind, determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities.

(f) The value of in-kind compensation, or a combination of money and in-kind compensation, must be equal to or greater than the amount of monetary compensation that the Division of Highways would charge if the compensation were paid solely with money.

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

§17-2E-4. Highway safety.

(a) The Division of Highways, in its sole discretion, may deny any longitudinal access or wireless access if such access would compromise the safe, efficient, and convenient use of any road, route, highway, or interstate in this state for the traveling public.

(b) Any longitudinal access or wireless access to a right-of-way granted by the Division of Highways pursuant to this article does not abrogate, limit, supersede, or otherwise affect access granted or authorized pursuant to the division's rules, policies, and guidelines related to accommodation of utilities on highways' rights-of-way and adjustment and relocation of utility facilities on highway projects.

§17-2E-5. Joint use.

(a) The Division of Highways shall provide for the proportionate sharing of costs between telecommunications carriers for joint trenching or trench sharing based on the amount of conduit innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division plans to use the trench it shall pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way.

(b) Upon application for a permit, the carrier will notify, by email, the West Virginia Broadband Enhancement Council and all other carriers on record with the West Virginia Broadband Enhancement Council of the application. Other carriers have 30 calendar days to notify the applicant if they wish to share the applicant's trench. This requirement extends to all underground construction technologies.

(c) The carrier shall also meet the following conditions for a permit:

(1) The telecommunications carrier will be required to place, at its sole expense, a Class II legal advertisement, in accordance with §59-3-2(a) of this code, and of a form and content approved by the Division of Highways, in the local project area newspaper, in the Charleston newspaper, on industry and the Division of Highways' websites, and within other pertinent media, announcing the general scope of the proposed installation within the right-of-way and providing competing

telecommunications carriers the opportunity to timely express an interest in installing additional telecommunication facilities during the initial installation. The legal advertisement is to run at least two consecutive weeks, and the telecommunications carrier is to notify the division of any interest of other parties received.

(2) If a competing telecommunications carrier expresses interest in participating in the project, an agreement between the two (or more) telecommunications carriers will be executed by those entities, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. A copy of the executed agreement shall be provided to the Division of Highways.

(3) The telecommunications carrier that placed the legal advertisement is responsible for resolving in good faith all disputes between any competing telecommunications carriers that timely responded to the advertisement and that wishes to install facilities within the same portion of the rights-of-way to be occupied. Should a dispute arise between the initial telecommunications carrier and a competing telecommunications carrier, the initial telecommunications carrier will attempt to mediate the dispute. Any dispute that is not resolved by the telecommunications carriers shall be adjudicated by the Public Service Commission.

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

§17-2E-6. Monetary and in-kind compensation.

(a) All monetary compensation collected by the Division of Highways pursuant to this article shall be deposited in the State Road Fund.

(b) In-kind compensation paid to the Division of Highways under an agreement entered into pursuant to this article may include, without limitation:

(1) Conduit or excess conduit;

(2) Innerduct;

(3) Dark fiber;

(4) Access points;

(5) Telecommunications equipment or services;

(6) Bandwidth; and

(7) Other telecommunications facilities as a component of the present value of the trenching.

(c) The Division of Highways shall value any in-kind compensation based on fair market value at the time of installation or review.

(d) In-kind compensation paid to the Division of Highways may be disposed of if both of the following conditions are met:

(1) The telecommunications facility received as in-kind payment has not been used within 10 years of its installation; and

(2) The Commissioner of the Division of Highways determines that the division does not have an immediately foreseeable need for the telecommunications facility.

(e) Upon determining that it is appropriate to dispose of the telecommunications facility, the division shall determine its current fair market value. The division shall offer the provider or providers who made the in-kind payment the option to purchase any telecommunications facility obtained from such provider. If the provider or providers do not purchase the telecommunications facility, it shall be offered for public auction in the same manner as the division auctions excess rights-of-way.

§17-2E-7. Multiple carriers in a single trench.

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

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

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

§17-2E-8. Existing policies.

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

(b) The Division of Highways may consider the financial and technical qualifications of a telecommunications carrier when determining specific insurance requirements for contractors authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair telecommunications facilities with longitudinal access or wireless access to the right-of-way.

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

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

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

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4447 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-2E-1, §17-2E-2, §17-2E-3, §17-2E-4, §17-2E-5, §17-2E-6, §17-2E-7, and §17-2E-8, all relating to providing a uniform and efficient system of broadband conduit installation coinciding with the construction, maintenance, or improvement of highways and rights-of-way under the oversight of the Division of Highways; making legislative findings; defining terms; providing procedures for broadband conduit installation in rights-of-way; providing for highway safety guidelines; establishing a procedure for joint use between telecommunications carriers; setting forth a procedure for monetary and in-kind compensation; setting forth standards to be utilized in agreements entered into by the Division of Highways and two or more telecommunications carriers in a single trench; and providing that existing rules, policies, and procedures of the Division of Highways and United States Code shall control.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 4629, Relating to broadband enhancement and expansion policies generally.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment of the bill by the Senate and requested the Senate to recede therefrom:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-10. Pilot Project for cooperatives by political subdivisions.

[Repealed].

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

As used in this article:

(1) ‘Cooperative association’ or ‘association’ means any corporation organized under this article. Each association shall also comply with the requisite business corporation provisions of chapter thirty-one-d or thirty-one-f of this code, or the nonprofit corporation provisions of chapter thirty-one-e of this code.

(2) 'Internet services' means providing access to, and presence on, the internet and other services. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless, or dedicated high-speed interconnects.

(3) 'Member' means a member of an association without capital stock and a holder of common stock in an association organized with capital stock.

(4) 'Qualified person' means a person who is engaged in the use of internet services, either in an individual capacity, as a political subdivision of this state, or as a business.

(5) 'Qualified activity' means using internet services.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

(a) The Public Service Commission shall possess and exercise regulatory jurisdiction over the provisions of this article. The Commission shall administer and adjudicate disputes relating to the issues and procedures provided for under this article.

(b) The Commission shall promulgate rules and regulations necessary to effectuate the provisions of the article.

(c) The Commission shall certify to the Federal Communications Commission that this state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the regulation of pole attachments. The certification shall include notice that the State of West Virginia hereby:

(1) Regulates the rates, terms, and conditions related to pole attachments, and

(2) In so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the services."

And,

By amending the title of the bill to read as follows:

H. B. 4629 - "A Bill to repeal §31G-1-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §31G-2-1 of said code; and to amend said code by adding thereto a new section, designated §31G-4-4, all relating to broadband enhancement and expansion policies generally; repealing language relating to pilot project for cooperative associations by political subdivisions; providing that a political subdivision of this state may be a qualified person for the purposes of forming a cooperative association; and establishing Public Service Commission jurisdiction over make-ready pole access within the state."

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to concur in the amendment of the House of Delegates and requested the House to recede from its amendment to

Com. Sub. for S. B. 392, Reconfiguring membership of Emergency Medical Services Advisory Council.

On motion of Delegate Cowles, the House of Delegates refused to recede from its amendment and requested the Senate to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Criss, Martin and Williams.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 2008, Relating to the Dealer Recovery Program.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 3089, Relating to the adoption of instructional resources for use in the public schools.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 4036, Increasing the maximum salaries of family case coordinators and secretary-clerks.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 4157, Eliminating the refundable exemption for road construction contractors.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 4166, Establishing a special revenue fund to be known as the "Capital Improvements Fund — Department of Agriculture Facilities".

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

H. B. 4486, Relating to persons required to obtain a license to engage in the business of currency exchange.

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

Com. Sub. for H. B. 4522, Allowing certain tax information to be shared with the Director of Purchasing Division, Department of Administration, and State Auditor.

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

Com. Sub. for H. B. 4558, Establishing the Entrepreneurship and Innovation Investment Fund in the West Virginia Development Office.

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

H. B. 4628, Relating to authorizing the redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to January 1, 2019.

A message from the Senate, by
The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 100, Morgantown High School Veterans Bridge.

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

Com. Sub. for S. B. 273, Reducing use of certain prescription drugs.

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

Com. Sub. for S. B. 548, Authorizing county commissions to pay election officials.

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

S. B. 585, Altering boundary line between Doddridge and Harrison counties.

Special Calendar

Third Reading

S. B. 633, Expiring funds from Insurance Commission Fund and appropriating funds to Consolidated Medical Services Fund, still being in possession of the Clerk, was taken up for further consideration.

On motion of Delegate Cowles, the House of Delegates then reconsidered the action taken on the effective date.

On motion of Delegate Cowles, the House then reconsidered the passage of the bill.

Delegate Cowles asked and obtained unanimous consent to amend the bill on third reading, and the rule was suspended to permit the offering and consideration of such.

On motion of Delegate Nelson, the bill was amended on page two, line two, following the words "be supplemented and amended by", by inserting the words "increasing an existing item of appropriation and by".

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 498**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Deem and Hanshaw.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 633) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 499**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Deem and Hanshaw.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 633) takes effect from its passage.

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

Conference Committee Report

Delegate Fast, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 4186, Relating generally to guaranteed asset protection waivers.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the Senate to Engrossed Committee Substitute for House Bill 4186 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking out everything after the enacting clause, and agree to the same as follows:

ARTICLE 4. GENERAL PROVISIONS.**§33-4-22. Guaranteed Asset Protection Waivers.**

(a) Short title. – This section may be cited as the “Guaranteed Asset Protection Waiver Act”.

(b) Purpose. – The purpose of this section is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(c) Legislative intent. – The Legislature finds that guaranteed asset protection waivers are not insurance and are not subject to the provisions of this chapter, except as provided in this section. Guaranteed asset protection waivers issued after the effective date of this section may not be construed as insurance and persons marketing, administering, selling or offering to sell guaranteed asset protection waivers are not required to comply with insurance licensing requirements.

(d) Applicability. – This section does not apply to:

(1) An insurance policy offered by an insurer under the insurance laws of this state; or

(2) A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. §37.1, et seq., 12 C.F.R. §721.1, et seq., or other federal law.

(e) Waivers not insurance; exemption from licensing requirement. – Guaranteed asset protection waivers governed by, and issued after the effective date of this section, are not insurance and are exempt from the insurance laws of this state. Persons marketing, administering, selling or offering to sell guaranteed asset protection waivers to borrowers that comply with this section are exempt from this state’s insurance licensing requirement with regard to the marketing, selling or offering to sell guaranteed asset protection waivers.

(f) Definitions. – The following terms are defined for purposes of this section. These terms are not intended to be used or required in guaranteed asset protection waivers.

(1) “Administrator” means a person, other than an insurer or creditor, who performs administrative or operational functions pursuant to guaranteed asset protection waiver programs. Administrative or operational functions may include, but are not limited to:

(A) Document development, processing, and support;

(B) Compliance Services;

(C) Waiver fee processing;

(D) Benefit determination and processing;

(E) Procurement and administration of the contractual liability or other insurance policy;

(F) Technology support; or

(G) Personnel support.

(2) “Borrower” means a debtor, retail buyer, or lessee under a finance agreement.

(3) "Contractual liability" means a contract or other agreement that obligates a third party to indemnify a creditor under (g)(4) of this section and is insurance under the insurance laws of this state.

(4) "Creditor" means:

(A) The lender in a loan or credit transaction;

(B) The lessor in a lease transaction;

(C) A retail dealer of motor vehicles licensed under §17A-6-1 et seq. of this code, that provides credit to buyers as part of a retail sale, provided the dealer complies with the requirements of this section;

(D) The seller in a commercial retail installment transaction; or

(E) The assignees of any of the foregoing persons to whom the credit obligation is payable.

(5) "Finance agreement" means a loan, lease or retail installment sales contract for the purchase or lease of a motor vehicle.

(6) "Free look period" means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees or costs to the borrower. This period of time may not be less than thirty days.

(7) "Guaranteed asset protection waiver" means a contractual agreement that is part of or a separate addendum to the finance agreement in which a creditor agrees, upon payment of a separate charge, to cancel or waive all or part of amounts due to it on a borrower's finance agreement if there is a total physical damage loss or unrecovered theft of a motor vehicle. A guaranteed asset protection waiver is not insurance due to the purchase, administration or operation of the contractual liability or other insurance policy authorized under subdivision (g)(4) of this section.

(8) "Insurer" means an insurance company required to be licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(9) "Motor vehicle" means a self-propelled or towed vehicle designed for personal or commercial use, including, but not limited to, an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat or personal watercraft, and the trailer used to transport a motorcycle, boat, camper or personal watercraft.

(10) "Person" includes an individual, company, association, organization, partnership, limited liability company, business trust, corporation and every form of legal entity.

(g) Requirements for offering guaranteed asset protection waivers. –

(1) Guaranteed asset protection waivers may be offered, sold or provided to borrowers in this state in compliance with this section.

(2) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. §1601, et seq., must be separately stated and may not be considered a finance charge or interest.

(4) A retail dealer of motor vehicles shall insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail dealer of motor vehicles, may insure its guaranteed asset protection waiver obligations under a contractual liability policy or similar policy issued by an insurer. The insurance policy may be directly obtained by a creditor, a retail dealer of motor vehicles or may be procured by an administrator to cover a creditor's or retail dealer's obligations: *Provided*, That retail dealers of motor vehicles that are lessors of motor vehicles are not required to insure obligations related to guaranteed asset protection waivers on leased vehicles.

(5) The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(6) The extension of credit, the terms of credit or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of a guaranteed asset protection waiver.

(7) A creditor that offers a guaranteed asset protection waiver shall report the sale of and forward funds received on all guaranteed asset protection waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy or other specified program document.

(8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor or administrator, pursuant to the terms of a written agreement must be held by the creditor or administrator in a fiduciary capacity.

(h) *Contractual liability or other insurance policies.* –

(1) Contractual liability or other insurance policies insuring guaranteed asset protection waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.

(2) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(3) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premiums have been received by the insurer.

(i) *Disclosures.* –

Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language, the following:

(A) The name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor;

(B) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation the requirements for protection, conditions or exclusions associated with the guaranteed asset protection waiver;

(C) That the borrower may cancel the guaranteed asset protection waiver within a free look period as specified in the waiver, and may receive a full refund of the purchase price, so long as no benefits have been provided under the waiver; or if benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset protection waiver;

(D) The procedure a borrower must follow, to obtain guaranteed asset protection waiver benefits under the terms and conditions of the waiver, including a telephone number and address where the borrower may initiate activation of waiver benefits. Once activation of waiver benefits has been initiated, and until such time as the request for a benefit under the GAP waiver is resolved, the GAP waiver shall not be terminated or cancelled, nor shall a request for a benefit under the GAP waiver be denied, by the creditor, administrator or other designated party, solely due to the borrower's failure to make monthly payments owed for the GAP waiver purchase price.

(E) Whether the guaranteed asset protection waiver may be canceled after the free look period and the conditions under which it may be canceled or terminated, including the procedures for requesting any refund due;

(F) That in order to receive any refund due if a borrower cancels the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator or other party as specified in the guaranteed asset protection waiver. If a borrower is canceling the guaranteed asset protection waiver due to early termination of the finance agreement, the borrower shall provide a written request to the creditor, administrator or other party within ninety days of the occurrence of the event terminating the finance agreement;

(G) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due if there is cancellation of the guaranteed asset protection waiver or early termination of the finance agreement; and

(H) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.

(j) Cancellation. –

(1) Guaranteed asset protection waiver agreements may be cancellable or non-cancellable after the free look period. Guaranteed asset protection waivers must provide that if a borrower cancels a guaranteed asset protection waiver within the free look period, so long as no benefits have been provided, the borrower is entitled to a full refund of the purchase price. If benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset protection waiver;

(2) If the borrower cancels the guaranteed asset protection waiver or terminates the finance agreement early but after the agreement has been in effect beyond the free look period, the borrower may receive a refund of any unearned portion of the purchase price of the guaranteed asset

protection waiver unless the guaranteed asset protection waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to the creditor, administrator or other party. If the borrower is canceling the guaranteed asset protection waiver due to the early termination of the finance agreement, the borrower shall provide a written request within ninety days of the event terminating the finance agreement;

(3) If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement, or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subdivision (4) of this subsection (i), below;

(4) A cancellation or termination refund under subdivision (1), (2) or (3) of this subsection (i) may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

(k) Commercial transaction exempted. – Subsections (g), (h) and (i) of this section do not apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a ‘commercial transaction’.

(l) Exemption. – This section does not apply to guaranteed asset protection waivers sold and/or issued by a federally regulated depository institution.

(m) Effective date. — This section shall apply to all guaranteed asset protection waivers which become effective on or after July 1, 2018.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Com. Sub. for H. B. 4186 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-4-22, relating generally to guaranteed asset protection waivers; providing short title, purpose, legislative intent, and applicability of section; defining certain terms; specifying requirements for offering guaranteed asset protection waivers; providing that guaranteed asset protection waivers are not insurance and are exempt from the insurance laws of this state; providing further exemptions; defining certain terms; providing requirements for offering guaranteed asset protection waivers; requiring contractual liability or other insurance policies on guaranteed asset protection waivers in certain circumstances; requiring certain disclosures; providing for cancellation or non-cancellation; specifying requirements upon cancellation in certain circumstances; exempting certain requirements in commercial transactions; exempting guaranteed asset protection waivers sold and/or issued by a federally regulated depository institution; and providing an effective date.”

Respectfully submitted,

Tom Fast, *Chair*,
John Overington,
Chad Lovejoy,
*Conferees on the part of the
House of Delegates.*

Patricia Rucker, *Chair*,
Michael Azinger,
Mike Woefel,
*Conferees on the part of the
Senate.*

On motion of Delegate Fast, the report of the Committee of Conference was adopted.

Delegate C. Miller requested to be excused from voting on the passage of Com. Sub. for H. B. 4186 under the provisions of House Rule 49.

The Speaker replied that any impact on the Delegate would be as a member of a class of persons possibly to be affected by the passage of the bill, and refused to excuse the Member from voting.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 500**), and there were—yeas 92, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Byrd, Cowles, Marcum, Pushkin, Robinson and Rowe.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4186) passed.

Delegate Cowles moved that the bill take effect July 1, 2018.

Delegate Cowles then asked and obtained unanimous consent to withdraw the motion.

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

At 11:42 a.m., on motion of Delegate Cowles, the House of Delegates recessed until 1:00 p.m.

* * * * *

Afternoon Session

* * * * *

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

Conference Committee Report Availability

At 1:35 p.m., the Clerk announced that the report of the Committee of Conference on **S. B. 282**, Exempting State Conservation Committee from Purchasing Division requirements for contracts related to flood recovery, shall be available in the Clerk's Office.

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for H. B. 2799, Prohibiting the superintendent of schools from requiring a physical examination to be included to the application for a minor's work permit.

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

On page three, section three, lines nineteen and twenty, by striking out all of subsection (c) and inserting in lieu thereof a new subsection, designated subsection (c), to read as follows:

“(c) The superintendent of schools may not require a physical examination to be included in the application for a work permit.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 501**), and there were—yeas 89, nays 1, absent and not voting 9, with the nays and absent and not voting being as follows:

Nays: Pushkin.

Absent and Not Voting: Blair, Deem, E. Evans, Ferro, Fluharty, Hicks, Hornbuckle, Storch and Upson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2799) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4002, Providing that all delegates shall be elected from one hundred single districts following the United States Census in 2020.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 2. APPORTIONMENT OF REPRESENTATION.

§1-2-2c. Redistricting.

Upon the reapportionment and redistricting of the Legislature following the United States Census in 2020 and in each subsequent reapportionment and redistricting, the House of Delegates shall be composed of one hundred single member districts, with apportionment to meet constitutional standards.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 502**), and there were—yeas 70, nays 22, absent and not voting 7, with the nays and absent and not voting being as follows:

Nays: Brewer, Campbell, Canestraro, Caputo, Criss, Diserio, Eldridge, E. Evans, Fleischauer, Hartman, Longstreth, Lynch, Miley, R. Miller, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Thompson, Ward and Williams.

Absent and Not Voting: Blair, Deem, Ferro, Fluharty, Hicks, Hornbuckle and Upson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4002) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4187, Business Liability Protection Act.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 7. DANGEROUS WEAPONS.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

This section may be referred to as ‘The Business Liability Protection Act’.

(a) As used in this section:

(1) ‘Parking lot’ means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles: *Provided*, That for purposes of this section, parking lot does not include the private parking area at a business located at the primary residence of the property owner.

(2) ‘Motor vehicle’ means any privately-owned automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and, which is required to be registered under state law: *Provided*, That for purposes of this section, motor vehicle does not mean vehicles owned, rented, or leased by an employer and used by the employee in the course of employment.

(3) ‘Employee’ means any person, who is over 18 years of age, not prohibited from possessing firearms by the provisions of this code or federal law, and

(A) Works for salary, wages, or other remuneration;

(B) Is an independent contractor; or

(C) Is a volunteer, intern, or other similar individual for an employer.

(4) 'Employer' means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, association, or public-sector entity, that has employees.

(5) 'Invitee' means any business invitee, including a customer or visitor, who is lawfully on the premises of a public or private employer.

(6) 'Locked inside or locked to' means

(A) The vehicle is locked; or

(B) The firearm is in a locked trunk, glove box, or other interior compartment, or

(C) The firearm is in a locked container securely fixed to the vehicle; or

(D) The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock.

(b) Notwithstanding the provisions of this article, any owner, lessee or other person charged with the care, custody, and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes of this section 'person' means an individual or any entity which may acquire title to real property: *Provided, however*, That for purposes of this section 'natural person' means an individual human being.

(c) Any natural person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail not more than six months, or both: *Provided*, That the provisions of this section do not apply to a natural person as set forth in ~~subdivisions (3) through (7), inclusive, subsection (a), section six of this article §61-7-6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while the person is acting in his or her an official capacity; and or to a natural person as set forth in subdivisions (1) through (8), inclusive, subsection (b) of said section §61-7-6(b)(1) through §61-7-6(b)(8) of this code, while the person is acting in his or her official capacity; *Provided, however*, That under no circumstances, except as provided for by the provisions of paragraph (l), subdivision (2), subsection (b), section eleven-a of this article, §61-7-11a(b)(2)(A) through (l) of this code, may any natural person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless the natural person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.~~

(d) *Prohibited acts.* – Notwithstanding the provisions of subsections (b) and (c) of this section:

(1) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is

(A) Lawfully possessed;

(B) Out of view;

(C) Locked inside or locked to a motor vehicle in a parking lot; and

(D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

(2) No owner, lessee, or other person charged with the care, custody, and control of real property may violate the privacy rights of a customer, employee, or invitee either

(A) By verbal or written inquiry, regarding the presence or absence of a firearm locked inside or locked to a motor vehicle in a parking lot; or

(B) By conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.

(C) No owner, lessee, or other person charged with the care, custody, and control of real property may take any action against a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of a firearm stored inside a motor vehicle in a parking lot for lawful purposes, except upon statements made pertaining to unlawful purposes or threats of unlawful actions involving a firearm made in violation of §61-6-24 of this code.

(3) No employer may condition employment upon either:

(A) The fact that an employee or prospective employee holds or does not hold a license issued pursuant to §61-7-4 or §61-7-4a of this code; or

(B) An agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes.

(4) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot of the person's place of business because the customer's, employee's, or invitee's motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within the customer's, employee's, or invitee's motor vehicle.

(e) *Limitations on duty of care; immunity from civil liability.* —

(1) When subject to the provisions of subsection (d) of this section, an employer, owner, lessee, or other person charged with the care, custody, and control of real property has no duty of care related to the acts prohibited under said subsection.

(2) An employer, owner, lessee, or other person charged with the care, custody, and control of real property is not liable in a civil action for money damages based upon any actions or inactions taken in compliance with subsection (d) of this section. The immunity provided in this subdivision does not extend to civil actions based on actions or inactions of employers, owners, lessees, or other persons charged with the care, custody, and control of real property unrelated to subsection (d) of this section.

(3) Nothing contained in this section may be interpreted to expand any existing duty or create any additional duty on the part of an employer, owner, lessee, or other person charged with the care, custody, and control of real property.

(f) *Enforcement.* – The Attorney General is authorized to enforce the provisions of subsection (d) of this section and may bring an action seeking either:

(1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of the rights secured in subsection (d) of any customer, employee, or invitee;

(2) Civil penalties of no more than \$5,000 for each violation of subsection (d) and all costs and attorney's fees associated with bringing the action; or

(3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this section, including costs and attorney's fees. This action must be brought in the name of the state and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a settlement with any alleged violator in the course of his or her enforcement of subsection (d) of this section.

(4) Notwithstanding any other provision in this section to the contrary, the authority granted to the Attorney General in this subsection does not affect the right of a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation of the rights protected under this section in his or her own name and instituted in the circuit court for the county where the alleged violator resides, has a principal place of business, or where the alleged violation occurred. In any successful action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court may award injunctive or other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court shall award all court costs and attorney's fees to the prevailing party."

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4187 – "A Bill to amend and reenact §61-7-14 of the Code of West Virginia, 1931, as amended, relating to creating the Business Liability Protection Act; providing definitions; prohibiting owners, lessees, or other persons charged with the care, custody, and control of real property from prohibiting any customer, employee, or invitee from possessing a legal owned firearm under certain circumstances; prohibiting owners, lessees, or other persons charged with the care, custody, and control of real property from violating certain privacy rights of a customer, employee, or invitee; providing that no employer may condition employment under certain circumstances; providing that no owner, lessee, or other person charged with the care, custody, and control of real property may prevent a customer, employee, or invitee from entering the parking lot because the motor vehicle contains a legal firearm; providing immunity and limitations of liability; providing that the Attorney General is authorized to enforce the such provisions; providing customers, employees, and invitees with a civil cause of action; and providing forms of relief and civil penalties."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 503**), and there were—yeas 87, nays 11, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Byrd, Fleischauer, Hornbuckle, Lane, McGeehan, Pushkin, Pyles, Rowe, Shott, Wagner and Williams.

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4187) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4270, Providing for the timely payment of moneys owed from oil and natural gas production.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.

§22-6-22. Well report, logs, core samples, and cuttings to be filed; confidentiality and permitted use; authority to promulgate rules; reporting of production data for horizontal wells.

(a) Within a reasonable time after the completion of the drilling of a shallow well or deep well, the well operator shall file with the secretary and with the state Geological and Economic Survey a completion report containing the following:

(1) The character, depth, and thickness of geological formations encountered, including fresh water, coal seams, mineral beds, brine, and oil and gas bearing formations; and

(2) Such other information as the secretary may require to effectuate the purposes of this chapter.

The secretary may promulgate such reasonable rules in accordance with §29A-3-1 *et seq.* of this code, as may be considered necessary to ensure that the character, depth, and thickness of geological formations encountered are accurately logged: *Provided*, That the secretary shall not require logging by the use of an electrical logging device: *Provided, however*, That if electrical, mechanical, or geophysical logs are recorded in the well, the secretary may request copies of these logs: *Provided further*, That mechanical or geophysical logs may not include vertical seismic profiles or two-dimensional or three-dimensional seismic information.

(b) If a well operator takes core samples, that activity shall be noted within the report, and, within 60 days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a complete set of cores, consisting of at least quarter slabs, correctly labeled and identified according to depth. The core samples requested by and provided to the state Geological and Economic Survey may not contain any materials or documents made with regard to analyzing or interpreting the core samples.

(c) If a well operator catches cuttings during the drilling of any deep or shallow well, that activity shall be noted within the report and, within 60 days after filing the completion report, the operator shall, subject to the terms of this article, provide the state Geological and Economic Survey with a sample of the cuttings, correctly labeled and identified according to depth.

(d) Any information, reports, cuttings, and core samples requested by and provided to the state Geological and Economic Survey by the operator shall be kept confidential at the written request of the operator for a specified amount of time as follows:

(1) Except for core samples, any logs, drill cuttings, reports and other information or materials that reveal trade secrets or other confidential business information relating to the competitive interests of the operator or the operator's privity may not be disclosed to the public for one year following delivery, unless the operator consents in writing to a shorter time. At the operator's written request, the period of confidentiality may be extended in annual increments: *Provided*, That the total period of confidentiality may not exceed three years.

(2) Any core samples may not be disclosed to the public for five years following delivery to the state Geological and Economic Survey, unless the operator consents in writing to a shorter time. At the operator's written request, the period of confidentiality may be extended for an additional five years: *Provided*, That the total period of confidentiality may not exceed 10 years.

(e) Notwithstanding the provisions of subsection (d) of this section, the state Geological and Economic Survey may store and process confidential information within its minerals mapping or geographic information systems; however, that confidential information may not be revealed to the public until the lapsing of the period of confidentiality created pursuant to subsection (d) of this section. After the period of confidentiality has lapsed, statistics or other information generated as the result of storage and processing may be disclosed in the aggregate through articles, reports, maps, or lectures presented in accordance with generally accepted academic or scientific practices and in a manner to preclude the identification of a particular well or operator.

(f) A quarterly report of the monthly volumes of oil, natural gas, and natural gas liquids produced from any horizontal well drilled shall be filed with the Chief of the Office of Oil and Gas on a form prescribed by the Secretary of the West Virginia Department of Environmental Protection. All reported data shall be made available to the public through the Office of Oil and Gas' website within a reasonable time. The secretary has the express authority pursuant to this article, as well as pursuant to the powers enumerated in §22-6-2 of this code, to promulgate rules and to amend the current rules to require timely quarterly reporting of production data as well as to establish a process for collecting such data.

CHAPTER 37B. MINERAL DEVELOPMENT.

ARTICLE 1. INFORMATION REPORTING AND PAYMENTS TO OWNERS.

§37B-1-1. Oil and natural gas production information reporting from horizontal wells.

(a) An operator or producer or their agents, contractors or assigns shall provide the following information with each payment to all interest owners receiving payments resulting from the development and production of oil, natural gas, or their constituents by horizontal wells governed by §22-6A-1 et seq. of this code, being the Natural Gas Horizontal Well Control Act:

(1) A name, number, or combination of name and number, and the state issued American Petroleum Institute number that identifies each lease, property, unit, pad, and well, for which payment is being made, and the county in which the lease, property, and well are located;

(2) Month and year of production;

(3) Total barrels of oil; number of MCF, MMBTU, or DTH of natural gas; and volume of natural gas liquids produced from each well and sold;

(4) Price received per unit of oil, natural gas, and natural gas liquids produced;

(5) Gross value of the total proceeds from the sale of oil, natural gas, and natural gas liquids from each well less taxes and deductions set forth in §37B-1-1(a)(6) of this code;

(6) Aggregate amounts for each category of deductions for each well which affect payment and are allowed by law, including without limitation those deductions provided for under the terms of the governing lease;

(7) Interest owner's interest in production from each well expressed as a decimal or fraction and reported pursuant to §37B-1-1(a)(1) of this code;

(8) Interest owner's ratable share of the total value of the proceeds of the sale of oil, natural gas, and natural gas liquids prior to the deduction of taxes, if applicable, and other deductions set forth in §37B-1-1(a)(6) of this code;

(9) Interest owner's ratable share of the proceeds from the sale of oil, natural gas, and natural gas liquids less the interest owner's ratable share of taxes, if applicable, and other deductions set forth in §37B-1-1(a)(6) of this code; and

(10) Contact information of the producer of the oil, natural gas, or natural gas liquids, including a mailing address and telephone number.

(b) An interest owner who does not receive the information required to be provided under this section in a timely manner may send a written request for the information by certified mail. Not later than the 60th day after the date the operator or producer receives the written request for information under this section, the operator or producer shall provide the requested information to the interest owner. If the interest owner makes a written request for information under this section and the operator or producer does not provide the information within the 60-day period, the interest owner may bring a civil action against the operator or producer to enforce the provisions of this section, and a prevailing interest owner shall be entitled to recover reasonable attorneys' fees and court costs incurred in the civil action.

§37B-1-2. Accumulation and payment of proceeds from production from horizontal wells.

Notwithstanding any of the other provisions of this article, proceeds from production of oil, natural gas, and natural gas liquids from horizontal wells may be accumulated by the owners, cotenants, lessees, operators, or their agents, contractors, or assigns, until such time as proceeds attributable to any interest owner exceeds \$100 before making a remittance: *Provided*, That, regardless of the amount of money accumulated, the owners, cotenants, lessees, operators, or their agents, contractors, or assigns shall remit proceeds from horizontal wells attributable to the interest owners not less than once annually: *Provided, however*, That all accumulated proceeds from horizontal wells shall be paid to the interest owners entitled thereto immediately, or as soon as practicable, upon cessation of production of oil, natural gas, or natural gas liquids or upon relinquishment or transfer of the payment responsibility to another party.

§37B-1-3. Payments from horizontal wells to be made timely; interest penalties.

All regular production payments from horizontal wells due and owing to an interest owner shall be tendered in a timely manner, which shall not exceed 120 days from the first date of sale of oil, natural gas, or natural gas liquids is realized and within 60 days thereafter for each additional sale.

unless such failure to remit is due to lack of record title in the interest owner, a legal dispute concerning the interest, a missing or unlocatable owner of the interest, or due to conditions otherwise specified in this article. Failure to remit timely payment for horizontal wells shall result in a mandatory additional payment of an interest penalty to be set at the prime rate plus an additional two percent until such payment is made, to be compounded quarterly. The prime rate shall be the rate published on the day of the sale of oil, natural gas, and natural gas liquids in the *Wall Street Journal* reflecting the base rate on corporate loans posted by at least 75 percent of the nation's 30 largest banks."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4270 - "A Bill to amend and reenact §22-6-22 of the Code of West Virginia, 1931, as amended, and to amend said code by adding a new chapter, designated §37B-1-1, §37B-1-2, and §37B-1-3, all relating generally to real property; providing for quarterly reporting to the West Virginia Department of Environmental Protection and publication of same; providing rule-making authority; requiring specified information to be remitted with certain payments to interest owners; providing for written request in the event an interest owner does not receive the required information; providing for a period to provide the required information beginning when the operator or producer receives the written request for information; providing for a cause of action to enforce compliance; providing for the accumulation of proceeds under certain circumstances; providing for timely payment of moneys owed from oil and natural gas production; and establishing interest penalties for certain late payments."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 504**), and there were—yeas 96, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Folk and McGeehan.

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4270) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4428, Allowing training hours earned through public school education or apprenticeship to count towards an applicant's occupational certification.

Delegate Cowles moved that the House of Delegates concur in the following amendment of the bill by the Senate, with further amendment:

On page one, after the enacting clause, by inserting the following:

“CHAPTER 18. EDUCATION.**ARTICLE 5. COUNTY BOARD OF EDUCATION.****§18-5-15g. Vocational education classes for homeschooled and private schooled students.**

County boards shall permit students who are homeschooled or attend private schools to enroll and take classes at the county’s vocational schools, if the county offers vocational classes either itself or through a joint vocational program or service with another county or counties: *Provided*, That such students will be treated equally for admission purposes with applicants enrolled in public school. These students may not be charged more than public school students of compulsory school age.

CHAPTER 18. EDUCATION.**ARTICLE 33. GOVERNOR’S WORKFORCE CREDENTIAL.****§18-33-1. Establishing the Governor’s Workforce Credential.**

The Governor’s Workforce Credential is an initiative aimed at preparing students to enter the workforce with industry ready skills and abilities to meet business and industry expectations. It also creates a way for employers to identify potential employees who are prepared to enter the workforce and understand the industry accepted expectations of such employees. The credential honors those students who are able to meet or exceed rigid requirements within their Career and Technical Education (CTE) programs.

§18-33-2. Requirements.

In order to receive the Governor’s Workforce Credential, a graduating senior shall:

(1) Obtain a grade of ‘B’ or better in the four required state-approved CTE Program of study courses;

(2) Accomplish a minimum score of 95 percent on the CTE portfolio;

(3) Attain a verified school attendance rate of 95 percent or higher during senior year;

(4) Score at an elite level of 70 or higher on the industry-recognized audit;

(5) Earn an industry certification that coincides with a state-approved CTE Program of Study in accordance with the West Virginia Board of Education Policy 2520 13; and

(6) Pass a minimum of two documented drug screenings.

§18-33-3. Recognition for recipients of credential upon graduation.

Any student who fulfills the requirements of the Governor’s Workforce Credential and has also met their graduation requirements will receive individual recognition at their high school graduation ceremony.”

On page three, section five, line four, after the word “acquired”, by inserting the word “through”.

On page three, section five, line five, after the word “education”, by inserting the word “and”.

On page three, section five, line eight, after the word “programs”, by inserting the word “and”.

On page four, section four, line four, after the word “acquired”, by inserting the word “through”.

On page four, section four, line five, after the word “education”, by inserting the word “and”.

On page four, section four, line eight, after the word “programs”, by inserting the word “and”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4428 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-15g; to amend said code by adding thereto a new article, designated §18-33-1, §18-33-2, and §18-33-3; to amend said code by adding thereto a new article, designated §21-1E-1, §21-1E-2, §21-1E-3, §21-1E-4, and §21-1E-5; and to amend said code by adding thereto a new article designated §30-1E-1, §30-1E-2, §30-1E-3, and §30-1E-4, all relating to addressing workforce needs; requiring county boards of education to permit students who are homeschooled or attend private schools to enroll and take classes at the county’s vocational schools under certain conditions; defining and setting forth purpose of Governor’s Workforce Credential; setting forth requirements for qualifying for Credential; requiring that any student fulfilling the requirements of the Credential and meeting graduation requirements receive individual recognition at their high school graduation ceremony; requiring standards and procedures for applying career technical training acquired in public schools, apprenticeships and training programs toward occupational testing, certification and/or licensure; establishing purpose; providing definitions; requiring rules providing standards and procedures be proposed by Commissioner of Labor and by licensing boards and commissions; requiring certain career and education related information be provided to high school students; and requiring Commissioner of Labor rule to include guidelines for collection and dissemination of information in manner easily accessible to both students and their parents.”

On motion of Delegate Cowles, the House concurred in the Senate amendment with the following further amendment, by striking out all of the new Article 33 sections §18-33-1, §18-33-2, and §18-33-3 in their entirety and inserting in lieu thereof a new section to read as follows:

“ARTICLE 2B. AREA VOCATIONAL PROGRAM.

§18-2B-9. Governor’s Workforce Credential.

(a) The Governor’s Workforce Credential is a joint initiative between the Governor, the State Board and the State Superintendent aimed at preparing students to enter the workforce with industry ready skills and abilities that meet business and industry expectations. This credential creates a way for employers to identify potential employees who are prepared to enter the workforce and understand the industry accepted expectations of such employees. The credential honors those students who are able to meet or exceed rigorous requirements within their Career and Technical Education programs.

(b) The State Superintendent shall annually award the Governor’s Workforce Credential to students in their senior year who meet the requirements to receive the credential as set forth in State Board policy.”

And,

In Section §18-5-18g of the Senate amendment, on line five, following the words “enrolled in public schools”, by inserting: “*Provided, however,* That no such student may displace a public school student.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 505**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4428) passed.

On motion of Delegate Cowles, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 4428 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-15g; to amend said code by adding thereto a new section, designated §18-2B-9; to amend said code by adding thereto a new article, designated §21-1E-1, §21-1E-2, §21-1E-3, §21-1E-4, and §21-1E-5; and to amend said code by adding thereto a new article designated §30-1E-1, §30-1E-2, §30-1E-3, and §30-1E-4, all relating to addressing workforce needs; requiring county boards of education to permit students who are homeschooled or attend private schools to enroll and take classes at the county’s vocational schools under certain conditions; defining and setting forth purpose of Governor’s Workforce Credential and providing for State Superintendent to award Credential to students in senior year who meet requirements set forth in State Board policy; requiring standards and procedures for applying career technical training acquired in public schools, apprenticeships and training programs toward occupational testing, certification and/or licensure; establishing purpose; providing definitions; requiring rules providing standards and procedures be proposed by Commissioner of Labor and by licensing boards and commissions; requiring certain career and education related information be provided to high school students; and requiring Commissioner of Labor rule to include guidelines for collection and dissemination of information in manner easily accessible to both students and their parents.”

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

A message from the Senate, by

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

Com. Sub. for H. B. 4392, Relating to Medicaid subrogation liens of the Department of Health and Human Resources.

Delegate Cowles moved that the House of Delegates concur with further title amendment, and the House concurred in the following amendment by the Senate:

On page three, section eleven, lines thirty through thirty-two, by striking out all of subdivision (6) and inserting in lieu thereof a new subdivision, designated subdivision (6), to read as follows:

“(6) The department shall have a priority right to be paid first out of any payments made to the recipient for past medical expenses before the recipient can recover any of his or her own costs for medical care.”

On page four, section eleven, lines fifty-four through fifty-six, by striking out all of subdivision (5) and inserting in lieu thereof a new subdivision, designated subdivision (5), to read as follows:

“(5) When determined by the department to be cost effective, the secretary or his or her designee may, in his or her sole discretion, negotiate for a reduction in the lien in an amount sufficient to incentivize Medicaid members to settle claims against liable third parties.”

And,

On page five, section eleven, lines ninety through ninety-five, by striking out all of paragraph (B) and inserting in lieu thereof a new paragraph, designated paragraph (B), to read as follows:

“(B) The department shall have the burden of proving by a preponderance of the evidence that the allocation agreed to by the parties is proper. The trial court shall give due consideration to the department’s interest in being fairly reimbursed for purposes of the operation of the Medicaid program. The trial court’s decision should be set forth in a detailed order containing the requisite findings of fact and conclusions of law to support its rulings.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 506**), and there were—yeas 74, nays 24, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Fast, Fleischauer, Fluharty, Hicks, Isner, Longstreth, Marcum, Miley, R. Miller, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaule, Thompson, Wagner and Williams.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4392) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 4392 - “A Bill to amend and reenact §9-5-11 of the Code of West Virginia, 1931, as amended, relating to Medicaid subrogation liens of the Department of Health and Human Resources; extending the definition of a liable ‘third-party’ to include certain insurers; establishing notice requirements for claims and civil actions; providing authority for the secretary to negotiate and incentivize Medicaid members to prosecute lawsuits against liable third parties; providing a priority right to the department for subrogation payments; requiring department authorization before finalizing settlement in certain circumstances; establishing the notice, procedure and consent requirements for settlement allocation; establishing procedure in the event the department rejects the proposed allocation; establishing the burden of proof regarding allocation dispute proceedings in court; requiring the trial court to consider the department’s interests in maximizing recovery for purposes of the operation of the Medicaid program in an allocation dispute; requiring the trial court decision to reflect findings of fact and conclusions of law; where a final subrogation lien is less than \$1,500 those matters are exempt from the provisions of this section; modifying the penalty for failure of recipient’s legal representative to notify the department to include interest, and setting effective date.”

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

Com. Sub. for S. B. 261, Transferring certain powers and programs of WV Affordable Housing Trust Fund to WV Housing Development Fund.

On motion of Delegate Cowles, the House concurred in the following Senate title amendment:

Com. Sub. for S. B. 261 - "A Bill to repeal §31-18D-1, §31-18D-2, §31-18D-3, §31-18D-4, §31-18D-5, §31-18D-6, §31-18D-7, §31-18D-8, §31-18D-9, §31-18D-10, §31-18D-11, §31-18D-12, §31-18D-13, §31-18D-14 and §31-18D-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-4c of said code; to amend and reenact §11-22-2 of said code; to amend and reenact §31-18-3, §31-18-6, §31-18-22 and §31-18-24 of said code; and to amend said code by adding thereto two new sections, designated §31-18-20d and §31-18-29, all relating generally to the elimination of the West Virginia Affordable Housing Trust Fund; transferring current responsibilities and duties of West Virginia Housing Trust Fund to the West Virginia Housing Development Fund; eliminating the West Virginia Affordable Housing Trust Fund and the West Virginia Affordable Housing Trust Fund Board of Directors; creating Affordable Housing Fund of the West Virginia Housing Development Fund and providing for uses therefor; providing for assessment of fees on all sales by licensed dealers of factory-built homes to be deposited in the Affordable Housing Fund of the West Virginia Housing Development Fund; providing for assessment of fees upon the privilege of transferring real estate for consideration to be deposited in the Affordable Housing Fund of the West Virginia Housing Development Fund; prohibiting use of funds in Affordable Housing Fund from being used to defray administrative and operating costs and expenses of Housing Development Fund; defining "Affordable Housing Fund"; authorizing the West Virginia Housing Development Fund to provide funding to increase the capacity of nonprofit community housing organizations; providing for uses of funds in the Affordable Housing Fund; providing for disposition of the Affordable Housing Fund in the event of termination or dissolution of West Virginia Housing Development Fund; providing for windup of West Virginia Affordable Housing Trust Fund; repealing code related to West Virginia Affordable Housing Trust Fund; eliminating obsolete language; and making technical corrections."

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 507**), and there were—yeas 61, nays 37, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, Boggs, Brewer, Campbell, Canestraro, Caputo, Diserio, Eldridge, A. Evans, E. Evans, Ferro, Fleischauer, Fluharty, Frich, Hamilton, Hartman, Hicks, Hornbuckle, Isner, Longstreth, Love, Lovejoy, Lynch, Miley, R. Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, R. Romine, Rowe, Sobonya, Sponaule, Thompson, Wagner and Williams.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 261) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, to take effect from passage, of

S. B. 463, Establishing group to examine benefits and need of transferring milk rules and regulations from DHHR to Agriculture.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“CHAPTER 16. PUBLIC HEALTH.

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-5a. Joint Task Force on Milk Rules and Regulations.

(a) The Legislature finds that it is in the public interest to examine the potential benefit and economies of scale by transferring some or all authority to promulgate milk rules and regulations from the Department of Health and Human Resources to the Department of Agriculture.

(b) On or before June 1, 2018, the Governor shall appoint a Joint Task Force on Milk Rules and Regulations composed of the following fifteen members:

(1) One representative from the Department of Agriculture;

(2) One representative from the Bureau for Public Health;

(3) One representative of the West Virginia University Extension Service;

(4) One representative from local health departments in the state;

(5) Two representatives from a trade or industry group representing the farming and agriculture industry in the state, at least one of whom shall be a dairy farmer;

(6) Three citizen members;

(7) Three Senators as recommended by the President of the Senate, no more than two of whom shall be from the same political party; and

(8) Three Delegates as recommended by the Speaker of the House of Delegates, no more than two of whom shall be from the same political party.

(c) The representative from the Department of Agriculture shall preside over the work group and shall provide staff to facilitate meetings of the Joint Task Force. The Joint Task Force shall examine the potential benefit and economies of scale of transferring some or all authority to promulgate milk rules and regulations from the Department of Health and Human Resources to the Department of Agriculture. The task force shall recommend legislation to the Governor and to the Joint Committee on Government and Finance no later than December 31, 2018.

(d) The expenses of the members on the task force shall be paid equally from the funds of the Department of Agriculture, the Bureau for Public Health, and the West Virginia University Extension

Service: *Provided*, That the members of the Joint Task Force may receive no compensation for their services other than actual expenses incurred in the discharge of their duties as members of the Joint Task Force.

(d) The authority of the Joint Task Force on Milk Rules and Regulations shall sunset and expire and is of no force and effect after December 31, 2018, or upon submission of any recommendations or draft legislation, whichever comes first.”

And,

By amending the title of the bill to read as follows:

S. B. 463 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-7-5a, relating to authorizing the establishment of a Joint Task Force on Milk Rules and Regulations; providing for the appointment of certain members by the Governor; authorizing the task force to study milk rules and regulations; providing for reimbursement of actual expenses for members; providing task force members may receive no compensation; requiring the task force to propose legislation; and providing for the sunset of the task force.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 508**), and there were—yeas 92, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Byrd, Eldridge, Pushkin, Robinson, Rowe and Upson.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 463) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 509**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 463) takes effect from its passage.

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

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

Delegate Hanshaw, Chair of 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, 2018, 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 S. B. 73, Modifying crime of fleeing from scene of accident,

Com. Sub. for S. B. 110, Requiring certain licensees notify law enforcement or EMS of life-threatening emergency on premises,

Com. Sub. for S. B. 134, Authorizing Division of Homeland Security and Emergency Management to engage individuals for emergency response and recovery,

Com. Sub. for S. B. 307, Declaring fundraising on state highway or roadway by volunteer fire department is not obstruction or nuisance,

Com. Sub. for S. B. 327, Providing extortion of anything of value, including sexual contact, subjects person to criminal penalty,

S. B. 346, Permitting full-time nonresident students purchase lifetime resident hunting, trapping and fishing licenses,

S. B. 351, Permitting ballot commissioners serve while candidates for certain offices,

Com. Sub. for S. B. 395, Providing for judicial review of appealed decisions of Air Quality Review Board, Environmental Quality Board and Surface Mine Board,

Com. Sub. for S. B. 397, Creating crime of impersonating blind or disabled person,

S. B. 539, Increasing limit for settling claims against DOH,

Com. Sub. for S. B. 561, Increasing minimum contract price requiring execution of bond with respect to building or repairing school property,

S. B. 143, Permitting DNR identification tag be used to identify trap,

S. B. 343, Limiting expenses in preparing list for notice to redeem,

S. B. 350, Eliminating obsolete requirement that Lottery Commission file racetrack video lottery game rules with Secretary of State,

Com. Sub. for S. B. 37, Equalizing penalty for entering without breaking regardless of time of day,

Com. Sub. for S. B. 146, Correcting technical error within Solid Waste Management Act,

Com. Sub. for S. B. 181, Authorizing MAPS promulgate legislative rules,

S. B. 338, Changing date for employers to file annual reconciliation and withholding statements,

Com. Sub. for S. B. 348, Allowing for disposal of service weapons of special DNR police officers,

S. B. 364, Allowing parent or legal guardian of homeschooled child provide signed statement for obtaining permit or license to operate motor vehicle,

S. B. 444, Repealing antiquated code sections regarding safety glass and lighting in motor vehicles,

And,

S. B. 464, Changing statutory payment date for incremental salary increases due state employees.

Mr. Speaker, Mr. Armstead, Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

Com. Sub. for H. C. R. 98, Requesting the Joint Committee on Government Organization to conduct a study to consider removing solid waste facilities and the intrastate transportation of solid waste from the jurisdiction of the Public Service Commission,

H. C. R. 103, Requesting the Joint Committee on Government and Finance study the feasibility and propriety of adopting "Right to Shop" legislation,

H. C. R. 105, Requesting the Joint Committee on Government and Finance to conduct a study regarding evaluating Department of Environmental Protection funds,

H. C. R. 106, Requesting the Joint Committee on Government and Finance to conduct a study of licensure, certification and registration forms of occupational and professional regulation,

H. C. R. 107, Requesting the Joint Committee on Government and Finance to conduct a study of the feasibility of a single building to house all occupational and professional regulatory boards,

H. C. R. 108, Requesting the Joint Committee on Government and Finance to conduct a study encouraging the film industry and tourism mechanisms for promoting West Virginia,

H. C. R. 109, Requesting the Joint Committee on Government and Finance to conduct a study on legislative rules being outcome driven rather than process driven,

H. C. R. 110, Requesting that the Joint Committee on Government and Finance comprehensively study mineral severance taxes and associated fees in West Virginia,

H. C. R. 111, Requesting the Joint Committee on Government and Finance study the issues, needs and challenges facing senior citizens in West Virginia,

H. C. R. 113, Requesting the Joint Committee on Government and Finance to conduct a study on the health outcomes of high sugar diets, and the short-term and long-term health and economic benefits of a sugar drink tax,

H. C. R. 114, Requesting the Joint Committee on Government and Finance study the feasibility and propriety of modernizing state code as it relates to rental of motor vehicles,

H. C. R. 115, Requesting the Joint Committee on Government and Finance study the issue of retirement security and the state taxation of Social Security benefits,

H. C. R. 116, Requesting that the Joint Committee on Government and Finance study the impact on states that require a legislative supermajority to enact tax increases or impose new taxes,

H. C. R. 117, Requesting that the Joint Committee on Government and Finance study the impact on states that impose tax and expenditure limitations to restrain the growth of state budgets,

H. C. R. 118, Requesting the Joint Committee on Finance to study the fiscal effects of the discretionary use of a video link between a physician and a patient during telemedicine calls regarding non-emergent acute illnesses,

S. C. R. 17, John Hancock Hall Memorial Bridge.,

S. C. R. 21, US Army PFC Charles Thurman "Buddy" Ellis Memorial Bridge.,

S. C. R. 22, US Army Colonel Larkin Bilton Vance Memorial Highway.,

S. C. R. 25, US Army PFC O. T. (Teaberry) Mullins Memorial Bridge.,

S. C. R. 26, US Army PFC Thomas Mayford Martin Memorial Bridge.,

S. C. R. 27, US Army CPL F. Lee Noel Memorial Bridge.,

S. C. R. 37, Sheriff John E. White Memorial Road.,

S. C. R. 43, US Army T-4 CE Caesar Bango Memorial Bridge.,

S. C. R. 54, Requesting study on effect of new vehicle weights on WV roads.,

And,

S. C. R. 55, Urging Congress pass law permitting WV to increase vehicle weight on interstate highways,

And reports the same back with the recommendation that they each be adopted.

At the request of Delegate Cowles, and by unanimous consent, the resolutions (Com. Sub. for H. C. R. 98, H. C. R. 103, H. C. R. 105, H. C. R. 106, H. C. R. 107, H. C. R. 108, H. C. R. 109, H. C. R. 110, H. C. R. 111, H. C. R. 113, H. C. R. 114, H. C. R. 115, H. C. R. 116, H. C. R. 117, H. C. R. 118, S. C. R. 17, S. C. R. 21, S. C. R. 22, S. C. R. 25, S. C. R. 26, S. C. R. 27, S. C. R. 37, S. C. R. 43, S. C. R. 54 and S. C. R. 55) were taken up for immediate consideration and put upon their adoption.

The resolutions were then adopted.

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

At the request of Delegate Cowles, and by unanimous consent, **Com. Sub. for S. B. 408**, Licensing of nursing homes and assisted living residences, still being in possession of the Clerk, was taken up for further consideration.

On motion of Delegate Cowles, the House of Delegates then reconsidered the vote on the passage of the bill.

Delegate Cowles asked and obtained unanimous consent to amend the bill on third reading, and the rule was suspended to permit the offering and consideration of such.

On motion of Delegate Howell, the bill was amended on page thirty, section fifteen, beginning on line forty-four, by striking out subsection “(e)” in its entirety and inserting in lieu thereof a new subsection “(e)” to read as follows:

“(e) The amount of damages recovered by a resident, in an action brought pursuant to this section, are exempt for purposes of determining initial or continuing eligibility for medical assistance pursuant to §9-5-1 *et seq.* of this code and may neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available pursuant to §9-5-1 *et seq.* of this code.”

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 510**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 408) passed.

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

At 2:26 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 4:00 p.m.

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Afternoon Session

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- continued -

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

Com. Sub. for H. B. 4001, Relating to eligibility and fraud requirements for public assistance.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Maroney, Weld and Plymale.

On motion of Delegate Cowles, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Shott, Hollen and Canestraro.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4006, Revising the processes through which professional development is delivered for those who provide public education.

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

On page nine, section two, after section two, by inserting a new section, designated section six, to read as follows:

“§5F-1-6. House Bill 4006 amendments effective date.

Except for instances where specifically provided otherwise, all amendments to this Code made by the passage of House Bill 4006 during the 2018 regular session of the Legislature shall become effective July 1, 2018.”

On page twenty-two, section four, lines thirty-three through forty-two, by striking out all of subsection (b) and inserting in lieu thereof a new subsection, designated subsection (b), to read as follows:

“(b) The Center for Professional Development, formerly provided for under §18A-3A-1 et seq. of this code before the effective date of the amendment and reenactment of this section during the 2018 regular session of the Legislature, is hereby transferred to be under the authority and control of the state board. To assist in the delivery of high quality professional development for teachers, principals, and other school employees, the state board shall incorporate within the Department of Education the Center for Professional Development whose general mission shall be under the direction of the state board to advance the quality of teaching and learning in the schools of West Virginia through programs, technical assistance and support to schools and school systems to meet the legislative findings and goals of this article. The center shall perform other duties that may be assigned to it by the state board. In addition, the center shall provide statewide coordination for the continued growth and development of advanced placement programs in West Virginia high schools, including, but not limited to, serving as a liaison for The College Board, Inc., and providing for the training of advanced placement teachers.”

On page twenty-nine, by striking out the article heading.

On pages twenty-nine through thirty-two, by striking out all of sections two, five, and six.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4006 – “A Bill to repeal §10-5-2a of the Code of West Virginia, 1931, as amended; to repeal §18-2l-3 of said code; to repeal §18A-3-2d of said code; to repeal §18A-3A-1, §18A-3A-2, §18A-3A-2b, §18A-3A-3 and §18A-3A-5 of said code; to repeal §18B-11-4 and §18B-11-6 of said code; to amend and reenact §4-13-2 of said code; to amend and reenact §5-26A-3 of said code; to amend and reenact §5B-2C-6 of said code; to amend and reenact §5F-1-2 of said code; to amend said code by adding thereto a new section, designated §5F-1-6; to amend and reenact §5F-2-1 of said code; to amend and reenact §6-7-2a of said code; to amend and reenact §18-2l-1, §18-2l-2 and §18-2l-4 of said code; to amend and reenact §18-10A-1, §18-10A-2, §18-10A-3, §18-10A-6a and §18-10A-12 of said code; to amend and reenact §18-30-4 of said code; to amend and reenact §18A-2-9 and §18A-2-12 of said code; to amend and reenact §18A-3-1, §18A-3-1d, §18A-3-2c and §18A-3-8 of said code; to amend and reenact §18A-3C-1, §18A-3C-2 and §18A-3C-3 of said code; to amend and reenact §18B-1B-2 of said code; to amend and reenact §18B-3D-2 of said code; to amend and reenact §18B-16-5 and §18B-16-8 of said code; to amend and reenact §18B-18B-1 of said code; and to amend and reenact §29-24-3 and §29-24-5 of said code, all relating to revising the processes through which professional development is delivered for those who provide public education in this state, including improvement of the focus on school-level continuous improvement processes led by the principal, generally; eliminating administrative offices, duplicative programs and obsolete provisions; repealing provisions related to creation and duties of distance learning coordinating council; repealing provisions related to annual state board professional development master plan; repealing provisions related to beginning principal internships; repealing provisions related to center for professional development and principals academy curriculum; repealing provisions related to center for development professional development project; repealing provisions related to principals academy establishment, mission, required attendance and employment of coordinator; repealing provisions related to pilot program of delivering educational services via distance learning; repealing provisions related to creation of depositories for assistive devices and services at two colleges or universities; repealing provisions creating the National Institute For Teaching Excellence and its governing board; modifying membership of Sesquicentennial of the American Civil War Commission; modifying membership of Commission for National and Community Service; removing Department of Education and the Arts as option to provide technical support to the Academy of Science and Technology in preparation of annual report; eliminating Department of Education and the Arts as executive department headed by secretary; establishing internal effective date; transferring Division of Culture and History and Division of Rehabilitation Services to Department of Commerce; making the Educational Broadcasting Authority and Library Commission each an independent agency within executive branch; correcting names of agencies; eliminating salary of Secretary of Education and the Arts; modifying the scope and goals of the system for coordination and delivery of professional development to be instituted by State Board of Education; modifying legislative findings with respect to professional development; eliminating requirement for State Board of Education master plan for professional development; requiring State Board of Education rule to include process for aggregating school and system strategic plan information to assist design and delivery of professional development; transferring the Center for Professional Development to be under the authority and control of the State Board of Education; replacing references to the secretary and the Department of Education and the Arts in rehabilitation and vocational services related statutes; modifying membership of College Prepaid Tuition and Savings Program Board; including instructional leadership among the responsibilities of principals and requiring course work in instructional leadership and related topics as prerequisite for administrative certification; moving from a precertification requirement to a pre-employment requirement that principals, assistant principals and administrators complete education and training in evaluation skills; deleting provisions proscribing limitations on certain rights and privileges of principals and assistant principals as teachers; removing requirements for interaction between State Board of Education and Center for Professional Development regarding performance evaluations; removing proscription of issuance or renewal of certain administrative certificate; removing requirement for State Board of Education consultation with Secretary of Education and Arts and Chancellor for Higher Education

prior to exercise of authority over education; adding within standards for education of professional educators requirement providing for the study of the history and philosophical foundations of Western Civilization and the writings of the founders of the United States of America; eliminating references to regional education service agencies; removing requirement for State Board of Education to consult with Secretary of Education and the Arts and the Chancellor of Higher Education; removing provisions related to required training and professional development of principals through principals academy; adding instructional leadership and management techniques to required minimum standards for rule governing training of principals; removing language relating to waivers, ineligibility, progress tracking and expenses relating to training of principals; requiring county professional staff development councils to base proposals for staff development on analysis of individual and collective need indicated in school's strategic plans; incorporating development of certain teachers, principals, assistant principals, vocational administrators and others in the provisions for a comprehensive system to improve teaching and learning; making legislative finding that professional development resources must be focused rather than increased; removing obsolete provisions related to phased implementation of provisions for professional personnel evaluations; eliminating requirement for five percent of evaluations to be based on state summative assessment and increasing percent based on evidence of student learning by five percent; incorporating principals into the comprehensive system of support for improved professional performance; requiring deficiencies identified through personnel evaluations to be incorporated in strategic plans for continuous improvement; removing language requiring posting and other provisions relating to employment; restricting certain appropriations for certain activities; modifying membership and selection process for members of Higher Education Policy Commission; modifying membership of Workforce Development Initiative Program Advisory Committee; updating agency references and removing Secretary of Education and the Arts with respect to rural health initiative; modifying membership of Science and Research Council; transferring certain references and responsibilities to Technology-Related Assistance Revolving Loan Fund For Individuals With Disabilities Board to Secretary of Commerce; directing the adoption and promulgation of rules and guidelines; and making consequential changes incident to the elimination of agencies or programs or the modification of duties, responsibilities and functions."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 511**), and there were—yeas 60, nays 36, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Boggs, Brewer, Byrd, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hartman, Hicks, Hornbuckle, laquinta, Isner, Longstreth, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Sponaugle, Thompson and Williams.

Absent and Not Voting: Capito, Deem and C. Romine.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4006) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the adoption, as amended, of

Com. Sub. for S. J. R. 3, Judicial Budget Oversight Amendment.

On motion of Delegate Cowles, the House of Delegates refused to concur in the following amendment by the Senate and requested the Senate to recede therefrom.

On page three, section fifty-one, Subsection B, lines forty-one through fifty-two, by striking out all of subdivision (5) and by inserting in lieu thereof a new subdivision, designated subdivision (5), to read as follows:

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or decreasing any item therein: *Provided*, That ~~no item relating to the judiciary shall be decreased,~~ the Legislature may not decrease the total general revenue appropriations to the judiciary provided by the budget bill by more than fifteen percent of the amount of the total general revenue appropriations to the judiciary in the current fiscal year's budget without a separate vote of the Legislature approved by a two-thirds vote of the members elected to each house, determined by yeas and nays and entered on the journals. ~~and~~ Except as otherwise provided in this constitution, the salary or compensation of any public officer shall not be increased or decreased during his or her term of office: *Provided further however*, That the Legislature shall not increase the estimate of revenue submitted in the budget without the approval of the Governor.

On page six, line one hundred nineteen, by striking out everything after the word "follows" and the colon, and inserting in lieu thereof the following: "Providing that the total general revenue appropriations to the judiciary may be reduced in the budget bill, and setting forth the required procedures to be followed by the Legislature to enact any decrease of more than fifteen percent in the total general revenue appropriations to the judiciary provided in the budget bill from the total general revenue appropriations to the judiciary provided in the preceding budget bill; providing that when requested by the Legislature, the Chief Justice of the Supreme Court of Appeals must appear and be heard and answer inquiries relative any budget bill; and conforming language relating to the introduction of the budget and matters that may be taken up during extended sessions to more recent amendments to the constitution."

And,

By amending the title of the resolution to read as follows:

Com. Sub. for S. J. R. 3 - "Proposing an amendment to the Constitution of the State of West Virginia, amending section 51, article VI thereof, relating to the state budget and related matters; providing that total general revenue appropriations to the judiciary may be decreased in the budget bill; providing that the Legislature may not reduce the total general revenue appropriation to the judiciary provided by budget bill in an amount greater than fifteen percent of the total general revenue appropriation enacted in the current fiscal year's budget unless such reduction is approved by a 2/3 vote of each house of the Legislature; providing rights and duties of the Chief Justice of the Supreme Court of Appeals relating to appearances before the Legislature and answering inquiries with respect to any budget bill; amending and adding language regarding when the Governor shall submit the budget to the Legislature and matters that may be considered during an extended session to conform the section to more recent amendments to the constitution; making technical corrections to gender related language; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment."

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

Conference Committee Report Availability

At 4:57 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for S. B. 582**, Allowing candidate for political party executive committee serve as election official, shall be available in the Clerk's Office.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2018, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4009, State Settlement and Recovered Funds Accountability Act.

Delegate Cowles moved that the House of Delegates concur with further title amendment, and the House concurred in the following amendment by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 3. ATTORNEY GENERAL.

§5-3-5. Fees to be paid into State Treasury.

[Repealed.]

ARTICLE 3A. STATE SETTLEMENT AND RECOVERED FUNDS ACCOUNTABILITY ACT.

§5-3A-1. Short title.

This article may be known and cited as the State Settlement and Recovered Funds Accountability Act.

§5-3A-2. Legislative findings.

(a) The Legislature hereby finds and declares that:

(1) Public accountability for funds or other assets recovered in a legal action or settlement by or on behalf of the general public, the state or its officers, agencies or political subdivisions is appropriate and required, whether the character of the assets or funds recovered is public or private;

(2) Accountability for assets or funds recovered by, or behalf of, the state is essential to the public trust;

(3) While it may be important that in certain circumstances funds or assets received retain their character, identity, and purpose, it is also important that the process by which funds are administered be open to public scrutiny and accountability to the public; and

(4) The power to appropriate funds for public purposes is solely within the purview of the legislative branch of government, and the Legislature, as a steward of the budgetary process, shall take steps to assure that settlements are handled in a manner that assures maximum accountability to the citizens of the state and their duly elected legislative representatives.

§5-3A-3. Funds to be deposited in State Treasury subject to appropriation; exceptions.

(a) Unless excepted under subsection (d) of this section, when the Attorney General or other officer or agency of the state, in accordance with statutory or common law authority, is a party to or has entered his or her appearance in a legal action on behalf of the State of West Virginia, including ex rel. or other type actions, or participated in a claim that resulted in an extra-judicial settlement, and

a disposition of that action or claim has resulted in the recovery of funds or assets to the state, of any kind or nature whatsoever, including, but not limited to, public funds and private funds or assets, the funds or assets awarded to the state are public funds and shall be deposited in the State Treasury in the General Revenue Fund. Nothing in this subsection shall be construed to apply to equitable relief that is obtained and directly related to any action or claim referenced in this subsection.

(b) Unless excepted under subsection (d) of this section, when the Attorney General or other officer or agency of the state, in accordance with statutory or common law authority, is a party to or has entered his or her appearance in a legal action on behalf of the State of West Virginia, including ex rel. or other type actions or participated in a claim that resulted in an extra-judicial settlement and a disposition of that action or claim has resulted in the recovery of funds or assets to be held in trust by the state, through court action or otherwise, to administer the trust funds or assets, for charitable, eleemosynary, benevolent, educational, or similar public purposes, those funds shall be deposited in a special revenue account or trust fund established in the State Treasury. The Attorney General or other officer or agency of the state or a person, organization, or entity created by the Attorney General or other officer or agency of the state are prohibited from administering trust funds or assets for charitable, eleemosynary, benevolent, educational, or similar public purposes except as is thereafter provided by appropriation or statutory authorization. Nothing in this subsection shall be construed to apply to equitable relief that is obtained and directly related to any action or claim referenced in this subsection.

(c) Assets or funds deposited in an account in the State Treasury pursuant to subsection (a) or (b) of this section shall not be disbursed without a specific legislative appropriation of the deposited funds by the Legislature.

(d) With respect to funds or assets collected or recovered under subsections (a) or (b) of this section, the following shall apply and not be deposited in the General Revenue Fund of the state:

(1) Monies recovered or received by the state pursuant to §46A-7-101 *et seq.* of this code, in which event the monies shall be deposited in the Consumer Protection Recovery Fund in accordance with, and otherwise comply with §5-3A-4 of this code;

(2) The recovery was on behalf of a political subdivision of the state and the funds or assets were specifically awarded to the political subdivision, in which event the recovery shall be transmitted to the treasurer of such political subdivision for deposit in its general fund;

(3) If, as part of a recovery under subsections (a) or (b) of this section, attorney fees, expenses, and costs are specifically awarded to the Attorney General, those monies shall be deposited in the Attorney General's General Administrative Fund and shall be available for expenditure by the Attorney General: *Provided*, That should the matter involve an action brought by the Attorney General pursuant to §47-18-1 *et seq.* of this code, then such award of attorney fees, expenses, and costs shall be deposited in the Attorney General's Antitrust Enforcement Fund and shall be available for expenditure: *Provided, however*, That should the specifically awarded attorney fees and costs be owed to a special Assistant Attorney General appointed by the Attorney General pursuant to section three-a, article three of this chapter, then such attorney fees and expenses shall be paid to the Special Assistant Attorney General; or

(4) Civil asset forfeiture proceedings; or

(5) Fines and civil penalties.

§5-3A-4. Retention of operational monies by Attorney General.

(a) *Legislative findings and purpose.* – The Legislature finds and recognizes that the Attorney General bears the responsibility to investigate, research, prepare pleadings, and, if appropriate, bring action on behalf of the State, its agencies and its citizens. These litigation responsibilities include

employing attorneys, investigators, support staff, and other administrative costs and expenses in performance of the Attorney General's duties. In order to effectively and efficiently perform litigation responsibilities, certain operational monies need to be retained by the Attorney General's office.

(b) Except as required under subsection (c) of this section, any monies recovered or received by the state as a result of a civil action filed by the Attorney General pursuant to §46A-7-1 et seq. of this code, shall be deposited in a separate special revenue fund by the State Treasurer, to be known as the Consumer Protection Recovery Fund, which is hereby created in the State Treasury and to be administered by the Attorney General as follows:

(1) The Attorney General shall transfer, upon the expiration of each fiscal year, from the Consumer Protection Recovery Fund into the General Revenue Fund of the state, any unencumbered monies in excess of \$7 million from the balance remaining in the Consumer Protection Recovery Fund.

(2) The monies in the Consumer Protection Recovery Fund shall be used by the Attorney General for the direct and indirect administrative, investigative, compliance, enforcement, or litigation costs and services incurred for consumer protection purposes in accordance with the provisions of chapter 46-A of this code.

(c) Any monies received by the Attorney General for the specific purpose of consumer restitution or refunds shall be placed in a separate special revenue fund by the State Treasurer, to be known as the Consumer Protection Restitution Fund, which is hereby created in the State Treasury under the administration of the Attorney General. All monies placed in the Consumer Protection Restitution Fund shall be paid out to the specific consumers for whom recovery was made: *Provided*, That when the Attorney General is unable to locate a consumer, for purposes of payment of restitution or refund, within one year of the date of receipt of any such restitution, said funds shall be transferred to the Consumer Protection Recovery Fund.

(d) Upon the effective date of this section, the Consumer Protection Fund, heretofore created in the State Treasury and administered by the Attorney General, is terminated and closed and any balance remaining in the fund shall be transferred to the Consumer Protection Recovery Fund for expenditure pursuant to subsection (b) of this section.

§5-3A-5. Preparation and enforceability of orders.

(a) In the preparation of a settlement agreement, conciliation agreement, memorandum of understanding, or other type of agreement setting forth a disposition that will result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state who is a party to or has entered his or her appearance in the action on behalf of the State of West Virginia, may not agree to any terms contrary to the provisions of §5-3A-3 or §5-3A-4 of this code.

(b) In the preparation of a judgment order that will result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state who is a party to or has entered his or her appearance in the action on behalf of the State of West Virginia, shall advise the court of the provisions of this section and of the provisions of §5-3A-3 or §5-3A-4 of this code.

(c) In the event of an extra-judicial settlement that would result in the recovery of funds or assets by the state, the Attorney General, or other officer or agency of the state acting on behalf of the State of West Virginia, may not agree to any terms contrary to the provisions of sections three or four of this article.

§5-3A-6. Reporting and accountability.

(a) For purposes of this section, the Attorney General shall, on or before August 15 of each year, deliver to the Governor, the Joint Committee on Government and Finance, and the State Auditor, a

report providing an accounting of receipts and expenditures for each fund administered by the Attorney General during the next preceding fiscal year.

(b) In addition to, and separate from, the annual report required to be filed under §5-3-4 of this code, the Attorney General shall, on or before January 15 of each year, deliver to the Governor, the Joint Committee on Government and Finance, and the State Auditor, a report of the causes described in §5-3A-3 of this code, in which there has been a disposition, and any extra-judicial settlements obtained, and summary of, the disposition, including amounts or assets recovered by the state during the next preceding calendar year.

(c) The report required by subsection (b) of this section shall also include:

(1) Amounts paid to any Special Assistant Attorney General or other persons under contract with the Attorney General to perform legal services, for representing the state or a public officer or employee of the state; and

(2) The amount of judgments, settlements, costs, and fees awarded by the courts to the Attorney General or to the state, including its officers or agencies, in which the Attorney General has served as counsel on behalf of the state.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4009 - “A Bill to repeal §5-3-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-4, §5-3A-5, and §5-3A-6, all relating to creating the state Settlement and Recovered Funds Accountability Act; providing a short title; setting forth legislative findings; directing that recovered funds and assets to be deposited into the State Treasury in the General Revenue Fund of the state, and providing exceptions; directing that certain recovered funds and assets be held in trust to be deposited into a special revenue account in the State Treasury; requiring legislative appropriation of those funds and assets; creating two special revenue funds in the state treasury, known as the Consumer Protection Recovery Fund and the Consumer Protection Restitution Fund; requiring annual transfer of monies exceeding \$7 million in the Consumer Protection Recovery Fund to the General Revenue Fund; requiring for disbursement of funds from the Consumer Protection Recovery Fund; requiring transfer of funds from the Consumer Protection Recovery Fund into the Consumer Protection Recovery Fund; authorizing the deposit and expenditure of attorney fees, expenses and costs awarded to the Attorney General from the fund; prohibiting agreements to settlement or agreement terms that are contrary to the provisions of law; requiring reporting by the Attorney General to report annually as to the receipts and expenditures of the funds and the disposition of causes; and repealing provisions requiring the Attorney General to deposit all fees received for representing the state into the General Revenue Fund.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 512**), and there were—yeas 76, nays 21, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bates, Boggs, Byrd, Eldridge, E. Evans, Fleischauer, Fluharty, Hicks, Hornbuckle, Iaquinta, Lovejoy, Lynch, Moye, Pushkin, Pyles, Robinson, Rowe, Thompson, Upson, Ward and Williams.

Absent and Not Voting: Capito and Deem.

So, a majority of the members elected to the House of Delegates having voting in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4009) passed.

On motion of Delegate Cowles, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 4009 - "A Bill to repeal §5-3-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5-3A-1, §5-3A-2, §5-3A-3, §5-3A-4, §5-3A-5, and §5-3A-6, all relating to creating the state Settlement and Recovered Funds Accountability Act; providing a short title; setting forth legislative findings; directing that recovered funds and assets to be deposited into the State Treasury in the General Revenue Fund of the state, and providing exceptions; directing that certain recovered funds and assets be held in trust to be deposited into a special revenue account in the State Treasury; requiring legislative appropriation of those funds and assets; creating two special revenue funds in the state treasury, known as the Consumer Protection Recovery Fund and the Consumer Protection Restitution Fund; requiring annual transfer of monies exceeding \$7 million in the Consumer Protection Recovery Fund to the General Revenue Fund; providing for disbursement of funds from the Consumer Protection Recovery Fund; requiring transfer of funds from the Consumer Protection Restitution Fund into the Consumer Protection Recovery Fund; authorizing the deposit and expenditure of attorney fees, expenses and costs awarded to the Attorney General from the fund; prohibiting agreements to settlement or agreement terms that are contrary to the provisions of law; requiring reporting by the Attorney General to report annually as to the receipts and expenditures of the funds and the disposition of causes; and repealing provisions requiring the Attorney General to deposit all fees received for representing the state into the General Revenue Fund."

Delegate Cowles moved that the bill take effect July 1, 2018.

On this question, the yeas and nays were taken (**Roll No. 513**), and there were—yeas 92, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Pushkin, Pyles, Robinson, Upson and Ward.

Absent and Not Voting: Capito and Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4009) takes effect July 1, 2018.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4150, Prohibiting telecommunications and IP-enabled voice services from displaying the name or telephone number of the recipient.

Delegate Cowles moved that the House of Delegates concur with further title amendment, and the House concurred in the following amendment by the Senate:

On page three, section five hundred one, line fifty-five, after the word "number", by striking out the comma and the word "location".

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 514**), and there were—yeas 96, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan and Robinson.

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4150) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 4150 - “A Bill to amend the Code of West Virginia, 1931, as amended, to amend and reenact §46A-6F-501; all relating generally to prohibiting telemarketing companies from transmitting misleading or inaccurate caller identification information; and providing exceptions thereto.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2018, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4338, Relating to the powers and authority of the Divisions of Administrative Services, and Corrections and Rehabilitation of the Department of Military Affairs and Public Safety.

Delegate Cowles moved that the House of Delegates concur in the following amendment of the bill by the Senate with further amendment:

On page two, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers’ successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, \$92,500; Commissioner, ~~Division of Corrections~~ Division of Corrections Division of Corrections and Rehabilitation, ~~\$80,000~~ \$90,000; Director, Division of Natural Resources, \$75,000; Superintendent, State Police, \$85,000; Commissioner, Division of ~~Banking~~ Financial Institutions, \$75,000; Commissioner, Division of Culture and History, \$65,000; Commissioner, Alcohol Beverage Control Commission, \$75,000; Commissioner, Division of Motor Vehicles, \$75,000; Director, Human Rights Commission, \$55,000; Commissioner, Division of Labor, \$70,000; ~~prior to July 1, 2011, Director, Division of Veterans Affairs, \$65,000~~; Chairperson, Board of Parole, \$55,000; members, Board of Parole, \$50,000; members, Employment Security Review Board, \$17,000; and Commissioner, Workforce West Virginia, \$75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, \$95,000: Provided, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed \$175,000; Transportation, \$95,000: Provided, however, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid \$120,000; Revenue, \$95,000; Military Affairs and Public Safety, \$95,000; Administration, \$95,000; Education and the Arts, \$95,000; Commerce, \$95,000; Veterans' Assistance, \$95,000; and Environmental Protection, \$95,000: Provided further, That any officer specified in this subsection whose salary is increased by more than \$5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of \$5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, \$80,000; Director, Division of Rehabilitation Services, \$70,000; Director, Division of Personnel, \$70,000; Executive Director, Educational Broadcasting Authority, \$75,000; Secretary, Library Commission, \$72,000; Director, Geological and Economic Survey, \$75,000; Executive Director, Prosecuting Attorneys Institute, \$80,000; Executive Director, Public Defender Services, \$70,000; Commissioner, Bureau of Senior Services, \$75,000; Executive Director, Women's Commission, \$45,000; Director, Hospital Finance Authority, \$35,000; member, Racing Commission, \$12,000; Chairman, Public Service Commission, \$85,000; members, Public Service Commission, \$85,000; Director, Division of Forestry, \$75,000; ~~Director, Division of Juvenile Services, \$80,000; Executive Director, Regional Jail and Correctional Facility Authority, \$80,000~~ and Executive Director of the Health Care Authority, \$80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, \$92,500; Insurance Commissioner, \$92,500; Director, Lottery Commission, \$92,500; Director, Division of Homeland Security and Emergency Management, \$65,000; and Adjutant General, \$125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.**ARTICLE 1. DEFINITIONS.****§15A-1-1. Rules of construction generally.**

Whenever in this chapter, or in any rule or regulation authorized by it, any of the words, terms, or phrases defined in this article are used, they shall be taken and construed to have the meaning, application, and effect ascribed to them in this article, unless otherwise specified or clearly intended.

§15A-1-2. 'Department.'

'Department' means the Department of Military Affairs and Public Safety.

§15A-1-3. 'Secretary.'

'Secretary' means the Secretary of the Department of Military Affairs and Public Safety.

§15A-1-4. 'Commissioner' defined.

'Commissioner' means the Commissioner of the Division of Corrections and Rehabilitation within the Department of Military Affairs and Public Safety.

§15A-1-5. 'Inmate' defined.

'Inmate' means an adult incarcerated person.

§15A-1-6. 'Resident' defined.

'Resident' means a juvenile within the custody of the Division of Corrections and Rehabilitation.

ARTICLE 2. DIVISION OF ADMINISTRATIVE SERVICES.**§15A-2-1. Division of Administrative Services.**

(a) The Division of Administrative Services is created within the department to perform the administrative services for identified agencies within the department.

(b) The Division of Administrative Services shall provide fiscal services, payroll services, human resources services, and procurement services for the Division of Corrections and Rehabilitation, created in §15A-3-1 et seq. of this code, and any other agencies or boards required by the secretary: *Provided*, That the secretary may not require the administrative services of the State Police, the West Virginia National Guard, or the West Virginia Military Authority be provided by the Division of Administrative Services.

(c) The State Police, the West Virginia National Guard, and the West Virginia Military Authority may elect to utilize the services of the Division of Administrative Services. The director of the Division of Administrative Services is authorized to enter into a memorandum of understanding with the head of the State Police, the West Virginia National Guard, or the West Virginia Military Authority to effectuate this utilization.

§15A-2-2. Division director; appointment and qualifications; powers and duties.

(a) The secretary shall appoint a director for the Division of Administrative Services who shall serve at the will and pleasure of the secretary. The director shall have extensive knowledge in the

field of public safety and the principles and practices of administration and experience in the civil service system.

(b) The director shall have control and supervision of the Division of Administrative Services and shall be responsible for the work of each of its employees.

(c) The director shall have the authority to employ all personnel necessary to perform the functions of the Division of Administrative Services. The director shall also have the authority to employ assistants and attorneys as may be necessary for the efficient operation of the Division of Administrative Services.

(d) The director shall perform the duties herein specified and shall also perform other duties as the secretary may prescribe.

(e) Where reference in this article is made to the 'director', it shall mean the Director of the Division of Administrative Services.

§15A-2-3. Transfer of employees; continuation of programs; transfer of equipment and records; protection.

(a) Effective July 1, 2018, all persons employed on the effective date of this article by the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority or the Division of Corrections whose current employment responsibilities include those to be provided by the Division of Administrative Services are hereby assigned and transferred to the Division of Administrative Services.

(1) The Division of Administrative Services shall assume all responsibilities of the administrative services sections of the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority and the Division of Corrections, including those related to ongoing programs, benefits, litigation or grievances.

(2) All equipment and records necessary to effectuate the purposes of this article shall be transferred to the Division of Administrative Services.

(b) Any person transferred to the office of the director of the division of administrative services who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee. Any person transferred to the office of the director of the division of administrative services who on the effective date of this article is a classified exempt civil service employee, other than the Director, and his or her Deputy Directors, and one exempt assistant, shall, within the limits contained in §29-6-1 et seq. of this code, be transferred into the civil service system as a permanent covered employee, and is no longer exempt: *Provided*, That any transferred employee that has been employed in his or her position for less than the required probationary period must first complete the probationary period prior to becoming a permanent covered employee.

ARTICLE 3. DIVISION OF CORRECTIONS AND REHABILITATION.

§15A-3-1. Purpose and legislative intent.

(a) The primary purpose of the Division of Corrections and Rehabilitation is to enhance public safety by providing for the detention of juvenile offenders, both pretrial and adjudicated, pretrial detention of adult persons facing criminal charges, and incarceration and care of adult convicted offenders who have been sentenced by courts of proper jurisdiction to serve terms of incarceration.

(b) It is the intent of the Legislature:

(1) That juveniles and adult offenders be afforded appropriate education and treatment to reestablish their ability to live peaceably, consistent with the protection of the community;

(2) That persons held in pretrial detention, and committed to jails and correctional institutions of the state for whom release is available for crimes, be afforded appropriate treatment to reestablish their ability to live peaceably, consistent with the protection of the community;

(3) That persons committed to jails and correctional institutions of the state be released at the earliest possible date, consistent with public safety;

(4) To establish a just, humane, and efficient corrections program; and

(5) To avoid duplication and waste of effort and money on the part of public and private agencies.

(c) This chapter shall be construed in favor of public safety.

§15A-3-2. Division of Corrections and Rehabilitation established.

(a) The Division of Corrections and Rehabilitation is hereby established within the Department of Military Affairs and Public Safety. The executive and administrative head of the Division of Correction and Rehabilitation shall be the Commissioner appointed pursuant to §15A-3-3 of this code.

(b) Effective July 1, 2018, the Division of Corrections and the Division of Juvenile Services are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of those divisions are hereby transferred to the Division of Corrections and Rehabilitation.

(c) Effective July 1, 2018, the powers and authority of the Regional Jail and Correctional Facility Authority Board, in relation to all functions of correctional operations, are hereby transferred to the Division of Corrections and Rehabilitation. The Regional Jail and Correctional Facility Authority Board shall only retain the powers authorized in §15A-8-1 *et seq.* of this code.

(d) Whenever in this code a reference is made to the Division of Corrections, it shall be construed to mean the Division of Corrections and Rehabilitation. Wherever in this code a reference is made to the Division of Juvenile Services, it shall be construed to mean the Division of Corrections and Rehabilitation. Whenever in this code reference is made to the Regional Jail and Correctional Facility Authority Board in relation to operations of any of the regional jails, it shall be construed to mean the Division of Corrections and Rehabilitation.

(f) Any person employed by the Division of Corrections and Rehabilitation who on the effective date of this article is a classified service employee shall, within the limits contained in §29-6-1 *et seq.* of this code, remain in the classified service system as a covered employee.

(e) Where reference in this article is made to the 'division', it shall mean the Division of Corrections and Rehabilitation.

§15A-3-3. Commissioner of division; qualifications, oath and bond.

(a) A commissioner of the Division of Corrections and Rehabilitation shall be appointed by the Governor, by and with the advice and consent of the Senate, as provided in §6-7-2a of this code.

(b) Effective July 1, 2018, the offices of Commissioner of Division of Corrections, the Director of Juvenile Services, and the Executive Director of the Regional Jail and Correctional Facility Authority are hereby abolished. Except as otherwise provided in this chapter, the powers and authority of those officers are vested in the Commissioner of the Division of Corrections and Rehabilitation.

(c) The commissioner shall take and subscribe to the oath prescribed by the Constitution for public officials and shall execute an official bond in a penalty of \$15,000, conditioned as required by law. Premiums on the bond shall be paid from appropriations made for the commissioner's office. The bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of the Secretary of State.

(d) Whenever in this code, reference is made to the Commissioner of the Division of Corrections or the Director of the Division of Juvenile Services, it shall be construed to mean the Commissioner of the Division of Corrections and Rehabilitation. Whenever in this code reference is made to the Executive Director of the Regional Jail and Correctional Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean the Commissioner of the Division of Corrections and Rehabilitation.

§15A-3-4. Powers and duties of commissioner generally.

(a) The commissioner, in order to carry out the purposes and intent of this chapter, shall:

(1) Exercise general supervision over the administration of the institutions under the jurisdiction of the division;

(2) Establish separate subdivisions, including a Bureau of Prisons and Jails, a Bureau of Juvenile Services, and a Bureau of Community Corrections, each to be headed by assistant commissioners, and other subdivisions as he or she deems advisable, which may be headed by one of the assistant commissioners, or by deputy directors. Nothing herein shall prohibit the commissioner from appointing the same person to head more than one subdivision;

(3) Establish rules, policies, and regulations in writing governing all subdivisions and institutions within the division;

(4) Establish an appropriate training program for personnel of the division;

(5) Classify the institutions of the division, varying according to the factors as security features, program, age, and sex of inmates, physical stature or size, character of inmates;

(6) Establish a system of classification of inmates and residents, through a reception and examination procedure;

(7) Cooperate with the Department of Education in providing for the education of inmates and residents in all institutions within the division, as provided in §18-2-13f of this code and any other provision of this code;

(8) Supervise the treatment, custody, and discipline of all inmates and residents and the maintenance of the institutions and their industries;

(9) Establish a system of compensation for inmates and residents of the institutions of the state who perform good and satisfactory work either within the industrial program or in the servicing and maintenance of the institutions or any other institutions or camps within the state. The commissioner,

or his or her designee, may establish a graduated scale of compensation to be paid to inmates and residents in accordance with their skill in industry; and

(10) Subject to the provisions in §25-1A-5 of this code, provide for the transportation of inmates between the jails and local holding facilities for court appearances.

(b) The commissioner, in order to carry out the purposes and intent of this chapter, may:

(1) Appoint a deputy commissioner to assist in the day to day operations of the division;

(2) Employ professional and support staff, including, but not limited to, certified public accountants, attorneys, assistants, and other employees as necessary for the efficient operation of the division;

(3) Acquire, own, hold, and dispose of property, real and personal, tangible and intangible;

(4) Lease property, whether as a lessee or lessor;

(5) Conduct examinations and investigations and hear testimony and take proof, under oath or affirmation;

(6) Issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before the commissioner, or his or her designee, to conduct any hearing;

(7) Apply to the circuit court having venue of the offense to have punished for contempt any witness who refuses to obey a subpoena, refuses to be sworn or affirmed, or refuses to testify, or who commits any contempt after being summoned to appear;

(8) Sue and be sued, implead and be impleaded, and complain and defend in any court;

(9) Propose rules for legislative approval for the management and regulation of the affairs of the division pursuant to the provisions of §29A-3-1 *et seq.* of this code;

(10) Make policies for the management and regulation of the affairs of the divisions;

(11) Make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation to affect any or all of the purposes of this chapter;

(12) Accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the United States of America or from any governmental unit or any person, firm, or corporation, acceptance or disposition of gifts or grants; and

(13) Designate a facility as a rehabilitation facility; a rehabilitation facility may utilize recommendations on programming from West Virginia higher education institutions and share statistical data with the same institutions for study on the effectiveness of services provided by the institution.

§15A-3-5. Officers and employees of corrections institutions.

(a) The commissioner, or his or her designee, has the authority to manage and administer the finances, business, operations, security, and personnel affairs of correctional units and juvenile facilities under the jurisdiction of the division.

(b) The superintendent of each institution or correctional unit has the power to hire all assistants and employees required for the management of the institution in his or her charge, but the number of the assistants and employees, and their compensation, shall first be approved by the commissioner.

(c) It is the duty of the commissioner to investigate any complaint made against the superintendent of any institution, and against any other officer or employee thereof, if the same has not been investigated.

(d) All prospective correctional employees shall pass a preemployment drug screening prior to being hired.

(e) All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

§15A-3-6. Hiring of correctional officer without regard to position on the register.

Notwithstanding any provision of law to the contrary or any rule promulgated under the provisions of this code, the Division of Corrections and Rehabilitation may hire any person listed on the Correctional Officer I Register for employment as a Correctional Officer I without regard to the person's position on the register: *Provided*, That no person on the Correctional Officer I Register may be offered employment or hired before an otherwise qualified person on a preference register who is willing to accept the position.

§15A-3-7. Compensation of employees; traveling and other expenses.

The commissioner shall, in accordance with the provisions of §29-6-1 *et seq.* of this code, approve the salaries of all employees of the division. Salaries shall be commensurate with their duties and responsibilities, but no meals or other emoluments of any kind shall be furnished, given, or paid to the employee as all or part of their salary. The employees may be provided meals, household facilities, and supplies as may be necessary for them to perform their duties, if the employees agree to pay the reasonable cost as established by the commissioner. In the event of an emergency, such as a riot or other disturbance, the commissioner may authorize meals to be provided to employees at no cost. Additionally, the commissioner may establish a procedure to reimburse employees reasonable costs in the event the employee's personal property is stolen or damaged by an inmate or resident. All persons employed under this article are entitled to be reimbursed for necessary traveling and other expenses.

§15A-3-8. Reports by commissioner and chief officers of institutions to Auditor.

The commissioner shall, from time to time, as may be necessary, make a report to the Auditor, which shall state the name of each person employed at any of the institutions named in §15A-3-12 of this code, his or her official designation and biweekly rate of compensation, and out of what funds or appropriation the same is payable. The superintendent of the institution, or other person who may have been appointed for the purpose by the commissioner, shall make and certify to the Auditor at the end of each month a list of persons to whom any payments may be due, stating for what purpose due, the amount due each person, and the fund or appropriation from which payable; one copy whereof shall be filed in the office of the institution where made, and one in the office of the commissioner. If the Auditor finds the list correct and in accordance with the reports made to him or her by the commissioner, he or she may pay to the persons entitled thereto the amounts so certified as due each.

§15A-3-9. Special compensation of officers and employees prohibited; penalty.

No officer or employee shall receive, directly or indirectly, any other compensation for his or her services than that provided by law, or by the commissioner before his or her appointment, nor shall he or she receive any compensation whatever, directly or indirectly, for any act or service which he or she may do or perform for or on behalf of any contractor, or agent, or employee of a contractor. For any violation of this section the officer, agent, or employee of the state engaged therein shall be dismissed from his or her office or service, and every contractor, or employee, or agent of a contractor, engaged therein shall be expelled from the grounds of an institution, and not again employed in any institution as a contractor, agent, or employee.

§15A-3-10. Law-enforcement powers of employees.

(a) Other than as outlined in this section, a correctional officer employed by the division is not a law-enforcement officer as that term is defined in §30-29-1 of this code.

(b) The commissioner is a law-enforcement official, and has the authority to use, and permit and allow or disallow his or her designated employees to use, publicly provided carriage to travel from their residences to their workplace and return: *Provided*, That the usage is subject to the supervision of the Commissioner and is directly connected with and required by the nature and in the performance of the official's or designated employee's duties and responsibilities.

(c) All employees of the division are responsible for enforcing rules and laws necessary for the control and management of correctional units and the maintenance of public safety that is within the scope of responsibilities of the division.

(d) Persons employed by the Division of Corrections and Rehabilitation as correctional officers are hereby authorized and empowered to make arrests of persons already charged with a violation of law who surrender themselves to the correctional officer, to arrest persons already in the custody of the division for violations of law occurring in the officer's presence, to detain persons for violations of state law committed on the property of any facility under the jurisdiction of the commissioner, and to conduct investigations, pursue, and apprehend escapees from the custody of a facility of the division.

(e) The commissioner may designate correctional employees as correctional peace officers who have the authority:

(1) To detain persons for violations of state law committed on the property of any state correctional institution;

(2) To conduct investigations regarding criminal activity occurring within a correctional facility;

(3) To execute criminal process or other process in furtherance of these duties; and

(4) To apply for, obtain, and execute search warrants necessary for the completion of his or her duties and responsibilities.

(f) The Corrections Special Operations Team is hereby established and shall consist of the Corrections Emergency Response Team, the K9 unit, and the Crisis Negotiations team created under the former Division of Corrections. The Corrections Special Operations Team serves as the first responder necessary for the protection of life, liberty, and property. It shall have limited law-enforcement authority regarding matters occurring at jails, correctional centers, and juvenile centers, and arrest powers to apprehend escapees, absconders, and in all matters arising on the grounds of

a facility under the care and control of the commissioner: *Provided*, That at any time the Corrections Special Operations Team is apprehending an escapee or an absconder outside the confinement of the facility grounds, it does so with the assistance and cooperation of local law enforcement or the West Virginia State Police.

§15A-3-11. Unauthorized use of uniform, badge, identification card, or other insignia; impersonation of member; and penalty.

(a) The commissioner shall prescribe the design, or designs, of uniforms used by employees of the division, which shall be dissimilar to the design of the uniform worn by the members of the State Police or the established statewide uniform of a sheriff or deputy sheriffs. A municipality shall not adopt for its police officers or other employees a uniform which is similar in design to the uniform adopted by the commissioner.

(b) No person who is not an officer or employee of the Division of Corrections and Rehabilitation, and no officer or employee of the division who is not authorized to do so, may, with intent to deceive, wear, use, order to be used or worn, copy, or imitate in any respect or manner the uniform, badge, identification card, or other insignia prescribed for employees of the division.

(c) No person who is not an officer or employee of the Division of Corrections and Rehabilitation may falsely represent himself or herself to be an officer or employee of the Division of Corrections and Rehabilitation or to be under the order or direction of any officer or employee of the division.

(d) No person employed as an officer or employee of the Division of Corrections and Rehabilitation may use his or her position as such to threaten or coerce any other person in order to receive any favoritism, employment, or thing of favor by virtue of his or her employment with the division: *Provided*, That this subsection does not apply to violations of the Prison Rape Elimination Act.

(e) Any person who violates the provisions of §15A-3-118(b), §15A-3-11(c), or §15A-3-11(d) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200, or confined in the county or regional jail for not more than six months, or both fined and confined.

§15A-3-12. Institutions managed by commissioner.

(a) The commissioner shall manage, direct, control, and govern the prisons, jails, or correctional institutions of this state, and the juvenile facilities of this state, including, but not limited to:

Mount Olive Correctional Complex and Jail;

Huttonsville Correctional Center and Jail;

Anthony Correctional Center and Jail;

Denmar Correctional Center and Jail;

Pruntytown Correctional Center and Jail;

Northern Regional Jail and Correctional Center;

Saint Marys Correctional Center and Jail;

Lakin Correctional Center and Jail;

Ohio County Correctional Center and Jail;

Beckley Correctional Center and Jail;

Martinsburg Correctional Center and Jail;

Salem Correctional Center and Jail;

Parkersburg Correctional Center and Jail;

Charleston Correctional Center and Jail;

Central Regional Jail and Corrections Facility;

Eastern Regional Jail and Corrections Facility;

North Central Regional Jail and Corrections Facility;

Potomac Highlands Regional Jail and Corrections Facility;

South Central Regional Jail and Corrections Facility;

Southern Regional Jail and Corrections Facility;

Southwestern Regional Jail and Corrections Facility;

Tygart Valley Regional Jail and Corrections Facility;

Western Regional Jail and Corrections Facility;

Donald R. Kuhn Juvenile Center;

Gene Spadaro Juvenile Center;

J.M. Chick Buckbee Juvenile Center;

Kenneth "Honey" Rubenstein Juvenile Center;

Lorrie Yeager Juvenile Center;

Robert L. Shell Juvenile Center;

Sam Perdue Juvenile Center;

Tiger Morton Juvenile Center;

Vicki Douglas Juvenile Center; and

Any other juvenile or adult facility later transferred to the commissioner.

(b) The commissioner may contract with the county commission of McDowell County to house and incarcerate inmates at the Stevens Correctional Center consistent with all requirements and standards governing the division.

(c) The commissioner may contract with Youth Services System to house and detain juveniles at the Ronald Mulholland Juvenile Center consistent with all the requirements and standards governing the division.

(c) The commissioner may establish work and study release units as extensions and subsidiaries of those state institutions under his or her control and authority. The work and study release units may be coeducational and shall be managed, directed, and controlled as provided in this article.

(d) The commissioner may contract with nonprofit or charitable entities including, but not limited to, nonprofit community mental health clinics, operating half-way houses, or transitional housing facilities for the placement of persons in the commissioner's custody, whether confined or under parole supervision, as long as the facilities meet standards and criteria established by the commissioner.

(1) The commissioner may direct that a person who is placed in a half-way house or transitional housing facility under this section make reimbursement to the state in the amount of a reasonable sum calculated to offset all or part of the costs of the placement. Prior to ordering the person to make the reimbursement, the commissioner, or his or her designee, shall consider the following:

(A) The person's ability to pay;

(B) The nature and extent of the person's responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court's sentence; and

(D) The effect, if any, that reimbursement might have on the person's rehabilitation.

(2) The division shall provide the number of persons placed in a half-way house or a transitional housing facility as authorized in this section in its report made pursuant to §5-1-20 of this code, and shall describe its plans to use the authority provided under the provisions of §15A-3-12(f) of this code in furtherance of the duties and responsibilities imposed by this article.

(e) All adult persons sentenced by a court to serve a sentence of incarceration in a prison, jail, or correctional institution under the jurisdiction of the commissioner shall be deemed to be sentenced to the custody of the commissioner. The commissioner, or his or her designee, has the authority to and may order the transfer of any adult to any appropriate institution within the division.

(f) The commissioner has full discretionary authority to contract with any county jail, or other appropriate facility or institution for the incarceration and care of adult inmates. If a felony sentenced inmate is held in a jail facility or unit, under the jurisdiction of the commissioner, the commissioner shall pay a per diem rate, not subject to the limitations set forth in §15A-3-16(g) of this code.

(g) The commissioner, or his or her designee, may transfer any adult prisoner or inmate who is mentally disturbed and who would more appropriately be treated in an institution under the jurisdiction of the Bureau of Health, to the Bureau, subject to the approval of the Director of Health, and may transfer any adult prisoner or inmate to an appropriate mental facility for specialized medical treatment.

(h) The commissioner shall, no later than July 1, 2019, complete an evaluation of all facilities within his or her control for the most appropriate space to house each type of inmate, and shall consult with the Juvenile Justice Commission on any and all intended uses of current or prospective juvenile facilities. This evaluation shall include an assessment of the physical plant of each institution, the inmate population size and type, and classification of inmates. Following completion of the evaluation,

the commissioner shall develop a plan on how to best utilize the institutional space, and shall report to the Joint Committee on Government and Finance with recommendations regarding implementation of that plan. The commissioner may, from time to time, and as circumstances dictate, reorganize the facilities, and units within the facilities, to house pretrial inmates, convicted misdemeanants, and convicted felons in the most appropriate manner. No facility shall be converted from a juvenile to an adult facility, or from an adult to a juvenile facility, without legislative authorization.

§15A-3-13. Title to property of state institutions; custody of deeds and other muniments of title; authority of Commissioner.

The title to all property constituting or belonging to the several institutions named in §15A-3-12 of this code is vested in the state. The commissioner is custodian of all deeds and other muniments of title and shall cause such as are susceptible of recordation to be recorded in the proper offices. The commissioner is authorized, as lessor, to lease the West Virginia penitentiary in Moundsville, title to which is vested in the state by prior act of the legislator, for a term of not more than five years: *Provided*, That this section does not affect any lease in effect as of the effective date of this section. Any agreement entered into under this section shall be with the consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the secretary or commissioner at any time.

§15A-3-14. Exempt from Purchasing Division; purchasing procedures.

(a) The provisions established in §5A-3-1 *et seq.* of this code do not apply to the division or any institution under the control of the division.

(b) When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of more than \$2,500 and less than \$25,000, the division shall solicit at least 3 bids, if possible, from vendors and make a written contract with the lowest responsible bidder. When the cost under any contract or agreement entered into by the division, other than compensation for personal services, involves an expenditure of \$25,000 or more, the division shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, the publication area for the publication to be the county or counties wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined and the time and place of receiving bids. But a contract for lease of a correctional facility is not subject to the foregoing requirements and the division may enter into the contract for lease pursuant to negotiation upon the terms and conditions and for the period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or efficient acquisition or construction of the projects. The division may reject any and all bids. A bond with good and sufficient surety, approved by the division, shall be required of all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon faithful performance of the contract.

(c) If the division has to make a purchase under emergency conditions, or an emergency situation, which jeopardizes the safe, secure, and orderly operations of the division, as deemed by the Commissioner, and approved by the Secretary, §15A-3-14(a) and §15A-3-14(b) of this code shall not apply.

(d) The commissioner may enter into agreements with medical schools and institutions of higher education in this state to develop standards for appropriate and innovative medical programming and

care for inmates: *Provided*, That the division will follow the procedures set forth in §15A-3-14(b) of this code for delivery of regular and normal medical care within the facilities.

§15A-3-15. Mutual aid agreements.

(a) The commissioner may enter into agreements to provide for the rendering of mutual aid with the political subdivisions of this state, other states, and the federal government to provide for the common defense, protect the public peace, health, and safety and to preserve the lives and property of the people of this state.

(b) Any agreement entered into under this section shall be with the consent and approval of the Secretary of the Department of Military Affairs and Public Safety, and shall include a provision within each agreement allowing for the immediate termination by the secretary or commissioner at any time.

§15A-3-16. Funds for operations of jails under the jurisdiction of the commissioner.

(a) Any special revenue funds previously administered by the Regional Jail and Correctional Facility Authority or its Executive Director are continued, and shall be administered by the commissioner.

(b) Funds that have been transferred by §15A-3-16(a) of this code shall be limited in use to operations of jail functions, and for payment to the Regional Jail and Correctional Facility Authority Board, for payment of indebtedness. In no case shall a fund be utilized to offset or pay operations of nonjail parts of the facility: *Provided*, That funds may be utilized on a pro rata basis for shared staff and for operational expenses of facilities being used as both prisons and jails.

(c) Whenever the commissioner determines that the balance in these funds is more than the immediate requirements of this article, he or she may request that the excess be invested until needed. Any excess funds so requested shall be invested in a manner consistent with the investment of temporary state funds. Interest earned on any moneys invested pursuant to this section shall be credited to these funds.

(d) These funds consist of the following:

(1) Moneys collected and deposited in the State Treasury which are specifically designated by Acts of the Legislature for inclusion in these funds;

(2) Contributions, grants, and gifts from any source, both public and private, specifically directed to the operations of jails under the control of the commissioner;

(3) All sums paid pursuant to §15A-3-16(g) of this code; and

(4) All interest earned on investments made by the state from moneys deposited in these funds.

(e) The amounts deposited in these funds shall be accounted for and expended in the following manner:

(1) Amounts deposited shall be pledged first to the debt service on any bonded indebtedness;

(2) After any requirements of debt service have been satisfied, the Commissioner shall requisition from these funds the amounts that are necessary to provide for payment of the administrative expenses of this article, as limited by this section;

(3) The commissioner shall requisition from these funds, after any requirements of debt service have been satisfied, the amounts that are necessary for the maintenance and operation of jails under his or her control. These funds shall make an accounting of all amounts received from each county by virtue of any filing fees, court costs or fines required by law to be deposited in these funds and amounts from the jail improvement funds of the various counties;

(4) Notwithstanding any other provisions of this article, sums paid into these funds by each county pursuant to §15A-3-16(g) of this code for each inmate shall be placed in a separate account and shall be requisitioned from these funds to pay for costs incurred; and

(5) Any amounts deposited in these funds from other sources permitted by this article shall be expended based on particular needs to be determined by the commissioner.

(f)(1) After a jail facility becomes available pursuant to this article for the incarceration of inmates, each county within the region shall incarcerate all persons whom the county would have incarcerated in any jail prior to the availability of the jail facility in the jail facility, except those whose incarceration in a local jail facility used as a local holding facility is specified as appropriate under the previously promulgated, and hereby transferred standards and procedures developed by the Jail Facilities Standards Commission, and whom the sheriff or the circuit court elects to incarcerate therein.

(2) Notwithstanding the provisions of §15A-3-16(f)(1) of this code, circuit and magistrate courts are authorized to:

(A) Detain persons who have been arrested or charged with a crime in a county or municipal jail specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1), for a period not to exceed 96 hours; or

(B) Commit persons convicted of a crime in a county or municipal jail, specified as appropriate under the standards and procedures referenced in §15A-3-16(f)(1) of this code, for a period not to exceed 14 days.

(g) When inmates are placed in a jail facility under the jurisdiction of the commissioner pursuant to §15A-3-16(f) of this code, the county, and municipality if the incarceration is a municipal violation, shall pay into this fund a cost per day for each incarcerated inmate to be determined by the state Budget Office, by examining the most recent three years of costs submitted by the commissioner for the cost of operating the jail facilities and units under his or her jurisdiction, and taking an average per day, per inmate cost of maintaining the operations of the jail facilities or units: *Provided*, That beginning July 1, 2018, and continuing through July 1, 2021, in no case shall any county or municipality be required to pay a rate that exceeds \$48.25 per day, per inmate. Nothing in this section shall be construed to mean that the per diem cannot be decreased or be less than \$48.25 per day per inmate.

(h) The per diem costs for incarcerating inmates may not include the cost of construction, acquisition, or renovation of the regional jail facilities: *Provided*, That each jail facility or unit operating in this state shall keep a record of the date and time that an inmate is incarcerated, and a county may not be charged for a second day of incarceration for an individual inmate until that inmate has remained incarcerated for more than 24 hours. After that, in cases of continuous incarceration, subsequent per diem charges shall be made upon a county only as subsequent intervals of 24 hours pass from the original time of incarceration.

(i) The county is responsible for costs incurred by the division for housing and maintaining inmates in its facilities who are pretrial inmates and convicted misdemeanants. The costs of housing shall be borne by the division on a felony conviction on which an inmate is incarcerated beginning the calendar

day following the day of sentencing: *Provided*, That beginning July 1, 2019, the costs of housing shall be borne by the division on a felony conviction when an inmate is incarcerated beginning the calendar day following the day of conviction. In no case shall the county be responsible for any costs of housing and maintaining felony convicted inmate populations.

(j) The county is responsible for the costs incurred by the authority for housing and maintaining an inmate who, prior to a felony conviction on which the inmate is incarcerated and is awaiting transportation to a state correctional facility for a 60 day evaluation period as provided in §62-12-7a of this code.

(k) On or before July 1, 2020, the commissioner shall prepare a report on the feasibility of phasing out the county and municipal per diem charges required by §15(A)-3-16(g) of this code. This report shall include information regarding savings realized because of the consolidation of the former Division of Corrections, Division of Juvenile Services, and the operations of the Regional Jail and Correctional Facility Authority, as well as any other recommendations that might ease the burden of paying the per diem inmate costs by the counties or municipalities. On or before January 1, 2019, January 1, 2020 and January 1, 2021, the commissioner shall report to the Joint Committee on Government and Finance and the co-chairmen of the Joint Standing Committee on Finance the actual per diem rate as calculated pursuant to §15A-3-16(g) of this code and any amount not assessed to counties if the actual per diem cost is larger than the amount charged to the counties or municipalities pursuant to §15A-3-16(g) between July 1, 2018 and July 1, 2021.

§15A-3-17. Jail Operations Partial Reimbursement Fund.

(a) There is continued in the State Treasury the Jail Operations Partial Reimbursement Fund.

(b) Revenues deposited into this fund shall be composed of fees collected by magistrate courts pursuant to §50-3-2(a) of this code, and by circuit courts pursuant to §59-1-11 of this code.

(c) Revenues deposited into this fund shall be used to reimburse those counties and municipalities participating in the jail system for the cost of incarceration.

(d) The State Treasurer shall, in cooperation with the division, administer the fund. The State Treasurer shall determine the amount of funds available for reimbursement and, upon receiving a report from the commissioner containing the total number of inmate days in the fiscal year immediately concluded, the State Treasurer shall calculate the reimbursement to each participant based upon a pro rata share formula: *Provided*, That only counties and municipalities that, on July 1 of each year, are not more than 90 days delinquent in payments for moneys to incarcerate its offenders are eligible to receive this reimbursement: *Provided, however*, That the pro rata share formula shall not include the counties or municipalities which are not entitled to reimbursement pursuant to this section.

(e) A participant's share shall be comparable with its total of inmate days, which shall consist of the number of inmates it contributed to the regional jail system and the number of days those inmates remained incarcerated.

(f) A participant's share shall be disbursed annually, within 90 days of July 1 each year, as provided in §15A-3-17(d) of this section.

§15A-3-18. Rules.

(a) The commissioner is authorized to propose rules for legislative authorization pursuant to §29A-3-1 *et seq.* of this code or develop policies for the proper execution of his or her duties and

powers; adopt rules or policies for the government of the institutions named or referred to in §15A-3-12 of this code; adopt rules or policies for the administration of the financial and business affairs of the institutions named or referred to in §15A-3-12 of this code, and establish policies regarding the treatment of mentally ill inmates, which reflect the safety and security concerns specific to jails and correctional facilities.

(b) All legislative rules and policies of the former Division of Corrections, the former Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority shall remain effective until amended or terminated pursuant to the provisions of §29A-3-1 et seq. of this code by the Division of Correction and Rehabilitation: *Provided*, That these rules shall expire on July 1, 2021, if not superseded sooner.

(c) Notwithstanding any provisions of law to the contrary, the division is not subject to the rules promulgated by, nor any mandates upon, the board of health for the treatment of mentally ill patients.

ARTICLE 4. CORRECTIONS MANAGEMENT.

§15A-4-1. Applicability of article.

(a) Except as otherwise provided herein, the provisions of this article relate to adult inmates housed in jails, prisons, and correctional facilities, and do not apply to juvenile residents housed in juvenile centers.

(b) Where reference in this article is made to the “division”, it shall mean the Division of Corrections and Rehabilitation.

§15A-4-2. Furlough programs.

(a) The commissioner may establish a furlough program for inmates committed to his or her custody for a felony offense. The program may provide that selected inmates be permitted to reside outside an institution operated by the division under legislative rules, pursuant to §29A-3-1 et seq. of this code, or policy directives, promulgated by the commissioner.

(b) The commissioner, or his or her designee, is authorized to propose rules for legislative authorization, pursuant to §29A-3-1 et seq. of this code, or policy directives, promulgated by the commissioner, a furlough program for pretrial and misdemeanor inmates under his or her control and custody in accordance with the following provisions:

(1) The program may include, but is not limited to, granting furloughs or special escorts for specified inmates under the commissioner’s control and custody to attend funerals or make hospital visits to terminally ill family members.

(2) The commissioner shall establish criteria to be used in determining which inmates are not likely to jeopardize public safety and should be granted a furlough or a special escort through this program.

(3) The commissioner is authorized to establish any other guidelines he or she considers necessary to administer the program and to ensure public safety, including, but not limited to:

(A) Eligibility for consideration, restrictions, conditions, and procedures; and

(B) The family relationship an inmate must have with the deceased or terminally ill individual in order to qualify for consideration for a furlough.

(c)(1) The division, the commissioner, members of the Regional Jail and Correctional Facility Authority Board, and employees of the division are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act of an inmate while on a furlough granted under this section.

(2) The immunity from suit and liability provided in this subsection does not extend to liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any person identified in §15A-4-2(c)(1) of this code.

§15A-4-3. Electronic monitoring of offenders; special account.

(a) The commissioner may use electronic monitoring equipment to aid in the supervision of offenders.

(b) The commissioner shall charge offenders subject to supervision by means of electronic monitoring equipment a reasonable fee, to be established under a legislative rule proposed by the commissioner for legislative authorization pursuant to §29A-3-1 *et seq.* of this code, to help defray the costs of the purchase and use of the equipment and the division's operational costs: *Provided*, That an offender's inability to pay a fee does not preclude the offender from being eligible for this program.

(c) All fees collected shall be deposited in a special account in the State Treasury designated the "electronic monitoring program account." The funds deposited in the account may be used by the commissioner only for the operation of the program and for the administration of the division.

(d) For purposes of this section, "electronic monitoring equipment" means an electronic device or apparatus approved by the division that is capable of recording or transmitting information regarding the offender's presence or nonpresence in a designated area. The device shall be minimally intrusive. Except to the extent provided in this section, the division shall not approve any monitoring device which is capable of recording or transmitting: (1) Visual images, except for that of a still image of the offender that can only be transmitted by the offender triggering the monitoring system; or (2) information as to the offender's activities while he or she is within the designated area. A monitoring device may transmit information regarding blood alcohol levels. The monitoring device shall not be used to eavesdrop or record any conversation: *Provided*, That conversations between the offender and the person supervising the offender may be recorded solely for purpose of voice identification.

§15A-4-4. Diagnostic and classification divisions.

(a) The commissioner may continue and establish diagnostic and classification subdivisions.

(b) Notwithstanding any provision of this code to the contrary, all persons committed to the custody of the division for presentence diagnosis and classification, and all persons sentenced to the custody of the division shall, upon transfer to the division, undergo diagnosis and classification, which shall include:

(1) Assessments of a person's criminogenic risk and need factors that are reliable, validated, and normed for a specific population and responsive to cultural and gender-specific needs as well as individual learning styles and temperament;

(2) Application of a mental health preliminary screen; and

(3) If the mental health preliminary screen suggests the need for further assessment, a full psychological evaluation.

(c) The division shall perform mental health preliminary screens, appraisals, and evaluations according to standards provided by the American Correctional Association.

§15A-4-5. Transfer of inmates of state institutions or facilities.

(a) The commissioner shall have authority to cause the transfer of any inmate from any facility under his or her control to any other state or federal institution or facility which is better equipped for the care or treatment of the inmate, or for other good cause or reason.

(b) Whenever an inmate committed to the custody of the division becomes mentally ill and his or her needs cannot be properly met within the correctional facility, the commissioner shall proceed in accordance with §15A-4-19 of this code.

(c) Whenever an inmate committed to the custody of the division needs medical attention, other than mental health care, not available at the prison, the superintendent of the facility shall immediately notify the commissioner who, after proper investigation, shall cause the transfer of the inmate to a facility properly equipped to render the medical attention necessary. The inmate, while receiving treatment in the hospital, shall be under an appropriate level of supervision at all times and shall forthwith be returned to his or her correctional facility upon release from the facility.

(d) In providing or arranging for the necessary medical and other care and treatment of a pregnant inmate, the superintendent of the facility shall take reasonable measures to assure that pregnant inmates will not be restrained after reaching the second trimester of pregnancy until the end of the pregnancy: *Provided*, That if the inmate, based upon her classification, discipline history, or other factors deemed relevant by the superintendent poses a threat of escape, or to the safety of herself, the public, staff, or the fetus, the inmate may be restrained in a manner reasonably necessary: *Provided, however*, That prior to directing the application of restraints and where there is no threat to the safety of the inmate, the public, staff, or the fetus, the superintendent, or designee shall consult with an appropriate health care professional to assure that the manner of restraint will not pose an unreasonable risk of harm to the inmate or the fetus.

§15A-4-6. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose telephone calls to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their telephone conversations may be monitored, intercepted, recorded, and disclosed;

(2) Only the commissioner, superintendent, or their designee shall have access to recordings of inmates' telephone calls unless disclosed pursuant to §15A-4-6(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every telephone that may be monitored;

(4) The contents of inmates' telephone calls may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the

correctional institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings of telephone calls shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) To safeguard the sanctity of the attorney-client privilege, a telephone line that is not monitored shall be made available for telephone calls to or from an attorney. These calls may not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate telephone conversation provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the telephone conversation were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §29B-1-4(a)(4) of this code. The inmate's telephone conversation and the information regarding law enforcement are law-enforcement records under that subdivision.

(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's telephone conversation supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled to access to and copies of the inmate's telephone conversations in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section apply only to those persons in the physical custody of the commissioner.

§15A-4-7. Monitoring inmate mail; procedures and restrictions; identifying mail from a state institution; mail to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, open, review, copy, and disclose mail sent to adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their mail may be monitored, opened, reviewed, copied, and disclosed;

(2) Only the commissioner and his or her designee shall have access to copies of inmates' mail unless disclosed pursuant to §15A-4-7(a)(4) of this code;

(3) Notice that the mail may be monitored shall be prominently placed on or immediately near every mail receptacle or other designated area for the collection or delivery of mail;

(4) The contents of inmates mail may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All copies of mail shall be retained for at least three years and maintained and destroyed in accordance with the records retention policy of the division adopted as required by §5A-8-1 et seq. of this code; or

(6) The inmate whose mail has been copied and disclosed under this section shall be given a copy of that mail when it is determined by the commissioner, or superintendent, not to jeopardize the safe and secure operation of the facility or to be detrimental to an ongoing investigation or administrative action.

(b) To safeguard the sanctity of the attorney-client privilege, mail to or from an inmate's attorney shall not be monitored, reviewed, copied, and kept by the institution, or disclosed in any manner unless required by an order of a court of competent jurisdiction. However, that mail may be checked for weapons, drugs, and other contraband provided it is done in the presence of the inmate and there is a reasonable basis to believe that any weapon, drug, or other contraband exists in the mail.

(c) All inmates outgoing mail must be clearly identified as being sent from an inmate at a state correctional institution and must include on the face of the envelope the name and full address of the institution.

(d) The commissioner or his or her designee is authorized to open, monitor, review, copy, and disclose an inmate's outgoing mail in accordance with the provisions of §15A-4-7(a) of this code.

(e) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) All inmate mail provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the inmate mail was provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-77(a)(5) of this code. The inmate mail and the information regarding law enforcement are law-enforcement records under §29B-1-4(a)(4) of this code.

(f) Should an inmate be charged with a criminal offense based, in whole or in part, on the inmate's mail supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled access to and copies of the inmate's mail in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(g) The provisions of this section apply only to those persons in the physical custody of the commissioner.

§15A-4-8. Monitoring of inmate electronic correspondence; procedures and restrictions; to or from attorneys excepted.

(a) The commissioner, or his or her designee, is authorized to monitor, intercept, record, and disclose electronic communications to or from adult inmates of state institutions under his or her control, in accordance with the following provisions:

(1) All adult inmates of state institutions shall be notified in writing that their electronic communications may be monitored, intercepted, recorded, and disclosed;

(2) Only the commissioner, superintendent, or their designees, shall have access to copies or recordings of inmates' electronic communications unless disclosed pursuant to §15A-4-8(a)(4) of this code;

(3) Notice shall be prominently placed on, or immediately near, every electronic communications device that may be monitored;

(4) The contents of inmates' electronic communications may be disclosed to an appropriate law-enforcement agency, or the West Virginia Intelligence Fusion Center, when disclosure is necessary for the investigation, prevention, or prosecution of a crime or to safeguard the orderly operation of the correctional institution. Disclosure may also be made in civil or administrative proceedings pursuant to an order of a court or an administrative tribunal when the disclosure is:

(A) Necessary to safeguard and protect the orderly operation of the correctional institution; or

(B) Necessary to protect persons from physical harm or the threat of physical harm;

(5) All recordings or copies of electronic communications shall be retained for at least three years and maintained and destroyed in accordance with the record retention policy of the division adopted as required by §5A-8-1 *et seq.* of this code; or

(6) To safeguard the sanctity of the attorney-client privilege, a method of electronic communications that is not monitored shall be made available for communications to or from an attorney. These communications shall not be monitored, intercepted, recorded, or disclosed in any matter.

(b) The commissioner shall promulgate a policy directive establishing a record-keeping procedure which requires retention of: (1) A copy of the contents of any inmate electronic communication provided to law enforcement; and (2) the name of the law-enforcement officer and the law-enforcement agency to which the contents of the communications were provided. The records required to be retained pursuant to this subsection shall be retained in accordance with the record retention policy specified in §15A-4-8(a)(5) of this code. The inmate's electronic communication and the information regarding law enforcement are law-enforcement records under §29B-1-4(a)(4) of this code.

(c) Should an inmate be charged with a crime based, in whole or in part, on the inmate's electronic communication supplied to law enforcement, the inmate's attorney in the criminal matter shall be entitled to access to and copies of the inmate's electronic communications in the custody of the commissioner which are not evidence in or the subject of another criminal investigation.

(d) The provisions of this section shall apply only to those persons in the physical custody of the commissioner.

§15A-4-9. Trustee accounts and funds, earnings and personal property of inmates and residents.

(a) The commissioner is authorized to establish at each institution under his or her jurisdiction a 'Trustee Fund'. The superintendent of each institution shall receive and take charge of the money and personal property, as defined by policy, of all inmates or residents in his or her institution and all money or personal property, as defined by policy, sent to the inmates or residents or earned by the inmates as compensation for work performed while they are domiciled there. The superintendent shall credit the money and earnings to the inmate or resident entitled to it and shall keep an accurate account of all the money and personal property so received, which account is subject to examination

by the commissioner. The superintendent shall deposit the moneys in one or more responsible banks in accounts to be designated 'Trustee Fund'.

(b) For all felony sentenced inmates, except those serving life without mercy and those the superintendent determines are likely to serve the remainder of their natural lives in the custody of the division due to their age and the length of their sentences, the superintendent shall keep in an account at least 10 percent of all money earned during the inmate's or resident's incarceration and pay the money to the inmate or resident at the time of the inmate's or resident's release. The superintendent may authorize the inmate to withdraw money from his or her mandatory savings for the purpose of preparing the inmate for reentry into society.

(c) The commissioner may direct that offenders who work in community work programs, including work release inmates who have obtained employment, make reimbursement to the state toward the cost of his or her incarceration.

(d)(1) Prior to ordering an incarcerated offender to make reimbursement toward the costs of his or her incarceration, the commissioner, or his or her designee, shall consider the following:

(A) The offender's ability to pay;

(B) The nature and extent of the offender's responsibilities to his or her dependents, if any;

(C) The length of probable incarceration under the court's sentence; and

(D) The effect, if any, that reimbursement might have on the offender's rehabilitation.

(2) No order of reimbursement entered pursuant to this section may exceed \$500 per month unless the offender gives his or her express consent; and

(3) The commissioner shall, prior to the beginning of each fiscal year, prepare a report that details the average cost per inmate incurred by the division for the care and supervision of those individuals in his or her custody.

(e) The superintendent of any facility, on request of an inmate or resident, may expend up to one half of the money earned by the inmate or resident on behalf of the family of the inmate or resident if the 10 percent mandatory savings has first been set aside and other fees or court ordered obligations owed by the inmate or resident have been paid. The remainder of the money earned, after deducting amounts expended as authorized, shall be accumulated to the credit of the inmate or resident and be paid to the inmate or resident at times as may be prescribed by rules. The funds so accumulated on behalf of inmates or residents shall be held by the superintendent of each institution under a bond approved by the Attorney General.

(f) The superintendent shall deliver to the inmate or resident at the time he or she leaves the institution, or as soon as practicable after departure, all personal property, moneys and earnings then credited to the inmate or resident, or in case of the death of the inmate or resident before authorized release from the institution, the superintendent shall deliver the property to the inmate's or resident's personal representative. In case a conservator is appointed for the inmate or resident while he or she is domiciled at the institution, the superintendent shall deliver to the conservator, upon proper demand, all moneys and personal property belonging to the inmate or resident that are in the custody of the superintendent.

(g) If any money is credited to a former inmate or resident after remittance of the sum of money as provided in §15A-4-9(f) of this code, the commissioner shall notify the former inmate or resident

within 30 days of receipt of the money. The former inmate or resident will be afforded the opportunity to collect the money if he or she pays the cost of the transaction. If the former inmate or resident does not claim the money within 30 days of receiving the notice and the sum of money is less than \$10, the commissioner may place the money into the inmate benefit fund.

(h) The provisions of this section apply to both juveniles and adults within the custody of the commissioner.

§15A-4-10. Inmate or resident benefit funds.

(a) The commissioner shall establish an inmate, or resident, benefit fund for each of the institutions under his or her jurisdiction. The inmate, or resident, benefit fund is a fund held by the institutions for the benefit and welfare of inmates incarcerated, or juveniles placed in facilities under the jurisdiction of the commissioner, and for the benefit of victims.

(b) There is continued a special revenue account in the State Treasury for each inmate, or resident, benefit fund established by the commissioner. If an account does not currently exist for an institution, the commissioner may establish the account for that institution. Moneys received by an institution for deposit in an inmate, or resident, benefit fund shall be deposited with the State Treasurer to be credited to the special revenue account created for the institution's inmate, or resident, benefit fund: *Provided*, That commissions on any contract providing services to jail inmates shall not be deposited into this account. Moneys in a special revenue account established for an inmate benefit fund may be expended by the institution for the purposes set forth in this section. Moneys to be deposited into an inmate, or resident, benefit fund consist of, but are not limited to:

(1) All profit from the exchange or commissary operation and if the commissary is operated by a vendor, whether a public or private entity, the profit is the negotiated commission paid to the Division of Corrections and Rehabilitation by the vendor;

(2) All net proceeds from vending machines used for inmate or resident visitation;

(3) All proceeds from contracted inmate or resident telephone commissions;

(4) Any funds that may be assigned by inmates or donated to the institution by the general public or an inmate service organization on behalf of all inmates or residents;

(5) Any funds confiscated considered contraband; and

(6) Any unexpended balances in individual inmate or resident trustee funds if designated by the inmate upon his or her discharge from the institution.

(c) The inmate benefit fund may only be used for the following purposes at facilities:

(1) Open-house visitation functions or other nonroutine inmate or resident functions;

(2) Holiday functions which may include decorations and gifts for children of inmates or residents;

(3) Cable television service;

(4) Rental of movies;

(5) Payment of video license;

(6) Recreational supplies, equipment, or area surfacing;

(7) Reimbursement of employee wages for overtime incurred during open-house visitations and holiday functions;

(8) Post-secondary education classes;

(9) Reimbursement of a pro rata share of inmate or resident work compensation;

(10) Household equipment and supplies in day rooms or units as approved by superintendents of institutions, excluding supplies used in the daily maintenance and sanitation of the unit;

(11) Christmas or other holidays gift certificates for each inmate or resident to be used at the exchange or commissary;

(12) Any expense associated with the operation of the fund;

(13) Expenditures necessary to properly operate an automated inmate family and victim information notification system;

(14) Any expense for improvement of the facility which will benefit the inmate or resident population that is not otherwise funded;

(15) Any expense related to the installation, operation, and maintenance of the inmate or resident telephone system; and

(16) Restitution of any negative balance on any inmate's trustee account for inmate medical copay, legal and ancillary related postage, and photocopy fees that are due the State of West Virginia, if the balance is uncollectible from an inmate after one calendar year from an inmate's release on parole or discharge date.

(d) The institution shall compile a monthly report that specifically documents inmate benefit fund receipts and expenditures and a yearly report for the previous fiscal year by September 1 of each year and submit the reports to the commissioner.

(e) The provisions of this section apply to both juveniles and adults within the custody of the commissioner.

§15A-4-11. Financial responsibility program for inmates.

(a) The Legislature finds that:

(1) There is an urgent need for vigorous enforcement of child support, restitution, and other court ordered obligations;

(2) The duty of inmates to provide for the needs of dependent children, including their necessary food, clothing, shelter, education, and health care should not be avoided because of where the inmate resides;

(3) A person owing a duty of child support who chooses to engage in behaviors that result in the person becoming incarcerated should not be able to avoid child support obligations; and

(4) Each sentenced inmate should be encouraged to meet his or her legitimate court-ordered financial obligations.

(b) As part of the initial classification process into a correctional facility, the division shall assist each inmate in developing a financial plan for meeting the inmate's child support obligations, if any exist. At subsequent program reviews, the division shall consider the inmate's efforts to fulfill those obligations as indicative of that individual's acceptance and demonstrated level of responsibility.

(c)(1) The superintendent shall deduct from the earnings of each inmate all legitimate court-ordered financial obligations. The superintendent shall also deduct child support payments from the earnings of each inmate who has a court-ordered financial obligation. The commissioner shall develop a policy that outlines the formula for the distribution of the offender's income and the formula shall include a percentage deduction, not to exceed 50 percent in the aggregate, for any court ordered victim restitution, court fees and child support obligations owed under a support order, including an administrative fee, consistent with the provisions of §48-14-406(c) of this code, to support the division's administration of this financial service;

(2) If the inmate worker's income is subject to garnishment for child support enforcement deductions, it shall be calculated on the net wages after taxes, legal financial obligations, and garnishment;

(3) The division shall develop the necessary administrative structure to record inmates wages and keep records of the amount inmates pay for child support; and

(4) Nothing in this section limits the authority of the Bureau for Child Support Enforcement of the Department of Health and Human Resources from taking collection action against an inmate's moneys, assets, or property.

(d) If an inmate is awarded a civil judgment which awards him or her monetary damages, the court in which those damages are awarded shall enter an order which deducts all outstanding child support, restitution, or other court-ordered obligations from the award to the inmate, and satisfies those obligations, prior to releasing any funds to the inmate.

(e) The accumulation of the total funds, not necessary for current distribution, shall be invested, with the approval of the commissioner or as appropriate, through the West Virginia Municipal Bond Commission, in short term bonds or treasury certificates or equivalent of the United States. Bonds and certificates so purchased shall remain in the custody of the State Treasurer. The earnings from investments so made shall be reported to the principal officer of each institution from time to time, as earned, and shall be credited to the respective accounts of the institutions by the West Virginia Municipal Bond Commission. When the earnings are transferred to the respective institutions, they shall be credited by the superintendent to the credit of, and for the benefit of, the inmate, or resident, benefit fund.

§15A-4-12. Limitation on reimbursement rate to medical service providers for services outside division facilities.

The division, or its contracted medical providers, may not pay an amount to an outside provider of a medical service for an adult inmate residing in a jail or correctional facility greater than the reimbursement rate applicable to service providers established in the West Virginia state Medicaid plan by the Bureau for Medical Services: *Provided*, That critical access hospitals shall be reimbursed at 75 percent of the billed charges. These limitations apply to all medical care services, goods, prescription drugs, and medications provided to a person who is in the custody of a correctional facility and is provided these services outside of a correctional facility: *Provided, however*, That the

Department of Military Affairs and Public Safety and the Department of Health and Human Resources effectuate an interagency agreement for the electronic processing and payment of medical services.

§15A-4-13. Charges assessed against inmates for services provided by state.

(a) The commissioner is authorized to assess inmates serving a sentence in any state jail, penal, or correctional facility reasonable charges for health care and treatment services provided to them by the state. The charges assessed against an inmate may be deducted directly from the inmate's trustee account without the inmate's consent. The inmate shall be notified of the amount deducted and the charges to which it has been applied.

(b) As used in this section, a 'reasonable charge' may not exceed the sum of \$25 for any billable service. Inmates shall be notified of the fee schedule, billable services, and exempt services. Services initiated by the inmate shall be assessed a fee, except that no charge may be assessed for: (1) a specific health care service required under the law of this state, including, by way of illustration, tuberculin testing; (2) an emergency service following a traumatic injury other than a self-induced injury, or necessary to prevent death or severe or permanent disability; (3) diagnosis and treatment of communicable diseases, including, by way of illustration, tuberculosis or hepatitis; (4) treatment of diagnosed severe mental illness; (5) treatment of specific chronic conditions identified by the commissioner, including, by way of illustration, heart disease and diabetes; (6) staff-initiated care, including follow-up and referral visits; (7) preventive services that the commissioner determines are to be provided or made available to all inmates, including services related to disease prevention and promotion of proper health habits; or (8) other services as may be exempted by rule of the commissioner. No inmate may be denied any necessary billable medical service because of inability to pay the charge.

(c) Any inmate who intentionally ingests, inhales, injects, absorbs, applies, or otherwise exposes himself or herself to, in any manner whatsoever not otherwise specified herein, an illegal drug, a drug not legally prescribed to him or her, a drug in quantities above that recommended by a prescribing physician, a synthetic intoxicant, or any substance for the purpose of causing an excited, euphoric, or stupefied state, or altered perception, including hallucinations or delusions, and the inmate requires medical treatment due to the ingestion, inhalation, injection, absorption, application, or exposure shall reimburse the cost of the medical treatment to the division.

(d) Each inmate shall be afforded an opportunity at least quarterly to review all deposits into, withdrawals from, and balance remaining in the inmate's trustee account during the preceding three months.

(e) The commissioner shall promulgate interpretive rules implementing this section pursuant to §29A-3-1 et seq. of this code prior to making any assessment under this section. The policy directive rules may establish the fee schedule and list of billable services and further define services to be exempted.

§15A-4-14. Record of inmate or resident.

The commissioner shall file and preserve the record of the indictment and conviction, in the case of an adult, or the charges and adjudication, in the case of a juvenile, of each inmate or resident, and keep a register describing him or her, the term of his or her confinement, for what offense, and when received into the institution.

§15A-4-15. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.

For the purpose of obtaining license plates to be used upon motor vehicles licensed for operation in this state and road signs or markers of any description for state roads, the commissioner is hereby

authorized and empowered on behalf of the state, to establish and operate a plant for the manufacture of the license plates and road signs or markers in his or her institution.

It shall be unlawful for any state official or employee to manufacture or obtain the license plates, road signs, or markers otherwise than as herein specified: *Provided*, That the Commissioner of Highways may originally secure road signs or markers from sources other than that provided herein.

§15A-4-16. Gifts to or dealings with convicts.

No officer or employee of the state, or contractor, or employee of a contractor shall make any gift or present to an inmate or resident, or receive any from an inmate or resident, or have any barter or dealings with a convict, except as allowed and permitted by the commissioner.

For every violation of this section, the party engaged therein shall be dismissed from his or her office or service, and every contractor, or employee, or agent of a contractor engaged therein shall be expelled from any facility within the jurisdiction of the commissioner, and not again employed in any institution as a contractor, agent, or employee.

§15A-4-17. Deduction from sentence for good conduct; mandatory supervision.

(a) All current and future adult inmates sentenced to a felony and, placed in the custody of the division, except those committed pursuant to §25-4-1 *et seq.* of this code, shall be granted commutation from their sentences for good conduct in accordance with this section: *Provided*, That nothing in this section shall be considered to recalculate the 'good time' of inmates currently serving a sentence or of giving back good time to inmates who have previously lost good time earned for a disciplinary violation, except for those inmates currently serving a sentence for a misdemeanor.

(b) The commutation of sentence, known as 'good time', shall be deducted from the maximum term of indeterminate sentences or from the fixed term of determinate sentences.

(c) Each inmate committed to the custody of the commissioner and incarcerated in a facility pursuant to that commitment shall be granted one day good time for each day he or she is incarcerated, including any and all days in jail awaiting sentence which are credited by the sentencing court to his or her sentence pursuant to §61-11-24 of this code or for any other reason relating to the commitment. An inmate may not be granted any good time for time served either on parole or bond or in any other status when he or she is not physically incarcerated.

(d) An inmate sentenced to serve a life sentence is not eligible to earn or receive any good time pursuant to this section.

(e) An inmate under two or more consecutive sentences shall be allowed good time as if the several sentences, when the maximum terms of the consecutive sentences are added together, were all one sentence.

(f) The commissioner shall promulgate disciplinary rules and policies. The rules and policies shall describe acts that inmates are prohibited from committing, procedures for charging individual inmates for violation of the rules, and for determining the guilt or innocence of inmates charged with the violations, and the sanctions which may be imposed for the violations. A copy of the rules shall be given to each inmate. For each violation, by a sanctioned inmate, any part or all of the good time which has been granted to the inmate pursuant to this section may be forfeited and revoked by the superintendent of the institution in which the violation occurred. The superintendent when appropriate and with approval of the commissioner, may restore any forfeited good time.

(g) Each inmate, upon his or her commitment to, and being placed into the custody of the commissioner, or upon his or her return to custody as the result of violation of parole pursuant to §62-12-19 of this code, shall be given a statement setting forth the term or length of his or her sentence or sentences and the time of his or her minimum discharge computed according to this section.

(h) Each inmate shall be given a revision of the statement described in §15A-4-17(g) of this code when any part or all of the good time has been forfeited and revoked or restored pursuant to §15A-4-17(f) of this code, by which the time of his or her earliest discharge is changed.

(i) The superintendent may, with the approval of the commissioner, allow extra good time for inmates who perform exceptional work or service.

(j) There shall be no grants or accumulations of good time or credit to any current or future inmate serving a sentence in the custody of the Division of Corrections and Rehabilitation except in the manner provided in this section.

(k) Prior to the calculated discharge date of an inmate serving a sentence for a felony crime of violence against the person, a felony offense where the victim was a minor child or a felony offense involving the use of a firearm, one year shall be deducted from the inmate's accumulated good time to provide for one year of mandatory post-release supervision following the first instance in which the inmate reaches his or her calculated discharge date. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(l) Upon sentencing of an inmate for a felony offense not referenced in §15A-4-17(k) of this code, the court may order that 180 days of the sentence, or some lesser period, be served through post-release mandatory supervision if the court determines supervision is appropriate and in the best interest of justice, rehabilitation, and public safety. All inmates released pursuant to this subsection shall be subject to electronic or GPS monitoring for the entire period of supervision. The provisions of this subsection are applicable to offenses committed on or after July 1, 2013.

(m) The commissioner shall adopt policies and procedures to implement the mandatory supervision provided for in §15A-4-17(k) and §15A-4-17(l) of this code, which may include terms, conditions, and procedures for supervision, modification, and violation applicable to persons on parole.

(n) As used in this section, 'felony crime of violence against the person' means felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of this code, and the felony offenses of arson and burglary of a residence where an individual is physically located at the time of the offense as set forth in §61-3-1 *et seq.* of this code.

(o) As used in this section, 'felony offense where the victim was a minor child' means any felony crime of violence against the person and any felony offense set forth in §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.* or §61-8D-1 *et seq.* of this code.

§15A-4-18. Governor's authority to authorize commissioner to consent to transfer of inmates under a federal treaty.

If a treaty in effect between the United States and a foreign country provides for the transfer or exchange of convicted offenders to the country of which they are citizens or nationals, the Governor may, on behalf of the state and subject to the terms of the treaty and with the consent of the offender, authorize the commissioner to consent to the transfer or exchange of inmates in his or her custody and take any other action necessary to initiate the participation of this state in the treaty. No transfer

may occur pursuant to the provisions of this section until the inmate is informed of his or her rights and the procedures involved in his or her native language unless it is determined that the inmate's knowledge of English is sufficient.

§15A-4-19. Mentally ill inmates; treatment; transfer between correctional and mental health facilities; correctional facility procedures.

(a) No person who is, or was considered to be, mentally ill, intellectually disabled, or addicted shall be denied parole or a parole hearing based upon the past or present condition. In the event a convicted person is deemed to be an appropriate candidate for parole, but for a condition warranting involuntary hospitalization of the person, shall be paroled, and proceedings instituted pursuant to §27-5-4 of this code. Any time spent in such a facility shall be considered part of the term, and any person whose sentence expires while receiving treatment for a mental condition shall be discharged unless proceedings have been instituted and a determination made pursuant to §27-5-4 of this code.

(b) When a convicted person in a jail, prison, or other facility is believed to be mentally ill, intellectually disabled, or addicted, as those terms are defined in §27-1-1 et seq. of this code, and in need of treatment, training, or other services, the facts relating to the illness, shall be presented to the superintendent of the facility. The facts may be presented by a correctional officer, member of a correctional institution medical staff, relative, or the convicted person. Immediately upon receipt of the facts, the superintendent shall arrange for psychiatric or psychological examination of the person alleged to be so afflicted. If the report of the examination is to the effect that the individual is mentally ill, intellectually disabled, or addicted and that treatment, training, or other services are required which cannot reasonably be provided at the correctional facility, the superintendent shall file within 20 days after presentation of the facts an application for transfer with the clerk of the circuit court of the county of location of the correctional facility. The application for transfer shall include a statement of the nature of the treatment which the person's condition warrants and the facility to which transfer is sought.

Within 10 days of receipt of the application from the superintendent, the mental hygiene commissioner or circuit judge shall appoint counsel for the convicted person if the person is indigent.

The clerk of the circuit court shall forthwith notify the convicted person, by certified mail, return receipt requested, delivered only to addressee, that the application has been filed, enclosing therewith a copy of the application with an explanation of the place and purpose of the transfer and the type of treatment to be afforded, together with the name, address, and telephone number of any appointed counsel. The person shall be afforded reasonable telephone access to his or her counsel. The clerk shall also notify the superintendent or other chief administrative officer of the facility to which transfer is sought. Within 15 days after receipt of notice, the convicted person, through counsel, shall file a verified return admitting or denying the allegations and informing the court or mental hygiene commissioner as to whether the respondent wishes to oppose the transfer. Counsel shall file the return only after personal consultation with the convicted person. The superintendent of the facility to which transfer is sought shall also file a return within 15 days of the receipt of notice, informing the court or mental hygiene commissioner as to whether the needed treatment or other services can be provided within that facility. If the superintendent objects to receiving the convicted person for treatment or services, the reasons for the objection shall be specified in detail.

If the transfer is opposed by either the convicted person or by the superintendent of the facility to which transfer is sought, the matter shall forthwith be set for hearing, in no event to exceed 30 days from the date of the return opposing the transfer, and the clerk shall provide to the convicted person, the superintendent of the facility to which transfer is sought, and the superintendent of the correctional

facility, at least 10 days written notice, by certified mail, return receipt requested, of the purpose, time, and place of the hearing.

The convicted person shall be present at the hearing, and be afforded an opportunity to testify and to present and cross-examine witnesses. Counsel for the convicted person shall be entitled to copies of all medical reports upon request. The person shall have the right to an examination by an independent expert of the person's choice and testimony from the expert as a medical witness on the person's behalf. The cost of providing the medical expert shall be borne by the state if the person is indigent. The person shall not be required to give testimony which is self-incriminating. The circuit court or mental hygiene commissioner shall hear evidence from all parties, in accord with the rules of evidence. A transcript or recording shall be made of all proceedings, and transcript made available to the person within 30 days, if the same is requested for the purpose of further proceedings, and without cost if the person is indigent.

Upon completion of the hearing, and consideration of the evidence presented therein, the circuit court or mental hygiene commissioner shall make findings of facts as to whether or not: (1) The individual is mentally ill, intellectually disabled, or addicted; (2) the individual because of mental illness, mental retardation, or addiction is likely to cause serious harm to self or others; (3) the individual could not obtain the requisite treatment or training at the correctional facility or another appropriate correctional facility; and (4) the designated facility to which transfer is sought could provide the treatment or training with the security as the court finds appropriate; and, if all the findings are in the affirmative, the circuit court may order the transfer of the person to the appropriate facility. The findings of fact shall be incorporated into the order entered by the circuit court. In all proceedings hereunder, proof of mental condition and of likelihood of serious harm must be established by clear, cogent, and convincing evidence, and the likelihood of serious harm must be based upon evidence of recent overt acts.

§15A-4-20. Work program.

(a) The commissioner is authorized to establish at each institution a work program for qualified inmates. The commissioner shall establish guidelines and qualifications to allow inmates sentenced to a regional jail facility to be gainfully employed with local businesses and governmental entities as part of a job program.

(b) An inmate who works in work programs established under this section may be required to make reimbursement to the division toward the cost of his or her incarceration to be credited to the agency billed for that incarceration, pursuant to the conditions set forth in §15A-4-19 of this code.

(c) Notwithstanding any provision of this code to the contrary, the county commission, its members and agents, the Division of Corrections and Rehabilitation or designee, its employees, agents, or assigns, the Regional Jail and Correctional Facility Authority Board, its members, agents, or assigns, the sheriff, and his or her deputies, shall be immune from all liability of any kind except for accident, injury, or death resulting directly from gross negligence or malfeasance.

§15A-4-21. Director of employment; director of housing; released inmates; duties.

The commissioner may employ or contract for a Director of Employment and a Director of Housing for released inmates. The Director of Employment shall work with federal, state, county, and local government and private entities to negotiate agreements which facilitate employment opportunities for released inmates. The Director of Housing shall work with federal, state, county, and local government and private entities to negotiate agreements which facilitate housing opportunities for released inmates. The Director of Employment shall investigate job opportunities and give every possible assistance in helping released inmates find employment. The Director of Housing shall work

in conjunction with the Bureau of Community Corrections and the Parole Board to reduce release delays due to lack of a home plan, develop community housing resources, and provide short-term loans to released inmates for costs related to reentry into the community.

ARTICLE 5. BUREAU OF PRISONS AND JAILS.

§15A-5-1. Creation of Bureau of Prisons and Jails; organization of facilities.

(a) The commissioner shall establish a Bureau of Prisons and Jails. The commissioner shall determine what adult facilities or institutions shall appropriately be managed by the Bureau of Prisons and Jails.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Prisons and Jails.

(c) Where reference in this article is made to the 'division', it shall mean the Division of Corrections and Rehabilitation.

§15A-5-2. Transfer of duties and funds of Division of Corrections.

All prior conveyed responsibilities of the Division of Corrections, and its Commissioner are hereby transferred to the Division of Corrections and Rehabilitation. All funds, both general revenue and special revenue, are hereby transferred to the Division of Corrections and Rehabilitation. Any funds administered by the Division of Corrections are to be administered by the Division of Corrections and Rehabilitation, and its Commissioner.

§15A-5-3. Superintendents; duties and authority; bond; residence.

(a) The commissioner shall appoint a superintendent for each institution under the control of the division. Each superintendent shall be bonded by the Board of Risk and Insurance Management.

(b) The superintendent shall be the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. The superintendent shall be in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the commissioner.

(c) The superintendent shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commissioner. The superintendent shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner.

(d) The commissioner may authorize the superintendent to establish an imprest fund in accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the superintendent, and any of the fund that currently exists is hereby continued. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee.

§15A-5-4. Appointment of deputy superintendent; duties; bond.

Each superintendent, with the approval of the commissioner, may hire a deputy superintendent. The deputy superintendent's duties shall be fixed by the superintendent, as approved by the commissioner. In the absence of the superintendent, the deputy superintendent shall perform all the

duties required of the superintendent. The deputy superintendent shall be bonded by the Board of Risk and Insurance Management.

§15A-5-5. Hiring of other assistants and employees.

The superintendent of each correctional institution or unit shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of the correctional institutions or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates, to prevent escapes, and to remove all persons convicted and sentenced to the custody of the Division of Corrections and Rehabilitation, from the place confined to a correctional institution, all of whom shall be under the control of the superintendent: *Provided*, That the number of the assistants and employees, and their compensation, shall first be approved by the commissioner.

All persons employed at a state-operated correctional institution or correctional unit are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

§15A-5-6. Jail intake facilities; housing of adult inmates.

To the extent practicable, and in a manner consistent with providing for the safety of the public, correctional employees, and inmates, the commissioner will create space in every adult institution for both jail and prison populations: *Provided*, That in no case shall the commissioner be required to provide jail space in every institution in excess of space necessary for initial receiving, booking, and holding of an inmate to await transport by the Division of Corrections and Rehabilitation to the most appropriate housing placement for that inmate. In no case may a person who is a pretrial detainee, who is not currently serving a felony sentence in the custody of the commissioner, be held in a space designated as a prison unit. Further, no convicted misdemeanor actively serving a sentence on a misdemeanor shall be held in a space designated as a prison unit.

§15A-5-7. Pretrial risk assessment.

(a) Within three calendar days of the arrest and placement of any person in a jail, the division shall conduct a pretrial risk assessment using a standardized risk assessment instrument approved and adopted by the Supreme Court of Appeals of West Virginia. The results of all standardized risk and needs assessments are confidential and shall only be provided to the court, court personnel, the prosecuting attorney, defense counsel, and the person who is the subject of the pretrial risk assessment. Upon completion of the assessment, the Division of Corrections and Rehabilitation shall provide it to the magistrate and circuit clerks for delivery to the appropriate circuit judge or magistrate.

(b) The pretrial risk assessment and all oral or written statements made by an individual during risk assessment shall be inadmissible evidence at any criminal or civil trial.

§15A-5-8. Jail processing fee.

(a) A person committed to be housed in jail by order of magistrate, circuit judge, or by temporary commitment order shall, at the time of initial booking into the jail, pay a processing fee of \$30. If the person is unable to pay at the time of booking, the fee shall be deducted, at a rate of 50 percent, from any new deposits made into the person's trust account until the jail processing fee is paid in full. The fee shall be credited to:

(1) The Jail's operating budget if the person is committed to and housed in a jail;

(2) The county commission if the person is committed to and housed in a county jail; or

(3) The municipality if the person is committed to and housed in a municipal jail. The fee should be paid prior to the offender being released.

(b) A refund of a fee collected under this section shall be made to a person who has paid the fee if the person is not convicted of the offense for which the person was booked and the person provides documentation from the court showing that all charges for which the person was booked were dismissed, accurate current name and address and a valid photographic identification. In the case of multiple offenses, if the person is convicted of any of the offenses the fee may not be refunded. If the person is convicted of a lesser included offense or a related offense, no refund may be made.

§15A-5-9. Ability to refuse offenders.

Notwithstanding any other provision of this code, the commissioner, or any employee of the division, having authority to accept offenders in a jail is not required to accept those offenders if an offender appears to be in need of medical attention of a degree necessitating treatment by a physician. If an offender is refused pursuant to the provisions of this section, he or she may not be accepted for detention until a written clearance from a licensed physician reflecting that the offender has been examined and if necessary treated, and which states that it is the physician's medical opinion that the offender can be safely housed in a jail.

ARTICLE 6. BUREAU OF JUVENILE SERVICES.

§15A-6-1. Creation of Bureau of Juvenile Services; organization of facilities.

(a) The Commissioner of Corrections and Rehabilitation shall establish a Bureau of Juvenile Services. This bureau shall manage any juvenile facilities or units, as determined pursuant to §15A-3-12 of this code.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Juvenile Services.

(c) Where reference in this article is made to the 'division', it shall mean the Division of Corrections and Rehabilitation.

§15A-6-2. Transfer of duties and funds.

All prior conveyed responsibilities and duties of the Division of Juvenile Services, and the Director of Juvenile Services, outlined in §49-1-101 *et seq.* of this code, are hereby transferred and conveyed to the Division of Corrections and Rehabilitation, and to its Commissioner. Any funds administered by the Division of Juvenile Services are to be administered by the Division of Corrections and Rehabilitation, and its Commissioner.

§15A-6-3. Superintendents; duties and authority; bond; residence.

(a) The commissioner shall appoint a superintendent for each institution under the control of the division. Each superintendent shall be bonded by the Board of Risk and Insurance Management.

(b) The superintendent shall be the chief executive officer of his or her assigned correctional institution and, subject to the direction of the commissioner, has the responsibility for the overall management of all operations within his or her assigned institution. The superintendent shall be in charge of its internal police and management and shall provide for feeding, clothing, working and taking care of the inmates, subject to the control of the commissioner.

(c) The superintendent shall promptly enforce all orders and rules made by the commissioner. He or she shall protect and preserve the property of the state and may for that purpose punish the inmates in the manner authorized by the commissioner. The superintendent shall have the custody and control of all the real and personal property at the correctional institution, subject to the orders of the commissioner.

(d) The commissioner may authorize the superintendent to establish an imprest fund in accordance with the provisions of §12-2-2 of this code for the sole purpose of providing employees with funds to transport inmates for any purpose as determined by the superintendent, and any of the fund that currently exists is hereby continued. The employee is required to complete a travel reimbursement form for the travel within five days of returning to the correctional facility. The funds shall be used to reimburse the imprest fund for the amount expended by the employee.

§15A-6-4. Appointment of deputy superintendent; duties; bond.

Each superintendent, with the approval of the commissioner, may hire a deputy superintendent. The deputy superintendent's duties shall be fixed by the superintendent, as approved by the commissioner. In the absence of the superintendent, the deputy superintendent shall perform all the duties required of the superintendent. The deputy superintendent shall be bonded by the Board of Risk and Insurance Management.

§15A-6-5. Hiring of other assistants and employees; duties of correctional employees.

The superintendent of each juvenile institution or unit shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of the juvenile institutions or units, including a sufficient number of correctional employees to preserve order and enforce internal rules among the juvenile inmates, to prevent escapes, and carry out all other responsibilities as outlined in chapter 49 of this code.

All persons employed at a state-operated juvenile facility are subject to the supervision and approval of the superintendent and the authority of the commissioner, or his or her designee, except those persons employed by the State Board of Education, pursuant to §18-2-13f of this code.

ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.

§15A-7-1. Creation of Bureau of Community Corrections; Organization of facilities.

(a) The commissioner shall establish a Bureau of Community Corrections. The commissioner shall establish which adult facilities or institutions shall appropriately be managed by the Bureau of Community Corrections.

(b) The commissioner shall appoint an assistant commissioner, who shall oversee the Bureau of Community Corrections.

(c) Where reference in this article is made to the 'division', it shall mean the Division of Corrections and Rehabilitation.

§15A-7-2. Duties of superintendents; bond; residence.

The commissioner shall appoint a Superintendent for each institution under the control of the division. The superintendent of a community corrections facility shall have the same duties and responsibilities as described in §15A-3-1 *et seq.* of this code.

§15A-7-3. Hiring of other assistants and employees; duties of employees.

(a) Each superintendent of a community corrections facility shall, in the manner provided in §15A-3-5 of this code, hire all assistants and employees required for the management of these facilities or units, including a sufficient number of correctional employees to preserve order and enforce discipline among the inmates or parolees, to prevent escapes, to enforce laws, rules, and policies, and to protect the public. Any person employed by the office of the Commissioner of the Division of Corrections and Rehabilitation who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee.

(b) The commissioner shall, in the manner provided in §15A-3-5 of this code, hire all probation and parole officers, assistants, and employees required to carry out the duties as proscribed in this code for management of the parolee population, and probation population, as set forth in §15A-7-4 and §62-13-2(b) of this code, for the management of parolees, to preserve order, and enforce discipline among the parolees, to enforce laws, rules, and policies, and to protect the public. Any person employed by the office of the Commissioner of the Division of Corrections and Rehabilitation who on the effective date of this article is a classified civil service employee shall, within the limits contained in §29-6-1 et seq. of this code, remain in the civil service system as a covered employee. Nothing in this section shall limit the abilities of the Supreme Court of Appeals of this state to carry forth their responsibilities and duties as proscribed in this code. All persons appointed or employed by the director shall be paid all necessary expenses incurred in the discharge of their duties.

§15A-7-4. Supervision of probationers and parolees; final determinations remaining with board of probation and parole.

The commissioner shall supervise all persons released on parole and placed in the charge of a state parole officer and all persons released on parole under any law of this state. He or she shall also supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the uniform act for out-of-state probation and parolee supervision. The commissioner shall prescribe rules for the supervision of probationers and parolees under his or her supervision and control, and shall succeed to all administrative and supervisory powers of the Parole Board and the authority of the Parole Board in those matters only.

The commissioner shall administer all other laws affecting the custody, control, treatment, and employment of persons sentenced or committed to institutions under the supervision of the department or affecting the operation and administration of institutions or functions of the division.

The final determination regarding the release of inmates from penal institutions and the final determination regarding revocation of parolees from those institutions pursuant to the provisions of §62-12-1 et seq. of this code shall remain within the exclusive jurisdiction of the Parole Board.

§15A-7-5. Powers and duties of state parole officers.

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than \$1,000 nor more than \$3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant: (1) Arrest or order confinement of any parolee or probationer under his or her supervision; and (2) search a parolee or probationer, or a parolee or probationer's residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) The Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation's training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

§15A-7-6. Parole supervision benefit fund.

(a) There is continued a special revenue account in the State Treasury designated the 'Parole Supervision Benefit Fund'. The fund is to be used by the Division of Corrections and Rehabilitation for the benefit of parolee supervision with approval of the commissioner. The fund shall consist of moneys received from any source, including, but not limited to, funds donated by the general public or an organization dedicated to parole supervision improvement, and funds seized from parolees that are forfeited pursuant to the provisions of §60A-7-701 *et seq.* of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commissioner may authorize use of the money in the fund created pursuant to this section for payment to a community corrections program established pursuant to §62-11C-1 et seq. of this code for providing enhanced supervision of parolees.

ARTICLE 8. REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY BOARD.

§15A-8-1. Powers and authority of the Regional Jail and Correctional Facility Authority Board; continuation of the Regional Jail and Correctional Facility Authority Board; payment of bonds; appeal of per diem rate.

(a) The Regional Jail and Correctional Facility Authority Board is continued, as follows:

(1) The powers and authority of the Regional Jail and Correctional Facility Authority Board, in relation to all functions of correctional operations, are hereby abolished, and these powers and authority are transferred to the Division of Corrections and Rehabilitation as of July 1, 2018. The Regional Jail and Correctional Facility Authority Board shall only retain the powers as now outlined in this chapter. Where reference in this code is made to the Regional Jail and Correctional Facility Authority, in relation to operations of any of the regional jails, it shall be construed to mean the Division of Corrections and Rehabilitation.

(2) The following powers and authority of the Regional Jail and Correctional Facility Board are hereby specifically abolished:

(A) To mortgage or otherwise grant security interests in its property;

(B) To borrow money and to issue its negotiable bonds, security interests, or notes and to provide for and secure the payment thereof, and to provide for the rights of the holders thereof, and to purchase, hold, and dispose of any of its bonds, security interests, or notes;

(C) To sell, at public or private sale, any bond or other negotiable instrument, security interest or obligation of the authority in a manner and upon terms that the authority considers would best serve the purposes of this article;

(D) To issue its bonds, security interests, and notes payable solely from the revenues or other funds available to the authority therefor; and the authority may issue its bonds, security interests, or notes in those principal amounts as it considers necessary to provide funds for any purposes under this article, including:

(i) The payment, funding, or refunding of the principal of, interest on, or redemption premiums on, any bonds, security interests, or notes issued by it whether the bonds, security interests, notes, or interest to be funded or refunded have or have not become due; and

(ii) The establishment or increase of reserves to secure or to pay bonds, security interests, notes, or the interest thereon and all other costs or expenses of the Division of Corrections and Rehabilitation incident to and necessary or convenient to carry out its purposes and powers. Any bonds, security interests, or notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source whatsoever;

(E) To issue renewal notes or security interests, to issue bonds to pay notes or security interests and, whenever it considers refunding expedient, to refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured except that no renewal notes shall be

issued to mature more than 10 years from date of issuance of the notes renewed and no refunding bonds may be issued to mature more than 25 years from the date of issuance;

(F) To apply the proceeds from the sale of renewal notes, security interests, or refunding bonds to the purchase, redemption, or payment of the notes, security interests, or bonds to be refunded; and

(G) To sell security interests in the loan portfolio of the authority. The security interests shall be evidenced by instruments issued by the authority.

(3) The powers and duties of the board in relation to paying the current bond series, designated as The State Building Commission of West Virginia Lease Revenue Refunding Bonds (West Virginia Regional Jail and Correctional Facility Authority) Series 1998A, Series 1998B, and Series 1998C are specifically continued. The board, however, may not reissue these bonds, renegotiate the terms of the current bonds, or refinance these bonds. There is hereby created in the State Treasury a Regional Jail and Correctional Facility Board Fund. The fund shall be controlled by the board, and shall be utilized for the sole purpose of payment of the outstanding bond series as provided above. The Commissioner of the Division of Corrections and Rehabilitation shall, on or before the fifth day of every month, transfer to this fund the amount necessary for the monthly payment of the bond, as set forth by the yearly communication from the creditor of the bonds. Further, on the effective date of this section, the commissioner shall transfer to this fund the reserve amount required by the bonds. On the date that the bonds are satisfied in full, these obligations shall cease, and any funds left in the board fund shall be transferred to the Commissioner of the Division of Corrections and Rehabilitation: *Provided*, That the funds can only be used in the manner directed or established by the board. Further, the board retains the authority to be able, and with consent of the Secretary of the Department of Military Affairs and Public Safety, to the extent permitted under its contracts with the holders of bonds, security interests, or notes of the authority, consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any bond, security interest, note, or contract or agreement of any kind to which the authority is a party.

(4) The Regional Jail Authority shall review the per diem cost set by the state Budget Office, pursuant to §15A-3-16 of this code. If the authority believes that the amount set by the state Budget Office is incorrect, or that the amounts submitted by the Division of Corrections and Rehabilitation include more than what should be attributed to the efficient operation of jail facilities and units, the authority may institute an action in regard to this pursuant to §29A-5-1 *et seq.* of this code.

(5) The Regional Jail Authority retains the ability to sue, as defined in this article, and to be sued.

(b) Where reference in this article is made to the 'division', it shall mean the Division of Corrections and Rehabilitation.

§15A-8-2. West Virginia Regional Jail and Correctional Facility Authority Board; composition; appointment; terms; compensation and expenses.

The West Virginia Regional Jail and Correctional Facility Authority Board is continued. The members of the board in office on the date this section takes effect shall, unless sooner removed, continue to serve until their respective terms expire and until their successors have been appointed and qualified.

The authority shall be governed by a board of nine members, seven of whom are entitled to vote on matters coming before the authority. The complete governing board shall consist of the Commissioner of the Division of Corrections; the Assistant Commissioner for the Bureau of Juvenile

Services; the Secretary of the Department of Military Affairs and Public Safety; the Secretary of the Department of Administration, or his or her designated representative; two county commissioners and one sheriff appointed by the Governor, no more than two of which may be of the same political party; and two citizens appointed by the Governor to represent the areas of law and medicine. The Commissioner of the Division of Corrections and Rehabilitation and the Assistant Commissioner for the Bureau of Juvenile Services shall serve in an advisory capacity and are not entitled to vote on matters coming before the authority. Members of the Legislature are not eligible to serve on the board.

The Governor shall nominate and, by and with the advice and consent of the Senate, appoint the five appointed members of the authority for staggered terms of four years.

Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

All members of the board shall execute an official bond in a penalty of \$10,000, conditioned as required by law. Premiums on the bond shall be paid from funds accruing to the Division of Corrections and Rehabilitation. The bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor and, when fully executed and approved, shall be filed in the office of the Secretary of State.

§15A-8-3. Governing body; organization and meetings; quorum; administrative expenses.

(a) The board shall consist of the voting members of the board as provided for in §15A-8-2 of this code and shall exercise all the powers given to the authority in this article. On the second Monday of July of each odd-numbered year, the board shall meet to elect a chairman and a secretary from among its own members. The Secretary of the Department of Administration or his or her designated representative shall serve as treasurer of the board. The board shall otherwise meet two times a year, unless a special meeting is called by its chairman.

(b) A majority of the members of the board constitute a quorum, and a quorum must be present for the board to conduct business. Unless the bylaws require a larger number, action may be taken by majority vote of the members present.

(c) The board shall prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted and shall review and approve the budget prepared by the executive director annually.

(d) All costs incidental to the administration of the board shall be paid from the jail operation fund by the Commissioner of Corrections and Rehabilitation.

CHAPTER 19. AGRICULTURE.

ARTICLE 12A. LAND DIVISION.

§19-12A-5. Powers, duties and responsibilities of commission.

(a) On or before July 1, 1990, the commission shall meet and confer with respect to the development of a management plan to determine the optimum use or disposition of all institutional farms, at which time the Farm Management Director shall provide the commission with a complete inventory of all institutional farms, and such information relating to easements, mineral rights, appurtenances, farm equipment, agricultural products, livestock, inventories, and farm facilities as

may be necessary to develop such management plan. The commission shall complete and provide to the Governor a management plan, which plan shall set forth the objectives of the commission with respect to institutional farms, the criteria by which the commission shall determine the optimum use or disposition of such property, and determinations as to whether each institutional farm shall be used in production, sold, or leased, in whole or in part. Prior to the adoption of any plan, the commission shall consult with the secretaries of the various departments of state government and shall request from such secretaries suggestions for land use and resource development on farm commission lands. On or before December 1, 1990, such management plan shall be presented to the Legislature, by providing a copy to the President of the Senate and the Speaker of the House of Delegates. The commission may confer with any other agency or individual in implementing and adjusting its management plan. The management plan established pursuant to this subsection may be amended, from time to time, as may be necessary.

(b) The commission shall manage its institutional farms, equipment, and other property in order to most efficiently produce food products for state institutions and shall implement the intent of the Legislature as set forth by this article. From the total amount of food, milk and other commodities produced on institutional farms, the commission shall sell, at prevailing wholesale prices, and each of the institutions under the control of the Bureau of Public Health and ~~the Division of Corrections~~ shall purchase, a proportionate amount of these products based on the dietary needs of each institution.

(c) If requested by the ~~commissioner of corrections~~ Commissioner of Corrections and Rehabilitation, the commission may authorize the Division of Corrections and Rehabilitation to operate a farm or other enterprise using inmates as labor on those lands. The ~~commissioner of corrections~~ Commissioner of Corrections and Rehabilitation is responsible for the selection, direction, and supervision of the inmates and shall assign the work to be performed by inmates.

(d) The commission is hereby authorized and empowered to:

(1) Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes permitted by the management plan, any land, easements, equipment, or other property, except that property may not be leased for any use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the Commissioner of Agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained. Any lease for an annual consideration of \$1,000 or more shall be by sealed bid auction and the commission shall give notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication is the county in which the property to be leased is located;

(2) Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-11-4 and §5A-11-5 of this code: *Provided*, That the net proceeds of the sale of farm commission lands shall be deposited in the General Revenue Fund of the state: *Provided, however*, That no sale may be concluded until on or after March 15, 1991, except with respect to: (A) Properties located at institutions closed on or before the effective date of this section, March 10, 1990; or (B) properties conveyed to or from the farm management commission to or from any other entity in order to facilitate the construction of a regional jail or correctional facility by the Regional Jail and Correctional Facilities Authority or the State Building Commission, with the decision to execute any such conveyance being solely within the discretion of, and at the direction of, the Regional Jail and Correctional Facilities Authority;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas, or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the Division of Environmental Protection will increase the beneficial use of such property. Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) above;

(4) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(e) Notwithstanding the provisions of subsection (d) ~~herein~~ of this section, no timberland may be leased, sold, exchanged, or otherwise disposed of unless the Division of Forestry of the Department of Commerce, Labor and Environmental Resources certifies that there is no commercially salable timber on the timberland, an inventory is provided, an appraisal of the timber is provided, and the sale, lease, exchange, or other disposition is accomplished by the sealed bid auction procedure provided above in subdivisions (1) or (2), as applicable.

(f) The commission shall promulgate, pursuant to ~~chapter 29A~~ §29-1-1 et seq. of this code, rules and regulations relating to the powers and duties of the commission as enumerated in this section.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1. ORGANIZATION, INSTITUTIONS AND CORRECTIONS MANAGEMENT.

§25-1-1. Office of commissioner of public institutions abolished; department and commissioner of corrections established; qualifications, oath and bond.

[Repealed.]

§25-1-1a. Purpose and legislative intent.

[Repealed.]

§25-1-3. Institutions managed by Commissioner of Corrections; certain institutions transferred to Department of Health and Human Resources; establishment of work and study release units; contracting with certain entities for reentry and direct placement services; reports to Governor.

[Repealed.]

§25-1-3a. Trustee accounts and funds, earnings and personal property of inmates.

[Repealed.]

§25-1-3b. Inmate benefit funds.

[Repealed.]

§25-1-3c. Financial responsibility program for inmates.

[Repealed.]

§25-1-4. Limitation on reimbursement rate to medical service providers for services provided for services outside division facilities.

[Repealed.]

§25-1-5. Rules and regulations.

[Repealed.]

§25-1-5a. Mutual aid agreements.

[Repealed.]

§25-1-6. Title to property of state institutions; custody of deeds and other muniments of title; authority of commissioner.

[Repealed.]

§25-1-7. Pruntytown Correctional Center established as a minimum security facility; limitations on type of residents therein.

[Repealed.]

§25-1-8. Charges assessed against inmates for services provided by state.

[Repealed.]

§25-1-11. Officers and employees of corrections institutions.

[Repealed.].

§25-1-11a. Duties of wardens and administrators; bond; residence.

[Repealed.]

§25-1-11b. Appointment of deputy warden; duties; bond.

[Repealed.]

§25-1-11c. Hiring of other assistants and employees; duties of correctional employees; right to carry weapons; powers of correctional peace officers.

[Repealed.]

§25-1-11d. Compensation of employees approved by commissioner; traveling and other expenses; payment of salaries.

[Repealed.]

§25-1-11e. Unauthorized use of uniform, badge, identification card or other insignia; impersonation of member; and penalty.

[Repealed.]

§25-1-11f. Hiring of correctional officer without regard to position on the register.

[Repealed.]

§25-1-13. Furlough programs.

[Repealed.]

§25-1-14. Electronic monitoring of offenders; special account.

[Repealed.]

§25-1-15. Diagnostic and classification divisions.

[Repealed.]

§25-1-16. Transfer of inmates of state institutions or facilities.

[Repealed.]

§25-1-16a. Governor's authority to authorize commissioner of corrections to consent to transfer of inmates under a federal treaty.

[Repealed.]

§25-1-17. Monitoring of inmate telephone calls; procedures and restrictions; calls to or from attorneys excepted.

[Repealed.]

§25-1-18. Monitoring inmate mail; procedures and restrictions; identifying mail from a state correctional institution; mail to or from attorneys excepted.

[Repealed.]

§25-1-19. Reports by Commissioner of Public Institutions and chief officers of institutions to Auditor.

[Repealed.]

§25-1-20. Reports to Governor.

[Repealed.]

§25-1-21. Employment of displaced correctional employees at other facilities.

[Repealed.]

§25-1-22. Task Force to Study the Feasibility of Establishing a Correctional Facility for the Incarceration and Treatment of Sex Offenders; members; duties.

[Repealed.]

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.**ARTICLE 5. THE PENITENTIARY.****§28-5-7. Record of convict.**

[Repealed.]

§28-5-8a. Manufacture of license plates, road signs or markers; securing signs and markers when federal government reimburses state for cost thereof.

[Repealed.]

§28-5-23. Special compensation of officers and employees prohibited; penalty.

[Repealed.]

§28-5-24. Gifts to or dealings with convicts.

[Repealed.]

§28-5-27. Deduction from sentence for good conduct; mandatory supervision.

[Repealed.]

CHAPTER 31. CORPORATIONS.**ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.****§31-20-1. Short title.**

[Repealed.]

§31-20-1a. Legislative findings and purposes.

[Repealed.]

§31-20-2. Definitions.

[Repealed.]

§31-20-3. West Virginia Regional Jail and Correctional Facility Authority; composition; appointment; terms; compensation and expenses.

[Repealed.]

§31-20-4. Governing body; organization and meetings; quorum; administrative expenses.

[Repealed.]

§31-20-5. Powers and duties of the authority; bidding procedures.

[Repealed.]

§31-20-5a. Bidding procedures.

[Repealed.]

§31-20-5b. Prohibition against use or possession of tobacco products by inmates held by regional facility authority in regional jails operated solely by the authority; authorization to establish smoking cessation program.

[Repealed.]

§31-20-5c. Additional powers and duties of the authority; juvenile detention facilities.

[Repealed.]

§31-20-5d. Good-time credit.

[Repealed.]

§31-20-5e. Monitoring of inmate telephone calls and electronic communications; procedures and restrictions; attorney-client privilege protected and exempted.

[Repealed.]

§31-20-5f. Charges assessed against inmates for services provided by the authority.

[Repealed.]

§31-20-5g. Pretrial risk assessment.

[Repealed.]

§31-20-5h. Programs for inmates committed to prison.

[Repealed.]

§31-20-8. Jail facilities standards commission; appointment; compensation; vacancies; quorum.

[Repealed.]

§31-20-8a. Juvenile facilities standards commission; appointment; compensation; vacancies; quorum.

[Repealed.]

§31-20-9. Jail facilities standards commission: Purpose, powers and duties.

[Repealed.]

§31-20-9a. Juvenile facilities standards commission; purpose; powers; and duties.

[Repealed.]

§31-20-10. Regional jail and correctional facility authority funds.

[Repealed.]

§31-20-10a. Criteria and procedures for determining the cost per day for inmates incarcerated in facilities operated by the authority and allocating cost.

[Repealed.]

§31-20-10b. Regional Jail Operations Partial Reimbursement Fund.

[Repealed.]

§31-20-11. Borrowing of money.

[Repealed.]

§31-20-12. Notes, security interests and bonds as general obligations of authority.

[Repealed.]

§31-20-13. Notes, security interests and bonds as negotiable instruments.

[Repealed.]

§31-20-14. Authorizing resolutions.

[Repealed.]

§31-20-15. Redemption of notes, security interests or bonds.

[Repealed.]

§31-20-20. Authorized limit on borrowing.

[Repealed.]

§31-20-22. Money of the authority.

[Repealed.]

§31-20-23. Conflict of interest; when contracts void.

[Repealed.]

§31-20-24. Agreement with federal agencies not to alter or limit powers of authority.

[Repealed.]

§31-20-27. Correctional officers; regional jails; priority of hiring.

[Repealed.]

§31-20-27a. Regional jail employees right to carry firearm; arrest authority of correctional officers.

[Repealed.]

§31-20-28. Limitations on contracts for sale of bonds or other securities.

[Repealed.]

§31-20-29. Furlough program.

[Repealed.]

§31-20-30. Limitation on reimbursement rate to medical service providers for services outside regional jail facilities.

[Repealed.]

§31-20-30a. Mechanical restraints during pregnancy.

[Repealed.]

§31-20-31. Work program.

[Repealed.]

§31-20-32. Jail processing fee.

[Repealed.]

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-2. Costs in criminal proceedings.

(a) In each criminal case before a magistrate court in which the defendant is convicted, whether by plea or at trial, there is imposed, in addition to other costs, fines, forfeitures or penalties as may be allowed by law: (1) Costs in the amount of \$60, of which \$5 of that amount shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code; (2) an amount equal to the one-day per diem provided for in ~~subsection (h), section ten, article twenty, chapter thirty-one~~ §15A-3-16(g) of this code; and (3) costs in the amount of \$30 to be deposited in the Regional Jail Operations Partial Reimbursement Fund created by ~~section ten-b of said article~~ §15A-3-16 of this code. A magistrate may not collect costs in advance. Notwithstanding any other provision of this code, a person liable for fines and court costs in a criminal proceeding in which the defendant is confined in a jail or prison and not participating in a work release program shall not be held liable for the fines and court costs until one hundred eighty days after completion of the term in jail or prison. A magistrate court shall deposit \$5 from each of the criminal proceedings fees collected pursuant to this section in the Court Security Fund created in section fourteen, article three, chapter fifty-one of this code. A magistrate court shall, on or before the tenth day of the month following the month in which the fees imposed in this section were collected, remit an amount equal to the one-day per diem provided for in ~~subsection (h), section ten, article twenty, chapter thirty-one~~ §15A-3-16(g) of this code from each of the criminal proceedings in which the fees

specified in this section were collected to the magistrate court clerk, or if there is no magistrate court clerk to the clerk of the circuit, together with information as may be required by the rules of the Supreme Court of Appeals and the rules of the Office of Chief Inspector. These moneys are paid to the sheriff who shall distribute the moneys solely in accordance with the provisions of section fifteen, article five, chapter seven of this code. Amendments made to this section during the 2001 regular session of the Legislature, are effective after June 30, 2001.

(b) A magistrate shall assess costs in the amount of \$2.50 for issuing a sheep warrant and the appointment and swearing appraisers and docketing the proceedings.

(c) In each criminal case which must be tried by the circuit court but in which a magistrate renders some service, costs in the amount of \$10 shall be imposed by the magistrate court and is certified to the clerk of the circuit court in accordance with the provisions of section six, article five, chapter sixty-two of this code.

§50-3-4a. Disposition of criminal costs and civil filing fees into State Treasury account for Regional Jail and Prison Development Fund.

(a) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail and Prison Development Fund in the state Treasury an amount equal to \$40 of the costs collected in each criminal proceeding and all but \$10 of the costs collected for the filing of each civil action.

(b) The clerk of each magistrate court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in ~~section ten-a, article twenty, chapter thirty-one~~ §15A-3-17 of this code the fees collected pursuant to subsection (g), section one and subdivision (3), subsection (a), section two of this article.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 12. PROBATION AND PAROLE.

§62-12-14. Appointment of probation and parole officers and clerical assistants; qualifications of officers; salaries and expenses.

[Repealed.]

§62-12-14a. Director of employment; director of housing; released inmates; duties.

[Repealed.]

§62-12-15. Powers and duties of state parole officers.

[Repealed.]

§62-12-25. Parole supervision benefit fund.

[Repealed.]

ARTICLE 13. CORRECTIONS MANAGEMENT.

§62-13-3. Appointment and qualifications of director.

[Repealed.]

§62-13-4. Powers and duties of commissioner or director generally; compensation and funds of inmates.

[Repealed.]

§62-13-5. Commitments; transfers.

[Repealed.]

§62-13-6a. Payment of jail fees to county commissions.

[Repealed.]”

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4338 – “A Bill to repeal §25-1-1, §25-1-1a, §25-1-3, §25-1-3a, §25-1-3b, §25-1-3c, §25-1-4, §25-1-5, §25-1-5a, §25-1-6, §25-1-7, §25-1-8, §25-1-11, §25-1-11a, §25-1-11b, §25-1-11c, §25-1-11d, §25-1-11e, §25-1-11f, §25-1-13, §25-1-14, §25-1-15, §25-1-16, §25-1-16a, §25-1-17, §25-1-18, §25-1-19, §25-1-20, §25-1-21, §25-1-22, of the Code of West Virginia, 1931, as amended; to repeal §28-5-7, §28-5-8a, §28-5-23, §28-5-24 and §28-5-27, of said code; to repeal §31-20-1, §31-20-1a, §31-20-2, §31-20-3, §31-20-4, §31-20-5, §31-20-5a, §31-20-5b, §31-20-5c, §31-20-5d, §31-20-5e, §31-20-5f, §31-20-5g, §31-20-5h, §31-20-8, §31-20-8a, §31-20-9, §31-20-9a, §31-20-10, §31-20-10a, §31-20-10b, §31-20-11, §31-20-12, §31-20-13, §31-20-14, §31-20-15, §31-20-20, §31-20-22, §31-20-23, §31-20-24, §31-20-27, §31-20-27a, §31-20-28, §31-20-29, §31-20-30, §31-20-30a, §31-20-31, and §31-20-32 of said code; to repeal §62-12-14, §62-12-14a, §62-12-15 and §62-12-25 of said code; to repeal §62-13-3, §62-13-4, §62-13-5 and §62-13-6a of said code; to amend and reenact §6-7-2a of said code; to amend said code by adding thereto a new chapter, designated §15A-1-1, §15A-1-2, §15A-1-3, §15A-1-4, §15A-1-5, §15A-1-6, §15A-2-1, §15A-2-2, §15A-2-3, §15A-3-1, §15A-3-2, §15A-3-3, §15A-3-4, §15A-3-5, §15A-3-6, §15A-3-7, §15A-3-8, §15A-3-9, §15A-3-10, §15A-3-11, §15A-3-12, §15A-3-13, §15A-3-14, §15A-3-15, §15A-3-16, §15A-3-17, §15A-3-18, §15A-4-1, §15A-4-2, §15A-4-3, §15A-4-4, §15A-4-5, §15A-4-6, §15A-4-7, §15A-4-8, §15A-4-9, §15A-4-10, §15A-4-11, §15A-4-12, §15A-4-13, §15A-4-14, §15A-4-15, §15A-4-16, §15A-4-17, §15A-4-18, §15A-4-19, §15A-4-20, §15A-4-21, §15A-5-1, §15A-5-2, §15A-5-3, §15A-5-4, §15A-5-5, §15A-5-6, §15A-5-7, §15A-5-8, §15A-5-9, §15A-6-1, §15A-6-2, §15A-6-3, §15A-6-4, §15A-6-5, §15A-7-1, §15A-7-2, §15A-7-3, §15A-7-4, §15A-7-5, §15A-7-6, §15A-8-1, §15A-8-2, and §15A-8-3; to amend and reenact §19-12A-5 of said code; and to amend and reenact §50-3-2 and §50-3-4a of said code, all relating generally to supervision of persons committed to the custody of the Division of Corrections, Division of Juvenile Services, and the Regional Jail and Correctional Facility Authority; setting forth rules of construction; defining terms; creating Division of Administrative Services within Department of Military Affairs and Public Safety; defining scope of duties for Division of Administrative Services; authorizing appointment of director; setting qualifications for director; providing authority and duties for director; authorizing director to enter into memorandum of understanding with certain agencies to provide services; transferring certain employees, responsibilities, equipment and records to Division of Administrative Services; providing for classified service coverage for certain employees; creating Division of Corrections and Rehabilitation within Department of Military Affairs and Public Safety; eliminating Division of Corrections and Division of Juvenile Services and transferring powers and authority to Division of Corrections and Rehabilitation; transferring certain powers and authority of Regional Jail and Correctional Facility Authority to Division of Corrections and Rehabilitation; setting forth purpose and legislative intent; requiring chapter be construed in favor of public safety; authorizing appointment of commissioner of Division of Corrections and Rehabilitation; requiring commissioner subscribe to oath and execute bond; abolishing office of Commissioner of Division of Corrections, Director of Juvenile Services, and

Executive Director of Regional Jail and Correctional Facility Authority; vesting powers of abolished offices in office of commissioner of Division of Corrections and Rehabilitation; setting salary for commissioner; setting requirements for commissioner; setting powers and duties of commissioner; providing for the hiring of officers and employees of corrections institutions; providing authority for commissioner or designee to manage and administer certain affairs of correctional units and juvenile facilities under the division's jurisdiction; providing powers of superintendents of institutions or correctional units; requiring commissioner to investigate complaints made against superintendents or employees of institutions; requiring preemployment drug screening of prospective correctional employees; providing authority for superintendent and commissioner over employees; providing exceptions; authorizing hiring of correctional officer employees without regard to position on register; providing for compensation of employees; providing for reimbursement or provision of traveling and other expenses under certain circumstances; providing for certain reporting by commissioner and chief officers of institutions to State Auditor; prohibiting special compensation of officers and employees; providing penalties for violations of provision; setting forth certain law-enforcement powers of employees; establishing Corrections Special Operations Team; authorizing commissioner to prescribe design of employee uniforms; providing limitations on commissioner and municipalities with respect to uniform design; establishing criminal penalties for wearing or using uniform, badge, identification card or insignia with intent to deceive; establishing criminal penalty for falsely representing oneself as officer or employee of division; establishing criminal penalty for employee using position to threaten or coerce any other person to receive benefit; providing exceptions; identifying institutions to be managed by commissioner; authorizing certain contracts; authorizing the establishment of certain work and study release units; authorizing contract with nonprofit or charitable entities; setting terms of placing person in half-way house or transitional housing facility; placing adult persons sentenced to incarceration under the jurisdiction of the commissioner in the custody of the commissioner; authorizing transfer of adult inmates among institutions; granting contracting authority to commissioner for county jails or other incarceration facilities; directing establishment of a per diem rate for felony sentenced inmates; authorizing transfer of mentally disturbed adult prisoners or inmates; directing commissioner evaluate all facilities for most appropriate space to house each type of inmate; requiring consultation with Juvenile Justice Commission regarding current or prospective juvenile facilities; requiring report on evaluation to Joint Committee on Government and Finance; prohibiting conversion of juvenile facilities to adult facilities or adult facilities to juvenile facilities absent legislative authorization; vesting title to certain properties in the state; making commissioner custodian of deeds; authorizing lease of West Virginia penitentiary in Moundsville, subject to certain conditions, with approval of secretary of Military Affairs and Public Safety; exempting division from purchasing; providing procedures to be followed when purchasing is done by division; providing conditions for emergency purchasing; authorizing certain agreements with medical schools and higher education institutions; authorizing mutual aid agreements, subject to certain conditions, with approval of secretary of Military Affairs and Public Safety; continuing certain funds from Regional Jail and Correctional Facility Authority; providing for transfer of fund administration from Regional Jail and Correctional Facility Authority or its executive director; limiting use of jail funds to certain operations and expenses; authorizing investment under certain circumstances; identifying contents of funds; authorizing certain expenditures of funds; requiring incarceration of persons by counties in jail facilities; providing exceptions; clarifying authority of circuit and magistrate courts with respect to detention and commitment; requiring payment by county or municipality for per-day cost of incarceration; providing for establishment of per-day cost; capping per-day cost for a period of time; providing conditions for calculating per-day cost; establishing period of time for which county is responsible for costs of housing and maintaining inmates in its facilities; directing preparation of a report on feasibility of phasing out per diem charges; directing contents of report; continuing Jail Operations Partial Reimbursement Fund; establishing source of revenues; providing for use of funds; providing for administration of fund; granting rule-making authority; granting authority to develop policies; continuing legislative rules and policies of former Division of Corrections, Division of Juvenile Services, and Regional Jail and Correctional Facility Authority; authorizing furlough programs;

authorizing rule-making; providing certain parameters for furlough program; granting immunity, with certain limitations, to certain persons and entities for claims arising out of furlough program; authorizing electronic monitoring; requiring commissioner charge reasonable fee; providing exceptions; providing for deposit and use of fees; setting parameters for electronic devices; authorizing continuation and establishment of diagnostic and classification subdivisions; requiring all persons committed to the custody of the division to undergo diagnosis and classification; requiring division perform mental health preliminary screenings; authorizing commissioner to transfer inmates; providing conditions for transfer under certain circumstances; authorizing monitoring of inmate telephone calls, inmate mail, and inmate electronic correspondence; requiring notice to inmates of monitoring; providing procedures for and restrictions on monitoring; excepting communications to or from attorneys; requiring promulgation of policy directive establishing record-keeping procedures; providing for use of records when inmate is charged with crimes based on conversations; authorizing establishment of trustee accounts; providing for handling of money and personal property of inmates or residents; requiring certain incarcerated offenders make reimbursement toward cost of incarceration; requiring certain reports concerning the average cost per inmate; authorizing facility superintendent expend up to one half of inmate's money to satisfy certain obligations; providing for distribution of funds upon inmate departure or death; providing for notice of credit of money credited to former inmate or resident under certain circumstances; directing establishment of inmate or resident benefit funds for each institution; requiring reports on inmate benefit funds; continuing special revenue account; identifying sources of moneys for inmate or resident benefit funds; providing for use of funds in inmate or resident benefit funds; requiring division assist inmates in developing financial plans to meet any child support obligations; directing deduction by superintendent from inmate earnings for all legitimate court-ordered financial obligations; providing for civil judgments awarded to inmate to be subject to deductions for child support, restitution or other court-ordered obligations; directing investment of remaining funds with Municipal Bond Commission; limiting reimbursement rate to medical service providers for services outside division facilities; authorizing assessment of certain reasonable charges against inmates for certain services provided by the state; providing exceptions to authority to assess charges; authorizing interpretive rules; directing preparation and preservation of records for indictment and conviction, or charges and adjudication, and a register containing certain information; authorizing establishment of plant for the manufacture of license plates, road signs, or markers; making it unlawful for state employee or official to obtain license plates, road signs, or markers other than through plant; prohibiting certain persons from making gifts to or receiving gifts from inmates or residents; directing commissioner promulgate disciplinary rules and policies; setting penalties for violations; requiring commutation of certain sentences for good conduct; providing exceptions; setting conditions and procedures for commutation of sentences; authorizing Governor to authorize commissioner to consent to transfer or exchange of inmates in his or her custody in accordance with treaty between United States and a foreign country; providing for handling of mentally ill patients; disallowing mentally ill patients being denied parole or a parole hearing based upon condition; providing for facts to be presented to superintendent if convicted person is believed to be mentally ill, intellectually disabled, or addicted; providing for application of transfer to be filed; providing for appointment of special counsel for convict who is indigent; providing for notice to convicted person; setting forth process after application for transfer is filed; authorizing establishment of work program for qualified inmates; setting conditions on work program; providing immunity for certain persons and entities; authorizing employment of Director of Employment and Director of Housing for released inmates; setting authority and duties of directors; directing commissioner establish Bureau of Prisons and Jails; directing appointment of assistant commissioner to oversee Bureau of Prisons and Jails; transferring duties and funds of Division of Corrections to Bureau of Prisons and Jails; directing appointment of superintendents for facilities within Bureau of Prisons and Jails; requiring superintendents post bond; setting authority of superintendents; authorizing establishment of imprest fund; authorizing appointment of deputy superintendents; requiring deputy superintendents post bond; authorizing hiring of other assistants and employees by superintendents with approval of commissioner; providing for oversight of

employees; requiring commissioner to make space in every adult institution for both jail and prison populations; setting limitations on requirement to house both jail and prison populations in each adult institution; requiring division conduct pretrial risk assessment of person within three calendar days of arrest and placement in jail; directing pretrial risk assessment be provided to magistrate and circuit clerks; making pretrial risk assessment inadmissible evidence; requiring person committed to be housed in jail pay processing fee; directing where processing fee to be credited; directing refund of fee if person is not convicted; authorizing commissioner or employee to refuse certain offenders if offender appears to need medical attention; directing commissioner establish Bureau of Juvenile Services; transferring duties and funds of Division of Juvenile Services to Bureau of Juvenile Services; directing appointment of assistant commissioner to oversee Bureau of Juvenile Services; directing appointment of superintendents for facilities within Bureau of Juvenile Services; requiring superintendents post bond; setting authority of superintendents; authorizing establishment of imprest fund; authorizing appointment of deputy superintendents; requiring deputy superintendents post bond; authorizing hiring of other assistants and employees by superintendents with approval of commissioner; providing for oversight of employees; directing commissioner establish Bureau of Community Corrections; directing appointment of assistant commissioner to oversee Bureau of Community Corrections; directing appointment of superintendents for facilities within Bureau of Community Corrections; requiring superintendents post bond; authorizing hiring of other assistants and employees by superintendents; providing for supervision of persons on probation or released on parole; directing rules regarding supervision of probationers and parolees; clarifying authority retained by Parole Board; setting powers and duties of state parole officers; authorizing issuance of certificates for state parole officers under certain conditions; continuing Parole Supervision Benefit Fund; authorizing use of money for payment to community corrections program; continuing Regional Jail and Correctional Facility Authority Board; continuing certain powers; transferring certain power and authority to Division of Corrections and Rehabilitation; abolishing certain powers; modifying composition of Regional Jail and Correctional Facility Authority Board; providing for appointment and qualifications of board members; providing for governance by and operation of board; directing authority review per diem cost set by state Budget Office; providing procedures if amount is challenged or believed incorrect; providing certain employees of State Board of Education not subject to supervision and approval of employees of division; making certain employees members of classified service; exempting Division of Corrections and Rehabilitation from requirement to buy certain products from Department of Agriculture; repealing provisions of code related to Division of Corrections; repealing provisions of code related to state correctional and penal institutions; repealing provisions of code related to West Virginia Regional Jail and Correctional Facility Authority; repealing provisions of code related to probation and parole; repealing provisions of code related to corrections management; updating code references; eliminating obsolete language; and making technical corrections.”

On motion of Delegate Cowles, the House of Delegates concurred in the amendment by the Senate, with further amendment as follows:

On page seven of the Senate amendment, section two, line eighteen, by striking out “(f)” and inserting in lieu thereof “(e)”.

On page seven, section two, line twenty-one, by striking out “(e)” and inserting in lieu thereof “(f)”.

On page fourteen, section eleven, line nineteen, following the word “of”, by striking out “§15A-3-118(b)”, and inserting in lieu thereof “§15A-3-11(b)”.

On page sixteen, section twelve, line sixty-five, by striking out “(c)” and inserting in lieu thereof “(d)” and relettering the remaining subsections.

On page seventeen, section twelve, lines eighty-five and eighty-six, by striking out “§15A-3-12(f)” and inserting in lieu thereof “§15A-3-12(g)”.

On page eighteen, section thirteen, line one hundred eighteen, following the words “by prior act of the”, by striking out the word “legislator” and inserting in lieu thereof “Legislature”.

On page twenty-five, section two, lines three and four, following “operated by the division”, by striking out “under legislative rules, pursuant to §29A-3-1 et seq of this code or policy directives promulgated by the commissioner”, and inserting in lieu thereof “pursuant to legislative rules promulgated pursuant to §29A-3-1 et seq of this code”.

On page thirty-two, section seven, line ninety-nine, following “specified in”, by striking out

“§15A-4-77(a)(5)” and inserting in lieu thereof “§15A-4-7(a)(5)”.

On page forty-three, section sixteen, by striking out the word “convicts” in the section heading and inserting in lieu thereof the words “inmate or resident”.

On page forty-nine, section twenty, line four, following “program” and the period, by inserting the words “A qualified inmate does not include an inmate convicted of a sexual offense or a violent felony.”

And,

On page fifty-four, section one, line one, by striking out “(c)” and inserting in lieu thereof “(a)”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 515**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4338) passed.

Delegate Cowles moved that the bill take effect July 1, 2018.

On this question, the yeas and nays were taken (**Roll No. 516**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4338) takes effect from July 1, 2018.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4350, Eliminating the regulation of upholstery.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 1A. REGULATION AND CONTROL OF BEDDING AND UPHOLSTERY BUSINESSES.**§47-1A-11. Statements required on tags to be affixed to bedding.**

(1) Every article of bedding made for sale, sold, or offered for sale shall have attached thereto a tag on which is stated the name of the filling material used, that such material used is new or secondhand and, when required to be sterilized, that such material has been sterilized and the number of the sterilization permit. Such tag shall also contain the name and address of the maker or the vendor and the registry number, as hereinafter provided, of the maker.

~~(2) Every remade or renovated article of bedding not for sale, before returned to the owner for his or her own use, shall have attached thereto a tag which, in addition to the statements hereinabove required, shall state the name and address of the remaker or renovator or the statement ‘remade and renovated for’ followed by the name and address of the person for whom the article of bedding is renovated.~~

~~(3) (2)~~ In the description of the filling material used on any tag attached to an article of bedding, no term or designation intended or likely to mislead shall be used; but where such article contains more than one material, the amount of such materials shall be stated on the tag and there shall be no variance in excess of 10 percent from the amount stated on the tag: *Provided, however,* That no variance shall be allowed for filling material which is described as ‘all’, ‘pure’, ‘100%’ or terms of similar import.

~~(4) (3)~~ A complete secondhand article of bedding which has not been remade or renovated may be sold ‘as is’ without being sterilized, but the original tag shall be removed by the vendor and he or she shall attach a tag stating that the article is secondhand – ‘contents unknown’. This requirement shall not apply to articles sold at public auction, the sale of antique furniture, or to a private sale from the home of the owner direct to the purchaser: *Provided, however,* That the exceptions herein stated shall not authorize the sale of an article of bedding that has been exposed to infectious or contagious disease and which, after such exposure, has not been sterilized and approved for use.

§47-1A-14. Annual registration and permit fees.

(a) The annual registration fee for all manufacturers shipping or selling articles of bedding ~~and for upholsterers or renovators, as defined in this article,~~ in the State of West Virginia shall be \$90, payable on the first day of the fiscal year. Any manufacturer, ~~upholsterer or renovator~~ who submits an annual registration fee on or after July 16 shall pay a \$25 late fee in addition to the annual fee.

(b) The annual sterilizer permit fee shall be \$90, payable on the first day of the fiscal year. Any sterilizer who submits an annual permit fee on or after July 16 shall pay a \$25 late fee in addition to the annual fee.

(c) The fee for reissuing a revoked or expired registration or permit shall be \$90.

(d) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the Bedding and Upholstery Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, Amounts amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this article may be utilized by the commissioner as needed to meet the division's funding obligation. Provided, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4350 – “A Bill to amend reenact §47-1A-11 and §47-1A-14 of the Code of West Virginia, 1931, as amended, all relating to eliminating the regulation of upholsterers by the Commissioner of Labor; removing tagging requirements for upholsterers; and eliminating annual registration and permit fees for upholsterers.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 517**), and there were—yeas 78, nays 20, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Bates, Byrd, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Fleischauer, Fluharty, Lynch, Miley, R. Miller, Moye, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaule and Williams.

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4350) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4394, Relating to forest fires.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 3. FORESTS AND WILDLIFE AREAS.

§20-3-5. Forest fire seasons; prohibited and permissible fires; burning permits and fees; fire control measures; criminal and civil penalties.

(a) *Forest fire seasons.* — March 1 through May 31, and October 1 through December 31 are designated as forest fire seasons. During any fire season, a person may set on fire or cause to be

set on fire any forest land, or any grass, grain, stubble, slash, debris, or other inflammable materials only between 5 p.m. and 7 a.m., at which time the fire must be extinguished.

(b) *Permissible fires during forest fire seasons.* — The following attended fires are permitted during forest fire season as set forth in subsection (a) of this section without a burning permit unless there is a burning ban in effect:

(1) Small fires set for the purpose of food preparation, or providing light or warmth around which all grass, brush, stubble, or other debris has been removed for a distance of 10 feet from the fire; and

(2) Burning conducted at any time when the ground surrounding the burning site is covered by one inch or more of snow.

(c) *Burning permits.* — The director or his or her designee may issue burning permits authorizing fires during forest fire seasons as set forth in subsection (a) of this section that are otherwise prohibited by this section. The permits shall state the requisite conditions and time frame to prevent danger from the fire to life or property: *Provided*, That the director or his or her designee shall take final action upon all completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested.

(1) *Permit fees.* — Entities required to pay a permit fee are those engaged in commercial, manufacturing, public utility, mining, and like activities. Agricultural activities are exempt from paying the permit fee. The permit fee is \$125 per site and shall be deposited into the Division of Forestry Fund (3081) to be used to administer the provisions of this section. The permit fee covers the fire season during which it is issued.

(2) Noncompliance with any condition of the permit is a violation of this section. Any permit which was obtained through willful misrepresentation is invalid and violates this section.

(3) Permit holders shall take all necessary and adequate precautions to confine and control fires authorized by the permit. Failure to take action is a violation of this section and is justification for the director to revoke the permit.

(d) *Fire control.* —

(1) With approval of the Governor, the director may prohibit the starting of and require the extinguishment of fire in any designated area, including fires permitted by this section.

(2) With approval of the Governor, the director may designate any forest area as a danger area, prohibit entry, and declare conditional uses and prohibited areas of the forest by proclamation at any time of the year. The proclamation shall be furnished to newspapers, radio stations, and television stations that serve the designated area and ~~shall become~~ becomes effective after 24 hours. The proclamation remains in effect until the director, with the approval of the Governor, terminates it. The order shall designate the time of termination, and notice of the order shall be furnished to each newspaper, radio station, and television station that received a copy of the proclamation.

(3) ~~Burning is not permitted by this section until all inflammable material has been removed from around the material to be burned and a safety strip of at least ten feet is established to ensure that the fire will not escape.~~ A person shall remove all flammable material from the area immediately surrounding the material to be burned for a distance which ensures the fire will at all times be contained; this safety strip shall in no event be less than 10 feet wide. Any person or his or her agent or employee who sets or causes to be set any fire which escapes the safety strip and causes damage to the lands of another is guilty of a misdemeanor.

(e) *Criminal and civil penalties.* — A person or entity that violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$100 and not more than \$1,000 for each violation. In addition to fines and costs, a person or entity convicted of a violation of this section shall pay a \$200 civil penalty to the division within 60 days. The civil penalty shall be collected by the court in which the person is convicted and forwarded to the division and deposited in the Division of Forestry Fund (3081) to be used to administer the provisions of this section.

§20-3-5a. Prescribed Fire Program.

(a) As used in this section:

(1) 'Certified prescribed fire manager' means an employee of the Division of Forestry, the Division of Natural Resources, or any federal employee who has successfully completed a certification process established by the director.

(2) 'Prescribed fire' means the controlled application of fire or wildland fuels in wildlife management areas, state forests or federal lands in either the natural or modified state, under specified environmental conditions, which allows the fire to be confined to a predetermined area and produces the fire behavior and fire characteristics necessary to attain planned fire treatment and ecological, silvicultural, and wildlife management objectives.

(3) 'Prescription' means a written statement defining the objectives to be attained by a prescribed fire and the conditions of temperature, humidity, wind direction and speed, fuel moisture, and soil moisture under which a fire will be allowed to burn. A prescription is generally expressed as an acceptable range of the prescription elements.

(b) Director certification process. — The director shall develop and administer a certification process and prescribed burn course for any individual who desires to become a certified prescribed fire manager. The prescribed fire course shall include the following subjects: The legal aspects of prescribed fire, fire behavior, prescribed fire tactics, smoke management, environmental effects, plan preparation, and safety. The director shall give a final examination on these subjects to all attendees. The director may charge a reasonable fee to cover the costs of the prescribed fire course and the examination.

(c) To be certified as a certified prescribed fire manager, a person shall:

(1) Successfully complete all components of the prescribed fire course developed by the director and pass the examination developed for the course;

(2) Successfully complete a prescribed fire course comparable to that developed by the director and pass the examination developed for the course; or

(3) Demonstrate relevant past experience, complete a review course and pass the examination developed for the prescribed fire course.

(d) Prescribed burning shall be performed in the following manner:

(1) A certified prescribed fire manager shall prepare a prescription for the prescribed fire prior to the burn. The prescription shall include: (A) The landowner's name, address, and telephone number, and the telephone number of the certified prescribed fire manager who prepared the plan; (B) a description of the area to be burned, a map of the area to be burned, the objectives of the prescribed fire, and the desired weather conditions or parameters; (C) a summary of the methods to be used to start, control, and extinguish the prescribed fire; and (D) a smoke management plan. The smoke

management plan shall conform to the Department of Environmental Protection's rule, Control of Air Pollution from Combustion of Refuse, 45 CSR 6. A copy of the prescription shall be retained at the site throughout the period of the burning;

(2) A certified prescribed fire manager shall directly supervise a prescribed fire and ensure that the prescribed fire is in accordance with the prescription; and

(3) The certified prescribed fire manager shall notify the nearest regional office of the division 24 hours prior to the prescribed fire.

(e) If the actions of any certified prescribed fire manager or the prescriptions prepared by him or her violate any provision of this article, state air pollution control laws, the Division of Forestry rules, the Department of Environmental Protection rules or laws, or threaten public health and safety, the director may revoke his or her certification.

(f) The director shall propose rules for promulgation in accordance with the provisions of §29A-3-1 et seq. of this code for establishing the procedures for the development of a certification program for prescribed fire managers."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4394 – "A Bill to amend and reenact §20-3-5 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §20-3-5a, all relating to forest fires; requiring all flammable material must be removed from the area immediately surrounding material to be burned for a distance which ensures the fire will at all times be contained; requiring that a safety strip shall in no event be less than ten feet wide; establishing a crime for any person or employee who sets or causes to be set any fire which escapes the safety strip and causes damage to the lands of another; setting forth criminal penalties; creating a prescribed fire program; defining terms; requiring Director of the Division of Natural Resources to develop a certification process and prescribed burn course; setting forth requirements for certification as a certified prescribed fire manager; prescribing manner in which prescribed burn must be performed; setting forth violations which may result in revocation of certification; and authorizing rule-making."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 518**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4394) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4431, Establishing the Mountaineer Trail Network Recreation Authority.

Delegate Cowles moved that the House of Delegates concur with further title amendment, and the House concurred in the following amendment by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 14A. MOUNTAINEER TRAIL NETWORK RECREATION AUTHORITY.

§20-14A-1. Legislative findings.

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

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

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

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

§20-14A-2. Definitions.

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

(1) ‘Authority’ means the Mountaineer Trail Network Recreation Authority;

(2) ‘Board’ means the board of the Mountaineer Trail Network Recreation Authority;

(3) ‘Charge’ means, for purposes of limiting liability for recreational purposes set forth in this article, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by the authority, which may be set by the authority in differing amounts for different categories of participants;

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

(5) 'Mountaineer Trail Network Recreation Area' means a system of recreational trails and appurtenant facilities, including trail head centers, parking areas, camping facilities, picnic areas, recreational areas, historic or cultural interpretive sites, and other facilities that are a part of the system: *Provided*, That for the purposes of permitted or prohibited use of such a system, the term includes a system located in a regional Mountaineer Trail Network Authority established pursuant to §20-14A-13 of this article;

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

(7) 'Participant' means any person using the land, trails, and facilities of the Mountaineer Trail Network Recreation Area;

(8) 'Participating county' means the counties of Barbour, Grant, Harrison, Marion, Mineral, Monongalia, Preston, Randolph, Taylor, and Tucker and, upon request of the county commission, any county that is adjacent to a participating county of the Mountaineer Trail Network Recreation Area as of July 1, 2021; and

(9) 'Recreational purposes' includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: Hunting, fishing, swimming, boating, camping, picnicking, hiking, bicycling, mountain bicycling, running, cross-country running, equestrian activities, nature study, winter sports and visiting, viewing or enjoying historical, archaeological, scenic, or scientific sites or otherwise using land for purposes of the user.

§20-14A-3. Mountaineer Trail Network Recreation Authority; board; terms.

(a) There is hereby created the 'Mountaineer Trail Network Recreation Authority' which is a public corporation and a joint development entity existing for the purpose of enabling and facilitating the development and operation of a system of trail-oriented recreation facilities for use by bicycling enthusiasts, mountain bicyclists, and others, to be located in north central West Virginia with significant portions of the trails system being located on private property made available for use through lease, license, easement, or other appropriate legal form by a willing landowner.

(b) The authority is composed of a board of members who shall be representative of the various interests involved in the Mountaineer Trail Network Recreation Area project in the participating counties and who shall be appointed as follows:

(1) The county commission of each participating county, as defined in §20-14A-2 of this article, shall appoint two members to the board as follows:

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

(B) One member who represents and is associated with travel and tourism or economic development efforts within the county or who is associated with a mining, logging, natural gas, or other resource-extraction industry or who is a licensed land surveyor or licensed professional

engineer. The initial appointment shall be for a two-year term, but all subsequent appointments shall be for a four-year term.

(2) Any appointed member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any appointed member is eligible for reappointment. Members of the board are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(c) The Mountaineer Trail Network Recreation Authority is a 'public body' for purposes of the West Virginia Freedom of Information Act, as provided in §29B-1-1 et seq. of this code.

§20-14A-4. Board; quorum; executive director; expenses.

(a) The board is the governing body of the authority and the board shall exercise all the powers given the authority in this article.

(b) The board shall meet quarterly, unless a special meeting is called by its chairman: *Provided*, That at the first meeting of each fiscal year beginning in an odd-numbered year, or as soon thereafter as feasible, the board shall elect a chairman, secretary, and treasurer from among its own members.

(c) A majority of the members of the board constitutes a quorum and a quorum shall be present for the board to conduct business.

(d) The board may prescribe, amend, and repeal bylaws and rules governing the manner in which the business of the authority is conducted, rules governing the use of the trail system and the safety of participants, and shall review and approve an annual budget. The fiscal year for the authority begins on July 1 and ends on the thirtieth day of the following June.

(e) The board shall appoint an executive director to act as its chief executive officer, to serve at the will and pleasure of the board. The board, acting through its executive director, may employ any other personnel considered necessary and retain such temporary legal, engineering, financial, and other consultants or technicians as may be required for any special study or survey consistent with the provisions of this article. The executive director shall carry out plans to implement the provisions of this article and to exercise those powers enumerated in the bylaws. The executive director shall prepare an annual budget to be submitted to the board for its review and approval prior to the commencement of each fiscal year. The budget shall contain a detailed account of all planned and proposed revenue and expenditures for the authority for the upcoming fiscal year, including a detailed list of employees by title, salary, cost of projected benefits and total compensation. Before August 15 of each year, the executive director shall provide to the board and the county commission for each participating county a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year and a copy of the approved budget for the current fiscal year.

(f) All costs incidental to the administration of the authority, including office expenses, personal services expense, and current expense, shall be paid in accordance with guidelines issued by the board from funds accruing to the authority.

(g) All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the authority of this article and no liability or obligation may be incurred by the authority under this article beyond the extent to which moneys have been provided under the authority of this article.

§20-14A-5. Financial review and oversight.

(a) The authority shall contract for and obtain an annual financial audit to be conducted by a private accounting firm in compliance with generally accepted government auditing standards. When complete, the audit shall be transmitted to the board, the president of the county commission of each participating county, and the Legislative Auditor. The cost of the audit shall be paid by the authority.

(b) If the authority receives any funds from the Legislature by appropriation or grant, the Legislative Auditor shall have the power and authority to examine the revenues, expenditures, and performance of the Mountaineer Trail Network Recreation Authority, and for these purposes, shall have the power to inspect the properties, equipment, and facilities of the authority and to request, inspect, and obtain copies of any records of the authority. For each fiscal year in which the authority receives any funds from the Legislature by appropriation or grant, the executive director shall provide to the Legislative Auditor and Secretary of Revenue a detailed list of actual expenditures and revenue by account and recipient name for the previous fiscal year within 45 days of the close of that fiscal year.

§20-14A-6. Powers of the authority.

The authority, as a public corporation and joint development entity, may exercise all powers necessary or appropriate to carry out the purposes of this article, including, but not limited to, the power:

- (1) To acquire, own, hold, and dispose of property, real and personal, tangible and intangible;
- (2) To lease property, whether as lessee or lessor, and to acquire or grant through easement, license, or other appropriate legal form, the right to develop and use property and open it to the use of the public;
- (3) To mortgage or otherwise grant security interests in its property;
- (4) To procure insurance against any losses in connection with its property, license, or easements, contracts, including hold-harmless agreements, operations, or assets in such amounts and from such insurers as the authority considers desirable;
- (5) To maintain such sinking funds and reserves as the board determines appropriate for the purposes of meeting future monetary obligations and needs of the authority;
- (6) To sue and be sued, implead and be impleaded, and complain and defend in any court;
- (7) To contract for the provision of legal services by private counsel and, notwithstanding the provisions of §5-3-1 et seq. of this code, the counsel may, in addition to the provisions of other legal services, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating to the authority, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority;
- (8) To adopt, use, and alter at will a corporate seal;
- (9) To make, amend, repeal, and adopt bylaws for the management and regulation of its affairs;
- (10) To appoint officers, agents, and employees and to contract for and engage the services of consultants;

(11) To make contracts of every kind and nature and to execute all instruments necessary or convenient for carrying on its business, including contracts with any other governmental agency of this state or of the federal government or with any person, individual, partnership, or corporation to effect any or all of the purposes of this article;

(12) Without in any way limiting any other subdivision of this section, to accept grants and loans from, and enter into contracts and other transactions with, any federal agency;

(13) To maintain an office at such places within the state as it may designate;

(14) To borrow money and to issue notes and to provide for the payment of notes and to provide for the rights of the holders of the notes and to purchase, hold, and dispose of any of its notes;

(15) To issue notes payable solely from the revenues or other funds available to the authority, and the authority may issue its notes in such principal amounts as it considers necessary to provide funds for any purpose under this article, including:

(A) The payment, funding or refunding of the principal of, interest on or redemption premiums on notes issued by it, whether the notes or interest to be funded or refunded have or have not become due; and

(B) The establishment or increase of reserves to secure or to pay notes or the interest on the notes and all other costs or expenses of the authority incident to and necessary or convenient to carry out its corporate purposes and powers. Notes may be additionally secured by a pledge of any revenues, funds, assets, or moneys of the authority from any source whatsoever;

(16) To issue renewal notes, except that no renewal notes may be issued to mature more than 10 years from the date of issuance of the notes renewed;

(17) To apply the proceeds from the sale of renewal notes to the purchase, redemption, or payment of the notes to be refunded;

(18) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies, or services from the federal government or from any governmental unit or any person, firm, or corporation and to carry out the terms or provisions of or make agreements with respect to or pledge any gifts or grants and to do any and all things necessary, useful, desirable, or convenient in connection with the procuring, acceptance, or disposition of gifts or grants;

(19) To the extent permitted under its contracts with the holders of notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of any note, contract or agreement of any kind to which the authority is a party;

(20) To construct, reconstruct, improve, maintain, repair, operate, and manage the Mountaineer Trail Network Recreation Area at the locations within the participating counties as may be determined by the authority;

(21) To enter into an agreement with the West Virginia Division of Natural Resources for natural resources police officers to provide law-enforcement services within the Mountaineer Trail Network Recreation Area and to reimburse the Division of Natural Resources for its costs therefor;

(22) To exercise all power and authority provided in this article necessary and convenient to plan, finance, construct, renovate, maintain, and operate or oversee the operation of the Mountaineer Trail

Network Recreation Area at such locations within the participating counties as may be determined by the authority;

(23) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state;

(24) To develop, maintain, and operate or to contract for the development, maintenance, and operation of the Mountaineer Trail Network Recreation Area;

(25) To enter into contract with landowners and other persons holding an interest in the land being used for its recreational facilities to hold those landowners and other persons harmless with respect to any claim in tort growing out of the use of the land for recreational purposes or growing out of the recreational activities operated or managed by the authority from any claim except a claim for damages proximately caused by the willful or malicious conduct of the landowner or other person or any of his or her agents or employees;

(26) To assess and collect a reasonable fee from those persons who use the trails, parking facilities, visitor centers, or other facilities which are part of the Mountaineer Trail Network Recreation Area and to retain and utilize that revenue for any purposes consistent with this article;

(27) To enter into contracts or other appropriate legal arrangements with landowners under which their land is made available for use as part of the Mountaineer Trail Network Recreation Area;

(28) To directly operate and manage recreation activities and facilities within the Mountaineer Trail Network Recreation Area;

(29) To establish and collect charges for users to enter or go upon the Mountaineer Trail Network Recreation Area, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion as set by the authority and including fees set by the authority in differing amounts for different categories of participants: *Provided*, That the authority may not charge a fee for any user to enter or go upon any trail that is open for use by the public without fee as of January 1, 2018;

(30) To promulgate and publish rules governing the use of the trail system and the safety of participants, including rules designating particular trails or segments of trails within the Mountaineer Trail Network Recreation Area for certain activities and limiting use of designated trails to such activities;

(31) To coordinate and conduct mountain bicycling or other athletic races, competitions, or events within the Mountaineer Trail Network Recreation Area, in cooperation with the county commissions of participating counties in which such events will take place; and

(32) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers conferred in this section.

§20-14A-7. Requirements for trail users and prohibited acts; criminal penalties.

(a) A person may not enter or remain upon the Mountaineer Trail Network Recreation Area without a valid, nontransferable user permit issued by the authority and properly displayed, except properly identified landowners or leaseholders or their officers, employees, or agents while on the land that the person owns or leases for purposes related to the ownership or lease of the land.

(b) A person may not consume or possess any alcoholic liquor, wine, nonintoxicating beer, or nonintoxicating craft beer at any time or any location within the Mountaineer Trail Network Recreation Area.

(c) The operator or any passengers of a bicycle or mountain bicycle within the Mountaineer Trail Network Recreation Area shall wear size-appropriate protective helmets at all times. All operators and passengers shall wear helmets that meet the current performance specifications established by the United States Consumer Products Safety Commission standard or the American Society for Testing and Materials standard.

(d) Each trail user shall obey all traffic laws, traffic-control devices, and signs within the Mountaineer Trail Network Recreation Area, including those which restrict trails to certain types of bicycles or mountain bicycles.

(e) Each trail user shall at all times remain within and on a designated and marked trail while within the Mountaineer Trail Network Recreation Area.

(f) A person may not ignite or maintain any fire within the Mountaineer Trail Network Recreation Area except in a designated camp site.

(g) A person may not operate a motor vehicle within the Mountaineer Trail Network Recreation Area.

(h) A person may not possess a glass container while riding on a bicycle or mountain bicycle within the Mountaineer Trail Network Recreation Area.

(i) A person may not operate or ride in an all-terrain vehicle or utility-terrain vehicle, as defined in §17F-1-1 *et seq.* of this code, or any other motor vehicle with bench or bucket seating and a steering wheel for control within the Mountaineer Trail Network Recreation Area.

(j) A person who violates any provision of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$100. Prosecution or conviction for the misdemeanor described in this subsection shall not prevent or disqualify any other civil or criminal remedies for the conduct prohibited by this section.

§20-14A-8. Limiting liability.

(a) An owner of land used by the Mountaineer Trail Network Recreation Authority owes no duty of care to keep the premises safe for entry or use by others for recreational purposes or to give any warning of a dangerous or hazardous condition, use, structure, or activity on the premises used by the Mountaineer Trail Network Recreation Authority to persons entering for those purposes.

(b) Unless otherwise agreed in writing, an owner who grants a lease, easement, or license of land to the authority for recreational purposes, whether with or without charge, owes no duty of care to keep that land safe for entry or use by others or to give warning to persons entering or going upon the land of any dangerous or hazardous conditions, uses, structures, or activities thereon. An owner who grants a lease, easement, or license of land to the authority for recreational purposes does not by giving a lease, easement, or license: (1) Extend any assurance to any person using the land that the premises are safe for any purpose; (2) confer upon those persons the legal status of an invitee or licensee to whom a duty of care is owed; or (3) assume responsibility for or incur liability for any injury to person or property caused by an act or omission of a person who enters upon the leased land. The provisions of this section apply whether the person entering upon the land is an invitee, licensee, trespasser, or otherwise.

(c) Nothing herein limits in any way any liability which otherwise exists for deliberate, willful, or malicious infliction of injury to persons or property: *Provided*, That nothing herein limits in any way the obligation of a person entering upon or using the land of another for recreational purposes to exercise due care in his or her use of the land and in his or her activities thereon, so as to prevent the creation of hazards or the commission of waste by himself or herself.

§20-14A-9. Purchasing and bidding procedures; criminal penalties.

(a) Whenever the authority proposes to purchase or contract for commodities or services reasonably anticipated to equal or exceed \$25,000 in cost, the purchase or contract shall be based on competitive bids. Where the purchase of particular commodities or services is reasonably anticipated to be \$25,000 or less, the executive director may, on behalf of the authority, solicit bids or price quotes in any manner that the executive director deems appropriate and the authority shall obtain its commodities or services by the lowest bid. In lieu of seeking bids or quotes for commodities or services in this price range, the authority may purchase those commodities and services pursuant to state master contracts as provided in §5A-3-10e of this code.

(b) Where the cost for the purchase of commodities or services is reasonably anticipated to exceed \$25,000, the executive director shall solicit sealed bids for the commodities or services to be provided: *Provided*, That the executive director may permit bids by electronic transmission be accepted in lieu of sealed bids. Bids shall be solicited by public notice. The notice shall be published as a Class II legal advertisement in all participating counties in compliance with the provisions of §59-3-1 *et seq.* of this code and by such other means as the executive director deems appropriate. The notice shall state the general character of the work and general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids. After all bids are received, the authority shall enter into a written contract with the lowest responsible bidder; however, the authority may reject any or all bids that fail to meet the specifications required by the authority or that exceed the authority's budget estimation for those commodities or services. If the executive director determines in writing that there is only one responsive and responsible bidder and that there has been sufficient public notice to attract competitive bids, he or she may negotiate the price for a noncompetitive award or the specifications for a noncompetitive award based solely on the original purpose of the solicitation.

(c) For any contract that exceeds \$25,000 in total cost, the authority shall require the vendors to post a bond, with form and surety to be approved by the authority, in an amount equal to at least 50 percent of the contract price conditioned upon faithful performance and completion of the contract.

(d) The bidding requirements specified in this section do not apply to any leases for real property upon which the authority makes improvements for public access to the recreation area, information distribution, and welcome centers. This exemption does not apply to leases for offices, vehicle and heavy equipment storage, or administrative facilities.

(e) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction, shall be confined in jail not less than 10 days nor more than one year, or fined not less than \$10 nor more than \$1,000, or both confined and fined.

§20-14A-10. Conflicts of interest prohibiting certain contracts; criminal penalties.

(a) No contract, change order to a prior contract, or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the board or an employee of the authority, or a spouse, sibling, child, or parent of a member of the board or an employee of the authority or to any vendor or prospective vendor in which

a member of the board or employee of the authority, or a spouse, sibling, child, or parent of a member of the board or an employee of the authority has an ownership interest of greater than five percent.

(b) No contract, change order to a prior contract, or renewal of any contract may be awarded or entered by the authority to any vendor or prospective vendor when the vendor or prospective vendor is a member of the West Virginia Legislature, or a spouse, sibling, child, or parent of a member of the Legislature, or to any vendor or prospective vendor in which a member of the Legislature or a spouse, sibling, child, or parent of a member of the Legislature, has an ownership interest of greater than five percent.

(c) All responses to bid solicitations, requests for quotation, requests for proposal, contracts, change orders, and contract renewals with the authority submitted or approved under the provisions of this article shall include an affidavit that the vendor or prospective vendor is not in violation of this section.

(d) Any person who violates a provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than 10 days nor more than one year, or fined not less than \$10 nor more than \$1,000, or both confined and fined.

§20-14A-11. Civil remedies for unlawful purchasing and contracts.

The county commission of any participating county may challenge the validity of any contract or purchase entered, solicited, or proposed by the authority in violation of §20-14A-9 or §20-14A-10 of this article by seeking declaratory or injunctive relief in the circuit court of the county of the challenging party. If the court finds by a preponderance of evidence that the provisions of those sections have been violated, the court may declare the contract or purchase to be void and may grant any injunctive relief necessary to correct the violations and protect the funds of the authority as a joint development entity.

§20-14A-12. Creation of regional Mountaineer Trail Network Recreation Authorities.

(a) For the purposes provided in §20-14A-1 of this article, four or more adjacent counties may, upon approval of the county commission of each county desiring to participate, form a separate and distinct regional Mountaineer Trail Network Recreation Authority that will be a joint development entity and a public corporation. A regional Mountaineer Trail Network Recreation Authority shall promulgate its own rules and bylaws relating to use of trails within the regional authority area and operations of the regional authority board.

(b) With respect to a regional Mountaineer Trail Network Recreation Authority area, a regional authority formed pursuant to this section shall have the same powers and duties of the Mountaineer Trail Network Recreation Authority, and such regional authority shall comply with all requirements of this article that apply to the Mountaineer Trail Network Recreation Authority.

(c) The liability of the owner of land used by a regional Mountaineer Trail Network Recreation Authority is limited in the same manner as provided in §20-14-8 of this article.

(d) All other provisions of this article regarding requirements, limitations, and privileges of a user, the board, participating landowners, or participating counties of the Mountaineer Trail Network Recreation Authority shall apply to a user, the board, a participating landowner, or a participating county of a regional Mountaineer Trail Network Recreation Authority with respect to the separate and distinct regional authority.

§20-14A-13. Severability.

The several sections and provisions of this article are severable, and if any section or provision hereof is held unconstitutional, all the remaining sections and provisions of this article shall nevertheless remain valid."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4431 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-14A-1, §20-14A-2, §20-14A-3, §20-14A-4, §20-14A-5, §20-14A-6, §20-14A-7, §20-14A-8, §20-14A-9, §20-14A-10, §20-14A-11, §20-14A-12, and §20-14A-13, all relating generally to establishing the Mountaineer Trail Network Recreation Authority; providing a statement of legislative purpose and findings; defining terms; creating the Mountaineer Trail Network Recreation Authority, which is a public corporation and joint development entity of certain participating counties; providing for appointment of individuals to the board of the authority and the filling of vacancies in the board; prescribing the terms of appointment; requiring quarterly meetings of the board; describing how quorum is established; authorizing the board to promulgate bylaws and rules; providing that the authority is subject to freedom of information act laws; describing the powers and duties of the authority, acting through its board; requiring the board to appoint an executive director; describing powers and duties of the executive director; authorizing employment of staff; requiring creation of an annual budget; providing for payment of authority expenses; allowing reimbursement of board member expenses; establishing financial audit requirements; requiring reporting and oversight of funds received from the Legislature; establishing prohibited actions by users of recreation area land and providing criminal penalties; limiting the liability of landowners of land used by the Authority; setting forth purchasing and bidding procedures for contracts and purchases by the Authority; providing criminal penalties for violation of purchasing and bidding requirements; prohibiting certain purchasing contracts with vendors that create conflicts of interest; providing criminal penalties for entering into prohibited purchasing contracts creating conflicts of interest; providing civil remedies for participating counties challenging purchasing contracts violating purchasing or bidding requirements or conflict of interest prohibitions; providing a process for four or more contiguous counties in the state to form a separate and distinct regional Mountaineer Trail Network Recreation Authority; providing that a regional Mountaineer Trail Network Recreation Authority must operate in compliance with all requirements applying to the Mountaineer Trail Network Recreation Authority; providing that any other provisions in the new article relating to requirements, limitations and privileges of a user, the board, participating landowners, or participating counties of the Mountaineer Trail Network Recreation Authority shall apply to a user, the board, a participating landowner, or a participating county of a regional Mountaineer Trail Network Recreation Authority with respect to the separate and distinct regional authority area; and providing for severability.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 519**), and there were—yeas 94, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Dean, Marcum, Maynard and Upson.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for Com. Sub. for H. B. 4431) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 4431 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-14A-1, §20-14A-2, §20-14A-3, §20-14A-4, §20-14A-5, §20-14A-6, §20-14A-7, §20-14A-8, §20-14A-9, §20-14A-10, §20-14A-11, §20-14A-12, and §20-14A-13, all relating generally to the Mountaineer Trail Network Recreation Authority; providing a statement of legislative purpose and findings; defining terms; creating the Mountaineer Trail Network Recreation Authority, which is a public corporation and joint development entity of certain participating counties; providing for appointment of individuals to the board of the authority and the filling of vacancies in the board; prescribing the terms of appointment; requiring quarterly meetings of the board; describing how quorum is established; authorizing the board to promulgate bylaws and rules; providing that the authority is subject to freedom of information act laws; describing the powers and duties of the authority, acting through its board; requiring the board to appoint an executive director; describing powers and duties of the executive director; authorizing employment of staff; requiring creation of an annual budget; providing for payment of authority expenses; allowing reimbursement of board member expenses; establishing financial review, oversight and audit requirements; requiring reporting and oversight of funds received from the Legislature; requiring a permit to enter and use the trail; establishing prohibited actions by users of recreation area land and providing criminal penalties; limiting the liability of landowners of land used by the Authority with exception of deliberate, willful or malicious acts; setting forth purchasing and bidding procedures for Authority contracts for commodities and services by the Authority; providing criminal penalties for violation of purchasing and bidding requirements; prohibiting certain purchasing contracts with vendors that create conflicts of interest; providing criminal penalties for entering into prohibited purchasing contracts that create purchasing contracts by seeking extraordinary relief to correct violations, void unlawful contracts and protect authority funds; providing a process for four or more adjacent counties in the state to form a separate and distinct regional Mountaineer Trail Network Recreation Authority; providing that a regional Mountaineer Trail Network Recreation Authority must operate in compliance with all requirements applying to the Mountaineer Trail Network Recreation Authority; providing that a regional Mountaineer Trail Network Recreation Authority will promulgate its own rules and bylaws; providing that a regional Mountaineer Trail Network Recreation Authority has the same powers, and duties as of the Mountaineer Trail Network Recreation Authority; providing that all other provisions regarding requirements, limitations, and privileges of a user, the board, participating landowners, or participating counties of the Mountaineer Trail Network Recreation Authority shall apply to a user, the board, a participating landowner, or a participating county of a regional Mountaineer Trail Network Recreation Authority; and providing for severability."

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

A message from the Senate, by

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

Com. Sub. for H. B. 4401, Relating to the registration of business.

A message from the Senate, by

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

Com. Sub. for H. B. 4571, Relating to the final day of filing announcements of candidates for a political office.

On motion of Delegate Foster, the House concurred in the following amendment of the title of the bill by the Senate:

Com. Sub. for H. B. 4571 - "A Bill to amend and reenact §3-5-7 of the Code of West Virginia, 1931, as amended, relating to the filing of certificates of announcement of candidacy for a political office; requiring that the office of the Secretary of State be open from 9:00 a.m. until 11:59 p.m. on the last day of the period during which a certificate of announcement may be filed; and requiring that the offices of the county clerks of each county be open from 9:00 a.m. until 12:00 p.m. on the last day of the period during which a certificate of announcement may be filed."

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 520**), and there were—yeas 97, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Sobonya.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4571) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4603, Providing immunity from civil liability to facilities and employees providing crisis stabilization.

Delegate Foster moved that the House of Delegates concur in the following amendment of the bill by the Senate, with further amendment:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 7K. IMMUNITY FROM CIVIL LIABILITY FOR BEHAVIORAL HEALTH FACILITIES AND RESIDENTIAL RECOVERY FACILITIES.

§55-7K-1. Limiting civil liability for certain behavioral health facilities and residential recovery facilities providing crisis stabilization services and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis.

Notwithstanding any other provision of this code, no behavioral health facility that is licensed in this state, another state, or operated by the state, or one of its political subdivisions, and no residential recovery facility certified by or meeting the standards of a national certifying body, nor any of their directors, officers, employees, and agents shall be liable for injury or civil damages related to the provision of short-term crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, drug overdose services, and/or withdrawal services to the extent the injury or damages arise from an individual's refusal of services, election to discontinue services,

failure to follow the orders or instructions of a facility, voluntary departure, elopement, or abandonment from a facility, with or without notice to others, so long as the services are offered in good faith, the facility does not require payment from the individual receiving the services, and the injury or damages are not proximately caused by the gross negligence or willful or wanton misconduct of the facility, or its directors, officers, employees, or agents: *Provided*, That for the purposes of this section, to the extent such behavioral health facilities or residential recovery facilities are reimbursed or receive Medicaid or grant funding, they are not deemed to have required payment from the individual receiving the services.

§55-7K-2. Applicability of provisions.

(a) The provisions of this article are applicable to all causes of action accruing on or after July 1, 2018.

(b) The provisions of this article operate in addition to, and not in derogation of, any of the provisions contained in §55-7B-1 et seq. of this code.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4603 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §55-7K-1 and §55-7K-2, relating to providing immunity from civil liability to certain facilities, including their directors, officers, employees, and agents, providing crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis; providing an effective date; and providing that the provisions of this article are to operate in addition to, and not in derogation of, any of the provisions contained in the Medical Professional Liability Act.”

On motion of Delegate Foster, bill was further amended on page one, section seven-k, lines thirteen through sixteen, by striking out “: *Provided*, That for the purposes of this section, to the extent such behavioral health facilities or residential recovery facilities are reimbursed or receive Medicaid or grant funding, they are not deemed to have required payment from the individual receiving the services”.

The bill, as amended by the Senate, and further amended by the House of Delegates, was put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 521**), and there were—yeas 95, nays 3, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fast, Miley and Upson.

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4603) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, to take effect from passage, of

Com. Sub. for S. B. 10, Relating generally to PSC jurisdiction.

On motion of Delegate Foster, the House concurred in the following Senate title amendment:

Com. Sub. for S. B. 10 – “A Bill to amend and reenact §8-19-2 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §8-19-2a and §8-19-2b; and to amend and reenact §16-13A-9 of said code; and to amend and reenact §24-2-1, §24-2-2, §24-2-3, and §24-2-4b of said code, all relating generally to the jurisdiction of the Public Service Commission; excluding the setting and adjustment of rates, fees, and charges of municipal power systems from the jurisdiction of the Public Service Commission; providing for a right of appeal by customers; providing public service districts may accept payments for all fees and charges due by credit or check card; providing procedures and guidance for utilization of this method of payment; and clarifying the commission’s jurisdiction as modified by chapters 161 and 209, Acts of the Legislature, regular session, 2017, over Internet protocol-enabled service, voice-over Internet protocol-enabled service, storm water services by a public service district, political subdivisions providing separate or combined water and/or sewer services, and certain telephone company transactions.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 522**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 10) passed.

Delegate Foster moved that the bill take effect from its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 523**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Deem and Householder.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 10) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

Com. Sub. for H. B. 4447, Providing for a uniform and efficient system of broadband conduit installation.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Boso, Sypolt and Plymale.

On motion of Delegate Cowles, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Shott, Hanshaw and Byrd.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

H. B. 4629, Relating to broadband enhancement and expansion policies generally.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Smith, Gaunch and Jeffries.

On motion of Delegate Cowles, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Hanshaw, Zatazelo and Isner.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

Com. Sub. for S. B. 244, Specifying conditions for unlawful possession of firearm at school-sponsored activities.

On motion of Delegate Foster, the House concurred in the following Senate title amendment:

Com. Sub. for S. B. 244 – “A Bill to amend and reenact §61-7-11a of the Code of West Virginia, 1931, as amended, relating to providing that it is unlawful to possess a firearm or other deadly weapon on a school bus, in or on the grounds of any primary or secondary educational facility of any type, or

at certain school-sponsored functions; providing exception for in or on the grounds of any private primary or secondary school if the institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds thereof; setting forth the conditions under which a retired law-enforcement officer may possess a firearm or other deadly weapon on a school bus, in or on the grounds of any primary or secondary educational facility of any type, or at certain school-sponsored functions; excluding certain students from the exception that applies to a person specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes; and revising conditions for which certain persons holding a valid concealed handgun permit can possess a concealed handgun in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school.”

The question being on the passage of the bill, the yeas and nays were taken **(Roll No. 524)**, and there were—yeas 86, nays 12, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Bates, Byrd, Caputo, Diserio, Fleischauer, Hornbuckle, Lane, Pushkin, Pyles, Rowe, Wagner and Williams.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 244) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, of

Com. Sub. for S. B. 283, Relating generally to procurement by state agencies.

On motion of Delegate Foster, the House concurred in the following amendment by the Senate:

On page fifteen, by striking out the section caption and inserting in lieu thereof a new section caption, to read as follows:

“§5A-3-37. Reciprocal preference; preference for resident vendors for certain contracts.”

On page nineteen, by striking out section thirty-seven in its entirety and inserting in lieu thereof the following:

“(a) For purposes of this section, a vendor shall be deemed to be a resident of this state if such vendor:

(1) Is registered in accordance with §11-12-1 et seq. of this code to transact business within the State of West Virginia;

(2) Maintains its headquarters or principal place of business in the state;

(3) Has actually paid, and not just applied to pay, personal property taxes imposed by chapter 11 of this code on equipment used in the regular course of supplying services or commodities of the general type offered; and

(4) Has actually paid, and not just applied to pay, all required business taxes imposed by chapter 11 of this code.

(b) Except as provided in subsection (c) of this section, in any instance that a purchase of commodities or printing by the director or by a state spending unit is required under the provisions of this article to be made upon competitive bids, preference shall only be given to resident vendors of West Virginia against a nonresident vendor from any state that gives or requires a preference to bidders from that state. The amount of the preference shall be equal to the amount of the preference given or required by the state of the nonresident vendor for that particular supply.

(c)(1) In any instance that a purchase of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects by the director or by a state department is required under the provisions of this article to be made upon competitive bids, the successful bid shall be determined as provided in this subsection.

(2) For purposes of this subsection, a successful bid shall be determined and accepted as follows:

(A) From an individual resident vendor who has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted or from a partnership, association, corporation resident vendor, or from a corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted: *Provided*, That for purposes of this paragraph, any partnership, association or corporation resident vendor of this state, which does not meet the requirements of this paragraph solely because of the continuous four-year residence requirement, shall be considered to meet the requirement if at least eighty percent of the ownership interest of the resident vendor is held by another individual, partnership, association or corporation resident vendor who otherwise meets the requirements of this paragraph, including the continuous four-year residency requirement: *Provided, however*, That the Purchasing Division shall promulgate rules relating to attribution of ownership among several resident vendors for purposes of determining the eighty percent ownership requirement; or

(B) From a resident vendor, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years, and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(C) From a nonresident vendor, which employs a minimum of one hundred state residents or a nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia and which employs a minimum of one hundred state residents, if, for purposes of producing or distributing the motor vehicles or the construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of

the vendor's bid and continuously over the entire term of the contract, on average at least seventy-five percent of the vendor's employees or the vendor's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than two and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(D) From a vendor who meets either the requirements of both paragraphs (A) and (B) of this subdivision or paragraphs (A) and (C) of this subdivision, if the bid does not exceed the lowest qualified bid from a nonresident vendor by more than five percent of the latter bid, and if the vendor has certified the residency requirements above and made written claim for the preference at the time the bid was submitted; or

(E) From an individual resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted, if the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has made written claim for the preference at the time the bid was submitted; or

(F) From a resident vendor who is a veteran of the United States Armed Forces, the Reserves or the National Guard, if, for purposes of producing or distributing motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects which are the subject of the vendor's bid and continuously over the entire term of the contract, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years and the vendor's bid does not exceed the lowest qualified bid from a nonresident vendor by more than three and one-half percent of the latter bid, and if the vendor has certified the residency requirements of this paragraph and made written claim for the preference, at the time the bid was submitted; or

(G) Notwithstanding any provisions of paragraphs (A), (B), (C), (D), (E) or (F) of this subdivision to the contrary, if any nonresident vendor that is bidding on the purchase of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects by the director or by a state department is also certified as a small, women or minority-owned business pursuant to §5A-3-59, the nonresident vendor shall be provided the same preference made available to any resident vendor under the provisions of this subdivision.

(3) If any of the requirements or provisions set forth in this section jeopardize the receipt of federal funds, then the requirement or provisions are void and of no force and effect for that specific project.

(4) The Purchasing Division shall promulgate any rules necessary to: (A) determine that vendors have met the residence requirements described in this section; (B) establish the procedure for vendors to certify the residency requirements at the time of submitting their bids; (C) establish a procedure to audit bids which make a claim for preference permitted by this section and to reject noncomplying bids; and (D) otherwise accomplish the objectives of this subsection.

(d) If the Purchasing Division determines under any audit procedure that a vendor who received a preference under this section fails to continue to meet the requirements for the preference at any time during the term of the contract for which the preference was received the Purchasing Division may: (1) reject the vendor's bid; or (2) assess a penalty against the vendor of not more than five percent of the vendor's bid on the contract.

(e) Political subdivisions of the state including county boards of education may grant the same preferences to any vendor of this state who has made a written claim for the preference at the time a bid is submitted, but for the purposes of this subsection, in determining the lowest bid, any political subdivision shall exclude from the bid the amount of business occupation taxes which must be paid by a resident vendor to any municipality within the county comprising or located within the political subdivision as a result of being awarded the contract which is the object of the bid; in the case of a bid received by a municipality, the municipality shall exclude only the business and occupation taxes as will be paid to the municipality: *Provided*, That prior to soliciting any competitive bids, any political subdivision may, by majority vote of all its members in a public meeting where all the votes are recorded, elect not to exclude from the bid the amount of business and occupation taxes as provided in this subsection.”

On page twenty-nine, by striking out all of section four and inserting in lieu thereof a new section four, to read as follows:

“§5G-1-4. Contracts for architectural and engineering services; selection process where total project costs are estimated to cost less than \$250,000; division of highways procurements.

(a) In the procurement of architectural and engineering services for projects estimated to cost less than \$250,000, competition shall be sought by the agency. The agency shall conduct discussions with three or more professional firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract: *Provided*, That if a judgment is made that special circumstances exist and that seeking competition is not practical, the agency may, with the prior approval of the director of purchasing, select a firm on the basis of previous satisfactory performance and knowledge of the agency’s facilities and needs. After selection, the agency and firm shall develop the scope of services required and negotiate a contract.

(b) The Division of Highways may procure the services of architectural and engineering firms under the provisions of this section in an amount not to exceed \$750,000 for the services per project.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 283 – “A Bill to amend and reenact §5-22-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-3-10b, §5A-3-10c, §5A-3-10e, §5A-3-33d, §5A-3-33f, §5A-3-37, and §5A-3-45 of said code; to amend said code by adding thereto a new section, designated §5A-3-61; to amend and reenact §5G-1-3 and §5G-1-4 of said code; to amend and reenact §6D-1-1 of said code; and to amend and reenact §18B-5-4 of said code, all relating generally to procurement by state agencies; defining terms; authorizing competitive bidding of certain open-ended repair and maintenance contracts; modifying use and consideration of alternates in solicitations; prohibiting alternates from being accepted out of order; modifying criteria to be considered in best value procurement awards; eliminating sole source procurement; establishing direct award procurement requirements; establishing prequalification agreements and their requirements and procedures; authorizing agency-delegated prequalification bidding and its procedure; increasing certain cost limits from \$50,000 to \$1 million; authorizing awarding contracts without competitive bidding if certain requirements are met; eliminating master contracts and direct ordering process; expanding the scope of those who may be debarred; eliminating preferences for resident vendors, vendors employing state residents, and veteran residents; establishing the concept of ‘reciprocal preference’ for an in-state vendor over an out-of-state vendor from any state that gives or requires a preference to bidders from that state and setting forth its requirements; providing certain preferences for purchases of motor vehicles or construction and maintenance equipment and

machinery used in highway and other infrastructure projects; modifying the value determination of certain motor vehicles that are to be sold; permitting funds from sale of surplus property be deposited in alternate fund if original fund no longer exists; permitting spending units to use a standardization process to purchase commodities and setting forth its requirements; permitting an architectural or engineering firm to be selected without bidding if certain conditions exist; increasing the cost of projects under which Division of Highways is permitted to procure services of architectural and engineering firms under certain provisions; increasing certain contract limits from \$100,000 to \$1 million for purposes of disclosure; modifying provisions requiring disclosure of interested parties; requiring certain reporting; removing preference requirements for higher education; and authorizing rulemaking.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 525**), and there were—yeas 67, nays 31, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Brewer, Byrd, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Gearheart, Hartman, Hornbuckle, Iaquina, Isner, Kelly, Longstreth, Love, Lovejoy, Lynch, Miley, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Thompson and Williams.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 283) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

Com. Sub. for S. B. 495, Designating specific insurance coverages exempt from rate filing requirements.

On motion of Delegate Foster, the House concurred in the following Senate title amendment:

Com. Sub. for S. B. 495 – “A Bill to amend and reenact §33-20-4 of the Code of West Virginia, 1931, as amended, relating to commercial insurance rates; and designating specific insurance coverages which are exempt from the requirements of filing rates with the insurance commissioner.”

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 526**), and there were—yeas 94, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fast, Fleischauer, Robinson and Rowe.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 495) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

S. B. 498, Creating two-year pilot program allowing all-terrain or recreational vehicles in Cabwaylingo State Forest.

On motion of Delegate Foster, the House concurred in the following Senate title amendment:

S. B. 498 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-3-3a, relating to Cabwaylingo State Forest; creating a pilot project permitting all-terrain and off-highway recreational vehicles on designated roads and trails in Cabwaylingo State Forest; permitting the Director of the Division of Natural Resources to designate roads, trails, and campgrounds and to close certain areas, or parts thereof, to public use in consultation with the Director of the Division of Forestry; permitting the Director of the Division of Natural Resources to establish special season and permit in consultation with the Director of the Division of Forestry; making it unlawful to operate an all-terrain or off-highway vehicle on any road or trail in Cabwaylingo State Forest without such special permit, should one be created; applying the ATV, UTV, and Motorcycle Responsibility Act to the project; providing the Director of the Division of Natural Resources emergency and regular legislative rule making authority; and requiring Legislative Auditor to review project and file report."

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 527**), and there were—yeas 93, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Hamilton, Iaquina, Lynch, Martin and Rowe.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 498) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 506, Deregulating persons who perform work on heating, ventilating, and cooling systems.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

S. B. 525, Relating to certification for emergency medical training-mining.

Delegate Foster moved that the House of Delegates concur with further title amendment and the House concurred in the following Senate title amendment:

S. B. 525 - "A Bill to repeal §16-4C-6c of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22A-10-3, relating to emergency medical technicians – mining; transferring certification requirements for emergency medical technician – mining to the chapter governing miners' health, safety and training; eliminating authority of director of Miners' Health Safety and Training to authorizing providers to administer certification courses and examination; modifying requirements for training personnel and independent trainers; and making technical corrections."

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 528**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 525) passed.

On motion of Delegate Foster, the title of the bill was amended to read as follows:

S. B. 525 – "A Bill to repeal §16-4C-6c of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22A-10-3, relating to emergency medical technicians – mining; transferring certification requirements for emergency medical technician – mining to the chapter governing miners' health, safety and training; eliminating the authority of the director of Miners' Health Safety and Training to authorize providers to administer certification courses and examinations; modifying requirements for training personnel and independent trainers; and making technical corrections."

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

Com. Sub. for S. B. 582, Allowing candidate for political party executive committee serve as election official.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Clements, Maroney and Baldwin.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to recede from its amendment and requested the House of Delegates to agree to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

Com. Sub. for S. J. R. 3, Judicial Budget Oversight Amendment.

The message further announced that the President of the Senate had appointed as conferees on the part of the Senate the following:

Senators Trump, Weld and Woelfel.

On motion of Delegate Cowles, the House of Delegates agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses.

Whereupon,

The Speaker appointed as conferees on the part of the House of Delegates the following:

Delegates Shott, Hanshaw and Byrd.

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

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

Delegate Hanshaw, Chair of 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 10th day of March, 2018, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

Com. Sub. for H. B. 2693, Relating to state ownership of wildlife,

Com. Sub. for H. B. 2983, Granting priority to roadway construction, reconstruction and maintenance for roadways prone to recurring floods that hinder ingress and egress,

Com. Sub. for H. B. 4015, Relating to the management and continuous inventory of vehicles owned, leased, operated, or acquired by the state and its agencies,

Com. Sub. for H. B. 4142, Providing certain employees of the Division of Corrections, Division of Juvenile Services, and West Virginia Regional Jail and Correctional Facility Authority a salary adjustment,

Com. Sub. for H. B. 4180, Relating to wildlife resources,

Com. Sub. for H. B. 4207, Authorizing an online application to receive a commission to act as a notary public, and eliminating the bond requirement,

Com. Sub. for H. B. 4230, Relating to credit for reinsurance,

Com. Sub. for H. B. 4236, Requiring agencies to provide an annual inventory of real property holdings to the Real Estate Division,

Com. Sub. for H. B. 4289, Relating to disability pensions of municipal employees,

Com. Sub. for H. B. 4343, Relating to the delivery of financial statements to bank shareholders,

Com. Sub. for H. B. 4347, Relating to voluntary contributions to the West Virginia State Police Forensic Laboratory Fund,

H. B. 4422, Permitting permanent endowment funds of cemeteries to invest their principal in certain government bonds, and corporate bonds,

H. B. 4433, Declaring certain claims against an agency of the state to be moral obligations of the state,

And,

H. B. 4621, Relating to removing reference to certain entities with respect to work.

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

Your Committee on Finance has had under consideration:

S. B. 634, Adding, increasing, and decreasing appropriations from General Revenue to DHHR,

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

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (S. B. 634) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Cowles moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 529**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Deem and Marcum.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

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

The bill was then read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 530**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 634) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 531**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 634) takes effect from its passage.

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

Mr. Speaker, Mr. Armstead, Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

H. C. R. 20, U. S. Marine Corps CPL Larry Scott Kennedy Memorial Bridge,

S. C. R. 1, US Army SGT Denver E. Short Memorial Road,

Com. Sub. for S. C. R. 3, Michael Angiulli Memorial Bridge,

And,

Com. Sub. for S. C. R. 29, US Army SGT Benny Fleming Memorial Bridge,

And reports the same back with the recommendation that they each be adopted.

At the request of Delegate Cowles, and by unanimous consent, the resolutions (H. C. R. 20, S. C. R. 1, Com. Sub. for S. C. R. 3 and Com. Sub. for S. C. R. 29) were each taken up for immediate consideration and put upon their adoption.

The resolutions were then adopted.

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

Conference Committee Report Availability

At 6:07 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for H. B. 4447**, Providing for a uniform and efficient system of broadband conduit installation, shall be available in the Clerk's Office.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 46, Permitting pharmacists to inform customers of lower-cost alternative drugs.

Conference Committee Report

Delegate Sobonya, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 46, Permitting pharmacists to inform customers of lower-cost alternative drugs.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the House to Engrossed Com. Sub. for Senate Bill 46 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the strike and insert amendment of the House of Delegates, and that the Senate and House agree to an amendment as follows:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 51. PHARMACY AUDIT INTEGRITY AND TRANSPARENCY ACT.

§33-51-9. Regulation of Pharmacy Benefit Managers.

(a) A pharmacy, a pharmacist, and a pharmacy technician shall have the right to provide a covered individual with information related to lower cost alternatives and cost share for such covered individual to assist health care consumers in making informed decisions. Neither a pharmacy, a pharmacist, nor a pharmacy technician shall be penalized by a pharmacy benefit manager for discussing information in this section or for selling a lower cost alternative to a covered individual, if one is available, without using a health insurance policy.

(b) A pharmacy benefit manager shall not collect from a pharmacy, a pharmacist, or a pharmacy technician a cost share charged to a covered individual that exceeds the total submitted charges by the pharmacy or pharmacist to the pharmacy benefit manager.

(c) A pharmacy benefit manager may only directly or indirectly charge or hold a pharmacy, a pharmacist, or a pharmacy technician responsible for a fee related to the adjudication of a claim if:

(1) The total amount of the fee is identified, reported, and specifically explained for each line item on the remittance advice of the adjudicated claim; or

(2) The total amount of the fee is apparent at the point of sale and not adjusted between the point of sale and the issuance of the remittance advice.

(d) This section shall not apply with respect to claims under an employee benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D.”

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title to read as follows:

Com. Sub. for S. B. 46 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-51-9, all relating to pharmacy benefit managers; providing that a pharmacy, pharmacist, or pharmacy technician may inform consumers of lower cost alternatives and cost share to assist health care consumers in making informed decisions; prohibiting pharmacy benefit managers from penalizing a pharmacy, pharmacist, or pharmacy technician for discussing certain information with consumers; prohibiting pharmacy benefit managers from collecting cost shares exceeding the total submitted charges by a pharmacy, pharmacist, or pharmacy technician; setting forth limitations on pharmacy benefit managers when charging certain adjudicated claim fees to a pharmacy, pharmacist, or pharmacy technician; and excluding an employee benefit plan under the Employee Retirement Income Security Act of 1974 or Medicare Part D from this code section.”

Respectfully submitted,

Tom Takubo, *Chair*
Sue Cline,
Ron Stollings,
Conferees on the part of the Senate.

Kelli Sobonya, *Chair*
Ray Hollen,
Andrew Byrd,
*Conferees on the part of the House
of Delegates.*

On motion of Delegate Sobonya, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 532**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Deem and Householder.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 46) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 51, Relating to domestic relations.

Conference Committee Report

Delegate Foster, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 51, Relating to domestic relations.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Committee Substitute for Senate Bill No. 51, having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the Senate agree to the following House of Delegates amendment:

On page six, section two hundred six, line eight, after the words "have a", by inserting the word "meaningful".

That both houses recede from their respective positions as to the amendment of the House of Delegates on page seven, section two hundred six, after line forty, and that the Senate and House agreement to an amendment as follows:

(b) The Court may consider the allocation of custodial responsibility arising from temporary agreements made by the parties after separation if the Court finds, by a preponderance of the evidence, that such agreements were consensual. The Court shall afford those temporary consensual agreements the weight the Court believes the agreements are entitled to receive, based upon the evidence. The Court may not consider the temporary allocation of custodial responsibility imposed by a court order on the parties.

And,

By relettering the remaining subsections.

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title, to read as follows:

Com. Sub. for S. B. 51 – "A Bill to amend and reenact §48-6-301 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-9-205 and §48-9-206 of said code, all relating to domestic relations; removing language related to child support from code section governing the awarding of spousal support and separate maintenance; directing court to consider certain factors to decide amount and duration of spousal support and separate maintenance; removing the 24-month time frame for a description of the allocation of caretaking and other parenting responsibilities performed from the matters contained in permanent parenting plan; clarifying that the court may accommodate the preferences of a child 14 years of age and older if the court determines it is in the best interests of the child; directing court to allocate custodial responsibility so that custodial time spent with each parent achieves certain objectives; directing courts to consider which parent will encourage and accept a positive relationship between child and other parent and which parent is more likely to keep other parent involved in child's life and activities; and allowing court to consider allocation of custodial responsibility arising from temporary agreements in certain circumstances."

Respectfully submitted,

Charles S. Trump, IV, *Chair*,
Randy Smith,
Mike Woelfel,

Conferees on the part of the Senate.

Geoff Foster, *Chair*,
Jason Harshbarger,
Phil Isner,

*Conferees on the part of the House
of Delegates.*

On motion of Delegate Foster, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 533**), and there were—yeas 84, nays 13, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bates, Canestraro, Fleischauer, Fluharty, Hicks, Miley, Moye, Pushkin, Pyles, Rowe, Sponaugle, Thompson and Williams.

Absent and Not Voting: Deem and Householder.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 51) passed.

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

Conference Committee Report Availability

At 6:47 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for H. B. 4001**, Relating to eligibility and fraud requirements for public assistance, shall be available in the Clerk's Office.

At 6:50 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for S. J. R. 3**, Judicial Budget Oversight Amendment, shall be available in the Clerk's Office.

At 7:10 p.m., the Clerk announced that the report of the Committee of Conference on **Com. Sub. for S. B. 392**, Reconfiguring membership of Emergency Medical Services Advisory Council, shall be available in the Clerk's Office.

At 7:11 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 7:30 p.m.

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Evening Session

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The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for H. B. 2655, Defining and establishing the crime of cyberbullying.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14c. Cyberbullying or specific acts of electronic harassment of minors; definitions; penalties; exceptions.

(a) It is unlawful for a person to knowingly and intentionally use a computer or computer network, as defined in §61-3C-3, to engage in conduct with the intent to harass, intimidate, or bully a minor, including, but not limited to:

(1) Posting, disseminating or encouraging others to post or disseminate private, personal, or sexual information pertaining to a minor on the Internet; or

(2) Posting obscene material, as defined in §61-3C-14a of this code, in a real or doctored image of a minor on the Internet;

(b) For the purposes of this section:

(1) ‘Harass, intimidate or bully’ means any intentional gesture, or any intentional electronic, written, verbal, or physical act, communication, transmission or threat that:

(A) A reasonable person under the circumstances should know the act will have the effect of any one or more of the following:

(i) Physically harming a minor;

(ii) Damaging a minor’s property;

(iii) Placing a minor in reasonable fear of harm to his or her person; or

(iv) Placing a minor in reasonable fear of damage to his or her property; or

(B) Is sufficiently severe, persistent, or pervasive that it creates an intimidating, threatening, or emotionally abusive environment for a minor.

(2) ‘Minor’ means an individual under the age of 18 years old.

(c) This section does not apply to a peaceful activity intended to:

(i) Express a political view; or

(ii) Provide information to others with no intent to harass, intimidate, or bully.

(d) Any person who violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or confined in jail for a period not to exceed one year, or both confined and fined.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2655 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3C-14c, relating to creating the offense of cyberbullying of minors; setting forth the essential elements of the offense; defining terms; providing exceptions; and establishing criminal penalties."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 534**), and there were—yeas 85, nays 1, absent and not voting 13, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Capito, Deem, Hamrick, Kessinger, Lane, Nelson, Phillips, Queen, Sponaugle, Storch, Upson, Westfall and White.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2655) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 2982, Relating to allowing draw games winners to remain anonymous.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-15a. Option for winners of draw games to remain anonymous.

(a) A person entitled to collect proceeds exceeding one million dollars from a winning draw game ticket may remain anonymous: *Provided*, That such anonymity only applies to the person's name, personal contact information, and likeness.

(b) If the person entitled to collect proceeds exceeding one million dollars from a winning draw game ticket desires to remain anonymous, he or she shall contact the State Lottery Director in writing or appear at the state lottery headquarters in person, concerning his or her desire to remain anonymous: *Provided*, That such a request only permits that the person's name, personal contact information, and likeness remain anonymous. At the time of his or her request to remain anonymous, the person shall provide his or her contact information, including any personal telephone number, residential address, and electronic mail address.

(c) Any request to remain anonymous may be made by certified mail addressed to the West Virginia State Lottery Director, P.O. Box 2067, Charleston, West Virginia 25327, by electronic mail to

an email address that is to be established by West Virginia State Lottery prior to the effective date of this section, or in person at the state lottery headquarters. Once established, the secure email address shall be posted on the West Virginia Lottery's website prior to the effective date of this section.

(d) Upon receiving a request to remain anonymous, the director shall contact the person requesting anonymity and schedule an appointment to meet at any county, regional, or state lottery office to confirm the winning number and to otherwise make arrangements to protect the anonymity of the requesting person.

(e) If a person elects to remain anonymous pursuant to this section, he or she shall remit 5 percent of his or her winnings to the State Lottery Fund.

(f) The requirements of this section are effective on January 1, 2019.

CHAPTER 29B. FREEDOM OF INFORMATION.

ARTICLE 1. PUBLIC RECORDS.

§29B-1-4. Exemptions.

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under ~~the provisions of this article~~:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical, or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: *Provided*, That this article does not preclude an individual from inspecting or copying his or her own personal, medical, or similar file;

(3) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(4) (A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents, or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological, and battlefield sites or constituting gifts to any public body

upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document, or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared, or maintained to prevent, mitigate, or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement, and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications, and network security records, passwords, security codes, or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests, or the results of those tests;

(15) Architectural or infrastructure designs, maps, or other records that show the location or layout of the facilities where computing, telecommunications, or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. §222;

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;

(20) Information related to applications under §61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided*, That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however*, That information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes;

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, "personal information" means a law-enforcement officer's social security number, health information, home address, personal address, personal telephone numbers, and personal email addresses and those of his or her spouse, parents, and children as well as the names of the law-enforcement officer's spouse, parents, and children; and

(22) Information provided by a person when he or she elects to remain anonymous after winning a draw game prize, pursuant to of §29-22-15a of this code.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term "terrorist act" means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

- (1) Intimidate or coerce the civilian population;
- (2) Influence the policy of a branch or level of government by intimidation or coercion;
- (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
- (4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity."

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 2982 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing certain winners of State Lottery draw games to remain anonymous; providing that a person entitled to collect proceeds exceeding one million dollars from a winning draw game ticket may remain anonymous in regards to his or her name, personal contact information, and likeness; establishing a procedure by which a draw game winner may request anonymity from the State Lottery Director; providing that a draw game winner who elects to remain anonymous must remit 5 percent of his or her winnings to the State Lottery Fund; establishing an effective date; and providing that information provided when a draw game winner elects to remain anonymous is exempt from disclosure under the Freedom of Information Act."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 535**), and there were—yeas 85, nays 6, absent and not voting 8, with the nays and absent and not voting being as follows:

Nays: Barrett, Byrd, Isner, Pushkin, Robinson and Rowe.

Absent and Not Voting: Deem, Hamrick, Kessinger, Lane, Nelson, Storch, Upson and White.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2982) passed.

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

Conference Committee Report Availability

At 7:43 p.m., the Clerk announced that the report of the Committee of Conference on **H. B. 4629**, Relating to broadband enhancement and expansion policies generally, shall be available in the Clerk's Office.

At 7:44 p.m., the Clerk announced that a new report of the Committee of Conference on **Com. Sub. for H. B. 4001**, Relating to eligibility and fraud requirements for public assistance, shall be available in the Clerk's Office.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced concurrence by the Senate in the amendment of the House of Delegates to the amendment of the Senate, and the passage, as amended, of

Com. Sub. for H. B. 2916, Authorizing certain first responders to carry firearms.

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on and the passage, as amended by said report, of

Com. Sub. for H. B. 2995, Permitting certain animal euthanasia technicians who have been certified by other states be certified animal euthanasia technicians in West Virginia.

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on and the passage, as amended by said report, of

Com. Sub. for H. B. 4013, Clarifying venue in West Virginia state courts as it applies to nonresidents of the state.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4156, Establishing the qualifications of full and part time nursing school faculty members.

Delegate Cowles moved that the House of Delegates concur in the following Senate amendment, with further amendment and title amendment:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-5. Schools of nursing.

(a) A nursing program is determined to be board approved if the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education. The accreditation is considered board approved and is exempt from board rules that require ongoing approval if the school or program maintains this accreditation.

(b) By July 1, 2022, all nursing programs shall be accredited by a national accrediting agency recognized by the United States Department of Education. A program created after July 1, 2018, shall have 5 years to obtain accreditation by an accrediting agency recognized by the United States Department of Education.

(c) The board may require information concerning the nursing program to be reported to the board by legislative rule. The requested information shall be consistent with information already being collected by the schools which is required to maintain the program’s accreditation.

(d) The board shall approve a new nursing program until the program is accredited by a national nursing accrediting agency recognized by the United States Department of Education.

§30-7-5a. Schools of nursing faculty requirements.

(a) Full-time nursing faculty members shall:

(1) Have a graduate degree with a major in nursing; have a bachelor’s degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor’s degree with a major in nursing and at least 10 years of direct patient care experience in nursing;

(2) Have evidence of current experience in nursing practice and education sufficient to demonstrate professional competence. For faculty with less than two years’ experience in education, the nursing program administrator will submit to the board mentoring and orientation plans as defined by board guidelines and function under the guidance of a faculty member fully qualified in the specific teaching area and professional competence; and

(3) Have credentials which verify status as a registered professional nurse in West Virginia.

(b) Part-time nursing faculty members shall:

(1) Have a graduate degree with a major in nursing; have a bachelor’s degree with a major in nursing and be enrolled in a graduate degree program with a major in nursing within one year of employment as a faculty member; or have a bachelor’s degree with a major in nursing and at least two years of direct patient care experience in nursing;

(2) Have evidence of current experience in nursing practice and education sufficient to demonstrate professional competence. For faculty with less than two years’ experience in education, the nursing program administrator will submit to the board mentoring and orientation plans as defined

by board guidelines and function under the guidance of a faculty member fully qualified in the specific teaching area and professional competence; and

(3) Have credentials which verify status as a registered professional nurse in West Virginia.

(c) The board may grant an exception to the requirements in §30-7-5a(a) and §30-7-5a(b) of this code for faculty members who have qualifications other than those set forth in these subsections which are acceptable to the board.

ARTICLE 7A. PRACTICAL NURSES.

§30-7A-8. Schools of practical nursing.

(a) A practical nursing program is determined to be board approved if approved by the board, or the program is accredited by a national accrediting agency recognized by the United States Department of Education. The accreditation is considered board approved and is exempt from board rules that require ongoing approval if the school or program maintains this accreditation.

(b) By July 1, 2022, all practical nursing programs shall be accredited by a national accrediting agency recognized by the United States Department of Education. A program created after July 1, 2018, shall have 5 years to obtain accreditation by an accrediting agency recognized by the United States Department of Education.

(c) The board may require information concerning the practical nursing program to be reported to the board by legislative rule. The requested information shall be consistent with information already being collected by the schools which is required to maintain the program's accreditation.

(d) The board shall approve a new practical nursing program until the program is accredited by a national accrediting agency recognized by the United States Department of Education."

On motion of Delegate Cowles, the House concurred in the Senate amendment with the following further amendment:

On page two, before §30-7-5, by inserting §30-7-1 to read as follows:

“§30-7-1. Definitions.

As used in this article:

(a) ‘Advanced practice registered nurse’ means a registered nurse who has acquired advanced clinical knowledge and skills preparing him or her to provide direct and indirect care to patients as a certified nurse practitioner, certified nurse-midwife, certified registered nurse anesthetist, or clinical nurse specialist, who has completed a board-approved graduate-level education program and who has passed a board-approved national certification examination.

(b) ‘Board’ means the West Virginia Board of Examiners for Registered Professional Nurses;

(c) ‘Collaborative relationship’ means a working relationship, structured through a written agreement, in which an advanced practice registered nurse may prescribe drugs in collaboration with a qualified physician;

‘Direct patient care’ means the provision of services to a sick, injured, mentally or physically disabled, elderly or fragile patient that requires some degree of interaction with that patient. Direct

patient care may include assessment, treatment, counseling, procedures, self-care, patient education, administration of medication, and implementation of a care plan;

(d) 'Practice of registered professional nursing' or 'registered professional nursing' means the performance for compensation of any service requiring substantial specialized judgment and skill based on knowledge and application of principles of nursing derived from the biological, physical and social sciences, such as responsible supervision of a patient requiring skill in observation of symptoms and reactions and the accurate recording of the facts, or the supervision and teaching of other persons with respect to such principles of nursing, or in the administration of medications and treatments as prescribed by a licensed physician, a licensed dentist or a licensed advanced practice registered nurse, or the application of such nursing procedures as involve understanding of cause and effect in order to safeguard life and health of a patient and others; and

(e) 'Temporary permit' means a permit authorizing the holder to practice registered professional nursing in this state until such permit is no longer effective or the holder is granted a license by the West Virginia State Board of Examiners for Registered Professional Nurses.

The bill, as amended by the Senate, and further amended by the House of Delegates, was then put upon its passage.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 536**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Deem and Kelly.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4156) passed.

On motion of Delegate Cowles, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 4156 - "A Bill to amend and reenact §30-7-1 and §30-7-5 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §30-7-5a; and to amend and reenact §30-7A-8 of said code; and, all relating to the regulation of nursing schools; defining terms; modifying accreditation standards for registered nursing schools; modifying accreditation standards for practical nursing schools; requiring national accreditation of registered nursing schools; setting out school of nursing faculty requirements; establishing the qualifications nursing school faculty members; providing an exception to the qualification of nursing school faculty and permitting practical nursing programs to be regulated by the board."

Delegate Foster moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 537**), and there were—yeas 96, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cowles, Deem and Kelly.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4156) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on and the passage, as amended by said report, of

Com. Sub. for H. B. 4186, Relating generally to guaranteed asset protection waivers.

A message from the Senate, by

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

Com. Sub. for H. B. 4214, Increasing penalties for unlawfully possessing or digging ginseng.

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

On page eight, section thirty-five, line eight, after “\$500”, by inserting the words “nor more than \$1,000, and, for each subsequent offense, shall be fined not less than \$1,000”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4214 - “A Bill to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-3-35 of said code, all relating to increasing penalties for unlawfully possessing or digging ginseng; requiring ginseng dealers to maintain a photocopy of a valid identification card of all diggers, growers, and dealers involved in a ginseng transaction; and requiring written consent by the landowner to enter the lands of another to dig or prospect for ginseng.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 538**), and there were—yeas 90, nays 6, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Folk, Isner, Kessinger, McGeehan, Upson and Wilson.

Absent and Not Voting: Cowles, Deem and Kelly.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4214) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4217, Permitting an attending physician to obtain a patient’s autopsy report.

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

On page two, section ten, line thirty, by striking out “§49-5D-3” and inserting in lieu thereof “§49-4-402”.

And,

On page two, section ten, line forty-two, by striking out the words “is empowered to” and inserting in lieu thereof the word “may”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 539**), and there were—yeas 98, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4217) passed.

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

Speaker Pro Tempore Anderson in the Chair

Mr. Speaker, Mr. Armstead, arose from his seat and addressed the House.

Mr. Speaker, Mr. Armstead, in the Chair

At 9:08 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 9:30 p.m.

* * * * *

Evening Session

* * * * *

-continued-

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for H. B. 4233, Relating generally to fraudulent transfers.

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

On page two, section one, line thirty-five, by striking out the words “paragraph (ii)” and inserting in lieu thereof the words “subparagraph (ii) of this paragraph”.

On page three, section one, line forty-two, by striking out the words “paragraph (iv)” and inserting in lieu thereof the words “subparagraph (iv) of this paragraph”.

On page three, section one, line forty-nine, by striking out the words “paragraph (iii)” and inserting in lieu thereof the words “subparagraph (iii) of this paragraph”.

On page seven, section six, line eleven, after “(a)”, by inserting the words “of this subsection”.

On page seven, section six, line fifteen, after “(a)”, by inserting the words “of this subsection”.

On page eight, section eight, lines twenty-five and twenty-six, by striking out the words “article nine of the uniform commercial code” and inserting in lieu thereof the words “§46-9-1 *et seq.* of this code”.

On page nine, section eight, line forty, by striking out the words “subparagraph (i) or (ii), paragraph (A), subdivision (1)” and inserting in lieu thereof the words “subdivision (1) or (2)”.

On page nine, section fourteen, by striking out the section caption and inserting a new section caption, to read as follows:

“§40-1A-14. Application to and recognition of a foreign series organization.”

On page ten, section fourteen, line four, by striking out the words “subdivision (2) of this subsection” and inserting in lieu thereof the words “the definition of a series organization in §40-1A-14 of this code”.

On page ten, section fourteen, after line twenty, by inserting a new subsection, designated subsection (c), to read as follows:

“(c) A series organization includes a foreign series limited liability company, or one or more protected series thereof, which is organized as a series organization under the laws of another state or jurisdiction, and shall be recognized as a foreign series limited liability company in this state pursuant to, and in compliance with the provisions of §31B-10-1 *et seq.* of this code.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4233 - “A Bill to amend and reenact §40-1A-1, §40-1A-2, §40-1A-4, §40-1A-5, §40-1A-6, and §40-1A-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §40-1A-13, §40-1A-14, and §40-1A-15, all relating generally to fraudulent transfers and voidable transactions; establishing that a presumption imposes on the party against which the presumption is directed the burden of proving that the nonexistence of insolvency is more probable than its existence; providing that a creditor making a claim for relief has the burden of proving the elements of the claim for relief by a preponderance of the evidence; setting forth rules regarding the defenses, liability and protection of transferees; establishing the governing law; providing for application to series organizations; defining terms; providing that each series organization and each protected series of the organization is a separate person; providing that a series organization includes a foreign series limited liability company; providing for the limiting, modifying or superseding of the federal Electronic Signatures in Global and National Commerce Act; and adding and modifying definitions and headings.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 540**), and there were—yeas 96, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Deem and Hornbuckle.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4233) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4251, Permitting employees of baccalaureate institutions and universities outside of this state to be appointed to board of governors.

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

On page one, section one, line seven, after the word “employee”, by inserting the words “or, as appropriate, nonclassified employee”.

On page two, section one, line thirty-four, after the word “institution” by inserting the words “or, if the respective institution does not have classified employees, a member from the institutional nonclassified employees duly elected by the nonclassified employees of the respective institution”.

On page three, section one, line seventy-one, after the word “employees”, by inserting the words “or, as appropriate, nonclassified employees”.

On page three, section one, line seventy-two, after the word “employees”, by inserting the words “or, as appropriate, nonclassified employees”.

On page five, section one, line one hundred one, after the word “employees”, by inserting the words “or, as appropriate, nonclassified employees”.

On page five, section one, line one hundred fifteen, after the word “employees”, by inserting the words “or, as appropriate, nonclassified employees”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4251 - “A Bill to amend and reenact §18B-2A-1 of the Code of West Virginia, 1931, as amended, relating to certain higher education institution boards of governors membership; permitting officers, employees, or members of any other board of governors outside of this state and employees of any institution of higher education outside of this state to be appointed to a board of governors; and including, for institutions that have no classified employees, a member from the nonclassified employees.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 541**), and there were—yeas 95, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Pyles.

Absent and Not Voting: Cooper, Deem and Hornbuckle.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4251) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 542**), and there were—yeas 96, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Pyles.

Absent and Not Voting: Cooper and Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4251) takes effect from its passage.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4320, Limiting the ability of an agent under a power of attorney to take self-benefiting actions.

Delegate Cowles moved that the House of Delegates concur with further title amendment, and the House concurred in the following amendment by the Senate:

On page four, section one hundred one, after line thirteen, by inserting a new subdivision, designated subdivision (9), to read as follows:

“(9) Exercise authority over the content of electronic communications, as defined in 18 U.S.C. Section 2510(12) sent or received by the principal.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 543**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4320) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

Com. Sub. for H. B. 4320 - "A Bill to amend and reenact §39B-1-114 of the Code of West Virginia, 1931, as amended; and to amend and reenact §39B-2-101 of said code, all relating to limiting the ability of an agent under a power of attorney to take self-benefiting actions; clarifying the presumption that an act is not within the scope of authority granted in a power of attorney when an agent benefits from the act to the detriment of an ancestor, spouse, heir, or descendant; requiring express grant of authority to exercise authority over the content of electronic communications sent or received by the principal; and clarifying the prohibition against an agent exercising authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise."

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

A message from the Senate, by

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

H. B. 4324, Relating to the employment of individuals by municipal paid fire departments under civil service.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-17. Form of application; age and residency requirements; exceptions.

(a) The Firemen's Civil Service Commission in each municipality shall require individuals applying for admission to any competitive examination provided for under the civil service provisions of this article or under the rules of the commission to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

(1) His or her full name, residence, and post-office address;

(2) His or her United States citizenship, age, and the place and date of his or her birth;

(3) His or her state of health, and his or her physical capacity for the public service;

(4) His or her business and employments and residences for at least three previous years; and

(5) Any other information ~~as may~~ reasonably be required, touching upon the applicant's qualifications and fitness for the public service.

(b) Blank forms for the applications shall be furnished by the commission, without charge, to all individuals requesting the same.

(c) The commission may require, in connection with the application, certificates of citizens, physicians, and others, having pertinent knowledge concerning the applicant, as the good of the service ~~may require~~ requires.

(d) Except as provided in subsections (e) and (f) of this section, ~~the commission may not accept an application~~ shall be received for original appointment ~~shall be received~~ if the individual applying is less than 18 years of age or more than 35 years of age at the date of his or her application.

(e) ~~In the event~~ If any applicant formerly served upon the paid fire department of the municipality to which he or she makes application for a period of more than one year, and resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant within a period of two years next preceding the date of his or her application, and at the time of his or her application resides within the corporate limits of the municipality in which the paid fire department to which he or she seeks appointment by reinstatement is located, then the individual ~~shall be~~ is eligible for appointment by reinstatement in the discretion of the Firemen's Civil Service Commission, even though the applicant ~~shall be~~ is over the age of 35 years, and the applicant, providing his or her former term of service so justifies, may be appointed by reinstatement to the paid fire department without a competitive examination. ~~but~~ The applicant shall undergo a medical examination; and if the individual ~~shall be~~ is so appointed by reinstatement to the paid fire department, he or she shall be the lowest in rank in the department next above the probationers of the department and may not be entitled to seniority considerations.

(f) If an individual is presently employed by one paid fire department and is over the age of 35, he or she may make an application to another paid fire department if:

(1) The paid fire department to which he or she is applying is serving a municipality that has elected to participate in the West Virginia Municipal Police Officers and Firefighters Retirement System created in §8-22A-1 *et seq.* of this code: *Provided*, That any individual applying pursuant to this subdivision is to be classified as a new employee for retirement purposes and ~~no~~ may not prior employment service ~~can~~ may not be transferred to the West Virginia Municipal Police Officers and Firefighters Retirement System; or

(2) The paid fire department to which he or she is applying is serving a municipality that has elected to participate in the West Virginia Public Employees Retirement System created in §5-10-1 *et seq.* of this code: *Provided*, That any individual applying pursuant to this subdivision is to be classified as a new employee for retirement purposes and ~~no~~ may not prior employment service ~~can~~ may not be transferred to the West Virginia Public Employees Retirement System, except for individuals and their prior employment service already credited to them in the West Virginia Public Employees Retirement System pursuant to §5-10-1 *et seq.* of this code.

(g) Individuals who are authorized to apply to a paid fire department pursuant to subsection (f) of this section shall be in the lowest rank of the department and may not be are not entitled to seniority considerations.

(h) Any applicant for original appointment ~~must have been a resident for one year, during some period of time prior to the date of his or her application~~ need not be a resident of the municipality or the county in which he or she seeks to become a member of the paid fire department. *Provided*, That if the commission determines it necessary it may consider for original appointment applicants who are not residents of the municipality but who have been residents of the county in which the municipality or any portion of the territory thereof is located for a period of at least one year.

§8-15-20. Appointments from list of eligible eligible applicants; special examinations for electricians or mechanics.

(a) Every position, unless filled by promotion, reinstatement, or reduction, shall be filled only in the manner specified in this section. The appointing officer shall notify the firemen's civil service commission of any vacancy in a position which he or she desires to fill, and shall request the certification of ~~eligibles~~ eligible applicants. The commission shall ~~forthwith~~ immediately certify, from the eligible list, the names of the three individuals ~~thereon~~ on the eligible list who received the highest averages at preceding competitive examinations held under the civil service provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing officer shall, ~~thereupon~~, with sole reference to the relative merit and fitness of the candidates, make an appointment from the three certified names ~~so certified~~: *Provided, That should he make objection if the appointing officer objects*, to the commission, to one or more of these individuals, for any of the reasons stated in §8-15-19 of this code, and ~~should such the~~ objection be is sustained by the commission, after a public hearing along the lines of the hearing provided for in §8-15-19 of this code, if ~~any such a~~ a hearing is requested, the commission shall ~~thereupon~~ strike the name of ~~any such the~~ individual from the eligible list, and certify the next highest name for each individual ~~so~~ stricken. As each subsequent vacancy occurs, in the same or another position, precisely the same procedure shall be followed: *Provided, however, That after any name has been rejected three times rejected* for the same or another position in favor of a name or names below it on the same list, the ~~said~~ name shall be stricken from the list. When there are a number of positions of the same kind to be filled at the same time, each appointment shall, nevertheless, be made separately and in accordance with the ~~foregoing~~ provisions of this section. When an appointment is made under the provisions of this section it shall be, in the first instance, for the probationary period of six months, as provided in §8-15-16 of this code: *Provided further, That in the event any position as an electrician or mechanic is to be filled in any paid fire department, then the examinations to be given to applicants for either position shall be ~~se~~ drawn as to test only the qualifications of such the applicants in regard to their ability as electricians or mechanics, such the examinations to be special examinations.*

(b) If there are not enough eligible applicants to certify a list of three, then the appointing officer may appoint a qualified individual to fill the position."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 544**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4324) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

H. B. 4389, Expiring funds to the Enterprise Resource Planning System Fund.

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

On page one, by striking out everything after the title and inserting in lieu thereof the following:

“WHEREAS, The Governor finds that the account balances in the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, and in the Treasurer’s Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300 exceed that which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, be decreased by expiring the amount of \$1,133,000, and to the Treasurer’s Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300 be decreased by expiring the amount of \$1,133,000 to the West Virginia Enterprise Resource Planning Board - Enterprise Resource Planning System Fund, fund 9080, fiscal year 2018, organization 0947, and the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Auditor’s Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, be decreased by expiring the amount of \$1,500,000 to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund ****, fiscal year 2018, organization 0804 to be available for expenditure during the fiscal year ending June 30, 2018.

And, chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION.

259a– State Rail Authority

West Virginia Commuter Rail Access Fund

(WV Code Chapter 29)

Fund **** FY 2018 Org 0804

	Appro-		Other
	priation		Funds
1 Current Expenses	13000	\$	1,500,000”

And,

By amending the title of the bill to read as follows:

H. B. 4389 - “A Bill expiring funds to the balance of the West Virginia Enterprise Resource Planning Board - Enterprise Resource Planning System Fund, fund 9080, fiscal year 2018, organization 0947, in the amount of \$2,266,000 and to the Department of Transportation, State Rail

Authority, West Virginia Commuter Rail Access Fund, fund ****, fiscal year 2018, organization 0804 in the amount of \$1,500,00; from the Auditor's Office – Securities Regulation Fund, fund 1225, fiscal year 2018, organization 1200, and from the Treasurer's Office, Banking Services Expense Fund, fund 1322, fiscal year 2018, organization 1300, by supplementing and amending chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 545**), and there were—yeas 93, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Bates, Eldridge and Fluharty.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4389) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 546**), and there were—yeas 95, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bates and Howell.

Absent and Not Voting: Cooper and Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4389) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, of

Com. Sub. for S. B. 625, Creating WV Volunteer Fire and Rescue Act of 2018.

On motion of Delegate Cowles, the House concurred in the following amendment by the Senate:

On page five, line twenty-three, section two, by striking out “\$50,000” and inserting in lieu thereof “\$100,000”.

On page five, section two, line twenty-seven, by striking out the word “killed” and inserting in lieu thereof the words “who died”.

On page seven, section three-d, line twenty-five, by striking out “90” and inserting in lieu thereof “75”.

On page seven, section three-d, after line twenty-eight, by creating a new subdivision (4), to read as follows:

“(4) If payment for services rendered has not been received within 90 days from the date of response, and if a payment schedule has not been established, a fire department or company may proceed in magistrate court or in other appropriate court action to recover from the responsible party all fees associated with the response, including attorney fees and court costs.”

And,

On page four of the amendment, by removing all of chapter eight, article fifteen, section three.

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 625 - “A Bill to amend and reenact §5A-3-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-3-8a; to amend and reenact §5H-1-2 of said code; to amend and reenact §7-1-3d of said code; to amend and reenact §8-15-3 of said code; to amend and reenact §16-4C-6 and §16-4C-8 of said code; to amend said code by adding thereto two new sections, designated §16-4C-8a and §16-4C-24; to amend said code by adding thereto a new section, designated §17-2A-8d; to amend said code by adding thereto three new sections, designated §29-3-5e, §29-3-5f and §29-3-8; to amend and reenact §29-3-12 of said code; to amend and reenact §33-3-33 of said code; and to amend said code by adding thereto a new section, designated §33-3-33b, all relating to creating the West Virginia Volunteer Fire and Rescue Act of 2018; requiring Director of Purchasing Division make facilities and services of the division available to fire departments and companies and certain emergency medical services agencies; authorizing director to provide for implementation by legislative rules or other agreement; authorizing payment of death benefits to survivors of firefighter, emergency medical services, or law-enforcement provider who dies as a proximate result of the performance of his or her duties; increasing death benefits to be paid; providing for written designation of beneficiary to be made on forms prescribed by State Fire Marshal or Commissioner of the Bureau for Public Health; requiring any county fire prevention units to be formed and recognized under the regulations of the State Fire Commission for local fire departments; increasing authorized reimbursement rate amount; providing exception for incidents or accidents involving hazardous materials or extended search and rescue and water rescue incidents; requiring payment of amounts owed as reimbursement within 75 days; authorizing written agreements between fire department or company and responsible party; permitting fire company or department to proceed to recover costs if payment or agreement not reached within 90 days; modifying provisions relating to fire fees imposed on nonresidents of a municipality who are users of that municipality’s fire service; capping the amount of the fees that can be imposed; excluding charges for certain buildings; requiring contract to impose fees for services provided to property outside municipal boundaries; authorizing Commissioner of the Bureau for Public Health to establish one or more statewide contracts for equipment and supplies utilized by emergency medical services agencies; requiring statewide contracts be made available to certain emergency medical services agencies; authorizing development of uniform standards for equipment and supplies used by emergency medical services agencies; giving legislative rule-making authority to Commissioner of the Bureau for Public Health to implement provisions; requiring Commissioner of the Bureau for Public Health to recognize and give full credit for all continuing education credits approved or recognized by state or nationally recognized accrediting body; establishing courtesy certification program for certified emergency medical service personnel in states bordering West Virginia; relieving courtesy certification applicants from requirement to comply with state certification standards; authorizing rulemaking to implement courtesy certification program; providing for biennial renewal of courtesy certification; authorizing revocation of courtesy certification under certain conditions; establishing special revenue fund known as Emergency Medical Services Equipment and Training Fund; authorizing use of fund for grants to equip emergency medical service providers and

train emergency medical services personnel; requiring Commissioner of the Bureau for Public Health establish grant program for equipment and training of emergency medical services providers and personnel; setting eligibility and certain priorities for grant program; granting rule-making authority to implement grant program; authorizing Commissioner of Division of Highways enter into reimbursement agreements with certain fire departments for services provided relating to tree or debris removal from state highways and rights-of-way; setting conditions for and defining scope of reimbursement; retaining authority of commissioner to properly remove and dispose of cleared trees, debris, or other obstacles; granting legislative rule-making authority to implement reimbursement program; setting minimum provisions for legislative rule; authorizing State Fire Marshal establish one or more statewide contracts for equipment and supplies utilized by fire companies and departments; requiring statewide contracts be made available to certain fire companies and departments as well as any other agency or subdivision with a need for those equipment or supplies; authorizing development of uniform standards for equipment and supplies used by fire companies and departments; giving legislative rule-making authority to State Fire Commission to implement provisions; establishing courtesy certification program for certified firefighters in states bordering West Virginia to serve as volunteer firefighters; relieving courtesy certification applicants from requirement to comply with state certification standards for volunteer firefighters; authorizing rulemaking to implement courtesy certification program; providing for biennial renewal of courtesy certification; authorizing revocation of courtesy certification under certain conditions; establishing special revenue fund known as Fire Service Equipment and Training Fund; authorizing use of fund for grants to equip volunteer and part-volunteer fire companies and departments and their members, and train volunteer and part-volunteer firefighters; requiring State Fire Marshal establish grant program for equipment and training of volunteer and part volunteer fire companies and departments and volunteer firefighters; setting eligibility and certain factors for State Fire Marshal to consider in making grants; granting rule-making authority to implement grant program; requiring State Fire Marshal prepare certain reports and make certain recommendations; increasing surcharge on fire and casualty insurance policies; exempting certain casualty insurance policies from surcharge; prohibiting premium taxes, agent commissions, and other assessments from being charged against surcharge; designating where funds collected from surcharge are to be deposited; requiring study and report from Insurance Commissioner regarding issues related to workers' compensation for volunteer and part-volunteer fire departments; eliminating obsolete language; and making technical corrections."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 547**), and there were—yeas 96, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: E. Evans.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 625) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. J. R. 3, Judicial Budget Oversight Amendment.

Conference Committee Report

Delegate Shott, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. J. R. 3, Judicial Budget Oversight Amendment.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the House to Com. Sub. for S. J. R. 3, having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, that both houses recede from their respective positions as to the amendment of the House, striking out everything after the resolved clause, and agree to the same as follows:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2018, which proposed amendment is that section 51, article VI thereof be amended to read as follows:

ARTICLE VI.

§51. Budget and supplementary appropriation bills.

The Legislature shall not appropriate any money out of the treasury except in accordance with the provisions of this section.

Subsection A – Appropriation Bills

(1) Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter provided.

Subsection B – Budget Bills

(2) ~~Within ten days after the convening of the regular session of the Legislature in odd-numbered years, unless such time shall be extended by the Legislature, On the second Wednesday of February in the year 2021 and every fourth year thereafter and on the second Wednesday of January in even-numbered~~ all other years, unless a later time in any year be fixed by the Legislature, the Governor shall submit to the Legislature a budget for the next ensuing fiscal year. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year and shall show the estimated surplus or deficit of revenues at the end of each fiscal year. Accompanying each budget shall be a statement showing: (a) An estimate of the revenues and expenditures for the current fiscal year, including the actual revenues and actual expenditures to the extent available, and the revenues and expenditures for the next preceding fiscal year; (b) the current assets, liabilities, reserves, and surplus or deficit of the state; (c) the debts and funds of the state; (d) an estimate of the state's financial condition as of the beginning and end of the fiscal year covered by the budget; and (e) any explanation the Governor may desire to make as to the important features of the budget and any suggestions as to methods for reduction or increase of the state's revenue.

(3) Each budget shall embrace an itemized estimate of the appropriations, in such form and detail as the Governor shall determine or as may be prescribed by law: (a) For the Legislature as certified to the Governor in the manner hereinafter provided; (b) for the executive department; (c) for the

judiciary department, as provided by law, certified to the Governor by the Auditor; (d) for payment and discharge of the principal and interest of any debt of the state created in conformity with the constitution, and all laws enacted in pursuance thereof; (e) for the salaries payable by the state under the constitution and laws of the state; and (f) for such other purposes as are set forth in the constitution and in laws made in pursuance thereof.

(4) The Governor shall deliver to the presiding officer of each house the budget and a bill for all the proposed appropriations of the budget clearly itemized and classified, in such form and detail as the Governor shall determine or as may be prescribed by law; and the presiding officer of each house shall promptly cause the bill to be introduced therein, and such bill shall be known as the "Budget Bill". The Governor may, with the consent of the Legislature, before final action thereon by the Legislature, amend or supplement the budget to correct an oversight, or to provide funds contingent on passage of pending legislation, and in case of an emergency, he or she may deliver such an amendment or supplement to the presiding officers of both houses; and the amendment or supplement shall thereby become a part of the budget bill as an addition to the items of the bill or as a modification of or a substitute for any item of the bill the amendment or supplement may affect.

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or decreasing any item therein: *Provided*, ~~That no item relating to the judiciary shall be decreased,~~ the Legislature may not decrease the total general revenue appropriations to the judiciary in the budget bill to an amount that is less than eighty-five percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget without a separate vote of the Legislature approved by a two-thirds vote of the members elected to each house, determined by yeas and nays and entered on the journals. ~~and~~ Except as otherwise provided in this constitution, the salary or compensation of any public officer shall not be increased or decreased during his or her term of office: *and Provided further however*, That the Legislature shall not increase the estimate of revenue submitted in the budget without the approval of the Governor.

(6) The Chief Justice of the Supreme Court of Appeals, the Governor, and such representatives of the executive departments, boards, officers, and commissions of the state expending or applying for state moneys as have been designated by the Governor for this purpose, shall have the right, and when requested by either house of the Legislature it shall be their duty, to appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.

Subsection C – Supplementary Appropriation Bills

(7) Neither house shall consider other appropriations until the budget bill has been finally acted upon by both houses, and no such other appropriations shall be valid except: in accordance with the provisions following (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object, or purpose therein stated and called therein a supplementary appropriation bill; (b) each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as ~~shall be~~ directed in the bill unless it appears from such budget that there is sufficient revenue available.

Subsection D – General Provisions

(8) If the budget bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the governor shall issue a proclamation extending the session for such further period as may, in his or her judgment, be necessary for the passage of the bill; but no matter other than the bill shall be considered during such an extension of a session except the matters detailed in section 14, article VII of this Constitution and a provision for the cost thereof.

(9) For the purpose of making up the budget, the Governor shall have the power and it shall be his or her duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions, and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as he or she shall direct. The estimates for the legislative department, certified by the presiding officer of each house, and for the judiciary, as provided by law, certified by the Auditor, shall be transmitted to the Governor in such form and at such times as he or she shall direct and shall be included in the budget.

(10) The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies and all institutions applying for state moneys. After such public hearings he or she may, in his or her discretion, revise all estimates except those for the legislative and judiciary departments.

(11) Every budget bill or supplementary appropriation bill passed by a majority of the members elected to each house of the Legislature shall, before it becomes a law, be presented to the Governor. The Governor may veto the bill, or he or she may disapprove or reduce items or parts of items contained therein. If he or she approves, he or she shall sign it and thereupon, it shall become a law. The bill, items or parts thereof, disapproved or reduced by the Governor, shall be returned with his or her objections to each house of the Legislature.

Each house shall enter the objections at large upon its journal and proceed to reconsider. If, after reconsideration, two thirds of the members elected to each house agree to pass the bill, or such items or parts thereof, as were disapproved or reduced, the bill, items or parts thereof, approved by two thirds of such members, shall become law, notwithstanding the objections of the Governor. In all such cases, the vote of each house shall be determined by yeas and nays to be entered on the journal.

A bill, item or part thereof, which is not returned by the Governor within five days (Sundays excepted) after the bill has been presented to him or her shall become a law in like manner as if he or she had signed the bill, unless the Legislature, by adjournment, prevents such return, in which case it shall be filed in the office of the Secretary of State, within five days after such adjournment, and shall become a law; or it shall be so filed within such five days with the objections of the governor, in which case it shall become law to the extent not disapproved by the Governor.

(12) The Legislature may, from time to time, enact such laws, not inconsistent with this section, as may be necessary and proper to carry out its provisions.

(13) In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the constitution, the provisions of this section shall prevail. But nothing herein shall be construed as preventing the Governor from calling extraordinary sessions of the Legislature, as provided by section nineteen of this article, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

(14) If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered "Amendment No. 1" and designated as the "Judicial Budget Oversight Amendment" and the purpose of the proposed amendment is summarized as follows: "Providing that the total general revenue appropriations to the judiciary may be reduced in the budget bill, and setting forth the required procedures to be followed

by the Legislature to enact any decrease in the total general revenue appropriations to the judiciary to an amount that is less than eight-five percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget; providing that when requested by the Legislature, the Chief Justice of the Supreme Court of Appeals must appear and be heard and answer inquiries relative any budget bill; and conforming language relating to the introduction of the budget and matters that may be taken up during extended sessions to more recent amendments to the constitution.”

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title, to read as follows:

Com. Sub. for S. J. R. 3 - “Proposing an amendment to the Constitution of the State of West Virginia, amending section 51, article VI thereof, relating to the state budget and related matters; providing that total general revenue appropriations to the judiciary may be decreased in the budget bill; providing that the Legislature may not decrease the total general revenue appropriations to the judiciary in the budget bill to an amount that is less than eighty-five percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget without a separate vote of the Legislature approved by a two-thirds vote of the members elected to each house, determined by yeas and nays and entered on the journals; providing rights and duties of the Chief Justice of the Supreme Court of Appeals relating to appearances before the Legislature and answering inquiries with respect to any budget bill; amending and adding language regarding when the Governor shall submit the budget to the Legislature and matters that may be considered during an extended session to conform the section to more recent amendments to the constitution; making technical corrections to gender related language; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.”

Respectfully submitted,

Charles S. Trump, IV, *Chair*,
Ryan Weld,
Mike Woelfel,

Conferees on the part of the Senate.

John Shott, *Chair*,
Roger Hanshaw,
Andrew Byrd,

*Conferees on the part of the House
of Delegates.*

On motion of Delegate Shott, the report of the Committee of Conference was adopted.

The resolution, as amended by said report, was then put upon its adoption.

On the adoption of the resolution, the yeas and nays were taken (**Roll No. 548**), and there were—yeas 96, nays none, absent and not voting 3, with the yeas, nays and absent and not voting being as follows:

Yeas: Adkins, Ambler, Anderson, Atkinson, Barrett, Bates, Blair, Boggs, Brewer, Butler, Byrd, Campbell, Canestraro, Capito, Caputo, Cowles, Criss, Dean, Diserio, Eldridge, Ellington, Espinosa, A. Evans, E. Evans, Fast, Ferro, Fluharty, Folk, Foster, Frich, Gearheart, Graves, Hamilton, Hamrick, Hanshaw, Harshbarger, Hartman, Higginbotham, Hicks, Hill, Hollen, Hornbuckle, Householder, Howell, Iaquina, Isner, Jennings, Kelly, Kessinger, Lane, Longstreth, Love, Lovejoy, Lynch, Marcum, Martin, Maynard, McGeehan, Miley, C. Miller, R. Miller, Moore, Moye, Nelson, Overington, Pack, Paynter, Pethtel, Phillips, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rohrbach, C. Romine, R. Romine, Rowan, Rowe, Shott, Sobonya, Sponaule, Statler, Storch, Summers, Sypolt, Thompson, Upson, Wagner, Ward, Westfall, White, Williams, Wilson, Zatezalo and Mr. Speaker, Mr. Armstead.

Nays: None

Absent and Not Voting: Cooper, Deem and Fleischauer.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the resolution (Com. Sub. for S. J. R. 3) adopted, as follows:

Com. Sub. for S. J. R. 3 - "Proposing an amendment to the Constitution of the State of West Virginia, amending section 51, article VI thereof, relating to the state budget and related matters; providing that total general revenue appropriations to the judiciary may be decreased in the budget bill; providing that the Legislature may not decrease the total general revenue appropriations to the judiciary in the budget bill to an amount that is less than 85 percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget without a separate vote of the Legislature approved by a two-thirds vote of the members elected to each house, determined by yeas and nays and entered on the journals; providing rights and duties of the Chief Justice of the Supreme Court of Appeals relating to appearances before the Legislature and answering inquiries with respect to any budget bill; amending and adding language regarding when the Governor shall submit the budget to the Legislature and matters that may be considered during an extended session to conform the section to more recent amendments to the constitution; making technical corrections to gender-related language; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment."

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2018, which proposed amendment is that section 51, article VI thereof be amended to read as follows:

ARTICLE VI.

§51. Budget and supplementary appropriation bills.

The Legislature shall not appropriate any money out of the treasury except in accordance with the provisions of this section.

Subsection A – Appropriation Bills

(1) Every appropriation bill shall be either a budget bill, or a supplementary appropriation bill, as hereinafter provided.

Subsection B – Budget Bills

(2) On the second Wednesday of February in the year 2021 and every fourth year thereafter and on the second Wednesday of January in all other years, unless a later time in any year be fixed by the Legislature, the Governor shall submit to the Legislature a budget for the next ensuing fiscal year. The budget shall contain a complete plan of proposed expenditures and estimated revenues for the fiscal year and shall show the estimated surplus or deficit of revenues at the end of each fiscal year. Accompanying each budget shall be a statement showing: (a) An estimate of the revenues and expenditures for the current fiscal year, including the actual revenues and actual expenditures to the extent available, and the revenues and expenditures for the next preceding fiscal year; (b) the current assets, liabilities, reserves, and surplus or deficit of the state; (c) the debts and funds of the state; (d)

an estimate of the state's financial condition as of the beginning and end of the fiscal year covered by the budget; and (e) any explanation the Governor may desire to make as to the important features of the budget and any suggestions as to methods for reduction or increase of the state's revenue.

(3) Each budget shall embrace an itemized estimate of the appropriations, in such form and detail as the Governor shall determine or as may be prescribed by law: (a) For the Legislature as certified to the Governor in the manner hereinafter provided; (b) for the executive department; (c) for the judiciary department, as provided by law, certified to the Governor by the Auditor; (d) for payment and discharge of the principal and interest of any debt of the state created in conformity with the constitution, and all laws enacted in pursuance thereof; (e) for the salaries payable by the state under the constitution and laws of the state; and (f) for such other purposes as are set forth in the constitution and in laws made in pursuance thereof.

(4) The Governor shall deliver to the presiding officer of each house the budget and a bill for all the proposed appropriations of the budget clearly itemized and classified, in such form and detail as the Governor shall determine or as may be prescribed by law; and the presiding officer of each house shall promptly cause the bill to be introduced therein, and such bill shall be known as the "Budget Bill". The Governor may, with the consent of the Legislature, before final action thereon by the Legislature, amend or supplement the budget to correct an oversight, or to provide funds contingent on passage of pending legislation, and in case of an emergency, he or she may deliver such an amendment or supplement to the presiding officers of both houses; and the amendment or supplement shall thereby become a part of the budget bill as an addition to the items of the bill or as a modification of or a substitute for any item of the bill the amendment or supplement may affect.

(5) The Legislature shall not amend the budget bill so as to create a deficit but may amend the bill by increasing or decreasing any item therein: *Provided*, That the Legislature may not decrease the total general revenue appropriations to the judiciary in the budget bill to an amount that is less than 85 percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget without a separate vote of the Legislature approved by a two-thirds vote of the members elected to each house, determined by yeas and nays and entered on the journals. Except as otherwise provided in this constitution, the salary or compensation of any public officer shall not be increased or decreased during his or her term of office: *Provided, however*, That the Legislature shall not increase the estimate of revenue submitted in the budget without the approval of the Governor.

(6) The Chief Justice of the Supreme Court of Appeals, the Governor, and such representatives of the executive departments, boards, officers, and commissions of the state expending or applying for state moneys as have been designated by the Governor for this purpose, shall have the right, and when requested by either house of the Legislature it shall be their duty, to appear and be heard with respect to any budget bill, and to answer inquiries relative thereto.

Subsection C – Supplementary Appropriation Bills

(7) Neither house shall consider other appropriations until the budget bill has been finally acted upon by both houses, and no such other appropriations shall be valid except: in accordance with the provisions following (a) Every such appropriation shall be embodied in a separate bill limited to some single work, object, or purpose therein stated and called therein a supplementary appropriation bill; (b) each supplementary appropriation bill shall provide the revenue necessary to pay the appropriation thereby made by a tax, direct or indirect, to be laid and collected as directed in the bill unless it appears from such budget that there is sufficient revenue available.

Subsection D – General Provisions

(8) If the budget bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session, the Governor shall issue a proclamation extending the session

for such further period as may, in his or her judgment, be necessary for the passage of the bill; but no matter other than the bill shall be considered during such an extension of a session except the matters detailed in section 14, article VII of this constitution and a provision for the cost thereof.

(9) For the purpose of making up the budget, the Governor shall have the power and it shall be his or her duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions, and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized estimates and other information, in such form and at such times as he or she shall direct. The estimates for the legislative department, certified by the presiding officer of each house, and for the judiciary, as provided by law, certified by the Auditor, shall be transmitted to the Governor in such form and at such times as he or she shall direct and shall be included in the budget.

(10) The Governor may provide for public hearings on all estimates and may require the attendance at such hearings of representatives of all agencies and all institutions applying for state moneys. After such public hearings he or she may, in his or her discretion, revise all estimates except those for the legislative and judiciary departments.

(11) Every budget bill or supplementary appropriation bill passed by a majority of the members elected to each house of the Legislature shall, before it becomes a law, be presented to the Governor. The Governor may veto the bill, or he or she may disapprove or reduce items or parts of items contained therein. If he or she approves, he or she shall sign it and thereupon, it shall become a law. The bill, items or parts thereof, disapproved or reduced by the Governor, shall be returned with his or her objections to each house of the Legislature.

Each house shall enter the objections at large upon its journal and proceed to reconsider. If, after reconsideration, two thirds of the members elected to each house agree to pass the bill, or such items or parts thereof, as were disapproved or reduced, the bill, items or parts thereof, approved by two thirds of such members, shall become law, notwithstanding the objections of the Governor. In all such cases, the vote of each house shall be determined by yeas and nays to be entered on the journal.

A bill, item or part thereof, which is not returned by the Governor within five days (Sundays excepted) after the bill has been presented to him or her shall become a law in like manner as if he or she had signed the bill, unless the Legislature, by adjournment, prevents such return, in which case it shall be filed in the office of the Secretary of State, within five days after such adjournment, and shall become a law; or it shall be so filed within such five days with the objections of the Governor, in which case it shall become law to the extent not disapproved by the Governor.

(12) The Legislature may, from time to time, enact such laws, not inconsistent with this section, as may be necessary and proper to carry out its provisions.

(13) In the event of any inconsistency between any of the provisions of this section and any of the other provisions of the constitution, the provisions of this section shall prevail. But nothing herein shall be construed as preventing the Governor from calling extraordinary sessions of the Legislature, as provided by section 19 of this article, or as preventing the Legislature at such extraordinary sessions from considering any emergency appropriation or appropriations.

(14) If any item of any appropriation bill passed under the provisions of this section shall be held invalid upon any ground, such invalidity shall not affect the legality of the bill or of any other item of such bill or bills.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered "Amendment No. 1" and designated as the "Judicial Budget Oversight Amendment" and the purpose of the proposed amendment is summarized as follows: "Providing that the total general revenue appropriations to the judiciary may be reduced in the budget bill, and setting forth the required procedures to be followed by the Legislature to enact any decrease in the total general revenue appropriations to the judiciary to an amount that is less than 85 percent of the amount of the total general revenue appropriations to the judiciary in the most recently enacted budget; providing that when requested by the Legislature, the Chief Justice of the Supreme Court of Appeals must appear and be heard and answer inquiries relative any budget bill; and conforming language relating to the introduction of the budget and matters that may be taken up during extended sessions to more recent amendments to the constitution.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

Com. Sub. for S. B. 582, Allowing candidate for political party executive committee serve as election official.

Conference Committee Report

Delegate Lane, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 582, Allowing candidate for political party executive committee serve as election official.

Submitted the following report, which was received:

Your committee of conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Committee Substitute for Senate Bill 582 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House recede from its position as to the amendment on page one, section twenty-eight, line eleven, immediately following the word "committee" by inserting the following: "or delegate to the national convention of a political party";

That both parties recede from their respective positions as to the amendment on page one, section twenty-eight, line twelve, and that the Senate and the House agree to an amendment as follows:

On page one, section twenty-eight, line twelve, by deleting subsection (4) in its entirety and inserting in lieu thereof the following:

"(4) May not be the parent, child, sibling, or spouse of a candidate on the ballot for any office, other than for district, county, or state political party executive committee, or an official write-in

candidate for any office, other than for district, county, or state political party executive committee, in the precinct where the official serves;”;

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Com. Sub. for S. B. 582 - “A Bill to amend and reenact §3-1-28 of the Code of West Virginia, 1931, as amended, relating to eligibility to be appointed or serve as an election official; permitting candidates for district, county, or state political party executive committee to serve as election officials; and permitting the parent, child, sibling, or spouse of a candidate for district, county, or state political party executive committee, to serve as election officials.”

Respectfully submitted,

Charles H. Clements, *Chair*,
Mike Maroney
Stephen Baldwin,

Conferees on the part of the Senate.

Charlotte Lane, *Chair*,
Moore Capito,
Rodney Miller,

*Conferees on the part of the House
of Delegates.*

On motion of Delegate Lane, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 549**), and there were—yeas 88, nays 8, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Barrett, Byrd, Fluharty, Isner, Pack, Pushkin, Robinson and Upson.

Absent and Not Voting: Cooper, Deem and Fleischauer.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 582) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 550**), and there were—yeas 93, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Barrett, Isner and Robinson.

Absent and Not Voting: Cooper, Deem and Fleischauer.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 582) takes effect from its passage.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

Conference Committee Report

Com. Sub. for S. B. 392, Reconfiguring membership of Emergency Medical Services.

Delegate Criss from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for S. B. 392, Reconfiguring membership of Emergency Medical Services Advisory Council.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Committee Substitute for Senate Bill No. 392 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendments of House of Delegates, striking everything after the enacting clause, and agree to the same as follows:

“ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.

(a) The Emergency Medical Services Advisory Council, heretofore created and established by former §16-4C-7 of this code, is continued for the purpose of developing, with the commissioner, standards for emergency medical service personnel and for the purpose of providing advice to the Office of Emergency Medical Services and the commissioner with respect to reviewing and making recommendations for, and providing assistance to, the establishment and maintenance of adequate emergency medical services for all portions of this state.

(b) The council shall have the duty to advise the commissioner in all matters pertaining to his or her duties and functions in relation to carrying out the purposes of this article.

(c) The council shall be composed of ~~45~~ 18 members appointed by the Governor by and with the advice and consent of the Senate. The Mountain State Emergency Medical Services Association shall submit to the Governor a list of six names of representatives from its association, and a list of three names shall be submitted to the Governor of representatives of their respective organizations by the County Commissioners' Association of West Virginia, the West Virginia State Firemen's Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia, and the State Department of Education. The Governor shall appoint from the respective lists submitted two persons who represent the Mountain State Emergency Medical Services Association, one of whom shall be a paramedic and one of whom shall be an emergency

medical technician-basic; and one person from the County Commissioners' Association of West Virginia, the West Virginia State Firemen's Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia, and the State Department of Education. In addition, the Governor shall appoint:

(1) One person to represent emergency medical service providers operating within the state;

(2) One person to represent small emergency medical service providers operating within this state; and

~~(3) three persons to represent the general public~~ One person to represent emergency medical services training officers or representatives; and

(4) Two people to represent emergency medical services supervisors or administrators.

(5) Three persons to represent the general public who shall serve in an advisory capacity as non-voting members.

(d) Not more than six of the members may be appointed from any one congressional district.

~~(e)~~ (e) Each term is to be for three years, and no member may serve more than four consecutive terms.

~~(e)~~ (f) The council shall choose its own chairman and meet at the call of the commissioner at least twice a year.

(f) (g) The members of the council shall receive compensation and expense reimbursement in an amount not to exceed the same compensation and expense reimbursement as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or substantial portion thereof engaged in the performance of official duties.

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title, to read as follows:

Com. Sub. for S. B. 392 - "A Bill to amend and reenact §16-4C-5 of the Code of West Virginia, 1931, as amended, relating to the Emergency Medical Services Advisory Council generally; and reconfiguring and increasing the membership of the council by adding three non-voting citizen members and requiring three members to be representative of professional groups."

Respectfully submitted,

Gregory L. Boso, *Chair*,
Tom Takubo,
Glenn D. Jeffries,

Conferees on the part of the Senate.

Vernon Criss, *Chair*,
Patrick S. Martin,
John Williams,

*Conferees on the part of the House
of Delegates.*

On motion of Delegate Criss, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 551**), and there were—yeas 96, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Deem and Fleischauer.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 392) passed.

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

Conference Committee Report

Delegate Shott, from the Committee of Conference on matters of disagreement between the two houses, as to

Com. Sub. for H. B. 4001, Relating to eligibility and fraud requirements for public assistance,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the Senate to Engrossed Committee Substitute for House Bill 4001 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate, striking out everything after the enacting clause, and agree to the same as follows:

CHAPTER 9. HUMAN SERVICES.

ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES AND RESPONSIBILITIES GENERALLY.

§9-2-6. Powers of secretary.

Within limits of state appropriations and federal grants and subject to provisions of state and federal laws and regulations, the secretary, in addition to all other powers, duties, and responsibilities granted and assigned to that office in this chapter and elsewhere by law, is authorized to:

(1) Promulgate, amend, revise and rescind department rules respecting the organization and government of the department and the execution and administration of those powers, duties, and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(2) Promulgate, amend, revise, and rescind department rules and regulations respecting qualifications for receiving the different classes of welfare assistance consistent with or permitted by federal laws, rules and policies, but not inconsistent with state law: *Provided*, That rules and policies respecting qualifications shall permit the expenditure of state funds to pay for care rendered in any birthing center licensed under the provisions of ~~§16-2e-1~~§16-2E-1, *et seq.* of this code by a licensed nurse midwife or midwife as this occupation is defined in §30-15-7 of this code and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of section seven of said article.

(3) Obtain by purchase or lease grounds, buildings, office or other space, equipment, facilities and services as may be necessary for the execution and administration of those powers, duties, and responsibilities granted and assigned by this chapter and elsewhere by law to the department and the secretary.

(4) Sign and execute in the name of the state by the State Department of Health and Human Resources any contract or agreement with the federal government or its agencies, other states, political subdivisions of this state, corporations, associations, partnerships, or individuals: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed.

(5) Sign and execute a contract to implement professional health care, managed care, actuarial and health care-related monitoring, quality review/utilization, claims processing, and independent professional consultant contracts for the Medicaid program: *Provided*, That the provisions of §5A-3-1 *et seq.* of this code are followed: *Provided, however*, That a contract awarded under the agency purchasing process from April 1, 2009, to January 2, 2013, remains in full force and effect and the secretary retains sole authority to review, approve, and issue changes to contracts issued under the former purchasing process, and is responsible for challenges, disputes, protests, and legal actions related to such contracts.

(6) Establish such special funds as may be required by the federal Social Security Act, as amended, or by any other Act or Acts of Congress, in order for this state to take full advantage of the benefits and provisions thereof relating to the federal-state assistance and federal assistance programs administered by the department and to make payments into and disbursements out of any such special fund or funds in accordance with the requirements of the federal Social Security Act, as amended, or any other Act or Acts of Congress, and in accordance with applicable state law and the objects and purposes of this chapter. In addition, the State Department of Health and Human Resources, through the secretary, is hereby authorized to accept any and all gifts or grants, whether in money, land, services or materials, which gift or gifts, if in the form of moneys, shall be placed in a separate fund and expended solely for the purpose of public assistance programs. No part of this special fund shall revert to the General Revenue Funds of this state. No expenses incurred pursuant to this special fund shall be a charge against the General Funds of this state.

(7) Establish within the department an Office of Inspector General for the purpose of conducting and supervising investigations, performing inspections, evaluations, and review, and ~~for the purpose of~~ providing quality control for the programs of the department. The Office of Inspector General shall be headed by the Inspector General who shall report directly to the secretary. Neither the secretary nor any employee of the department may prevent, inhibit, or prohibit the Inspector General or his or her employees from initiating, carrying out, or completing any investigation, ~~quality control~~ inspection, evaluation, review or other activity oversight of public integrity by the Office of the Inspector General. The secretary shall place within the Office of Inspector General any function he or she deems necessary. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, including that of the position of Inspector General, shall be governed by the classified service provisions of §29-6-1 *et seq.* of this code and rules promulgated thereunder. The Inspector General shall supervise all personnel of the Office of Inspector General.

(8) Provide at department expense a program of continuing professional, technical, and specialized instruction for the personnel of the department.

(9) Pay from available funds all or part of the reasonable expenses incurred by a person newly employed by the department in moving his household furniture, effects, and immediate family from his or her place of residence in this state to his or her place of employment in this state; and to pay from available funds all or part of the reasonable expenses incurred by a department employee in

moving his or her household furniture, effects, and immediate family as a result of a reassignment of the employee which is considered desirable, advantageous to and in the best interests of the state, but no part of the moving expenses of any one such employee shall be paid more frequently than once in 12 months or for any movement other than from one place of employment in this state to another place of employment in this state.

(10) Establish a program to provide reimbursement to employees of the department whose items of personal property, as defined by the department by policy, are damaged during the course of employment or other work-related activity as a result of aggressive behavior by a client or patient receiving services from the department: *Provided*, That such reimbursement is limited to a maximum amount of \$250 per claim.

(11) Establish and maintain such institutions as are necessary for the temporary care, maintenance, and training of children and other persons.

(12) Prepare and submit state plans which will meet the requirements of federal laws, rules governing federal-state assistance and federal assistance and which are not inconsistent with state law.

(13) Organize within the department a Board of Review, consisting of a chairman appointed by the secretary and as many assistants or employees of the department as may be determined by the secretary and as may be required by federal laws and rules respecting state assistance, federal-state assistance, and federal assistance, such Board of Review to have such powers of a review nature and such additional powers as may be granted to it by the secretary and as may be required by federal laws and rules respecting federal-state assistance and federal assistance.

(14) Provide by rules review and appeal procedures within the Department of Health and Human Resources as may be required by applicable federal laws and rules respecting state assistance, federal-state assistance, and federal assistance and as will provide applicants for, and recipients of, all classes of welfare assistance an opportunity to be heard by the Board of Review, a member thereof or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance.

(15) Provide by rules, consistent with requirements of applicable federal laws and rules, application forms and application procedures for the various classes of public assistance.

(16) Provide locations for making applications for the various classes of public assistance.

(17) Provide a citizen or group of citizens an opportunity to file objections and to be heard upon objections to the grant of any class of public assistance.

(18) Delegate to the personnel of the department all powers and duties vested in the secretary, except the power and authority to sign contracts and agreements.

(19) Make such reports in such form and containing such information as may be required by applicable federal laws and rules respecting federal-state assistance and federal assistance.

(20) Invoke any legal, equitable, or special remedies for the enforcement of the provisions of this chapter.

(21) Require a provider, subgrantee, or other entity performing services on behalf of the department to comply with all applicable laws, rules, and written procedures pertaining to the program for which the entity is providing or coordinating services, including, but not limited to, policy manuals,

statements of work, program instructions, or other similar agreements. When submitting a claim for payment, the entity shall certify that it has complied with all material conditions for payment. Knowingly and intentionally submitting a claim or billing for services performed in material violation of any law, rule, policy, or other written agreement shall constitute fraud and the agreement for provision of services shall terminate. The entity shall be required to repay the department for any payment under the program for which the provider was not entitled, regardless of whether the incorrect payment was the result of department error, fraud, or other cause. A demand for repayment or termination of agreement for provision of services shall be subject to the due process procedures pursuant to §29A-5-1 *et seq.* of this code. The provisions of this subsection do not apply to fraud in the Medicaid program.

(22) Develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud. The Secretary shall submit a report containing the pilot program's results and recommendations to the Joint Committee on Government and Finance no later than December 31, 2020.

§9-7-2. Definitions.

For the purposes of this article:

~~(1)~~ "Assistance" means money payments, medical care, transportation and other goods and services necessary for the health or welfare of individuals, including guidance, counseling, and other welfare services and shall include all items of any nature contained within the definition of "welfare assistance" in §9-1-2 of this chapter code.

~~(2)~~ "Benefits" means money payments, goods, services, or any other thing of value.

~~(3)~~ "Board and Care Facility" means a residential setting where two or more unrelated adults receive nursing services or personal care services.

~~(4)~~ "Claim" means an application for payment for goods or services provided under the medical programs of the Department of Health and Human Resources.

~~(5)~~ "Entity" means any corporation, association, partnership, limited liability company, or other legal entity.

~~(6)~~ "Financial Exploitation" means the intentional misappropriation or misuse of funds or assets of another.

"Fraud" means a knowing misrepresentation, knowing concealment, or reckless statement of a material fact.

~~(7)~~ "Medicaid" means that assistance provided under a state plan implemented pursuant to the provisions of subchapter nineteen, chapter seven, Title 42, United States Code, as that chapter has been and may hereafter be amended.

~~(8)~~ "Person" means any individual, corporation, association, partnership, proprietor, agent, assignee, or entity.

~~(9)~~ "Provider" means any individual or entity furnishing goods or services under the medical programs of the Department of Health and Human Resources.

~~(10)~~ "Unit" means the Medicaid Fraud Control Unit established under §9-7-1 of this article code.

§9-7-5. Bribery; false claims; conspiracy; criminal penalties; failure to maintain records.

(a) A person shall not solicit, offer, pay, or receive any unlawful remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an expenditure of moneys from the medical services fund established pursuant to §9-4-2 of this ~~chapter~~ code, which is not authorized by applicable laws or rules and regulations.

(b) A person shall not make or present or cause to be made or presented to the Department of Health and Human Resources a claim under the medical programs of the Department of Health and Human Resources knowing the claim to be false, fraudulent, or fictitious.

(c) A person shall not enter into an agreement, combination or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fraudulent, or fictitious claim under the medical programs of the Department of Health and Human Resources.

(d) Any person found to be in violation of §9-7-5 (a), §9-7-5(b) or §9-7-5(c) of this ~~section~~ code is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility not less than one nor more than 10 years or shall be fined not to exceed \$10,000, or both fined and imprisoned.

(e) Any provider who, having submitted a claim for or received a benefit, payment, or allowance under the medical programs of the Department of Health and Human Resources, knowingly fails to maintain such records as are necessary to disclose fully the nature of a good or service for which a claim was submitted or benefit, payment, or allowance was received, or such records as are necessary to disclose fully all income and expenditures upon which rate of payment were based, for a period of at least five years following the date on which payment was received, shall be guilty of a misdemeanor and, upon conviction, may be imprisoned in a state correctional facility not to exceed one year or may be fined up to \$1,000, or both fined and imprisoned. Any person who knowingly destroys such records within five years from the date the benefit, payment, or allowance was received, shall be guilty of a felony, and may be imprisoned in a state correctional facility not less than one nor more than 10 years or may be fined not to exceed \$10,000, or both fined and imprisoned.

§9-7-6. Civil remedies; statute of limitations.

~~(a) Any person, firm, corporation, or other entity which willfully, by means of a false statement or representation, or by concealment of any material fact, or by other fraudulent scheme, devise or artifice on behalf of himself, herself, itself, or others, obtains or attempts to obtain benefits or payments or allowances under the medical programs of the Department of Health and Human Resources to which he or she or it is not entitled, or, in a greater amount than that to which he or she or it is entitled, makes or attempts to make, or causes to be made, a claim for benefits, payments, or allowances under the medical programs of the Department of Health and Human Resources, when such person, firm, corporation, or entity knows, or reasonably should have known, such claim to be false, fictitious, or fraudulent, or fails to maintain such records as are necessary shall be liable to the Department of Health and Human Resources in an amount equal to three times the amount of such benefits, payments, or allowances to which he or she or it is not entitled, and shall be liable for the payment of reasonable attorney fees and all other fees and costs of litigation.~~

(b) No criminal action or indictment need be brought against any person, firm, corporation or other entity as a condition for establishing civil liability hereunder.

(c) A civil action under this section may be prosecuted and maintained on behalf of the Department of Health and Human Resources by the Attorney General and the Attorney General's assistants or a prosecuting attorney and the prosecuting attorney's assistants or by any attorney in contract with or employed by the Department of Health and Human Resources to provide such representation.

(d) Any civil action brought under this section shall be brought within five years from the time the false, fraudulent, or fictitious claim was made. Claims will be judged based on the Medicaid or program rules in existence at the time of the claim submission.

ARTICLE 8. ELIGIBILITY AND FRAUD REQUIREMENTS FOR PUBLIC ASSISTANCE.

§9-8-1. Definitions.

As used in this article:

“Able bodied adult” means a person between the ages of 18 and 49 years of age without dependents and who does not meet any of the exemptions set forth in §9-8-2(a) of this code.

“Applicant” or “recipient” means a person who is applying for, or currently receiving, public assistance in the State of West Virginia from the department.

“Department” means the West Virginia Department of Health and Human Resources.

“Electronic benefit transfer” or “EBT” means any electronic system which allows the department to issue and track benefits via a magnetically encoded payment card.

“Good cause” means circumstances beyond the household’s control, including, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, natural disaster, a declared state of emergency due to inclement weather, or the unavailability of transportation.

“Public assistance” means government benefits provided to qualifying individuals on the basis of need to provide basic necessities to individuals and their families. These shall include, but are not limited to, the following:

(A) Supplemental Nutrition Assistance Program, or SNAP;

(B) Medicaid; and

(C) Temporary Assistance to Needy Families, or TANF.

“Secretary” means the Secretary of the West Virginia Department of Health and Human Resources.

“Work” or “working” means:

(A) Work in exchange for money;

(B) Work in exchange for goods or services (“in kind” work);

(C) Unpaid work, verified under standards established by the department in rule; or

(D) Any combination thereof.

§9-8-2. Work requirements.

(a) All able bodied adults may receive Supplemental Nutrition Assistance benefits for only three months in each 36-month period. Recipients are exempt from the time limit if they are employed or

are participating and complying with the requirements of a work, education, or volunteer program for at least 20 hours per week. *Provided*, That further exemptions may apply and shall be determined in accordance with federal law. *Provided, however*, that any such exemptions shall not exceed those granted by federal law.

(b) Beginning October 1, 2018, the department shall discontinue and shall not seek federal waivers granted pursuant to 7 U.S.C. § 2015(o) for Able Bodied Adults Without Dependents (ABAWD) for any county that cannot be demonstrated to have, through data in conformance with U.S. Bureau of Labor Statistics methodology set forth under federal law, a recent 12-month average unemployment rate above 10 percent; a recent 24-month average unemployment rate 20 percent above the national average for the same 24-month period; qualification for extended unemployment benefits; or designation as a "labor surplus area" by the U.S. Department of Labor. These waivers exempt able bodied adults with no children from work requirements for receipt of SNAP benefits. Notwithstanding any provision in this code to the contrary, all counties shall be ineligible for any such waiver effective October 1, 2022.

(c) The department shall submit a report to the Legislative Oversight Committee on Health and Human Resources Accountability, no later than October 1, 2020, on the employment impact of ABAWD requirements in those counties where they were implemented as of October 1, 2018. The report shall include, on a county-by-county basis, information on the number of SNAP recipients subject to work requirements; the number exempted from work requirements and the reasons for exemption; the number of applicants denied benefits due to non-compliance with work requirements; the dollar amount of benefits withheld due to non-compliance; the estimated fiscal impact on SNAP retailers of withholding those benefits; the number of recipients who engaged in work, education, or volunteerism in order to maintain benefits; the efforts made to assist recipients with meeting work requirements in order to maintain benefits; and any such recommendations pertaining to work requirements as the department deems advisable.

(d) If a recipient resides in a county subject to the provisions of this article, an applicant shall be deemed as complying with the requirements of a work, education, or volunteer program if any of the following requirements are satisfied:

(1) Working at least 20 hours per week, averaged monthly, or 80 hours a month;

(2) Participating in, and complying with, the requirements of a work force training program of 20 hours per week, as determined by the department in rule;

(3) Volunteering 20 hours a week, as determined by the department in rule;

(4) Any combination of working, volunteering and/or participating in a work program for a total of 20 hours per week, as determined by the department in legislative rule; or

(5) Participating in, and complying with, a workfare program as set out in 7 C.F.R. 273.24(a)(3).

(e) As determined by the department, if a recipient would have worked an average of 20 hours per week but missed some work for good cause, the recipient shall be considered to have met the work requirement if the absence from work is temporary and the recipient retains his or her job. Good cause includes circumstances beyond the household's control, such as, but not limited to, illness, illness of another household member requiring the presence of the member, a household emergency, natural disaster, a declared state of emergency due to inclement weather, or the unavailability of transportation.

(f) If the department determines that a waiver, or an amendment to a waiver, is necessary to implement a policy that complies with 7 C.F.R. 273.24, it shall request the waiver or the amendment to the waiver from the United States Department of Agriculture.

(g) The department shall propose legislative rules in accordance with the provisions of this code for a plan for implementation of the requirements set forth in this section in counties that are subject to the requirements set forth in §9-8-2 (d) of this code.

§9-8-3. Income and identity verification.

(a) By December 31, 2018, the department shall redesign an existing system or establish a new computerized income, asset, and identity eligibility verification system or contract with a third-party vendor to verify eligibility, eliminate the duplication of assistance, and deter waste, fraud, and abuse in each public assistance program which it administers.

(b) The department may contract with a third-party vendor to develop a system to provide a service or verify income, assets, and identity eligibility of applicants to prevent fraud, misrepresentation, and inadequate documentation when determining eligibility for public assistance. This system or service shall be accessed prior to determining eligibility, periodically between eligibility redeterminations, and during eligibility redeterminations and reviews. The department may contract with a vendor to provide information to facilitate reviews of recipient eligibility conducted by the department.

(c) A contract made pursuant to this section may not include a provision that provides the vendor with a monetary incentive for reducing the number of recipients.

(d) Nothing in this article precludes the department from continuing to conduct additional eligibility verification processes currently in practice.

§9-8-4. Eligibility verification.

All applications for benefits must be processed through a system as set forth in this article. Complete applications, including the interview, shall be processed within 10 days of receipt or the maximum period required by federal law. Prior to determining eligibility, the department shall access information for every applicant from federal, state, and other sources: *Provided*, That such access does not violate any federal law.

§9-8-5. Identity authentication.

(a) Prior to awarding public assistance, applicants for benefits must complete a computerized identity authentication process to confirm the identity of the applicant. This shall be done with a knowledge-based questionnaire consisting of financial and/or personal questions. The questionnaire must contain questions tailored to assist persons without a bank account or those who have poor access to financial and banking services or who do not have an established credit history. The questionnaire may be submitted online, in-person, or via telephone.

(b) The department shall submit a report to the Legislative Oversight Committee on Health and Human Resources Accountability regarding the feasibility of implementing the photo EBT card option under 7 U.S.C. § 2016(h)(9). The study shall address certain operational issues to ensure that state implementation would be consistent with all federal requirements, and that program access is protected for participating households, including, but not limited to, allowing the recipient to designate permitted users for purposes of utilizing the photo EBT card.

§9-8-6. Case review.

(a) If the information obtained from the review provided in this article does not result in the department finding a discrepancy or change in an applicant's or recipient's circumstances affecting eligibility, the department shall not take any further action and shall continue processing the application.

(b) If the review results in a discrepancy, the department shall promptly redetermine eligibility.

§9-8-7. Notice and right to be heard.

(a) An applicant shall be given written notice and the opportunity to explain any issues with the application or redetermination as set forth in §9-8-6 of this code. Self-declarations by applicants or recipients shall be accepted as verification of categorical and financial eligibility if no other verification source is available. In cases requiring expedited services an applicant's statement may be temporarily accepted until such time as verification is possible.

(b) The notice given to the applicant or recipient is required to describe the circumstances of the issue, the manner in which the applicant or recipient may respond, and the consequences of failing to take action. If the applicant does not respond timely as required by federal law, the department shall take appropriate action. The department may request additional information as it finds necessary to reach a decision.

(c) An individual may respond in writing, electronically, or verbally. If an individual responds verbally, staff shall note the time and contents of the response in the individual's file. The response by the individual may:

(1) Disagree with the findings of the department. The department shall reinvestigate the matter if the applicant or recipient disagrees. If the department finds that there has been an error, the department shall take immediate action to correct it. If the department determines that there is no error, the department shall determine the effect of the response on the applicant's or recipient's case and take appropriate action. Written notice of the department's action shall be given to the applicant or recipient; or

(2) Agree with the findings of the department. The department shall determine the effect on the applicant's or recipient's case and take appropriate action. Written notice of the department's action shall be given to the applicant or recipient.

(d) If the applicant fails to respond to the notice, the department shall deny or discontinue assistance for failure to verify information. Eligibility for assistance may not be established or reestablished until the issue has been resolved.

§9-8-8. Referrals for fraud, misrepresentation or inadequate documentation.

(a) After the case review as set forth in §9-8-6 of this code, the department shall refer cases of suspected fraud to the Office of Inspector General within the department. That office shall take appropriate action, including civil penalties or referral to an appropriate prosecuting attorney for criminal prosecution.

(b) In cases of substantiated fraud, upon conviction, the state shall review all appropriate legal options. These may include, but are not limited to, removal from other public assistance programs and garnishment of wages or state income tax refunds until the department recovers an equal amount of benefits fraudulently claimed.

(c) The department may refer suspected cases of fraud, misrepresentation, or inadequate documentation to appropriate agencies, divisions, or departments for review of eligibility issues in other public assistance programs. This should also include cases in which an individual is determined to be no longer eligible for the original program.

§9-8-9. Reporting to the Governor and Legislature.

The department shall prepare an annual report by January 15 each year to the Governor and Legislative Oversight Commission on Health and Human Resources Accountability. The report shall contain information on the effectiveness and general findings of the eligibility verification system, including the number of cases reviewed, the number of case closures, the number of referrals for criminal prosecution, recovery of improper payment, collection of civil penalties, the outcomes of cases referred to the Office of Inspector General, and any savings that have resulted from the system.

§9-8-10. Prohibitions on use of electronic benefit transfer cards.

(a) To ensure that public assistance program funds are used for their intended purposes, funds available on electronic benefit transfer cards may not be used to purchase alcohol, liquor or imitation liquor, cigarettes, tobacco products, bail, gambling activities, lottery tickets, tattoos, travel services provided by a travel agent, money transmission to locations abroad, sexually oriented adult materials, concert tickets, professional or collegiate sporting event tickets, or tickets for other entertainment events intended for the general public.

(b) Electronic benefit transfer card transactions are prohibited at all casinos, gaming establishments, tattoo parlors, massage parlors, body piercing parlors, spas, nail salons, lingerie shops, vapor cigarette stores, psychic or fortune-telling businesses, bail bond companies, video arcades, movie theaters, swimming pools, cruise ships, theme parks, dog or horse racing facilities, pari-mutuel facilities, sexually oriented businesses, retail establishments which provide adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment, and businesses or retail establishments where minors under age 18 are not permitted.

(c) Upon enrollment, the department shall provide all applicants with an itemized list of prohibited purchases, including those specified in this section, and make such list available on the department's website.

(d) If a recipient is found to have violated the provisions of this section, the department shall issue a warning in writing to the recipient. The recipient is subject to disqualification of benefits for up to three months following the first offense, for up to one year following the second offense, and a permanent termination of benefits following the third offense, unless expressly prohibited by federal law.

§9-8-11. Tracking out-of-state spending.

(a) The department shall post on its website and provide to the Joint Committee on Government and Finance a report of Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families benefit spending on or before January 15 of each year.

(b) The report required by this section shall include:

(1) The dollar amount and number of transactions of Supplemental Nutrition Assistance Program benefits that are accessed or spent out-of-state, by state;

(2) The dollar amount and number of transactions of Temporary Assistance for Needy Families benefits that are accessed or spent out-of-state, by state;

(3) The dollar amount, number of transactions and times of transactions of Supplemental Nutrition Assistance Program benefits that are accessed or spent in-state, by retailer, institution or location; and

(4) The dollar amount, number of transactions and times of Temporary Assistance for Needy Families transactions of benefits that are accessed or spent in-state, disaggregated by retailer, institution, or location.

(c) The report required pursuant to this section shall not identify individual recipients.

§9-8-12. Rulemaking.

The secretary may promulgate rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code which he or she finds necessary to effectuate the provisions of this article.

CHAPTER 61. CRIMES AND PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-54. Taking identity of another person; penalty.

Any person who knowingly takes the name, birth date, social security number, or other identifying information of another person, without the consent of that other person, with the intent to fraudulently represent that he or she is the other person for the purpose of making financial or credit transactions in the other person's name, or for the purpose of gaining employment, is guilty of a felony and, upon conviction, shall be punished by confinement in the penitentiary not more than five years, or fined not more than \$1,000, or both: *Provided*, That the provisions of this section do not apply to any person who obtains another person's drivers license or other form of identification for the sole purpose of misrepresenting his or her age.

And,

That both houses recede from their respective positions as to the title of the bill and agree to a new title as follows:

Com. Sub. for H. B. 4001 - "A Bill to amend and reenact §9-2-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §9-7-2, §9-7-5, and §9-7-6 of said code; to amend said code by adding thereto a new article, designated §9-8-1, §9-8-2, §9-8-3, §9-8-4, §9-8-5, §9-8-6, §9-8-7, §9-8-8, §9-8-9, §9-8-10, §9-8-11, and §9-8-12; and to amend and reenact §61-3-54 of said code, all relating to investigations, inspections, evaluations, and review conducted by the Department of Health and Human Resources to prevent fraud and abuse; disenrolling providers who commit fraud and requiring repayment; authorizing secretary to develop a data analytics pilot program to identify potential fraud and help guide policy objectives to eliminate future fraud; requiring a report on the pilot project to the Legislature; defining fraud as it relates to Medicaid; creating criminal penalties against providers for failure to keep medical records for a specific time period; authorizing a civil cause of action for fraud when a person or entity knew or reasonably should have known a claim to be false; enlarging the statute of limitations to file health care fraud civil actions; defining terms relating to public assistance; requiring the Department of Health and Human Resources to implement work

requirements for applicants of Supplemental Nutrition Assistance Program (SNAP); to limit recipients to 3 months of benefits in any 36-month period unless the recipient is working or participating in a work, educational, or volunteer program for at least 20 hours a week; providing further exemptions to work requirements; requiring discontinuance of a federal waiver in certain counties; requiring a study of the impact of the SNAP work requirements in those counties where they were implemented; eliminating the federal waiver statewide within a certain time-period; requiring a report to the legislature; establishing work requirements; authorizing a waiver to if necessary to implement a policy that complies with federal law; authorizing rulemaking; requiring a design or establishment of a computerized income, asset, and identity verification system for each public assistance program administered by the Department of Health and Human Resources; allowing for contracting with a third-party vendor; setting out required contract terms; requiring accessing information of various federal, state, and miscellaneous sources for eligibility verification; requiring identity authentication as a condition to receive public assistance; requiring the department to study the feasibility of requiring photos on EBT cards; specifying procedures for case review of public assistance benefits; setting forth notice requirements and right to a hearing; requiring referrals for fraud, misrepresentation, and inadequate documentation; authorizing referrals of suspected cases of fraud for criminal prosecution; requiring report to the Governor and Legislature; setting forth prohibitions on the use of an electronic benefit transfer card; tracking out-of-state spending of SNAP and TANF benefits; providing for rulemaking; and providing a penalty for taking the identity of another person for the purpose of gaining employment.”

Respectfully submitted,

John Shott, *Chair*,
Ray Hollen,
Joe Canestraro,

*Conferees on the part of the House
of Delegates.*

Michael Maroney, *Chair*,
Ryan Weld,
Robert Plymale,

Conferees on the part of the Senate.

On motion of Delegate Shott, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 552**), and there were—yeas 73, nays 23, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Bates, Byrd, Caputo, Diserio, Eldridge, E. Evans, Fluharty, Hicks, Hornbuckle, Iaquina, Longstreth, Love, Lovejoy, Lynch, Marcum, R. Miller, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Thompson and Williams.

Absent and Not Voting: Cooper, Deem and Fleischauer.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4001) passed.

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

Conference Committee Report

Delegate Hanshaw, from the Committee of Conference on matters of disagreement between the two houses, as to

H. B. 4447, Providing for a uniform and efficient system of broadband conduit installation,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the Senate to Engrossed Committee Substitute for House Bill 4447 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate striking out everything after the enacting clause, and agree to the same as follows:

ARTICLE 2E. DIG ONCE POLICY.

§17-2E-1. Legislative findings.

(a) The Legislature finds that it is in the public interest to accommodate telecommunications facilities on Division of Highways right-of-way when the use of the right-of-way does not adversely affect the safety of the traveling public or impair the highway or its aesthetic quality or conflict with any federal, state, or local laws, rules, regulations, or policies.

(b) The Legislature further finds that a broadband connection is an essential part of developing the state and local economies, enhancing the transportation system and creating a safer and more secure environment for our citizens.

(c) The Legislature further finds that expanding telecommunication facilities will allow the state to participate in the E-Rate Program of funding for digital education in America to provide reliable services opportunities for education and training.

(d) The Legislature further finds that fast, reliable broadband connections enhance telemedical opportunities for our rural doctors and hospitals, linking them to our major medical centers. Thereby overcoming distance barriers, and improving access to medical services that often are not consistently available in rural communities.

(e) The Legislature further finds that instituting a dig once policy encourages telecommunications carriers to coordinate installation of broadband conduit to minimize costs to the carriers and minimize disruption and inconvenience to the traveling public.

§17-2E-2. Definitions.

In this article, unless the context otherwise requires:

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

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

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

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

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

(6) "Permit" means an encroachment permit issued by the Commissioner of the Division of Highways under the authority of this Code, and pursuant to the "Accommodation of Utilities On Highway Right-Of-Way and Adjustment and Relocation Of Utility Facilities On Highway Projects Policy", or equivalent policy, as currently enforced by the Division of Highways, that specifies the requirements and conditions for performing work in a right-of-way.

(7) "Right-of-way" means land, property, or any interest therein acquired or controlled by the West Virginia Division of Highways for transportation facilities or other transportation purposes or specifically acquired for utility accommodation.

(8) "Telecommunications carrier" means a telecommunications carrier:

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

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

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

(10) "Utility facility" has the meaning ascribed to it in §17-2A-17a of this Code.

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

§17-2E-3. Use of rights-of-way. Broadband conduit installation in rights of way; permits; agreements; compensation; valuation of compensation.

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

(b) Before granting permitted longitudinal access or wireless access to a right-of-way, the Division of Highways shall

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

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

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

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

(C) Be nonexclusive; and

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

(b) Unless specifically provided for in an agreement entered into pursuant to §17-2E-3(a) of this code, the Division of Highways may not grant a property interest in a right-of-way pursuant to this article.

(c) A telecommunications carrier shall compensate the Division of Highways for access to a right-of-way for the construction, installation, and maintenance of telecommunication facilities, the use of spare conduit or related facilities of the Division of Highways as part of any longitudinal access or wireless access granted to a right-of-way pursuant to this section. The compensation must be, without limitation:

(1) At fair market value;

(2) Competitively neutral;

(3) Nondiscriminatory;

(4) Open to public inspection;

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

(6) Paid in monetary compensation or with in-kind compensation, or a combination of monetary compensation and in-kind compensation; and

(7) Paid in a lump-sum payment or in annual installments, as agreed to by the telecommunications carrier and the Division of Highways.

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

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

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

(2) If compensation is paid in-kind, determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities.

(f) The value of in-kind compensation, or a combination of money and in-kind compensation, must be equal to or greater than the amount of monetary compensation that the Division of Highways would charge if the compensation were paid solely with money.

(g) The provisions of this article shall not apply to the relocation or modification of existing telecommunication facilities in a right-of-way, nor shall these provisions apply to aerial

telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.

§17-2E-4. Highway safety.

(a) The Division of Highways, in its sole discretion, may deny any longitudinal access or wireless access if such access would compromise the safe, efficient, and convenient use of any road, route, highway, or interstate in this state for the traveling public.

(b) Any longitudinal access or wireless access to a right-of-way granted by the Division of Highways pursuant to this article does not abrogate, limit, supersede, or otherwise affect access granted or authorized pursuant to the division's rules, policies, and guidelines related to accommodation of utilities on highways' rights-of-way and adjustment and relocation of utility facilities on highway projects.

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

(a) The Division of Highways shall provide for the proportionate sharing of costs between telecommunications carriers for joint trenching or trench sharing based on the amount of conduit innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division plans to use the trench, it shall pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way.

(b) Upon application for a permit, the carrier will notify, by email, the West Virginia Broadband Enhancement Council and all other carriers on record with the West Virginia Broadband Enhancement Council of the application. Other carriers have 30 calendar days to notify the applicant if they wish to share the applicant's trench. This requirement extends to all underground construction technologies.

(c) The carrier shall also meet the following conditions for a permit:

(1) The telecommunications carrier will be required to place, at its sole expense, a Class II legal advertisement, in accordance with §59-3-2(a) of this code, and of a form and content approved by the Division of Highways, in the local project area newspaper, in the Charleston newspaper, on industry and the Division of Highways' websites, and within other pertinent media, announcing the general scope of the proposed installation within the right-of-way and providing competing telecommunications carriers the opportunity to timely express an interest in installing additional telecommunication facilities during the initial installation. The legal advertisement is to run at least two consecutive weeks, and the telecommunications carrier is to notify the division of any interest of other parties received.

(2) If a competing telecommunications carrier expresses interest in participating in the project, an agreement between the two (or more) telecommunications carriers will be executed by those entities, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. A copy of the executed agreement shall be provided to the Division of Highways.

(3) The telecommunications carrier that placed the legal advertisement is responsible for resolving in good faith all disputes between any competing telecommunications carriers that timely responded to the advertisement and that wishes to install facilities within the same portion of the rights-of-way to be occupied. Should a dispute arise between the initial telecommunications carrier

and a competing telecommunications carrier, the initial telecommunications carrier will attempt to mediate the dispute. Any dispute that is not resolved by the telecommunications carriers shall be adjudicated by the Public Service Commission.

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

(e) The Commissioner of the Division of Highways shall promulgate Rules governing the relationship between the telecommunications carriers, as hereinafter provided in this article.

§17-2E-6. Monetary and in-kind compensation.

(a) All monetary compensation collected by the Division of Highways pursuant to this article shall be deposited in the State Road Fund.

(b) In-kind compensation paid to the Division of Highways under an agreement entered into pursuant to this article may include, without limitation:

(1) Conduit or excess conduit;

(2) Innerduct;

(3) Dark fiber;

(4) Access points;

(5) Telecommunications equipment or services;

(6) Bandwidth; and

(7) Other telecommunications facilities as a component of the present value of the trenching.

(c) The Division of Highways shall value any in-kind compensation based on fair market value at the time of installation or review, and may also consider any valuation or cost information provided by the telecommunications carrier.

(d) In-kind compensation paid to the Division of Highways may be disposed of if both of the following conditions are met:

(1) The telecommunications facility received as in-kind payment has not been used within 10 years of its installation; and

(2) The Commissioner of the Division of Highways determines that the division does not have an immediately foreseeable need for the telecommunications facility.

(e) Upon determining that it is appropriate to dispose of the telecommunications facility, the division shall determine its current fair market value. The division shall offer the provider or providers who made the in-kind payment the option to purchase any telecommunications facility obtained from such provider. If the provider or providers do not purchase the telecommunications facility, it shall be offered for public auction in the same manner as the division auctions excess rights-of-way.

§17-2E-7. Multiple carriers in a single trench.

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

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

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

§17-2E-8. Existing policies.

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

(b) The Division of Highways may consider the financial and technical qualifications of a telecommunications carrier when determining specific insurance requirements for contractors authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair telecommunications facilities with longitudinal access or wireless access to the right-of-way.

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

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

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

§17-2E-9. Rulemaking authority.

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

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

Com. Sub. for H. B. 4447 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-2E-1, §17-2E-2, §17-2E-3, §17-2E-4, §17-2E-5, §17-2E-6, §17-2E-7, §17-2E-8, and §17-2E-9, all relating to providing a uniform and efficient system of broadband conduit installation coinciding with the construction, maintenance, or improvement of highways and rights-of-way under the oversight of the Division of Highways; making legislative findings; defining terms; providing procedures for broadband conduit installation in rights-of-way; providing for highway safety guidelines; establishing a procedure for joint use between telecommunications carriers; setting forth a procedure for monetary and in-kind compensation; providing a method for Division of Highways to offer excess conduit to a telecommunications carrier; setting forth standards to be utilized in agreements entered into by the Division of Highways and two or more telecommunications carriers in a single trench; providing that existing rules, policies, and procedures of the Division of Highways and United States Code shall control; and providing that the Commissioner of the Division of Highways may promulgate rules.

Respectfully submitted,

John Shott, *Chair*,
Roger Hanshaw,
Andrew Byrd,

*Conferees on the part of the House
of Delegates.*

Greg Boso, *Chair*,
Dave Sypolt,
Robert Plymale,

Conferees on the part of the Senate.

On motion of Delegate Hanshaw, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 553**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4447) passed.

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

Conference Committee Report

Delegate Hanshaw, from the Committee of Conference on matters of disagreement between the two houses, as to

H. B. 4629, Relating to broadband enhancement and expansion policies generally.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the Senate to Engrossed House Bill 4629 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate striking out everything after the enacting clause, and agree to the same as follows:

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

§31G-1-10. Pilot Project for cooperatives by political subdivisions.

[Repealed].

ARTICLE 2. COOPERATIVE ASSOCIATIONS.

§31G-2-1. Definitions.

As used in this article:

(1) "Cooperative association" or "association" means any corporation organized under this article. Each association shall also comply with the requisite business corporation provisions of chapter thirty-one-d or thirty-one-f of this code, or the nonprofit corporation provisions of chapter thirty-one-e of this code.

(2) "Internet services" means providing access to, and presence on, the internet and other services. Data may be transmitted using several technologies, including dial-up, DSL, cable modem, wireless, or dedicated high-speed interconnects.

(3) "Member" means a member of an association without capital stock and a holder of common stock in an association organized with capital stock.

(4) "Qualified person" means a person who is engaged in the use of internet services, either in an individual capacity, as a political subdivision of this state, or as a business.

(5) "Qualified activity" means using internet services.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

H. B. 4629 - "A Bill to repeal §31G-1-10, of the Code of West Virginia, 1931, as amended; to amend and reenact §31G-2-1 of said Code; all relating to broadband enhancement and expansion policies generally; repealing language relating to pilot project for cooperative associations by political subdivisions; and providing that a political subdivision of this state may be a qualified person for the purposes of forming a cooperative association."

Respectfully submitted,

Roger Hanshaw, *Chair*,
Mark Zatezalo,
Phil Isner,

*Conferees on the part of the
House of Delegates.*

Randy Smith, *Chair*,
Edward Gaunch,
Glenn Jeffries,

Conferees on the part of the Senate.

On motion of Delegate Hanshaw, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 554**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 4629) passed.

Delegate Cowles moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 555**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4629) takes effect from its passage.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, to take effect from passage, and requested the concurrence of the House of Delegates in the passage, of

S. B. 545, Relating to driving privileges and requirements for persons under 18.

Conference Committee Report

Delegate Zatezalo, from the committee of conference on matters of disagreement between the two houses, as to

S. B. 545, Relating to driving privileges and requirements for persons under 18.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendment of the House to Engrossed Senate Bill No. 545 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the Senate agree to the amendment of the House of Delegates to the bill striking out everything after the enacting clause, excepting section three-a, subsection (e).

That the House recede from its amendment on page five, section three-a, subsection (e), and that both houses agree to a new section three-a, subsection (e), to read as follows:

(e) ~~Level three, full Class E license~~ Terms and conditions of level three, full Class E driver's license.
 — The level three license is valid until 30 days after the date the licensee attains his or her twenty-first birthday. A holder of a level three, full Class E driver's license who is under the age of 18 years is prohibited from using a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. Unless otherwise provided in this section or any other section of this code, the holder of a level three, full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked, or otherwise canceled and who meets all other requirements of the code may be issued a level three, full Class E license without further examination or road skills testing if the licensee:

(1) Has reached the age of 17 years; and

(A) Presents a completed application as prescribed by ~~the provisions of~~ §17B-2-6 of this code;

(B) Has held the level two intermediate license conviction free for the 12-month period immediately preceding the date of the application;

(C) Has completed any driver improvement program required under ~~paragraph (G), subdivision (2), subsection (d) of this section~~ §17B-2-3a(d)(2)(H) of this code; and

(D) Pays a fee of \$2.50 for each year the license is valid. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in §3-2-12 of this code;

(E) Presents a driver's eligibility certificate or otherwise shows compliance with ~~the provisions of~~ §18-8-11 of this code; or

(2) Reaches the age of 18 years; and

(A) Presents a completed application as prescribed by ~~the provisions of~~ §17B-2-6 of this code; and

(B) Pays a fee of \$5 for each year the license is valid. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in such fee may not exceed 10 percent of the total fee amount in a single year. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in §3-2-12 of this code.;

And,

That the Senate agree to the House amended title.

Respectfully submitted,

Charles S. Trump, IV, *Chair*,
 Ryan W. Weld,
 Michael A. Woelfel,

Conferees on the part of the Senate,

Mark Zatezalo, *Chair*,
 Ray Hollen,
 Phil Isner,

*Conferees on the part of the House
 of Delegates.*

On motion of Delegate Zatezalo, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 556**), and there were—yeas 25, nays 72, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Cowles, Criss, A. Evans, Fleischauer, Foster, Hamilton, Hanshaw, Hicks, Hollen, Isner, Lane, C. Miller, Overington, Phillips, R. Romine, Rowe, Shott, Sobonya, Sypolt, Wagner, Westfall, Zatezalo and Mr. Speaker, Mr. Armstead.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting not having voted in the affirmative, the Speaker declared the bill (S. B. 545) rejected.

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

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for H. B. 4424, Providing that the Ethics Act applies to certain persons providing services without pay to state elected officials.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-3. Definitions.

As used in this chapter, unless the context in which used clearly requires otherwise:

(a) ‘Review Board’ means the Probable Cause Review Board created by §6B-2-2a of this code.

(b) ‘Business’ means any entity through which business for-profit is conducted including a corporation, partnership, proprietorship, franchise, association, organization, or self-employed individual.

(c) ‘Compensation’ means money, thing of value, or financial benefit. The term ‘compensation’ does not include reimbursement for actual reasonable and necessary expenses incurred in the performance of one’s official duties.

(d) ‘Employee’ means any person in the service of another under any contract of hire, whether express or implied, oral, or written, where the employer or an agent of the employer or a public official

has the right or power to control and direct such person in the material details of how work is to be performed and who is not responsible for the making of policy nor for recommending official action.

(e) 'Ethics Commission' or 'commission' means the West Virginia Ethics Commission.

(f) 'Immediate family', with respect to an individual, means a spouse with whom the individual is living as husband and wife and any dependent child or children, dependent grandchild or grandchildren, and dependent parent or parents.

(g) 'Ministerial functions' means actions or functions performed by an individual under a given state of facts in a prescribed manner in accordance with a mandate of legal authority, without regard to, or without the exercise of, the individual's own judgment as to the propriety of the action being taken.

(h) 'Person' means an individual, corporation, business entity, labor union, association, firm, partnership, limited partnership, committee, club, or other organization or group of persons, irrespective of the denomination given such organization or group.

(i) 'Political contribution' means and has the same definition as is given that term under the provisions of §3-8-1 *et seq.* of this code.

(j) 'Public employee' means any full-time or part-time employee of any state, county or municipal governmental body or any political subdivision thereof, including county school boards.

(k) "Public official" means any person who is elected ~~or appointed to~~ to, appointed to, or given the authority to act in any state, county, or municipal office or position, whether compensated or not, and who is responsible for the making of policy or takes official action which is either ministerial or nonministerial, or both, with respect to: (1) Contracting for, or procurement of, goods or services; (2) administering or monitoring grants or subsidies; (3) planning or zoning; (4) inspecting, licensing, regulating, or auditing any person; or (5) any other activity where the official action has an economic impact of greater than a de minimis nature on the interest or interests of any person. The term "public official" includes a public servant volunteer.

(l) 'Public servant volunteer' means any person who, without compensation, performs services on behalf of a public official and who is granted or vested with powers, privileges, or authorities ordinarily reserved to public officials.

(m) 'Relative' means spouse, mother, father, sister, brother, son, daughter, grandmother, grandfather, grandchild, mother-in-law, father-in-law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law.

(n) 'Respondent' means a person who is the subject of an investigation by the commission or against whom a complaint has been filed with the commission.

(o) 'Thing of value', 'other thing of value', or 'anything of value' means and includes: (1) Money, bank bills, or notes, United States treasury notes and other bills, bonds or notes issued by lawful authority and intended to pass and circulate as money; (2) goods and chattels; (3) promissory notes, bills of exchange, orders, drafts, warrants, checks, bonds given for the payment of money, or the forbearance of money due or owing; (4) receipts given for the payment of money or other property; (5) any right or chose in action; (6) chattels real or personal or things which savor of realty and are, at the time taken, a part of a freehold, whether they are of the substance or produce thereof or affixed thereto, although there may be no interval between the severing and the taking away thereof; (7) any interest in realty, including, but not limited to, fee simple estates, life estates, estates for a term or

period of time, joint tenancies, cotenancies, tenancies in common, partial interests, present or future interests, contingent or vested interests, beneficial interests, leasehold interests, or any other interest or interests in realty of whatsoever nature; (8) any promise of employment, present or future; (9) donation or gift; (10) rendering of services or the payment thereof; (11) any advance or pledge; (12) a promise of present or future interest in any business or contract or other agreement; or (13) every other thing or item, whether tangible or intangible, having economic worth. 'Thing of value', 'other thing of value' or 'anything of value' shall not include anything which is *de minimis* in nature nor a lawful political contribution reported as required by law.

ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND EMPLOYEES; APPEARANCES BEFORE PUBLIC AGENCIES; CODE OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.

§6B-2-5. Ethical standards for elected and appointed officials and public employees.

(a) *Persons subject to section.* — The provisions of this section apply to all elected and appointed public officials and public employees, whether full or part-time and whether compensated or not, in state, county, municipal governments and their respective boards, agencies, departments, and commissions and in any other regional or local governmental agency, including county school boards.

(b) *Use of public office for private gain.* — (1) A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person. Incidental use of equipment or resources available to a public official or public employee by virtue of his or her position for personal or business purposes resulting in *de minimis* private gain does not constitute use of public office for private gain under this subsection. The performance of usual and customary duties associated with the office or position or the advancement of public policy goals or constituent services, without compensation, does not constitute the use of prestige of office for private gain.

(2) Notwithstanding the general prohibition against use of office for private gain, public officials and public employees may use bonus points acquired through participation in frequent traveler programs while traveling on official government business: *Provided*, That the official's or employee's participation in such program, or acquisition of such points, does not result in additional costs to the government.

(3) The Legislature, in enacting this subsection, recognizes that there may be certain public officials or public employees who bring to their respective offices or employment their own unique personal prestige which is based upon their intelligence, education, experience, skills and abilities, or other personal gifts or traits. In many cases, these persons bring a personal prestige to their office or employment which inures to the benefit of the state and its citizens. Those persons may, in fact, be sought by the state to serve in their office or employment because, through their unusual gifts or traits, they bring stature and recognition to their office or employment and to the state itself. While the office or employment held or to be held by those persons may have its own inherent prestige, it would be unfair to those individuals and against the best interests of the citizens of this state to deny those persons the right to hold public office or to be publicly employed on the grounds that they would, in addition to the emoluments of their office or employment, be in a position to benefit financially from the personal prestige which otherwise inheres to them. Accordingly, the commission is directed, by legislative rule, to establish categories of public officials and public employees, identifying them generally by the office or employment held, and offering persons who fit within those categories the opportunity to apply for an exemption from the application of the provisions of this subsection. Exemptions may be granted by the commission, on a case-by-case basis, when it is shown that: (A) The public office held or the public employment engaged in is not such that it would ordinarily be

available or offered to a substantial number of the citizens of this state; (B) the office held or the employment engaged in is such that it normally or specifically requires a person who possesses personal prestige; and (C) the person's employment contract or letter of appointment provides or anticipates that the person will gain financially from activities which are not a part of his or her office or employment.

(4) A public official or public employee may not show favoritism or grant patronage in the employment or working conditions of his or her relative or a person with whom he or she resides: *Provided*, That as used in this subdivision, 'employment or working conditions' shall only apply to government employment: *Provided, however*, That government employment includes only those governmental entities specified in subsection (a) of this section.

(c) *Gifts.* — (1) A public official or public employee may not solicit any gift unless the solicitation is for a charitable purpose with no resulting direct pecuniary benefit conferred upon the official or employee or his or her immediate family: *Provided*, That no public official or public employee may solicit for a charitable purpose any gift from any person who is also an official or employee of the state and whose position is subordinate to the soliciting official or employee: *Provided, however*, That nothing herein shall prohibit a candidate for public office from soliciting a lawful political contribution. No official or employee may knowingly accept any gift, directly or indirectly, from a lobbyist or from any person whom the official or employee knows or has reason to know:

(A) Is doing or seeking to do business of any kind with his or her agency;

(B) Is engaged in activities which are regulated or controlled by his or her agency; or

(C) Has financial interests which may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duties.

(2) Notwithstanding the provisions of subdivision (1) of this subsection, a person who is a public official or public employee may accept a gift described in this subdivision, and there shall be a presumption that the receipt of such gift does not impair the impartiality and independent judgment of the person. This presumption may be rebutted only by direct objective evidence that the gift did impair the impartiality and independent judgment of the person or that the person knew or had reason to know that the gift was offered with the intent to impair his or her impartiality and independent judgment. The provisions of subdivision (1) of this subsection do not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel, and lodging of the official or employee for a meeting at which the official or employee participates in a panel or has a speaking engagement;

(E) Gifts of tickets or free admission extended to a public official or public employee to attend charitable, cultural, or political events, if the purpose of such gift or admission is a courtesy or ceremony customarily extended to the office;

(F) Gifts that are purely private and personal in nature; or

(G) Gifts from relatives by blood or marriage, or a member of the same household.

(3) The commission shall, through legislative rule promulgated pursuant to chapter 29A of this code, establish guidelines for the acceptance of a reasonable honorarium by public officials and elected officials. The rule promulgated shall be consistent with this section. Any elected public official may accept an honorarium only when:

(A) That official is a part-time elected public official;

(B) The fee is not related to the official's public position or duties;

(C) The fee is for services provided by the public official that are related to the public official's regular, nonpublic trade, profession, occupation, hobby, or avocation; and

(D) The honorarium is not provided in exchange for any promise or action on the part of the public official.

(4) Nothing in this section shall be construed so as to prohibit the giving of a lawful political contribution as defined by law.

(5) The Governor or his designee may, in the name of the State of West Virginia, accept and receive gifts from any public or private source. Any gift so obtained shall become the property of the state and shall, within 30 days of the receipt thereof, be registered with the commission and the Division of Culture and History.

(6) Upon prior approval of the Joint Committee on Government and Finance, any member of the Legislature may solicit donations for a regional or national legislative organization conference or other legislative organization function to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. Legislative organizations are bipartisan regional or national organizations in which the Joint Committee on Government and Finance authorizes payment of dues or other membership fees for the Legislature's participation and which assist this and other State Legislatures and their staff through any of the following:

(A) Advancing the effectiveness, independence, and integrity of Legislatures in the states of the United States;

(B) Fostering interstate cooperation and facilitating information exchange among State Legislatures;

(C) Representing the states and their Legislatures in the American federal system of government;

(D) Improving the operations and management of State Legislatures and the effectiveness of legislators and legislative staff, and to encourage the practice of high standards of conduct by legislators and legislative staff;

(E) Promoting cooperation between State Legislatures in the United States and Legislatures in other countries.

The solicitations may only be made in writing. The legislative organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the Legislature may not be used by the legislative member in conjunction with the fund raising or solicitation effort. The legislative organization for which solicitations are being made shall file with the Joint Committee on Government and Finance and with the Secretary of State for publication in the State Register as provided in §29A-2-1 *et seq.* of this code, copies of letters, brochures, and other solicitation documents, along with a complete list of the

names and last known addresses of all donors and the amount of donations received. Any solicitation by a legislative member shall contain the following disclaimer:

'This solicitation is endorsed by [name of member]. This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. A copy of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, and with the Secretary of State and are available for public review.'

(7) Upon written notice to the commission, any member of the board of Public Works may solicit donations for a regional or national organization conference or other function related to the office of the member to be held in the state for the purpose of deferring costs to the state for hosting of the conference or function. The solicitations may only be made in writing. The organization may act as fiscal agent for the conference and receive all donations. In the alternative, a bona fide banking institution may act as the fiscal agent. The official letterhead of the office of the Board of Public Works member may not be used in conjunction with the fund raising or solicitation effort. The organization for which solicitations are being made shall file with the Joint Committee on Government and Finance, with the Secretary of State for publication in the State Register as provided in §29A-2-1 *et seq.* of this code and with the commission, copies of letters, brochures, and other solicitation documents, along with a complete list of the names and last known addresses of all donors and the amount of donations received. Any solicitation by a member of the board of Public Works shall contain the following disclaimer: 'This solicitation is endorsed by (name of member of Board of Public Works.) This endorsement does not imply support of the soliciting organization, nor of the sponsors who may respond to the solicitation. Copies of all solicitations are on file with the West Virginia Legislature's Joint Committee on Government and Finance, with the West Virginia Secretary of State and with the West Virginia Ethics Commission and are available for public review.' Any moneys in excess of those donations needed for the conference or function shall be deposited in the Capitol Dome and Capitol Improvement Fund established in §5A-4-2 *et seq.* of this code.

(d) Interests in public contracts. —

(1) In addition to the provisions of §61-10-15 of this code, no elected or appointed public official or public employee or member of his or her immediate family or business with which he or she is associated may be a party to or have an interest in the profits or benefits of a contract which the official or employee may have direct authority to enter into, or over which he or she may have control: *Provided*, That nothing herein shall be construed to prevent or make unlawful the employment of any person with any governmental body: *Provided, however*, That nothing herein shall be construed to prohibit a member of the Legislature from entering into a contract with any governmental body, or prohibit a part-time appointed public official from entering into a contract which the part-time appointed public official may have direct authority to enter into or over which he or she may have control when the official has not participated in the review or evaluation thereof, has been recused from deciding or evaluating and has been excused from voting on the contract and has fully disclosed the extent of his or her interest in the contract.

(2) In the absence of bribery or a purpose to defraud, an elected or appointed public official or public employee or a member of his or her immediate family or a business with which he or she is associated shall not be considered as having a prohibited financial interest in a public contract when such a person has a limited interest as an owner, shareholder, or creditor of the business which is awarded a public contract. A limited interest for the purposes of this subsection is:

(A) An interest which does not exceed \$1,000 in the profits or benefits of the public contract or contracts in a calendar year;

(B) An interest as a creditor of a public employee or official who exercises control over the contract, or a member of his or her immediate family, if the amount is less than \$5,000.

(3) If a public official or employee has an interest in the profits or benefits of a contract, then he or she may not make, participate in making, or in any way attempt to use his office or employment to influence a government decision affecting his or her financial or limited financial interest. Public officials shall also comply with the voting rules prescribed in subsection (j) of this section.

(4) Where the provisions of subdivisions (1) and (2) of this subsection would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship, or other substantial interference with the operation of a state, county, municipality, county school board, or other governmental agency, the affected governmental body or agency may make written application to the Ethics Commission for an exemption from subdivisions (1) and (2) of this subsection.

(e) *Confidential information.* — No present or former public official or employee may knowingly and improperly disclose any confidential information acquired by him or her in the course of his or her official duties nor use such information to further his or her personal interests or the interests of another person.

(f) *Prohibited representation.* — No present or former elected or appointed public official or public employee shall, during or after his or her public employment or service, represent a client or act in a representative capacity with or without compensation on behalf of any person in a contested case, rate-making proceeding, license or permit application, regulation filing or other particular matter involving a specific party or parties which arose during his or her period of public service or employment and in which he or she personally and substantially participated in a decision-making, advisory or staff support capacity, unless the appropriate government agency, after consultation, consents to such representation. A staff attorney, accountant or other professional employee who has represented a government agency in a particular matter shall not thereafter represent another client in the same or substantially related matter in which that client's interests are materially adverse to the interests of the government agency, without the consent of the government agency: *Provided*, That this prohibition on representation shall not apply when the client was not directly involved in the particular matter in which the professional employee represented the government agency, but was involved only as a member of a class. The provisions of this subsection shall not apply to legislators who were in office and legislative staff who were employed at the time it originally became effective on July 1, 1989, and those who have since become legislators or legislative staff and those who shall serve hereafter as legislators or legislative staff.

(g) *Limitation on practice before a board, agency, commission or department.* — Except as otherwise provided in §8A-2-3, §8A-2-4, or §8A-2-5 of this code: (1) No elected or appointed public official and no full-time staff attorney or accountant shall, during his or her public service or public employment or for a period of one year after the termination of his or her public service or public employment with a governmental entity authorized to hear contested cases or promulgate or propose rules, appear in a representative capacity before the governmental entity in which he or she serves or served or is or was employed in the following matters:

(A) A contested case involving an administrative sanction, action or refusal to act;

(B) To support or oppose a proposed rule;

(C) To support or contest the issuance or denial of a license or permit;

(D) A rate-making proceeding; and

(E) To influence the expenditure of public funds.

(2) As used in this subsection, 'represent' includes any formal or informal appearance before, or any written or oral communication with, any public agency on behalf of any person: *Provided*, That nothing contained in this subsection shall prohibit, during any period, a former public official or employee from being retained by or employed to represent, assist or act in a representative capacity on behalf of the public agency by which he or she was employed or in which he or she served. Nothing in this subsection shall be construed to prevent a former public official or employee from representing another state, county, municipal, or other governmental entity before the governmental entity in which he or she served or was employed within one year after the termination of his or her employment or service in the entity.

(3) A present or former public official or employee may appear at any time in a representative capacity before the Legislature, a county commission, city or town council, or county school board in relation to the consideration of a statute, budget, ordinance, rule, resolution, or enactment.

(4) Members and former members of the Legislature and professional employees and former professional employees of the Legislature shall be permitted to appear in a representative capacity on behalf of clients before any governmental agency of the state or of county or municipal governments, including county school boards.

(5) An elected or appointed public official, full-time staff attorney or accountant who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the one year prohibition against appearing in a representative capacity, when the person's education and experience is such that the prohibition would, for all practical purposes, deprive the person of the ability to earn a livelihood in this state outside of the governmental agency. The Ethics Commission shall, by legislative rule, establish general guidelines or standards for granting an exemption or reducing the time period, but shall decide each application on a case-by-case basis.

(h) Employment by regulated persons and vendors. — (1) No full-time official or full-time public employee may seek employment with, be employed by, or seek to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding 12 months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

(C) Is a vendor to the agency where the official serves or public employee is employed and the official or public employee, or a subordinate of the official or public employee, exercises authority or control over a public contract with such vendor, including, but not limited to:

(i) Drafting bid specifications or requests for proposals;

(ii) Recommending selection of the vendor;

(iii) Conducting inspections or investigations;

(iv) Approving the method or manner of payment to the vendor;

(v) Providing legal or technical guidance on the formation, implementation or execution of the contract; or

(vi) Taking other nonministerial action which may affect the financial interests of the vendor.

(2) Within the meaning of this section, the term 'employment' includes professional services and other services rendered by the public official or public employee, whether rendered as employee or as an independent contractor; 'seek employment' includes responding to unsolicited offers of employment as well as any direct or indirect contact with a potential employer relating to the availability or conditions of employment in furtherance of obtaining employment; and 'subordinate' includes only those agency personnel over whom the public official or public employee has supervisory responsibility.

(3) A full-time public official or full-time public employee who would be adversely affected by the provisions of this subsection may apply to the Ethics Commission for an exemption from the prohibition contained in subdivision (1) of this subsection.

(A) The Ethics Commission shall, by legislative rule, establish general guidelines or standards for granting an exemption, but shall decide each application on a case-by-case basis;

(B) A person adversely affected by the restriction on the purchase of personal property may make such purchase after seeking and obtaining approval from the commission or in good faith reliance upon an official guideline promulgated by the commission, written advisory opinions issued by the commission, or a legislative rule.

(C) The commission may establish exceptions to the personal property purchase restrictions through the adoption of guidelines, advisory opinions or legislative rule.

(4) A full-time public official or full-time public employee may not take personal regulatory action on a matter affecting a person by whom he or she is employed or with whom he or she is seeking employment or has an agreement concerning future employment.

(5) A full-time public official or full-time public employee may not personally participate in a decision, approval, disapproval, recommendation, rendering advice, investigation, inspection, or other substantial exercise of nonministerial administrative discretion involving a vendor with whom he or she is seeking employment or has an agreement concerning future employment.

(6) A full-time public official or full-time public employee may not receive private compensation for providing information or services that he or she is required to provide in carrying out his or her public job responsibilities.

(i) *Members of the Legislature required to vote.* — Members of the Legislature who have asked to be excused from voting or who have made inquiry as to whether they should be excused from voting on a particular matter and who are required by the presiding officer of the House of Delegates or Senate of West Virginia to vote under the rules of the particular house shall not be guilty of any violation of ethics under the provisions of this section for a vote so cast.

(j) *Limitations on voting.* —

(1) Public officials, excluding members of the Legislature who are governed by subsection (i) of this section, may not vote on a matter:

(A) In which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest. Business with which they are associated means a business of which the person or an immediate family member is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stocks of any class.

(B) If a public official is employed by a financial institution and his or her primary responsibilities include consumer and commercial lending, the public official may not vote on a matter which directly affects the financial interests of a customer of the financial institution if the public official is directly involved in approving a loan request from the person or business appearing before the governmental body or if the public official has been directly involved in approving a loan for that person or business within the past 12 months: *Provided*, That this limitation only applies if the total amount of the loan or loans exceeds \$15,000.

(C) The employment or working conditions of the public official's relative or person with whom the public official resides.

(D) The appropriations of public moneys or the awarding of a contract to a nonprofit corporation if the public official or an immediate family member is employed by, or a compensated officer or board member of, the nonprofit: *Provided*, That if the public official or immediate family member is an uncompensated officer or board member of the nonprofit, then the public official shall publicly disclose such relationship prior to a vote on the appropriations of public moneys or award of contract to the nonprofit: *Provided, however*, That for purposes of this paragraph, public disclosure shall mean disclosure of the public official's, or his or her immediate family member's, relationship to the nonprofit (i) on the agenda item relating to the appropriation or award contract, if known at time of agenda, (ii) by the public official at the meeting prior to the vote, and (iii) in the minutes of the meeting.

(2) A public official may vote:

(A) If the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class shall consist of not fewer than five similarly situated persons or businesses; or

(B) If the matter affects a publicly traded company when:

(i) The public official, or dependent family members individually or jointly own less than five percent of the issued stock in the publicly traded company and the value of the stocks individually or jointly owned is less than \$10,000; and

(ii) Prior to casting a vote the public official discloses his or her interest in the publicly traded company.

(3) For a public official's recusal to be effective, it is necessary to excuse him or herself from participating in the discussion and decision-making process by physically removing him or herself from the room during the period, fully disclosing his or her interests, and recusing him or herself from voting on the issue. The recusal shall also be reflected in the meeting minutes.

(k) *Limitations on participation in licensing and rate-making proceedings.* — No public official or employee may participate within the scope of his or her duties as a public official or employee, except through ministerial functions as defined in §6B-1-3 of this code, in any license or rate-making proceeding that directly affects the license or rates of any person, partnership, trust, business trust, corporation, or association in which the public official or employee or his or her immediate family

owns or controls more than 10 percent. No public official or public employee may participate within the scope of his or her duties as a public official or public employee, except through ministerial functions as defined §6B-1-3 of this code, in any license or rate-making proceeding that directly affects the license or rates of any person to whom the public official or public employee or his or her immediate family, or a partnership, trust, business trust, corporation or association of which the public official or employee, or his or her immediate family, owns or controls more than 10 percent, has sold goods or services totaling more than \$1,000 during the preceding year, unless the public official or public employee has filed a written statement acknowledging such sale with the public agency and the statement is entered in any public record of the agency's proceedings. This subsection shall not be construed to require the disclosure of clients of attorneys or of patients or clients of persons licensed pursuant to §30-3-1 *et seq.*, §30-8-1 *et seq.*, §30-14-1 *et seq.*, §30-14A-1 *et seq.*, §30-15-1 *et seq.*, §30-16-1 *et seq.*, §30-20-1 *et seq.*, §30-21-1 *et seq.*, or §30-31-1 *et seq.* of this code.

(l) *Certain compensation prohibited.* — (1) A public employee may not receive additional compensation from another publicly-funded state, county, or municipal office or employment for working the same hours, unless:

(A) The public employee's compensation from one public employer is reduced by the amount of compensation received from the other public employer;

(B) The public employee's compensation from one public employer is reduced on a pro rata basis for any work time missed to perform duties for the other public employer;

(C) The public employee uses earned paid vacation, personal or compensatory time or takes unpaid leave from his or her public employment to perform the duties of another public office or employment; or

(D) A part-time public employee who does not have regularly scheduled work hours or a public employee who is authorized by one public employer to make up, outside of regularly scheduled work hours, time missed to perform the duties of another public office or employment maintains time records, verified by the public employee and his or her immediate supervisor at least once every pay period, showing the hours that the public employee did, in fact, work for each public employer. The public employer shall submit these time records to the Ethics Commission on a quarterly basis.

(2) This section does not prohibit a retired public official or public employee from receiving compensation from a publicly-funded office or employment in addition to any retirement benefits to which the retired public official or public employee is entitled.

(m) *Certain expenses prohibited.* — No public official or public employee shall knowingly request or accept from any governmental entity compensation or reimbursement for any expenses actually paid by a lobbyist and required by the provisions of this chapter to be reported, or actually paid by any other person.

(n) Any person who is employed as a member of the faculty or staff of a public institution of higher education and who is engaged in teaching, research, consulting, or publication activities in his or her field of expertise with public or private entities and thereby derives private benefits from such activities shall be exempt from the prohibitions contained in subsections (b), (c) and (d) of this section when the activity is approved as a part of an employment contract with the governing board of the institution or has been approved by the employee's department supervisor or the president of the institution by which the faculty or staff member is employed.

(o) Except as provided in this section, a person who is a public official or public employee may not solicit private business from a subordinate public official or public employee whom he or she has

the authority to direct, supervise or control. A person who is a public official or public employee may solicit private business from a subordinate public official or public employee whom he or she has the authority to direct, supervise or control when:

(A) The solicitation is a general solicitation directed to the public at large through the mailing or other means of distribution of a letter, pamphlet, handbill, circular, or other written or printed media; or

(B) The solicitation is limited to the posting of a notice in a communal work area; or

(C) The solicitation is for the sale of property of a kind that the person is not regularly engaged in selling; or

(D) The solicitation is made at the location of a private business owned or operated by the person to which the subordinate public official or public employee has come on his or her own initiative.

(p) The commission may, by legislative rule promulgated in accordance with chapter 29A of this code, define further exemptions from this section as necessary or appropriate.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4424 – “A Bill to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §6B-2-5 of said code, all relating to providing that the West Virginia Governmental Ethics Act applies to public servant volunteers; defining terms; and providing that the requirements of the West Virginia Governmental Ethics Act apply to a person who is granted or vested with powers, privileges or authorities ordinarily reserved to public officials or who performs services, without compensation, on behalf of a public official.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 557**), and there were—yeas 96, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Deem and White.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4424) passed.

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

A message from the Senate, by

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

H. B. 4488, Relating to the Hatfield-McCoy Recreation Authority.

Delegate Cowles moved that the House of Delegates concur with further title amendment, and the House concurred in the following amendment by the Senate:

On page four, section three, line twenty-one, by striking out the word “may” and inserting in lieu thereof the word “shall”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 558**), and there were—yeas 92, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Dean, Eldridge, Marcum, Maynard and Paynter.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4488) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

H. B. 4488 - “A Bill to amend and reenact §20-14-1, §20-14-2, §20-14-3, §20-14-4, and §20-14-8 of the Code of West Virginia, 1931, as amended, all relating to the Hatfield-McCoy Recreation Authority; updating legislative findings; adding the counties of Braxton, Clay, Fayette, Nicholas, and Webster to the list of participating counties; modifying the number of board members; providing that 10 members of the board constitutes a quorum; prohibiting persons from consuming non-intoxicating beer, nonintoxicating craft beer, or wine at any time within the Hatfield-McCoy Recreation Area; prohibiting a child under the age of six from being allowed on any trail within the Hatfield-McCoy Recreation Area; prohibits children under the age of eight years who are required to be in a child passenger safety device while occupying a motor vehicle from being allowed on any trail within the Hatfield-McCoy Recreation Area; and requiring all persons operating or riding upon an ATV, UTV, or motorcycle to follow the manufacturer’s recommendations for that vehicle relating to age and size limitations for operators and passengers.”

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

A message from the Senate, by

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

Com. Sub. for H. B. 4524, Establishing guidelines for the substitution of certain biological pharmaceuticals.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-12c. Substitution of biological product: Definitions; selection of interchangeable biological products; exceptions; records; labels; manufacturing standards; emergency rules; complaints; and immunity.

(a) As used in this section:

'Biological product' means the same as that term is defined in 42 U.S.C. § 262.

'Brand name' means the proprietary or trade name selected by the manufacturer and placed upon a drug or drug product, its container, label, or wrapping at the time of packaging.

'Interchangeable biological product' means a biological product that the federal Food and Drug Administration has:

(1) Licensed and determined meets the standards for interchangeability pursuant to 42 U.S.C. § 262(k)(4); or

(2) Determined is therapeutically equivalent as set forth in the latest edition of or supplement to the federal Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations.

'Proper name' means the nonproprietary name of a biological product.

'Substitute' means to dispense without the prescriber's express authorization an interchangeable biological product in the place of the drug ordered or prescribed.

(b) Except as limited by subsection (c) and unless instructed otherwise by the patient, a pharmacist who receives a prescription for a specific biological product shall select a less expensive interchangeable biological product unless in the exercise of his or her professional judgment the pharmacist believes that the less expensive drug is not suitable for the particular patient. The pharmacist shall provide notice to the patient or the patient's designee regarding the selection of a less expensive interchangeable biological product.

(c) If, in the professional opinion of the prescriber, it is medically necessary that an equivalent drug product or interchangeable biological product not be selected, the prescriber may so indicate by certifying that the specific brand-name drug product prescribed, or the specific brand-name biological product prescribed, is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the specific brand-name drug product prescribed, or the specific biological product prescribed is medically necessary.

(d) (1) Within five business days following the dispensing of a biological product, the dispensing pharmacist or the pharmacist's designee shall communicate the specific product provided to the patient, including the name of the product and the manufacturer, to the prescriber through any of the following electric records systems:

(A) An interoperable electronic medical records system;

(B) An electronic prescribing technology;

(C) A pharmacy benefit management system; or

(D) A pharmacy record.

(2) Communication through an electronic records system as described in §30-5-12c(d)(1) of this code is presumed to provide notice to the prescriber.

(3) If the pharmacist is unable to communicate pursuant to an electronic records system the pharmacist shall communicate to the prescriber which biological product was dispensed to the patient using facsimile, telephone, electronic transmission, or other prevailing means.

(4) Communication is not required under this subsection when:

(A) There is no Federal Food and Drug Administration approved interchangeable biological product for the product prescribed; or

(B) A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

(e) The pharmacist shall maintain a record of the biological product dispensed for at least two years. Such record shall include the manufacturer and proper name of the interchangeable biological product selected.

(f) All biological products shall be labeled in accordance with the instructions of the practitioner.

(g) Unless the practitioner directs otherwise, the prescription label on all biological products dispensed by the pharmacist shall indicate the proper name using abbreviations, if necessary, and either the name of the manufacturer or packager, whichever is applicable, in the pharmacist's discretion. The same notation will be made on the original prescription retained by the pharmacist.

(h) A pharmacist may not dispense a product under the provisions of this section unless the manufacturer has shown that the biological product has been manufactured with the following minimum good manufacturing standards and practices by:

(1) Labeling products with the name of the original manufacturer and control number;

(2) Maintaining quality control standards equal to or greater than those of the United States Food and Drug Administration;

(3) Marking products with identification code or monogram; and

(4) Labeling products with an expiration date.

(i) The West Virginia Board of Pharmacy shall promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code setting standards for substituted interchangeable biological products, obtaining compliance with the provisions of this section, and enforcing the provisions of this section.

(j) Any person shall have the right to file a complaint with the West Virginia Board of Pharmacy regarding any violation of the provisions of this article. Such complaints shall be investigated by the Board of Pharmacy.

(k) No pharmacist or pharmacy complying with the provisions of this section shall be liable in any way for the dispensing of an interchangeable biological product substituted under the provisions of this section, unless the interchangeable biological product was incorrectly substituted.

(l) In no event where the pharmacist substitutes an interchangeable biological product under the provisions of this section shall the proscribing physician be liable in any action for loss, damage,

injury, or death of any person occasioned by or arising from, the use of the substitute biological product unless the original biological product was incorrectly prescribed.

(m) Failure of a practitioner to specify that a specific brand name is necessary for a particular patient shall not constitute evidence of negligence unless the practitioner had reasonable cause to believe that the health of the patient required the use of a certain product and no other.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4524 - “A Bill to amend the Code of West Virginia, 1931, as amended, by enacting a new section designated as § 30-5-12c relating to establishing guidelines for the substitution of certain biological pharmaceuticals by pharmacists; defining terms; providing for guidelines relating to substitution of interchangeable biological products; establishing communication requirements between the pharmacists and prescriber relating to substitution of interchangeable biological products; requiring maintenance of records relating to biological products dispensed for at least two years; providing for emergency rules; establishing manufacturing standards; clarifying process for complaints; and providing for immunity for certain actions.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 559**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4524) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

H. B. 4626, Relating to West Virginia innovative mine safety technology tax credit act.

A message from the Senate, by

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

H. B. 4627, Relating to providing a limitation on the eminent domain authority of a municipal park board.

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

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 21. BOARD OF PARK AND RECREATION COMMISSION.**§8-21-8. Purchase, lease or condemnation of real property.**

The board is hereby granted the power and authority to acquire in its name or in the name of the city by purchase, lease, or by exercise of the power of eminent domain, or otherwise, such land or lands as it shall determine to be necessary, appropriate, convenient or incidental to the establishment, construction, improvement, extension, development, maintenance or operation of a system of public parks, parkways, playgrounds, athletic fields, stadiums, swimming pools, skating rinks or arenas and other public park and recreational facilities for the city, whether of a like or different nature: Provided, That any such acquisition by the board made by exercise of the power of eminent domain must be approved by a majority vote of the governing body of that municipality. Approval by the governing body must be granted as to each specific parcel or tract of land to be acquired by power of eminent domain.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 560**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4627) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 2, U. S. Marine Corps PFC James Ralph Heeter Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 9, U. S. Air Force Major Neil L. Ferrell Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

Com. Sub. for H. C. R. 13, U. S. Army SGM Bill E. Jeffrey Memorial Road.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 25, U. S. Army SPC David A. Hess Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

Com. Sub. for H. C. R. 30, U. S. Army PFC Victor Allen Mazitis, Jr. Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 35, USMC LCpl George W. Henry, Jr. Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

Com. Sub. for H. C. R. 45, U. S. Air Force Reserves 2nd Lieutenant Richard E. Tyson Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 61, U. S. Army PFC Cornelious Wiley Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 62, Pocahontas County Veterans Memorial Bridge.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, line four, by striking out the words "be named the Pocahontas County Veterans Memorial Bridge" and inserting in lieu thereof the words the "Pocahontas County Veterans Memorial Bridge".

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

H. C. R. 62 - "Requesting the Division of Highways to name bridge number 38-39-21.66 (38A053), locally known as Marlinton City Bridge, carrying WV 39 over the Greenbrier River in Pocahontas County, the "Pocahontas County Veterans Memorial Bridge".

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 65, U. S. Army CPL George Browning Memorial Road.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 68, U. S. Army SGT Douglas Thompson Memorial Road.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, with amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 75, PVT George Howell, Continental Army Memorial Highway.

On motion of Delegate Cowles, the House of Delegates concurred in the following amendment of the resolution by the Senate:

On page two, in the Resolved clause, line one, by striking out the words "PVT George Howell, Continental Army Memorial Highway" and inserting in lieu thereof the words Continental Army PVT George Howell Memorial Highway".

On page two, in the first Further Resolved clause, lines two and three, by striking out the words "PVT George Howell, Continental Army Memorial Highway" and inserting in lieu thereof the words "Continental Army PVT George Howell Memorial Highway".

And,

By amending the title of the resolution to read as follows:

H. C. R. 75 - "Requesting the Division of Highways name WV Route 46, from its intersection with County Route 3 to its intersection with County Route 42/3 in Mineral County the 'Continental Army PVT George Howell Memorial Highway'."

The resolution, as amended by the Senate, was then adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 77, Deputy Sheriff Jesse R. Browning Memorial Road.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 78, U. S. Marine Corps PFC Danny Marshall Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

H. C. R. 88, U. S. Air Force Capt. Clarence Virgil Slack, Jr. Memorial Bridge.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

Com. Sub. for S. B. 275, Relating to tax on purchases of intoxicating liquors.

On motion of Delegate Cowles, the House concurred in the following title amendment by the Senate:

Com. Sub. for S. B. 275 - "A Bill to amend and reenact §11-10-5d of the Code of West Virginia, 1931, as amended; to amend and reenact §60-3-9d of said code; and to amend and reenact §60-3A-21 of said code, all relating to the excise tax on sales of intoxicating liquors and wine; defining terms; providing that tax collected on sales sourced within the corporate limits of a municipality be remitted to the municipality; providing that the tax collected on sales sourced outside the corporate limits of a municipality be remitted to the county; providing rule-making authority; providing sourcing rules for determining whether tax is collected within or outside of the corporate limits of a municipality; permitting counties to inspect and make copies of certain Tax Commissioner records relating to the collection of tax within the county and the municipalities in the county or the remittance of tax to such county or municipalities; and permitting municipalities to inspect and make copies of certain Tax Commissioner records relating to the collection of tax within the municipality and within the county in which the municipality is located, but outside of the corporate limits of another municipality, and the remittance of tax to such municipality and county."

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 561**), and there were—yeas 94, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Caputo, Longstreth and Ward.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 275) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title, as follows:

S. C. R. 23 - "Requesting the Division of Highways name bridge number 23-14-0.05 (23A368), locally known as Rum Creek Connector over Guyandotte River, carrying County Route 14 over Guyandotte River in Logan County, the 'Betty Jo DeLong Memorial Bridge'."

Whereas, Betty Jo Chambers, the daughter of coal miner, Harry Chambers, and Postmaster, Geraldine Lowe, attended Dehue-Chambers Grade School, in Dehue, Logan County, West Virginia; and

Whereas, Betty Jo Chambers was a Golden Horseshoe winner and graduated from Logan High School in Logan County; and

Whereas, Betty Jo Chambers married Don Thomas Delong from Lyburn, West Virginia, and the couple had two children: Donnetta Rainwater, a teacher at Logan Middle School; and Donald Rex Delong, owner of Eastern Petroleum; and

Whereas, Betty Jo Delong grew up with her siblings: Donna Lou Hipshire, Dorothy Young, Grover Chambers, Thelma Willis Eplin, Harry Chambers, Gerri Ball, Cora Tooley, and Alice Price; and

Whereas, Betty Jo Delong was proud of the Chambers' family's long association with the Rum Creek area; and

Whereas, At one time the Chambers family owned property reaching from Rum Creek to Lowe's Mountain; and

Whereas, Betty Jo Delong worked at several jobs in Logan County but later in her career was employed at the Logan County Courthouse, where she worked in the record room and was in charge of the deed books; and

Whereas, Betty Jo Delong is still remembered for updating the county's system of obtaining deeds and land proposals; and

Whereas, Betty Jo Delong worked tirelessly to help members of her community, especially the elderly; and

Whereas, Betty Jo Delong assisted with the visit to Logan County of John F. Kennedy when he was a presidential candidate; and

Whereas, Betty Jo Delong died of cancer at the age of 42; and

Whereas, At the time of her death, all offices of the courthouse were closed out of respect for Betty Jo Delong's service to the many people of Logan County; and

Whereas, It is fitting that an enduring memorial be established in the name of Betty Jo Delong in an area where she and her family have, for so long, been a part of the fabric of the community; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 23-14-0.05 (23A368), locally known as Rum Creek Connector over Guyandotte River, carrying County Route 14 over Guyandotte River in Logan County, the "Betty Jo Delong Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Betty Jo Delong Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (S. C. R. 23) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title, as follows:

S. C. R. 48 - "Requesting the Division of Highways name bridge number 20-77-130.80, NB and SB, (18A157, 18A156), carrying Interstate 77 over County Route 21/28, locally known as CR 21/28 Overpass Bridge in Jackson County, the 'U. S. Army MSG Monty Ray Skeen, Sr., Memorial Bridge'."

Whereas, MSG Monty Ray Skeen, Sr., was born on June 23, 1957, the son of Barbara Jean Scott and Charles Wayne Skeen; and

Whereas, MSG Monty Ray Skeen, Sr., married Regina Mae Skeen and had two children: Monty Ray Skeen, Jr and Shery Ann Zimmermann, and lived in Jackson County; and

Whereas, MSG Monty Ray Skeen, Sr., joined the U. S. Army in 1976 and began serving his country. He attained the rank of Master Sergeant after 20 years of service, including Desert Storm and the Gulf War. While serving, he was awarded the following medals: Two Meritorious Service Medals; four Army Commendation Medals, Southwest Asia Service Medal; three Overseas Service Ribbon, Expert Badge M-16 Rifle; and many others; and

Whereas, In 1997, MSG Monty Ray Skeen, Sr., retired from the Army and worked as a shift supervisor for Rite Aid Distribution Center in Poca, West Virginia, where he worked for 20 years; and

Whereas, MSG Monty Ray Skeen, Sr., passed away suddenly due to onset complications of acute myeloid leukemia on November 4, 2016, at Charleston Area Medical Center, Memorial Hospital; and his family still misses him immensely; and

Whereas, It is fitting that an enduring memorial be established to commemorate MSG Monty Ray Skeen's service to his state and country; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 20-77-130.80, NB and SB, (18A157, 18A156), carrying Interstate 77 over County Route 21/28, locally known as CR 21/28 Overpass Bridge in Jackson County, the "U. S. Army MSG Monty Ray Skeen, Sr., Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U. S. Army MSG Monty Ray Skeen, Sr., Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (S. C. R. 48) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title, as follows:

S. C. R. 49 - "Requesting the Division of Highways name bridge number 22-77-103.66, NB and SB, (20A442, 25A443), locally known as I-77 Surface Drive Overpass, carrying Interstate 77 over Surface Drive CR 119/37 in Kanawha County, the 'U. S. Army PFC Robert 'Bobby' Tate, Jr., Memorial Bridge'."

Whereas, Robert "Bobby" Tate, Jr., was born in Charleston, West Virginia, on February 22, 1949, and was a lifelong resident of the Kanawha Two-Mile area, from a family that has lived in Kanawha County for more than 100 years; and

Whereas, Robert "Bobby" Tate, Jr., attended Bonham Elementary School, Woodrow Wilson Junior High School, and Sissonville High School and was always known as a hard-working young man. When he was not in school, he helped to support his family by working as a stock boy at Pickway Grocery; and

Whereas, Robert "Bobby" Tate, Jr., joined the U. S. Army and began a tour of duty in Vietnam in January 1969 as an Indirect Fire Infantryman in the 196th Infantry Brigade; and

Whereas, PFC Robert "Bobby" Tate, Jr., died in the line of duty due to hostile groundfire on March 20, 1969, and was posthumously recognized with the Purple Heart medal; and

Whereas, PFC Robert "Bobby" Tate, Jr., has been interred in the Lane Cemetery at Eden's Fork in Kanawha County; and

Whereas, It is fitting that a permanent memorial be established to honor the service and sacrifice of PFC Robert "Bobby" Tate, Jr.; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways name bridge number 22-77-103.66, NB and SB, (20A442, 25A443), locally known as I-77 Surface Drive Overpass, carrying Interstate 77 over Surface Drive CR 119/37 in Kanawha County, the "U. S. Army PFC Robert "Bobby" Tate, Jr., Memorial Bridge"; and be it

Further Resolved, That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "U. S. Army PFC Robert "Bobby" Tate, Jr., Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (S. C. R. 49) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title, as follows:

Com. Sub. for S. C. R. 52 - "Requesting the Division of Highways name bridge number 40-64-36.24, EB-WB, (40A067, 40A069), locally known as Cow Creek Road Bridge, carrying Interstate 64 over Cow Creek Road in Putnam County, the 'Deputy Sheriff Jonathan Janey Memorial Bridge'."

Whereas, Jonathan Wayne Janey was born on March 2, 1957, in South Charleston, West Virginia; and

Whereas, Jonathan Wayne Janey was a lifelong resident of Putnam County, West Virginia, and became a deputy in the Putnam County Sheriff's Office in 1980. He dutifully served the people of his community for nine years; and

Whereas, In August 1989, Deputy Jonathan Janey received information that a house located on Cow Creek Road in Putnam County may be targeted for arson and he conducted a stakeout of this residence; and

Whereas, During the night of his stakeout, he saw a man enter the house carrying two jugs and the man spread the contents of the jugs on the floor of the house. The man saw Deputy Jonathan Janey and attempted to flee. Deputy Jonathan Janey apprehended him and managed to put one handcuff on him, but the man spun around and struck Deputy Jonathan Janey on the head with the other portion of the handcuffs. The man grabbed Deputy Jonathan Janey's firearm and shot him twice in the chest. After Deputy Jonathan Janey fell to the ground, the man shot him once more, this time in the head. So ended Deputy Jonathan Janey's final shift shortly after 1:15 a.m. on August 17, 1989. The culprit was later convicted and sentenced to life in prison and has never been paroled; and

Whereas, It is fitting that an enduring memorial be established to commemorate Deputy Sheriff Jonathan Janey and his contributions to his county and state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 40-64-36.24, EB-WB, (40A067, 40A069), locally known as Cow Creek Road Bridge, carrying Interstate 64 over Cow Creek Road in Putnam County, the "Deputy Sheriff Jonathan Janey Memorial Bridge"; and, be it

Further Resolved, That the Division of Highways is hereby requested to make and place signs identifying the bridge as the "Deputy Sheriff Jonathan Janey Memorial Bridge"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (Com. Sub. for S. C. R. 52) to a committee was dispensed with, and it was taken up for immediate consideration and adopted.

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

At the request of Delegate Cowles and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

Mr. Speaker, Mr. Armstead, Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

S. C. R. 14, US Army SPC 4 William L. Amos Memorial Bridge,

And reports the same back with the recommendation that it be adopted.

At the request of Delegate Cowles, and by unanimous consent, the resolution (S.C. R. 14) was taken up for immediate consideration and put upon its adoption.

The resolution (S. C. R. 14) was then adopted.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, and requested the concurrence of the House of Delegates in the passage, of

S. B. 282, Exempting State Conservation Committee from Purchasing Division requirements for contracts related to flood recovery.

Conference Committee Report

Delegate Hanshaw, from the Committee of Conference on matters of disagreement between the two houses, as to

S. B. 282, Exempting State Conservation Committee from Purchasing Division requirements for contracts related to flood recovery,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the House to Engrossed Senate Bill 282, having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses agree to recede from their respective positions as to the amendment of the House of Delegates on page two, section three, line thirty-three, and that both houses further agree to an amendment on page two, section three, line thirty-three after the word "Services:" to read as follows:

And provided further, That the provisions of this subdivision shall not apply to contracts for any natural disaster recovery activities entered into by the West Virginia State Conservation Committee or the West Virginia Conservation Agency.

And,

That both houses recede from their respective positions as to the title of the bill and agree to the same as follows:

S. B. 282 – “A Bill to amend and reenact §5A-3-3 of the Code of West Virginia, 1931, as amended, relating to exempting the State Conservation Committee and the Conservation Agency from the Purchasing Division requirements for contracts related to natural disaster recovery activities and joint funding agreements with the United States Geological Survey.”

Respectfully submitted,

Greg Boso, *Chair*,
Corey Palumbo,
Mark R. Maynard,

*Conferees on the part of the
Senate.*

Roger Hanshaw, *Chair*
George Ambler,
Andrew Byrd,

*Conferees on the part of the
House of Delegates.*

On motion of Delegate Hanshaw, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 562**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 282) passed.

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

Delegate Byrd arose to a point of inquiry regarding the status of **Com. Sub. for H. B. 4345**. Delegate Byrd subsequently asked unanimous consent and, objection being heard, then moved that the message from the Senate be taken up for immediate consideration.

The Speaker replied that the Gentleman's motion was not in order and that, until the message was received by the House of Delegates, it was not before the House to be acted upon.

Delegate Byrd then asked unanimous consent that the message be received.

The Speaker replied that this motion was also out of order.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, of

Com. Sub. for S. B. 313, Waiving occupational fees and licensing requirements for certain low-income individuals, military families, and young workers.

Delegate Cowles moved that the House concur in the following amendment by the Senate:

On page one, section twenty-two, line one, and inserting in lieu thereof the following:

On page one, section twenty-two, line three, by striking out the phrase “This includes individuals” and inserting in lieu thereof the phrase “This means individuals in the local labor market as defined in §21-1C-2 of this code.”

On page one, section twenty-two, line eight, by striking out the word “includes” and inserting in lieu thereof the word “means”.

And,

On page one, section twenty-two, line twelve, by striking out the phrase “This includes applicants” and inserting in lieu thereof the phrase “This means individuals in the local labor market as defined in §21-1C-2 of this code”.

And,

By amending the title of the bill to read as follows:

S. B. 313 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22, relating to waiver of occupational licensing fees for certain individuals; requiring boards and licensing authorities to waive certain occupational licensing fees for low-income individuals, military families, and young workers; defining terms; requiring individuals seeking waiver of occupational licensing fees to apply on a form provided by the board or licensing authority; and granting rule-making authority.”

Delegate Folk demanded the previous question, which demand was sustained.

On this question, “Shall the previous question be put?”, the yeas and nays were taken (**Roll No. 563**), and there were—yeas 58, nays 39, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Adkins, Ambler, Anderson, Atkinson, Brewer, Butler, Campbell, Caputo, Cowles, Criss, Eldridge, A. Evans, Frich, Graves, Harshbarger, Hicks, Iaquina, Isner, Jennings, Kelly, Kessinger, Love, Lynch, Marcum, Martin, C. Miller, Overington, Pethel, Pyles, Rodighiero, Rohrbach, C. Romine, R. Romine, Rowan, Sobonya, Sypolt, Westfall, Zatezalo and Mr. Speaker, Mr. Armstead.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

On motion of Delegate Cowles, the House of Delegates then concurred in the amendment by the Senate.

The question before the House being the passage of the bill, Delegate Folk demanded the previous question, which demand was sustained.

On the question, “Shall the previous question be put?”, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 564**), and there were—yeas 58, nays 39, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Adkins, Ambler, Anderson, Atkinson, Butler, Campbell, Canestraro, Cowles, Criss, Diserio, Eldridge, A. Evans, Ferro, Frich, Graves, Harshbarger, Hicks, Hollen, Iaquinta, Isner, Kelly, Kessinger, Longstreth, Lovejoy, Marcum, Martin, C. Miller, Overington, Pyles, Rodighiero, Rohrbach, C. Romine, R. Romine, Rowan, Sobonya, Sypolt, Westfall, Zatezalo and Mr. Speaker, Mr. Armstead.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 565**), and there were—yeas 90, nays 7, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bates, Fleischauer, Lynch, R. Miller, Pushkin, Robinson and Rowe.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 313) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, of

Com. Sub. for S. B. 446, Creating Agritourism Responsibility Act.

Delegate Cowles moved that the House concur in the following amendment by the Senate:

On page one, section one, line fifteen, after the word “agritourism”, by inserting the word “business”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for S. B. 446 - “A Bill to amend the Code of West Virginia, 1931, by adding thereto a new article, designated §19-36-1, §19-36-2, §19-36-3, §19-36-4, and §19-36-5, all relating to agritourism generally; creating the Agritourism Responsibility Act; making findings; establishing authority and duties of the Commissioner of Agriculture related to agritourism business; authorizing Commissioner of Agriculture, in consultation with the Secretary of Commerce, to promulgate and propose rules; defining terms; establishing duties of agritourism businesses and participants in agritourism activities; immunizing agritourism business, employees, and volunteers associated therewith from certain acts of simple negligence and creating exceptions thereto; requiring notice of certain rights, limitations on liability, and responsibilities of participants in agritourism activities; clarifying that operation of agritourism business does not change status of the facilities and property used for building code and tax purposes; and exempting structures of agritourism business occasionally used for events from building code requirements for entities engaged in such activities on a full-time basis.”

Delegate Folk demanded the previous question, which demand was sustained.

On this question, "Shall the previous question be put?", the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 566**), and there were—yeas 57, nays 39, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Anderson, Bates, Boggs, Brewer, Byrd, Campbell, Canestraro, Caputo, Cowles, Criss, Diserio, Eldridge, E. Evans, Ferro, Fluharty, Frich, Hartman, Hornbuckle, Iaquina, Isner, Kelly, Longstreth, Love, Lovejoy, Lynch, Miley, R. Miller, Moye, Overington, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Rowe, Sponaugle, Williams and Zatezalo.

Absent and Not Voting: Barrett, Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

On motion of Delegate Cowles, the House then concurred in the amendment by the Senate.

The question before the House being the passage of the bill, Delegate Folk demanded the previous question, which demand was sustained and the motion was adopted.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 567**), and there were—yeas 83, nays 14, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bates, Brewer, Byrd, Campbell, Canestraro, E. Evans, Fast, Ferro, Fluharty, Gearheart, Hornbuckle, Miley, Robinson and Rowe.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 446) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with a title amendment, and the passage, as amended, of

Com. Sub. for H. B. 4607, Establishing certain criteria for the restricted operation of drones within State Parks, Forests, and Rail Trails.

Delegate Cowles moved that the House concur in the following amendment by the Senate:

On page four, section two, line eighty-eight, by striking out the word "drones" and inserting in lieu thereof the words "an unmanned aircraft system".

On page four, section two, line eighty-nine, by striking out the word "drone" and inserting in lieu thereof the words "unmanned aircraft system".

On page four, section two, line ninety-one, by striking out the word “drone” and inserting in lieu thereof the words “unmanned aircraft system”.

On page four, section two, line ninety-four, by striking out the word “drone” and inserting in lieu thereof the words “unmanned aircraft system”.

And,

On page four, section two, line ninety-five, by striking out the word “drones” and inserting in lieu thereof the words “an unmanned aircraft system”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4607 - “A Bill to amend and reenact §20-5-2 of the Code of West Virginia, 1931, as amended, relating to the Division of Natural Resources permitting the use of recreational unmanned aircraft systems in state parks, state forests, and on rail trails; requiring persons who intend to operate unmanned aircraft systems to register with the superintendent prior to participating in the use of any unmanned aircraft system; establishing certain criteria for the restricted operation of unmanned aircraft systems within state parks, forests, and rail trails; and clarifying that persons who operate unmanned aircraft systems assume full responsibility and liability.”

Delegate Folk demanded the previous question, which demand was sustained, and the motion was adopted.

On motion of Delegate Cowles, the House of Delegates then concurred in the amendment by the Senate.

The question being on the passage of the bill, Delegate Folk demanded the previous question, which demand was sustained.

On this question, “Shall the previous question be put?”, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 568**), and there were—yeas 65, nays 32, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Brewer, Byrd, Campbell, Canestraro, Caputo, Criss, Diserio, Eldridge, E. Evans, Ferro, Fluharty, Hornbuckle, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Miley, Overington, Pethel, Robinson, Rodighiero, Rohrbach, Rowe, Sobonya, Sponaugle, Thompson, Williams and Zatezalo.

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the motion prevailed.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 569**), and there were—yeas 97, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4607) passed.

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

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect from passage, of

Com. Sub. for S. B. 152, Budget Bill,

S. B. 633, Expiring funds from Insurance Commission Fund and appropriating funds to Consolidated Medical Services Fund,

S. B. 406, Clarifying that ground emergency medical transportation is eligible for Medicare and Medicaid reimbursement,

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 230, Authorizing Department of Commerce promulgate legislative rules,

Com. Sub. for S. B. 271, Creating centralized Shared Services Section of Department of Administration,

S. B. 339, Relating to WV Retirement Health Benefit Trust Fund within PEIA,

Com. Sub. for S. B. 375, Relating to farmers markets,

Com. Sub. for S. B. 401, Requiring specified coverage in health benefit plans for treatment of substance abuse disorders,

Com. Sub. for S. B. 442, Establishing universal forms and deadlines when submitting prior authorization electronically,

And,

Com. Sub. for S. B. 434, Specifying documents not subject to discovery in certain proceedings.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendments of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 438, Relating to debt service on bonds secured by State Excess Lottery Revenue Fund,

Com. Sub. for S. B. 443, Terminating parental rights when certain conditions are met,

Com. Sub. for S. B. 445, Allowing DOH acquire real or personal property for utility accommodation,

And,

Com. Sub. for S. B. 601, Relating to personal income tax,

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the title amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 469, Converting Addiction Treatment Pilot Program to permanent program,

And,

Com. Sub. for S. B. 603, Relating to proceedings for involuntary custody for examination.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect July 1, 2018, of

Com. Sub. for S. B. 501, Relating to accrued benefit of retirees in Deputy Sheriff Retirement System,

And,

Com. Sub. for S. B. 521, Requiring chief executive of municipal law-enforcement agency be certified law-enforcement officer.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had receded from its amendments and passed, a bill of the House of Delegates as follows:

H. B. 2869, Providing for paid leave for certain state officers and employees during a declared state of emergency.

Committee Reports

In accordance with House Rule 68, Delegate Hanshaw, Chair of the Joint Committee on Enrolled Bills, and Delegate Westfall, Vice Chair of the Joint Committee on Enrolled Bills, filed the following reports with the Clerk:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the dates listed, 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:

March 14, 2018

H. B. 4376, Expiring funds to the balance of the Department of Health and Human Resources,

H. B. 4379, Supplementing, amending, decreasing, and increasing items of the existing appropriations to the Department of Transportation,

H. B. 4389, Expiring funds to the Enterprise Resource Planning System Fund,

Com. Sub. for S. B. 152, Budget Bill,

S. B. 385, Decreasing and adding appropriations out of Treasury to DHHR and MAPS,

S. B. 633, Expiring funds from Insurance Commission Fund and appropriating funds to Consolidated Medical Services Fund,

And,

S. B. 634, Adding, increasing, and decreasing appropriations from General Revenue to DHHR.

March 15, 2018

Com. Sub. for H. B. 4016, Relating to combatting waste, fraud, and misuse of public funds through investigations, accountability and transparency,

Com. Sub. for H. B. 4024, Relating generally to direct cremation or direct burial expenses for indigent persons,

Com. Sub. for H. B. 4275, Relating to the law-enforcement authority of the director and officers of the division of protective services,

Com. Sub. for H. B. 4336, Updating the schedule of controlled substances,

Com. Sub. for H. B. 4368, Relating to voluntary assignments of wages by state employees who have been overpaid,

H. B. 4434, Clarifying provisions relating to candidates unaffiliated with a political party as it relates to certificates of announcement,

Com. Sub. for H. B. 4453, Relating to judicial review of contested cases under the West Virginia Department of Health and Human Resources Board of Review,

H. B. 4462, Allowing off duty members and officers of the department of public safety to guard private property,

Com. Sub. for H. B. 4473, Relating to use of state funds for advertising to promote a public official or government office,

Com. Sub. for H. B. 4478, Authorizing public schools to distribute excess food to students,

Com. Sub. for H. B. 4502, Adding the crimes of murder and armed robbery to the list of offenses for which a prosecutor may apply for an order authorizing interception,

H. B. 4529, Relating to oath by municipal official certifying list of delinquent business and occupation taxes,

Com. Sub. for H. B. 4546, Relating to where an application for a marriage license may be made,

Com. Sub. for H. B. 4618, Relating to the authority of the Division of Protective Services,

H. B. 4622, Relating to authorizing legislative rules regarding higher education,

And,

Com. Sub. for S. B. 152, Budget Bill.

March 16, 2018

Com. Sub. for H. B. 2028, Relating to the venue for suits and other actions against the state,

Com. Sub. for H. B. 2464, Relating to disclaimers and exclusions of warranties in consumer transactions for goods,

Com. Sub. for H. B. 3005, Relating to regulation of unmanned aircraft systems,

Com. Sub. for H. B. 4023, Relating to the regulation of dialysis technicians,

H. B. 4025, Permitting reciprocity for licensure as a pharmacy technician,

Com. Sub. for H. B. 4027, Creating an education permit for allopathic physician resident,

Com. Sub. for H. B. 4035, Creating a legislative coalition to study and report to the Legislature on palliative care,

Com. Sub. for H. B. 4042, Redefining school zone to facilitate placement of school zone signs,

Com. Sub. for H. B. 4079, Promulgating administrative rules by various executive or administrative agencies of the state,

H. B. 4178, Permitting certain portions of certified nurse aide training to be provided through distance learning technologies,

H. B. 4183, Relating generally to standardized testing requirements for nonpublic schools,

Com. Sub. for H. B. 4276, Allowing magistrates to grant work release privileges,

Com. Sub. for H. B. 4279, Relating to adult protective services system,

Com. Sub. for H. B. 4400, Relating to the West Virginia Physicians Mutual Insurance Company,

And,

Com. Sub. for H. B. 4509, Relating to the establishment of substance abuse treatment facilities.

March 19, 2018

Com. Sub. for H. B. 2008, Relating to the Dealer Recovery Program,

Com. Sub. for H. B. 2655, Defining and establishing the crime of cyberbullying,

H. B. 2869, Providing for paid leave for certain state officers and employees during a declared state of emergency,

Com. Sub. for H. B. 2982, Relating to allowing draw games winners to remain anonymous,

Com. Sub. for H. B. 3089, Relating to the adoption of instructional resources for use in the public schools,

Com. Sub. for H. B. 4013, Clarifying venue in West Virginia state courts as it applies to nonresidents of the state,

Com. Sub. for H. B. 4036, Increasing the maximum salaries of family case coordinators and secretary-clerks,

Com. Sub. for H. B. 4186, Relating generally to guaranteed asset protection waivers,

H. B. 4626, Relating to West Virginia innovative mine safety technology tax credit act,

H. B. 4628, Relating to authorizing the redirection of amounts collected from certain surcharges and assessments on workers' compensation insurance policies for periods prior to January 1, 2019,

Com. Sub. for S. B. 36, Relating generally to DNA testing,

S. B. 242, Requiring health insurance providers provide coverage for certain Lyme disease treatment,

Com. Sub. for S. B. 290, Relating to DEP standards of water quality and effluent limitations,

S. B. 322, Relating to employees of Department of Agriculture,

Com. Sub. for S. B. 359, Authorizing Supreme Court establish curricula for mental hygiene commissioners and certain magistrates,

Com. Sub. for S. B. 465, Relating to mandated reporting of child abuse and neglect,

S. B. 479, Establishing local government monitoring by Auditor,

Com. Sub. for S. B. 493, Relating to guaranty associations,

Com. Sub. for S. B. 499, Requiring one year of certain approved postgraduate clinical training for persons with foreign medical degrees,

Com. Sub. for S. B. 500, Authorizing City of White Sulphur Springs to expend principal and interest from special interest-bearing fund,

Com. Sub. for S. B. 510, Designating hospitals for stroke treatment,

Com. Sub. for S. B. 522, Relating generally to Administrative Procedures Act,

Com. Sub. for S. B. 543, Relating to confidentiality of medical records,

Com. Sub. for S. B. 555, Providing immunity from civil liability for qualified directors of certain governmental and nonprofit entities,

Com. Sub. for S. B. 574, Relating to crime of misrepresentation of military honors,

Com. Sub. for S. B. 575, Approving additional beds for intermediate care facilities,

S. B. 576, Relating to Patient Injury Compensation Fund,

S. B. 584, Finding certain claims against state to be moral obligations of state,

Com. Sub. for S. B. 589, Relating to issuance of personalized plates for antique motor vehicles,

And,

Com. Sub. for S. B. 616, Establishing maximum gross weight for certain wood-bearing trucks.

March 20, 2018

S. B. 298, Authorizing county assessors make separate entries in landbooks when real property is partly used for exempt and partly for nonexempt purposes,

S. B. 299, Relating to mandatory insurance coverage for medical foods for amino acid-based formulas,

Com. Sub. for S. B. 347, Relating to operation of motorboats,

Com. Sub. for S. B. 456, Physical Therapy Licensure Compact Act,

Com. Sub. for S. B. 461, Extending time to file petition for motor fuel excise tax refund,

Com. Sub. for S. B. 475, Industrial Hemp Development Act,

Com. Sub. for S. B. 590, Providing special license plate for curing childhood cancer,

S. B. 612, Relating to sale of municipal property,

S. B. 626, Relating generally to coal mining,

And,

S. B. 631, Relating generally to one-call system.

March 21, 2018

Com. Sub. for H. B. 2799, Prohibiting the superintendent of schools from requiring a physical examination to be included to the application for a minor's work permit,

Com. Sub. for H. B. 2995, Permitting certain animal euthanasia technicians who have been certified by other states be certified animal euthanasia technicians in West Virginia,

Com. Sub. for H. B. 4001, Relating to eligibility and fraud requirements for public assistance,

Com. Sub. for H. B. 4002, Providing that all delegates shall be elected from one hundred single districts following the United States Census in 2020,

Com. Sub. for H. B. 4006, Revising the processes through which professional development is delivered for those who provide public education,

Com. Sub. for H. B. 4009, State Settlement and Recovered Funds Accountability Act,

Com. Sub. for H. B. 4150, Prohibiting telecommunications and IP-enabled voice services from displaying the name or telephone number of the recipient,

Com. Sub. for H. B. 4156, Establishing the qualifications of full and part time nursing school faculty members,

Com. Sub. for H. B. 4157, Eliminating the refundable exemption for road construction contractors,

Com. Sub. for H. B. 4187, Business Liability Protection Act,

Com. Sub. for H. B. 4214, Increasing penalties for unlawfully possessing or digging ginseng,

Com. Sub. for H. B. 4217, Permitting an attending physician to obtain a patient's autopsy report,

Com. Sub. for H. B. 4251, Permitting employees of baccalaureate institutions and universities outside of this state to be appointed to board of governors,

Com. Sub. for H. B. 4270, Providing for the timely payment of moneys owed from oil and natural gas production,

Com. Sub. for H. B. 4320, Limiting the ability of an agent under a power of attorney to take self-benefiting actions,

H. B. 4324, Relating to the employment of individuals by municipal paid fire departments under civil service,

Com. Sub. for H. B. 4338, Relating to the powers and authority of the Divisions of Administrative Services, and Corrections and Rehabilitation of the Department of Military Affairs and Public Safety,

Com. Sub. for H. B. 4350, Eliminating the regulation of upholstery,

Com. Sub. for H. B. 4394, Relating to forest fires,

Com. Sub. for H. B. 4401, Relating to the registration of business,

Com. Sub. for H. B. 4424, Providing that the Ethics Act applies to certain persons providing services without pay to state elected officials,

Com. Sub. for H. B. 4447, Providing for a uniform and efficient system of broadband conduit installation,

H. B. 4488, Relating to the Hatfield-McCoy Recreation Authority,

Com. Sub. for H. B. 4522, Allowing certain tax information to be shared with the Director of Purchasing Division, Department of Administration, and State Auditor,

Com. Sub. for H. B. 4524, Establishing guidelines for the substitution of certain biological pharmaceuticals,

Com. Sub. for H. B. 4571, Relating to the final day of filing announcements of candidates for a political office,

Com. Sub. for H. B. 4603, Providing immunity from civil liability to facilities and employees providing crisis stabilization,

Com. Sub. for H. B. 4607, Establishing certain criteria for the restricted operation of drones within State Parks, Forests, and Rail Trails,

H. B. 4627, Relating to providing a limitation on the eminent domain authority of a municipal park board,

H. B. 4629, Relating to broadband enhancement and expansion policies generally,

Com. Sub. for S. B. 10, Relating generally to PSC jurisdiction,

Com. Sub. for S. B. 46, Permitting pharmacists to inform customers of lower-cost alternative drugs,

Com. Sub. for S. B. 51, Relating to domestic relations,

Com. Sub. for S. B. 82, Including rebuttable presumptions in certain cases for firefighters with regard to workers' compensation,

Com. Sub. for S. B. 141, Expanding county assessment and collection of head tax on breeding cows,

Com. Sub. for S. B. 230, Authorizing Department of Commerce promulgate legislative rules,

Com. Sub. for S. B. 244, Specifying conditions for unlawful possession of firearm at school-sponsored activities,

Com. Sub. for S. B. 261, Transferring certain powers and programs of WV Affordable Housing Trust Fund to WV Housing Development Fund,

Com. Sub. for S. B. 271, Creating centralized Shared Services Section of Department of Administration,

Com. Sub. for S. B. 273, Reducing use of certain prescription drugs,

Com. Sub. for S. B. 275, Relating to tax on purchases of intoxicating liquors,

S. B. 282, Exempting State Conservation Committee from Purchasing Division requirements for contracts related to flood recovery,

Com. Sub. for S. B. 283, Relating generally to procurement by state agencies,

Com. Sub. for S. B. 313, Waiving occupational fees and licensing requirements for certain low-income individuals, military families, and young workers,

Com. Sub. for S. B. 336, Providing certain DMV applicants ability to contribute to WV Department of Veterans Assistance,

S. B. 339, Relating to WV Retirement Health Benefit Trust Fund within PEIA,

Com. Sub. for S. B. 375, Relating to farmers markets,

Com. Sub. for S. B. 392, Reconfiguring membership of Emergency Medical Services Advisory Council,

Com. Sub. for S. B. 401, Requiring specified coverage in health benefit plans for treatment of substance abuse disorders,

S. B. 406, Clarifying that ground emergency medical transportation is eligible for Medicare and Medicaid reimbursement,

S. B. 407, Licensing and approval of child care programs,

Com. Sub. for S. B. 408, Licensing of nursing homes and assisted living residences,

S. B. 411, Removing Commissioner of Bureau for Public Health from State Board of Sanitarians,

Com. Sub. for S. B. 446, Creating Agritourism Responsibility Act,

S. B. 425, Removing sunset dates which members of policemen's or firemen's pension fund elect to participate in deferred retirement option plan,

Com. Sub. for S. B. 434, Specifying documents not subject to discovery in certain proceedings,

Com. Sub. for S. B. 438, Relating to debt service on bonds secured by State Excess Lottery Revenue Fund,

Com. Sub. for S. B. 442, Establishing universal forms and deadlines when submitting prior authorization electronically,

Com. Sub. for S. B. 443, Terminating parental rights when certain conditions are met,

Com. Sub. for S. B. 445, Allowing DOH acquire real or personal property for utility accommodation,

S. B. 463, Establishing group to examine benefits and need of transferring milk rules and regulations from DHHR to Agriculture,

S. B. 468, Changing date and recipients for submission of Auditor's annual report,

Com. Sub. for S. B. 469, Converting Addiction Treatment Pilot Program to permanent program,

Com. Sub. for S. B. 495, Designating specific insurance coverages exempt from rate filing requirements,

S. B. 498, Creating two-year pilot program allowing all-terrain or recreational vehicles in Cabwaylingo State Forest,

Com. Sub. for S. B. 501, Relating to accrued benefit of retirees in Deputy Sheriff Retirement System,

Com. Sub. for S. B. 506, Deregulating persons who perform work on heating, ventilating, and cooling systems,

Com. Sub. for S. B. 521, Requiring chief executive of municipal law-enforcement agency be certified law-enforcement officer,

S. B. 525, Relating to certification for emergency medical training - mining,

Com. Sub. for S. B. 528, Providing additional circuit judge for nineteenth judicial circuit,

Com. Sub. for S. B. 548, Authorizing county commissions to pay election officials,

Com. Sub. for S. B. 582, Allowing candidate for political party executive committee serve as election official,

S. B. 585, Altering boundary line between Doddridge and Harrison counties,

Com. Sub. for S. B. 603, Relating to proceedings for involuntary custody for examination,

Com. Sub. for S. B. 625, Creating WV Volunteer Fire and Rescue Act of 2018,

And,

S. B. 635, Relating to 2019 salary adjustment for employees of DHHR.

March 23, 2017

Com. Sub. for H. B. 4166, Establishing a special revenue fund to be known as the "Capital Improvements Fund — Department of Agriculture Facilities".

Messages from the Executive

Actions of His Excellency, the Governor, on other bills are indicated in communications, addressed to the Secretary of State, as follows:

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 15, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
Building I, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled House Bill 4376

Dear Secretary Warner:

Pursuant to the provisions of section fifty-one, article VI of the Constitution of West Virginia, I hereby return Enrolled Committee Substitute for House Bill 4376, passed March 8, 2018, approved with the following objections:

My first objection to the Bill is contained in the title of the bill, on page 1, lines 1-16, which state:

“AN ACT expiring funds to the balance of the Department of Health and Human Resources, Division of Health — Medical Cannabis Program Fund, fund 5420, fiscal year 2018, organization 0506, in the amount of \$2,953,990 from the Department of Health and Human Resource, Division of Health - The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2018, to the Department of Health and Human Resource, Division of Health - The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, to the Department of Health and Human Resources, Division of Health - Laboratory Services Fund, fund 5163, fiscal year 2018, organization 0506, to the Department of Health and Human Resource, Division of Health - Medical Cannabis Program Fund, fund 5420, fiscal year 2018, organization 0506, and to the Department of Health and Human Resources, Division of Human Services - Health Care Provider Tax, Medicaid State Share Fund, fund 5090, fiscal year 2018, organization 0511, by supplementing and amending chapter one, Acts of the Legislature, 1st extraordinary session, 2017, known as the budget bill.”

Included in this supplemental bill is an expiration to the Medical Cannabis Program Fund to fund startup costs associated with the Medical Cannabis Program. Since the program's inception, the State Treasurer has stated his objection to processing funds in the State Treasury related to cannabis due to federal banking regulations. To alleviate any of those concerns, I am going to veto this expiration to the Medical Cannabis Program Fund and search for a solution that will resolve this issue and allow the program to be implemented as mandated in the statute.

Therefore, on page 1, line 3, I am reducing the amount in the language by \$2,953,990 to \$0.

My second objection to the Bill is contained on page 2, lines 4-9, which state:

“That the balance of funds available for expenditure in the fiscal year ending June 30, 2018, to the Department of Health and Human Resources, Division of Health - The Vital Statistics Account, fund 5144, fiscal year 2018, organization 0506, be decreased by expiring the amount of \$2,953,330 to the Department of Health and Human Resources, Division of Health — Medical Cannabis Program Fund, fund 5420, fiscal year 2018, organization 0506, to be available for expenditure during the fiscal year ending June 30, 2018.”

Having deleted language in the title of the Bill in objection one above, I am reducing the amount in the language on page 2, line 7 by \$2,953,330 to \$0.

For the reasons stated herein, I have approved, subject to the above objections, Enrolled Committee Substitute for House Bill 2801.

Sincerely,

Jim Justice
Governor

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 15, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
Building 1, Suite 157-K
State Capitol
Charleston, West Virginia 25305

RE: Enrolled Committee Substitute for Senate Bill No. 152

Dear President Warner:

Pursuant to the provisions of section fifty-one, article VI of the Constitution of West Virginia, I hereby return Enrolled Committee Substitute for Senate Bill No. 152, passed March 10, 2018, approved with the following objections:

My first objection to the Bill is contained in Item 58, page 46, lines 24-29, which state:

“From the above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500), together with available funds from the Division of Health – Hospital Services Revenue Account (fund 5156, appropriation 33500), on July 1, 2018, the sum of \$160,000 shall be transferred to the Department of Agriculture – Land Division – Farm Operating Fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.”

The Department of Agriculture has requested this mandate for our health institutions to purchase food through them be eliminated due to the burden it places on the department in sourcing appropriate food products for these institutions. Therefore, I am reducing the amount in the language on page 46, line 26, by \$160,000 to \$0.

My second objection to the Bill is contained in Item 68, pages 55 and 56, lines 44-48, which state:

“From the above appropriation to Unclassified (fund 0450, appropriation 09900), on July 1, 2018, the sum of \$300,000 shall be transferred to the Department of Agriculture – Land Division – Farm Operating Fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.”

Provisions in HB 4338 that reorganized the state correctional agencies into a Division of Corrections and Rehabilitation eliminated the requirement that correctional institutions buy food products from the Department of Agriculture. Therefore, I am reducing the amount in the language on page 55, line 45, by \$300,000 to \$0.

My third objection to the Bill is contained in Item 72, page 59, lines 21-24, which state:

“From the above appropriations, on July 1, 2018, the sum of \$50,000 shall be transferred to the Department of Agriculture – Land Division – Farm Operating Fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.”

Provisions in HB 4338 that reorganized the state correctional agencies into a Division of Corrections and Rehabilitation eliminated the requirement that correctional institutions buy food products from the Department of Agriculture. Therefore, I am reducing the amount in the language on page 59, line 21, by \$50,000 to \$0.

My fourth objection to the Bill is contained in Item 202, pages 110 and 111, lines 16-21, which state:

“From the above appropriation to Institutional Facilities Operations, together with available funds from the Consolidated Medical Services Fund (fund 0525, appropriation 33500) on July 1, 2018, the sum of \$160,000 shall be transferred to the Department of Agriculture – Land Division – Farm Operating Fund (1412) as advance payment for the purchase of food products; actual payments for such purchases shall not be required until such credits have been completely expended.”

The Department of Agriculture has requested this mandate for our health institutions to purchase food through them be eliminated due to the burden it places on the department in sourcing appropriate food products for these institutions. Therefore, I am reducing the amount in the language on page 110, line 18, by \$160,000 to \$0.

For the reasons stated herein, I have approved, subject to the above objections, Enrolled Committee Substitute for Senate Bill No. 152.

Sincerely,

Jim Justice
Governor

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305
March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for the Committee Substitute for Senate Bill 141

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for the Committee Substitute for Senate Bill 141.

Enrolled Committee Substitute for the Committee Substitute for Senate Bill 141 amends and reenacts current West Virginia Code §7-7-6e. The current law requires the assessment and collection of \$1 on all breeding age sheep and goats to participate in the Coyote Control Program. It creates a new fee for cow owners. It could be the first step toward making the fee for cow owners mandatory.

For these reasons, I must disapprove and return Enrolled Committee Substitute for the Committee Substitute for Senate Bill 141.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305
March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for Senate Bill 313

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 313.

Enrolled Committee Substitute for Senate Bill 313 exempts all licensure fees for three groups of individuals: low income individuals, military families and young workers (ages 18 - 25). This exemption applies to all licensing boards included in WV Code Chapter 30 and apply to all licensing fees for the board, as long as the applicant continues to meet the exemption.

Although the intentions behind this bill were noble, the implementation of the exemptions are overly broad by incorporating an exemption for a group of young workers (age 18 - 25), who are applying for a professional license and beginning what could be a very lucrative career. Allowing an exemption for this group does not serve the laudable goals that the bill intended.

In addition, the fees that would be waived by this bill make up a substantial component of their annual budget, which is used for the oversight, investigation and discipline of the license holders. If a board's budget is reduced by the waiving of these licensing fees, it will damage the public safety efforts that the board is charged with instituting.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 313.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305
March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Senate Bill 322

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 322.

Enrolled Senate Bill 322 amends and reenacts current West Virginia Code §19-1-3. The bill authorized the Department of Agriculture's Commissioner of Agriculture to employ a general counsel and other such personnel necessary to perform the duties of the office.

The Attorney General's office currently provides legal services to the Department of Agriculture. The bill would provide for an expansion of government within the Department of Agriculture by authorizing the employment of a general counsel and other support staff.

For this reason, I must disapprove and return Enrolled Senate Bill 322.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 28, 2018

Veto Message

The Honorable Mac Warner

Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Senate Bill 343

Dear Secretary of State Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 343.

The provisions of this bill conflict with W. Va. Code §11A-3-56. The bill increases, from \$200 to \$500, the maximum amount that a county sheriff is to pay the purchaser of a redeemed tax delinquent property for additional expenses incurred in preparing the list for the notice to redeem and an incidental title examination, W.Va. Code §11A-3-58 requires a sheriff to pay the purchaser for such expenses once the land has been redeemed pursuant to §11A-3-56 and the deputy commissioner has delivered the redemption money to the sheriff. The bill does not amend W.Va. Code §11A-3-56, which requires a person redeeming property to pay the deputy commissioner up to \$200 for additional expenses incurred in preparing this list for the notice to redeem and any incidental title examination. Therefore, enactment of this bill could result in county sheriffs paying more to purchasers than is received from owners of redeemed property. For this reason, I disapprove and return Enrolled Senate Bill 343.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for Senate Bill 392

Dear Secretary of State Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 392.

The bill is technically flawed because its title is defective. See *State ex rel. Davis v. Oakley*, 156 W. Va. 154, 191 S.E.2d 610 (1972) (requiring bill title to provide notice of bill's contents). The bill attempts to modify the membership of the Emergency Medical Services Advisory Council. The bill's title provides that it relates to "reconfiguring and increasing the membership of the council by *adding three nonvoting citizen members* and requiring three members to be representative of professional groups." (Emphasis added). However, the bill does not add any additional citizen members to the council. W.Va. Code §16C-4C-5 currently requires that the council include three persons to represent the general public. In regard to citizen members, the bill actually strips away the voting rights of the three members currently required to represent the general public. In addition to this technical defect, I also disapprove of the policy eliminating the voting privileges of council members whose sole responsibility is to represent the interests of the general public. For these reasons, I disapprove and return Enrolled Committee Substitute for Senate Bill No. 392.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for Senate Bill 434

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 434.

Enrolled Committee Substitute for Senate Bill 434 makes confidential and not subject to disclosure documents regarding the hiring, discipline, terminating, credentialing, issuing and renewing of staff privileges, as well as alleged misconduct of a health care provider. It further mandates nondisclosure for performance improvement, review, recommendation and audit documents regarding the performance of health care professionals.

To shield such documents from disclosure does not allow patients harmed in the course of their treatment, to fully seek redress of their damages and be made whole. It puts patients at a disadvantage as they pursue their claims. The bill is bad public policy for West Virginia because it does not promote patient rights and public safety.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 434.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for Senate Bill 442

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill No. 442.

Enrolled Committee Substitute for Senate Bill No. 442 requires the Public Employees Insurance Agency (PEIA), managed care organizations (MCOs) and private commercial insurance companies to develop forms and accept electronic prior authorization requests by specific deadlines. Most notably, the legislation purports to void existing contractual agreements governing the prior authorization process by declaring them “unenforceable”.

Enrolled Community Substitute for Senate Bill 442 is concerning because it voids current contracts governing prior authorization response times would be ruled as unconstitutional. WV Code §33-4-22(i) of the bill violates the Contracts Clause of both the Constitutions of the United States (U.S. Const. Art. I, § 10, cl. 1) and of West Virginia (W.Va. Const. Art. III, § 3, cl. 4). Both the Supreme Court of Appeals of West Virginia and the United States Supreme Court have held state laws unconstitutional where a state statute “impairs the obligation of an existing contract” Devon Corp. v. Miller, 167 W. Va. 362, 280 S.E.2d. 108 (1981), cert. denied, 455 U.S. 933, 102 S. Ct. 1622, 7 L. Ed. 2d 855 (1982). If this provision would become law, insurance companies, with current contracts that govern response times for prior authorizations, would have no alternative but to unilaterally alter these contracts based on the requirements of this bill. This legislative interference with current contracts would be unconstitutional.

For these reasons, I must disapprove and return Enrolled Committee Substitute for Senate Bill No. 442.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 4009

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 4009.

Enrolled Committee Substitute for House Bill 4009 requires the award or recovery of funds or assets, because of lawsuit or settlement, to the state of any kind be deposited in the General Revenue Fund. Funds or assets collected would be required to be dispersed only through a legislative appropriation which would significantly delay any implementation of correcting the problem or redress of the damages awarded.

Although this bill was intended to disallow unfettered use of an officeholder's discretionary settlement funds, its application to the Executive Branch is ill conceived and does not take into consideration the practical effect on an agency when actual monetary damages are incurred because of a breach of contract. For example, if the roof on a state building is being repaired, is damaged during performance and there is a failed completion of the initial contractor's work, the state agency may have to bring an action against the contract for the damages. In this instance, the state agency may be required to hire another contract to repair the damages and complete the work, causing the agency to incur substantial additional damages. The agency would be required to recover by court action, then the damages received for the roof are then deposited to the General Fund. Under this bill, only in the event if the Legislature chose to re-appropriate, would the agency recover for its loss.

Additionally, when the recovery of settlement funds are damages because of a fraud investigation against a vendor or constituent, to reallocate the money to the General Fund impedes the purpose of the state's litigation against a fraudulent vendor and limits the agency's ability to complete the contract.

Also, the bill does not allow for the return of any administrative costs on behalf of the state agency in a damage award to the state agency involved in the litigation or prosecution of the case. However, the bill does specifically to the Attorney General to recover those costs. The lack of administrative costs contemplated in this bill could discourage state agencies from bring lawsuits or assisting in the prosecution of cases in the future.

Finally, to require that any damages awarded to a state agency be deposited in the General Revenue Fund and then be re-appropriated through the legislative process would significantly delay

the timely operation of state contracts and perhaps result in more damages, especially in instances where mitigation of damages is required.

I look forward to the opportunity to address this important issue with the WV Legislature, however, for these reasons, I must disapprove and return Enrolled Committee Substitute for House Bill No. 4009.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 4166

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 4166.

Enrolled Committee Substitute for House Bill No. 4166 creates a new West Virginia Code §19-1-4e and amends and reenacts West Virginia Code §19-12A-6a. The new section establishes a new Capital Improvements Fund for Department of Agriculture facilities that is not needed. The Department of Agriculture construction and improvements can be funded by annual appropriations through the regular budget process.

For these reasons, I must disapprove and return Enrolled Committee Substitute for House Bill No. 4166.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 4199

Dear Secretary of State Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 4199. The provisions of this bill would allow authorized medication assistive personnel, instead of certified nurses, to dispense medication to nursing home residents. Nursing home residents are among our most vulnerable citizens and deserve the highest level of professional care. Lessening the professional standards for the those caring for nursing home residents would inevitably result in diminished care. For this reason, I disapprove and return Enrolled Committee Substitute for House Bill 4199.

Sincerely,

Jim Justice,
Governor.

State of West Virginia
Office of the Governor
1900 Kanawha Blvd., East
Charleston, WV 25305

March 28, 2018

Veto Message

The Honorable Mac Warner
Secretary of State
State of West Virginia
Building 1, Suite 157-K
State Capitol
Charleston, WV 25305

Re: Enrolled Committee Substitute for House Bill 4392

Dear Secretary Warner:

Pursuant to the provisions of Section Fourteen, Article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for House Bill No. 4392 for technical reasons.

Enrolled Committee Substitute for House Bill 4392 contains a significant technical flaw that inadvertently creates an incorrect burden of proof that the allocation agreed to by the parties was

proper on the WV Department of Health and Human Resources. This technical error would require that the WVDHHR take a contrary legal position than it should be taking, undercutting the Department's case and causing confusion. This technical error is sufficient to require a technical veto.

For these reasons, I must disapprove and return Enrolled Committee Substitute for House Bill No. 4392.

Sincerely,

Jim Justice,
Governor.

Subsequent to the adjournment of the session, communications were received from His Excellency, the Governor, advising that on March 20, 2018, he approved **Com. Sub. for H. B. 2008, Com. Sub. for H. B. 2483, Com. Sub. for H. B. 2890, Com. Sub. for H. B. 4022, H. B. 4025, Com. Sub. for H. B. 4036, Com. Sub. for H. B. 4079, Com. Sub. for H. B. 4138, Com. Sub. for H. B. 4400, H. B. 4410, H. B. 4436, Com. Sub. for H. B. 4444, H. B. 4621, H. B. 4622, H. B. 4626, Com. Sub. for S. B. 37, S. B. 47, Com. Sub. for S. B. 110, Com. Sub. for S. B. 133, Com. Sub. for S. B. 134, S. B. 143, Com. Sub. for S. B. 146, Com. Sub. for S. B. 181, S. B. 242, Com. Sub. for S. B. 307, Com. Sub. for S. B. 319, Com. Sub. for S. B. 327, S. B. 338, S. B. 346, Com. Sub. for S. B. 348, S. B. 350, S. B. 351, Com. Sub. for S. B. 359, S. B. 364, S. B. 365, Com. Sub. for S. B. 395, S. B. 427, S. B. 444, S. B. 464, Com. Sub. for S. B. 522 and S. B. 584;** on March 21, 2018, he approved **Com. Sub. for H. B. 2028, Com. Sub. for H. B. 4002, Com. Sub. for H. B. 4156, Com. Sub. for H. B. 4187, Com. Sub. for H. B. 4338, H. B. 4488, Com. Sub. for S. B. 46, Com. Sub. for S. B. 230, Com. Sub. for S. B. 261, Com. Sub. for S. B. 271, Com. Sub. for S. B. 273, Com. Sub. for S. B. 336, Com. Sub. for S. B. 397, S. B. 411, Com. Sub. for S. B. 451, S. B. 525 and S. B. 635;** on March 22, 2018, he approved **Com. Sub. for H. B. 2693, Com. Sub. for H. B. 2696, Com. Sub. for H. B. 2799, H. B. 2869, Com. Sub. for H. B. 2983, Com. Sub. for H. B. 3104, Com. Sub. for H. B. 4027, Com. Sub. for H. B. 4035, Com. Sub. for H. B. 4042, H. B. 4183, Com. Sub. for H. B. 4238, Com. Sub. for H. B. 4251, H. B. 4285, Com. Sub. for H. B. 4343, Com. Sub. for H. B. 4368, Com. Sub. for H. B. 4394, H. B. 4433, H. B. 4434, H. B. 4462, H. B. 4486, Com. Sub. for H. B. 4522, Com. Sub. for H. B. 4619, H. B. 4627, H. B. 4628, Com. Sub. for S. B. 51, S. B. 298, S. B. 339, Com. Sub. for S. B. 347, Com. Sub. for S. B. 438, Com. Sub. for S. B. 461, S. B. 539, S. B. 576 and Com. Sub. for S. B. 616;** on March 27, 2018, he approved **Com. Sub. for H. B. 2464, Com. Sub. for H. B. 2654, Com. Sub. for H. B. 2655, Com. Sub. for H. B. 2694, Com. Sub. for H. B. 2843, Com. Sub. for H. B. 2916, Com. Sub. for H. B. 2982, Com. Sub. for H. B. 3005, Com. Sub. for H. B. 3089, Com. Sub. for H. B. 4001, Com. Sub. for H. B. 4013, Com. Sub. for H. B. 4015, Com. Sub. for H. B. 4016, Com. Sub. for H. B. 4023, Com. Sub. for H. B. 4024, Com. Sub. for H. B. 4150, Com. Sub. for H. B. 4169, Com. Sub. for H. B. 4175, H. B. 4178, Com. Sub. for H. B. 4180, Com. Sub. for H. B. 4207, Com. Sub. for H. B. 4214, Com. Sub. for H. B. 4230, Com. Sub. for H. B. 4233, Com. Sub. for H. B. 4236, Com. Sub. for H. B. 4270, Com. Sub. for H. B. 4275, Com. Sub. for H. B. 4276, Com. Sub. for H. B. 4279, Com. Sub. for H. B. 4289, Com. Sub. for H. B. 4320, H. B. 4324, H. B. 4332, Com. Sub. for H. B. 4336, Com. Sub. for H. B. 4347, Com. Sub. for H. B. 4350, Com. Sub. for H. B. 4401, H. B. 4402, H. B. 4422, Com. Sub. for H. B. 4424, Com. Sub. for H. B. 4447, Com. Sub. for H. B. 4453, Com. Sub. for H. B. 4473, Com. Sub. for H. B. 4478, Com. Sub. for H. B. 4502, Com. Sub. for H. B. 4509, Com. Sub. for H. B. 4524, H. B. 4529, Com. Sub. for H. B. 4546, Com. Sub. for H. B. 4571, Com. Sub. for H. B. 4603, Com. Sub. for H. B. 4607, Com. Sub. for H. B. 4618, H. B. 4624, H. B. 4629, Com. Sub. for S. B. 10, Com. Sub. for S. B. 36, Com. Sub. for S. B. 73, Com. Sub. for S. B. 82, Com. Sub. for S. B. 102, Com. Sub. for S. B. 244, Com. Sub. for S. B. 272, Com. Sub. for S. B. 275, S. B. 282, Com. Sub. for S. B. 283, Com. Sub. for S. B. 290, S. B. 299, Com. Sub. for S. B. 375, Com. Sub. for S. B. 401, Com. Sub. for S. B. 404, S. B. 406, S. B. 407, Com. Sub. for S. B. 408, Com. Sub. for S. B. 412, S. B. 425, S. B. 441, Com. Sub. for S. B. 443, Com. Sub. for S. B. 445, Com. Sub. for S. B. 446,**

Com. Sub. for S. B. 456, S. B. 463, Com. Sub. for S. B. 475, S. B. 479, Com. Sub. for S. B. 465, S. B. 468, Com. Sub. for S. B. 469, Com. Sub. for S. B. 493, Com. Sub. for S. B. 495, S. B. 498, Com. Sub. for S. B. 499, Com. Sub. for S. B. 501, Com. Sub. for S. B. 506, Com. Sub. for S. B. 510, Com. Sub. for S. B. 521, Com. Sub. for S. B. 528, Com. Sub. for S. B. 543, Com. Sub. for S. B. 548, Com. Sub. for S. B. 555, Com. Sub. for S. B. 561, Com. Sub. for S. B. 574, Com. Sub. for S. B. 575, Com. Sub. for S. B. 582, S. B. 585, Com. Sub. for S. B. 589, Com. Sub. for S. B. 590, Com. Sub. for S. B. 603, S. B. 612, Com. Sub. for S. B. 625, S. B. 626 and S. B. 631; on March 28, 2018, he approved **Com. Sub. for H. B. 4006.**

The following bills became law with the signature of the Governor:

Com. Sub. for S. B. 415, Permitting wagering on certain professional or collegiate sports events authorized as WV Lottery sports wagering activities,

Com. Sub. for S. B. 500, Authorizing City of White Sulphur Springs to expend principal and interest from special interest-bearing fund,

Com. Sub. for H. B. 3004, Relating to filling vacancies in certain offices,

And,

Com. Sub. for H. B. 4186, Relating generally to guaranteed asset protection waivers.

Miscellaneous Business

Delegate E. Evans announced that he was absent on today when the vote was taken on Com. Sub. for H. B. 2799 (Roll No. 501), and that had he been present, he would have voted "Yea" thereon.

Delegate Fleischauer announced that she was absent on today when the vote was taken on Com. Sub. for H. B. 4001 (Roll No. 552), and that had she been present, she would have voted "Nay" thereon.

Delegates Nelson, Westfall and White noted to the Clerk that they were absent on today when the vote was taken on Roll No. 534, and that had they been present, they would have voted "Yea" thereon.

Delegates Nelson and White noted to the Clerk that they were absent on today when the vote was taken on Roll No. 535, and that had they been present, they would have voted "Yea" thereon.

Delegate Caputo submitted a card to the Clerk requesting to be recorded in the Journal as voting against the adoption of S. C. R. 54 and S. C. R. 55.

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

- Delegate Hornbuckle regarding Marshall University
- All Delegate farewell speeches

On motion of Delegate Overington, the Speaker was authorized to appoint a committee of three to notify the Senate that the House of Delegates had completed the business of this Second Regular Session of the 83rd Legislature and was ready to adjourn *sine die*.

Whereupon,

The Speaker appointed as members of said committee the following:

Delegates C. Miller, Hamilton and Canestraro.

On motion of Delegate Overington, the Speaker was authorized to appoint a committee of three on the part of the House of Delegates, to join with a similar committee of the Senate, to inform His Excellency, the Governor, that the Legislature was ready to adjourn *sine die*.

The Speaker appointed as members of such committee the following:

Delegates Kelly, Blair and Moye.

The hour of midnight having arrived, on motion of Delegate Overington, the House of Delegates adjourned *sine die*.



We hereby certify that the forgoing record of the proceedings of the House of Delegates, Second Regular Session, 2018, is the Official Journal of the House of Delegates for said session.

Tim Armstead
Speaker of the House of Delegates

Stephen J. Harrison
Clerk of the House of Delegates

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