

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2019

SATURDAY, JUNE 1, 2019

Pursuant to the call of the President of the Senate, under the authority of House Concurrent Resolution 101, adopted March 10, 2019, the Senate reassembled in extraordinary session in its chamber in the state capitol in the City of Charleston, at 10:14 a.m., and was called to order by its President, the Honorable Mitch Carmichael.

Prayer was offered by the Honorable Rollan A. Roberts, a senator from the ninth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Charles S. Trump IV, a senator from the fifteenth district.

Pending the reading of the Journal of Monday, May 20, 2019,

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

Senator Prezioso moved that the Senate Committee on Education be discharged from further consideration of

(Senate Bill 1029), Increasing teacher and school service personnel salaries.

(Senate Bill 1030), Increasing basic foundation allowance for county professional student support personnel.

(Senate Bill 1031), Authorizing competitive grant program for vocational-technical education programs in middle schools.

(Senate Bill 1032), Restoring local public school flexibility.

(Senate Bill 1033), Modifying school aid formula.

(Senate Bill 1034), Relating to studies of certain issues affecting public education.

And,

(Senate Bill 1035), Relating generally to high-quality education.

The question being on the adoption of Senator Prezioso's aforestated motion, and on this question, Senator Prezioso demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

The nays were: Azinger, Blair, Boley, Boso, Clements, Cline, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

Absent: Plymale—1.

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

The Senate proceeded to the third order of business.

Senator Carmichael (Mr. President) laid before the Senate the following supplement to the proclamation dated March 7, 2019, from His Excellency, the Governor, which was read by the Clerk:

STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT

Charleston

A PROCLAMATION

By the Governor

I, **JIM JUSTICE**, by virtue of the authority vested in the Governor by Section 7, Article VII, of the Constitution of West Virginia, do hereby **AMEND** the proclamation dated the seventh day of March, Two Thousand Nineteen, calling the West Virginia Legislature to convene in Extraordinary Session upon adjournment *sine die* of the 2019 Regular Session, and amended by subsequent Proclamation dated the seventeenth day of May, Two Thousand Nineteen, and amended by subsequent Proclamation dated the twentieth day of May, Two Thousand Nineteen, by adding item thirty-four, as follows:

THIRTY-FOURTH: a bill relating to the West Virginia Business Ready Sites Program.

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

DONE at the Capitol in the City of Charleston, State of West Virginia, this thirty-first day of May, in the year of our Lord, Two Thousand Nineteen, and in the One Hundred Fifty-Sixth year of the State.



By the Governor


GOVERNOR


SECRETARY OF STATE

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 24th day of May, 2019, 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:

(S. B. 1001), Upper Kanawha Valley Resiliency and Revitalization Program.

(S. B. 1004), Antihazing law.

(S. B. 1006), Authorizing WV Board of Physical Therapy to conduct criminal background checks on initial license applicants.

(S. B. 1009), Establishing health professionals student loan programs.

(S. B. 1012), Creating voluntary certification of recovery residences.

(S. B. 1013), Permitting certain trained professionals to provide counseling in medication-assisted treatment program.

(S. B. 1016), Supplemental appropriation to DOT, Division of Highways.

(S. B. 1019), Supplementing, amending, decreasing, and increasing existing appropriations from State Road Fund to DOH for fiscal year ending June 30, 2020.

(S. B. 1026), Expiring funds from Treasurer's Unclaimed Property Fund and supplementing appropriations to Governor's Office.

(S. B. 1037), Relating generally to medical cannabis.

(H. B. 111), Relating to refunds of excise taxes collected from dealers of petroleum products.

(H. B. 112), Relating generally to the personal income tax.

(H. B. 115), Relating generally to court actions in abuse and neglect proceedings.

(H. B. 116), Relating generally to persons eighteen years of age and older in the custody of the Bureau of Juvenile Services.

(H. B. 117), Relating to reduced rates for low-income residential customers of privately owned sewer and combined water and sewer utilities.

(H. B. 119), Supplementing, amending, decreasing, and increasing items from the State Road Fund to the Department of Transportation.

And,

(H. B. 133), Relating to the admissibility of health care staffing requirements in medical professional liability litigation.

Respectfully submitted,

Mark R. Maynard,
Chair, Senate Committee.
Moore Capito,
Chair, House Committee.

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

Executive Communications

The Clerk then presented communications from His Excellency, the Governor, advising that on May 28, 2019, he had approved **Enr. Senate Bill 1016, Enr. Senate Bill 1019, Enr. House Bill 119, and Enr. House Bill 133**; and on May 29, 2019, he had approved **Enr. Senate Bill 1001, Enr. Senate Bill 1004, Enr. Senate Bill 1006, Enr. Senate Bill 1009, Enr. Senate Bill 1012, Enr. Senate Bill 1013, Enr. Senate Bill 1026, Enr. Senate Bill 1037, Enr. House Bill 111, Enr. House Bill 112, Enr. House Bill 115, Enr. House Bill 116, and Enr. House Bill 117**.

The Senate proceeded to the sixth order of business.

The following bills were introduced and read by their titles.

By Senators Carmichael (Mr. President), Rucker, Swope, Tarr, Trump, Blair, Boso, Azinger, Smith, and Boley:

Senate Bill 1039—A Bill to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-21-25; to amend and reenact §15-1B-24 of said code; to amend said code by adding thereto a new section, designated §18-1-5; to amend said code by adding thereto a new section, designated §18-2E-12; to amend and reenact §18-2I-4 of said code; to amend and reenact §18-5-16, §18-5-16a, §18-5-18a, §18-5-18b, §18-5-45, and §18-5-46 of said code; to amend said code by adding thereto a new section, designated §18-5-45a; to amend and reenact §18-5E-1, §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5, and §18-5E-6 of said code; to amend said code by adding thereto a new article, designated §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-6, §18-5G-7, §18-5G-8, §18-5G-9, §18-5G-10, §18-5G-11, §18-5G-12, and §18-5G-13; to amend and reenact §18-7A-3 of said code as contained in Chapter 89, Acts of the Legislature, Regular Session, 2019; to amend and reenact §18-7B-2 of said code as contained in Chapter 89, Acts of the Legislature, Regular Session, 2019; to amend and reenact §18-8-4 of said code; to amend and reenact §18-9A-2 of said code as contained in Chapter 133, Acts of the Legislature, Regular Session, 2019; to amend and reenact §18-9A-8 and §18-9A-9 of said code; to amend said code by adding thereto a new section, designated §18-9A-19; to amend said code by adding thereto a new section, designated §18-9B-22; to amend and reenact §18-20-5 of said code; to amend and reenact §18A-4-2, §18A-4-5, §18A-4-5a, §18A-4-7a, §18A-4-8a, and §18A-4-10 of said code; to amend and reenact §18A-5-2 of said code; to amend and reenact §18C-4-1, §18C-4-2, §18C-4-3, §18C-4-4, and §18C-4-5 of said code; to amend and reenact §18C-4A-1, §18C-4A-2, and §18C-4A-3 of said code; and to amend and reenact §29-12-5a of said code, all relating to establishing the Student Success Act; allowing public charter schools to participate in the Public Employees Insurance Agency insurance program; creating personal income tax credits for educational expenses incurred by certain school employees for the purchase of supplementary educational materials or professional development costs; requiring Governor to expand Mountaineer Challenge Academy at its existing location and to a new location subject to agreement required under federal law; requiring the State Board of Education to implement the

Mountain State Digital Literacy Project as a pilot project; providing that professional development for classroom teachers should be individualized; requiring all teachers to receive professional development on addressing social, emotional, and behavioral needs of students; requiring state board to establish the Principals Academy; requiring county boards to establish attendance zones; replacing existing provisions pertaining to student transfers with requirement for county boards to establish an open enrollment policy; requiring appeal process whereby a parent or guardian can appeal the refusal of a county board to accept the transfer of the student; requiring the county to which a student is transferred include the student in its net enrollment in certain instances; providing that certain transfer provisions do not supersede eligibility requirements for participation in extracurricular activities established by the Secondary School Activities Commission; requiring the West Virginia Department of Education to survey districts to determine where overcrowding is impeding student achievement; increasing percentage of work time school counselors are required to spend in a direct counseling relationship with pupils; replacing the required number of instructional minutes per day with a requirement for at least an average of five hours per day throughout the instructional day; allowing public notice of meetings to discuss school calendar to be accomplished by publishing prominently on the county board of education's website; prohibiting certain extracurricular activity participation in certain instances of a work stoppage or strike; providing that the teacher's recommendation is a primary consideration in determining student promotion; removing requirement that an Innovation in Education school have a focus on certain specified areas; removing certain provisions required in an Innovation in Education application and plan; providing county boards instead of the state board the authority to designate schools as Innovation in Education schools; allowing appeals to the State Board of Education certain Innovation in Education-related determinations made by a county board; exempting public charter schools from all statutes and administrative regulations applicable to the state board, a county board, or a school, with exceptions; providing that no elected official can profit from a charter school, with exception; setting forth public charter school requirements and authority; requiring a public charter school be administered by a governing board; allowing a public charter school to enroll any student in the state; requiring randomized and transparent lottery if capacity at a public charter school is insufficient; creating and allowing certain enrollment preferences at a public charter school; requiring a public charter school to submit a student recruitment and retention plan; requiring an applicant to submit an application to an authorizer in order to establish a new public charter school or to convert an existing noncharter public school to a public charter school; setting forth minimum requirements for application for a public charter school; allowing state board, subject to funding, to offer an incentive grant for a public charter school; setting forth duties of the authorizer of a public charter school; establishing process for authorizer's approval or denial of public charter school application; limiting liability of certain persons and entities relating to the operation of a public charter school; requiring each public charter school to remit to its authorizer an oversight fee; requiring a charter contract between the governing board and the authorizer; setting forth requirements for the charter contract; making the authorizer responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school; setting forth requirements pertaining to renewal, nonrenewal, and revoking a charter contract; requiring state board rule establishing the process for renewing or not renewing a charter contract; requiring an authorizer to develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status; allowing a charter applicant or governing board to appeal certain authorizer decisions; setting forth prohibitions for a public charter school; requiring or allowing state board rules pertaining to public charter school funding, clarifying certain requirements, addressing unforeseen circumstances, prohibiting discrimination against employees involved with establishing charter schools, ensuring accountability, allowing the Schools for the Deaf and Blind to apply for authorization, and facilitating the creation of two youth programs modeled after the Mountaineer Challenge Academy; providing for public charter school access to public facilities;

setting forth reporting requirements for certain authorizers and the State Superintendent; allowing public charter schools to elect to participate in certain state retirement systems; modifying requirements applicable after certain numbers of unexcused student absences; including professional personnel providing direct social and emotional support services to students and professional personnel addressing chronic absenteeism within the definition of “professional student support personnel”; increasing calculated net enrollment for the purposes of determining a county’s basic foundation program of certain counties with an actual net enrollment of less than 1,400; decreasing the percent of the levy rate used to calculate local share; basing the basic foundation allowance for professional student support personnel on a ratio; increasing the percentage used to calculate each county’s allowance for current expense; requiring that each county board receive its allocated state aid share of the county’s basic foundation program in the form of block grants; requiring the State Superintendent to provide the State Auditor with the required data for use by the searchable budget data website; including public charter schools in the provisions pertaining to an appropriation to serve certain exceptional children; increasing teacher salaries; providing that certain math and special education teachers be considered to have three additional years of experience for the purposes of the salary schedule; removing definition of salary equity among the counties; removing requirement that Department of Education include in its budget request a request for funding sufficient to meet the objective of salary equity; adding to exceptions to requirement that county salary schedules be uniform; permitting a county board of education to base its reductions in force determinations on an individual’s qualifications as defined in county board policy; modifying provisions pertaining to the preferred recall list and posting of position openings; removing requirement for county board to annually make available a list of all professional personnel employed, their areas of certification, and their seniority; providing that all personnel in a public charter school accrue seniority for the purpose of employment in noncharter public schools; increasing salaries for service personnel; increasing leave without cause days from three to four; requiring a bonus for classroom teachers who have not used more than four days of personal leave during the employment term; renaming the Underwood-Smith Teacher Scholarship and Loan Assistance programs the Underwood-Smith Teaching Scholars Program and the Teacher Education Loan Repayment Program; modifying requirements for Higher Education Policy Commission rules providing for administration of the programs; requiring that Underwood-Smith Teaching Scholars award recipients receive additional academic support and training from mentors in their academic field; continuing the Underwood-Smith Teacher Scholarship and Loan Assistance Fund as the Underwood-Smith Teaching Scholars Program Fund; requiring each award recipient to be distinguished as an Underwood-Smith Teaching Scholar; establishing uses for moneys in the Underwood-Smith Teaching Scholars Program Fund; providing for continuation of certain terms, conditions, requirements, and agreements; requiring the Vice Chancellor for Administration to appoint a selection panel to select Underwood-Smith Teaching Scholars; modifying eligibility criteria for Underwood-Smith Teaching Scholars; modifying Underwood-Smith Teaching Scholars award agreement requirements; modifying renewal requirements for an Underwood-Smith Teaching Scholars award; modifying conditions under which a recipient is not in violation of the agreement; requiring Underwood-Smith Teaching Scholars award to be used in preparation for becoming a teacher in a critical shortage field in the public schools of this state; increasing the amount of the annual award; requiring as a condition of loan repayment award eligibility an applicant to be currently employed in a public school in this state in a critical teacher shortage field or as a school counselor in a school or geographic area of the state identified as an area of critical need for such field; requiring as a condition of eligibility an applicant to agree to be employed full time for two school years in a critical teacher shortage field or as a school counselor in a school or geographic area of critical need for such field for each year for which a loan repayment assistance award is received; modifying provisions pertaining to the amount of loan assistance and the requirements for eligibility; modifying eligibility requirements for renewal of a loan repayment assistance award;

removing accumulated limit on loan repayment awards; increasing minimum Board of Risk and Insurance Management coverage; requiring at least annual written notice of Board of Risk and Insurance Management insurance coverages by county boards to employee insureds; and allowing public charter schools to obtain insurance coverage from the Board of Risk and Insurance Management.

Senator Takubo requested unanimous consent that reference of the bill to a committee be dispensed with, and that it be taken up for immediate consideration, read a first time, and ordered to second reading.

Which consent was not granted, Senator Unger objecting.

On motion of Senator Takubo, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Takubo moved that the constitutional rule requiring a bill to be read on three separate days be suspended.

The roll being taken, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

Absent: Plymale—1.

So, less than four fifths of the members present and voting having voted in the affirmative, the President declared the motion to suspend the constitutional rule rejected.

By Senators Carmichael (Mr. President) and Rucker:

Senate Bill 1040—A Bill to amend and reenact §18-8-1 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-9A-10a; and to amend said code by adding thereto a new article, designated §18-31-1, §18-31-2, §18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7, §18-31-8, and §18-31-9, all relating to the Education Savings Account Act; creating compulsory school attendance exemption for Education Savings Account (ESA) students; requiring the Department of Education to annually make a projection of the amount required to fund ESAs and make a request for an appropriation in that amount; requiring the Legislature to appropriate the amount requested; requiring the Department of Education to pay to the West Virginia State Treasurer's Office the amount appropriated; requiring the total amount of funds annually deposited in an ESA to be 90 percent of the prior year's statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes; limiting use of ESA funds to certain qualifying expenses; allowing a parent to apply to the Treasurer to establish an ESA for an eligible student; establishing household income limit as a condition of qualifying for the ESA program; setting forth conditions under which the Treasurer is required to approve applications; requiring Treasurer to annually renew a student's ESA after making certain verifications; setting forth certain duties, obligations, and authority of the Treasurer; creating a Parent Review Committee to assist the Treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses, to provide recommendations to the Treasurer about how to implement, administer, and improve the ESA Program, and for other purposes; setting forth eligibility requirements for service providers;

requiring provision to an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974; and addressing legal proceedings.

Senator Takubo requested unanimous consent that reference of the bill to a committee be dispensed with, and that it be taken up for immediate consideration, read a first time and ordered to second reading.

Which consent was not granted, Senator Unger objecting.

Senator Takubo moved that reference of the bill to a committee be dispensed with, and that it be taken up for immediate consideration, read a first time and ordered to second reading.

The question being on the adoption of Senator Takubo's aforesated motion, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

Absent: Plymale—1.

So, less than two thirds of the members present and voting having voted in the affirmative, the President declared Senator Takubo's aforesated motion had not prevailed.

Whereupon, further consideration of Senate Bill 1040 was placed under unfinished business for tomorrow, Sunday, June 2, 2019.

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

Senate Bill 1041—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1n, relating to creating a pilot program to encourage utility infrastructure development to certain lands; declaring certain legislative findings; defining certain terms; requiring the West Virginia Development Office to consider certain applications; allowing the Secretary of the Department of Commerce to certify sites that do not currently have adequate public utility services from one or more public utilities regulated by the Public Service Commission as having potential for industrial development, upon the recommendation of the Development Office; requiring the Public Service Commission consider certain multi-year comprehensive plans for infrastructure development to construct public utility infrastructure and provide services to industrial development sites as certified by the Secretary, in lieu of a proceeding pursuant to §24-2-11 of this code; requiring the applicant to publish, in the form the Public Service Commission directs, the anticipated rates and, if any, rate increase under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code; providing the Public Service Commission with the authority to allow certain public utility infrastructure projects to recover certain costs via ratemaking; providing for the expiration of certain statutory provisions; and providing for an effective date of the provisions of this section.

Referred to the Committee on Rules.

By Senators Jeffries, Lindsay, and Baldwin:

Senate Bill 1042—A Bill to amend and reenact §18-3-12 of the Code of West Virginia, 1931, as amended, relating to the Special Community Development School Pilot Program.

Referred to the Committee on Education.

Senators Hamilton and Boso offered the following resolution:

Senate Resolution 104—Congratulating the Webster County High School Highlanders boys' basketball team for winning the 2019 Class A State Championship.

Whereas, The Webster County High School Highlanders boys' basketball team had a dominant year on the court, finishing with an undefeated record of 28-0, and winning the state championship; and

Whereas, The Webster County High School Highlanders boys' basketball team is led by head coach, Mike Gray, assistant coach, Eddie Mazzella, staffed by Codey Horton, and consists of players: Tyler Gray, Cole Taylor, Drew Holcomb, Pryce Gadd, Gage Rose, Rye Gadd, Levi Cochran, William Lewis, Garrett Hamrick, Dorian Groggs, Carter Williams, and Kayden Cutlip; and

Whereas, The Webster County High School Highlanders boys' basketball team displayed its strong will and determination for an entire season on its way to becoming the first team in West Virginia basketball history to finish a season 28-0; and

Whereas, The Webster County High School Highlanders boys' basketball team will be remembered as one of the best teams ever assembled in West Virginia high school basketball history and is a shining example of what can be accomplished with dedication, commitment, and teamwork; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Webster County High School Highlanders boys' basketball team for winning the 2019 Class A State Championship; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Webster County High School Highlanders boys' basketball team.

Which, under the rules, lies over one day.

On motion of Senator Trump, the Senate reconsidered the vote as to the effective date of

Eng. House Bill 118, Relating to the use of post-criminal conduct in professional and occupational initial licensure decision making.

Having been passed by the Senate and made effective from passage on Monday, May 20, 2019,

The vote thereon having been reconsidered,

The question again being on the adoption of Senator Takubo's motion that the bill take effect from passage.

Thereafter, at the request of Senator Takubo, and by unanimous consent, his foregoing motion was withdrawn.

On motion of Senator Trump, the Senate reconsidered the vote as to the passage of the bill.

The vote thereon having been reconsidered,

At the request of Senator Trump, unanimous consent was granted to offer an amendment to the bill on third reading.

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

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

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-24. Use of criminal records as disqualification from authorization to practice.

(a) Definitions. — For the purposes of this section:

(1) "Board" means the board, authority, or other agency authorized by the provisions of this chapter to issue licenses, certifications, registrations, or other authorizations to engage in a particular profession or occupation.

(2) "License" or "licensure" means the official authorization to engage in a profession or occupation issued by a board, pursuant to the requirements of this chapter.

(3) "Unreversed", as that term refers to a criminal conviction, means that a conviction has not been set aside, vacated, pardoned, or expunged.

(b) Notwithstanding any provision of this chapter to the contrary, except for the professions and occupations regulated by §30-2-1 et seq., §30-3-1 et seq., §30-3E-1 et seq., §30-14-1 et seq., §30-18-1 et seq., and §30-29-1 et seq. of this code, and where not in conflict with an existing compact or model act:

(1) Boards subject to the requirements of this section may not disqualify an applicant from initial licensure to engage in a profession or occupation because of a prior criminal conviction that remains unreversed unless that conviction is for a crime that bears a rational nexus to the profession or occupation requiring licensure. In determining whether a criminal conviction bears a rational nexus to a profession or occupation, the board shall consider at a minimum:

(A) The nature and seriousness of the crime for which the individual was convicted;

(B) The passage of time since the commission of the crime;

(C) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(D) Any evidence of rehabilitation or treatment undertaken by the individual.

(2) Because the term “moral turpitude” is vague and subject to inconsistent applications, boards subject to the requirements of this section may not rely upon the description of a crime for which an applicant has been convicted as one of “moral turpitude” as a basis for denying licensure: *Provided*, That if the prior conviction for the underlying crime bears a rational nexus to the profession or occupation requiring licensure, the board may consider the conviction according to the requirements of subdivision (1) of this subsection.

(3) Notwithstanding any other provision of this chapter to the contrary, if an applicant is disqualified from licensure because of a prior criminal conviction, a board shall permit the applicant to apply for initial licensure if:

(A) A period of five years has elapsed from the date of conviction or the date of release from incarceration, whichever is later;

(B) The individual has not been convicted of any other crime during the period of time following the disqualifying offense; and

(C) The conviction was not for an offense of a violent or sexual nature: *Provided*, That a conviction for an offense of a violent or sexual nature may subject an individual to a longer period of disqualification from licensure, to be determined by the individual board.

(4) An individual with a criminal record who has not previously applied for licensure may petition the appropriate board at any time for a determination of whether the individual’s criminal record will disqualify the individual from obtaining a license. This petition shall include sufficient details about the individual’s criminal record to enable the board to identify the jurisdiction where the conviction occurred, the date of the conviction, and the specific nature of the conviction. The board shall provide the determination within 60 days of receiving the petition from the applicant. The board may charge a fee to recoup its costs for each petition.

(5) The requirements of this section do not apply to the criteria that boards may consider when making determinations regarding relicensure or discipline of licensees.

(c) Every board subject to the provisions of this section shall propose rules or amendments to existing rules for legislative approval to comply with the provisions of this section. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2020.

Having been engrossed, the bill (Eng. H. B. 118), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: Tarr—1.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 118) passed.

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

Eng. House Bill 118—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-24; relating generally to criteria for initial licensure to engage in certain professions and occupations; regulating and making consistent the consideration of prior criminal convictions in initial licensure determinations by certain boards and licensing authorities; requiring a rational nexus between prior criminal convictions considered by certain boards and licensing authorities and the profession or occupation for which the initial licensure is sought; providing criteria for certain boards and licensing authorities to consider when determining whether a criminal conviction has a rational nexus to a profession or occupation; defining terms; eliminating offenses generally described as ones of moral turpitude from grounds for denial of an initial license to engage in certain professions and occupations absent there being a rational nexus between the underlying offense and the profession or occupation for which licensure is sought; requiring certain boards and licensing authorities to allow a previously disqualified applicant to apply for licensure after a certain period of time, with exceptions; requiring certain boards and licensing authorities to allow a potential applicant to petition the board or authority for a determination as to whether his or her criminal record precludes licensure and requiring the board or agency to provide the applicant with such determination within a certain period of time; and requiring certain boards and licensing authorities to promulgate rules.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: Tarr—1.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 118) takes effect from passage.

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

Following points of inquiry to the President, with resultant responses thereto,

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

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senators Romano, Takubo, Hardesty, Woelfel, Blair, Boso, Lindsay, Weld, Trump, Beach, Unger, Roberts, Facemire, and Rucker.

On motion of Senator Takubo, at 11:55 a.m., the Senate adjourned until tomorrow, Sunday, June 2, 2019, at 2 p.m.

SUNDAY, JUNE 2, 2019

The Senate met at 2:55 p.m.

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

Prayer was offered by the Honorable Glenn D. Jeffries, a senator from the eighth district.

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

Pending the reading of the Journal of Saturday, June 1, 2019,

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

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

The Clerk presented the following communications from a state agency as required by the provisions of law:

Treasurer, Office of the (Debt Capacity) (§12-6A-6)

Treasurer, Office of the (Debt Position) (§12-6A-6)

The Senate proceeded to the sixth order of business.

The following joint resolution was introduced, read by its title, and referred to the appropriate committees:

By Senators Blair, Boso, and Cline:

Senate Joint Resolution 101—Proposing an amendment to the Constitution of the State of West Virginia, amending section two, article XII thereof, relating generally to the supervision of free schools; clarifying that the general supervisory authority of the State Board of Education is subject to legislative enactments; specifying that board rules and policies are subject to legislative review and approval; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

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

Senators Rucker, Romano, and Facemire offered the following resolution:

Senate Resolution 105—Recognizing students from Big Otter Elementary School for competing in the Fittest School in America Challenge.

Whereas, Operation Tone Up is a fitness program that teaches the importance of nutrition and fitness which can lead to a healthy lifestyle; and

Whereas, Fourteen students from Big Otter Elementary School were selected from grades three through five to compete in the Fittest School Challenge in American (Operation Tone Up) at the West Virginia Culture Center in Charleston, West Virginia, against other elementary school students from surrounding counties in various nutritional and physical fitness challenges; and

Whereas, Under the guidance of teachers Deloris Kleman and Sissy Barker, the following students participated in the challenge: Fifth grade—Evan Bass, Elijah Sheldon, Prezlei Tanner, Jaxon Brown, Maria Drake, and Ely Metheney; fourth grade—Seth Robinson, Skiley Wilmoth, Lainey Nichols, and Blake Coleman; and third grade—Cooper Collins, Abigail Grandon, and Layla Cash; and

Whereas, The students from Big Otter Elementary School advanced to the national competition in Hermosa Beach, California, and finished in second place; and

Whereas, It is fitting that the Senate recognize these teachers and students for their dedication and commitment to learning skills for a healthy lifestyle; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes students from Big Otter Elementary School for competing in the Fittest School in America Challenge; and, be it

Further Resolved, That the Senate extends its congratulations to the teachers and students for their outstanding accomplishments; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the teachers and students of Big Otter Elementary School.

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

The question being on the adoption of the resolution (S. R. 105), and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—28.

The nays were: None.

Absent: Blair, Mann, Maroney, Maynard, Palumbo, and Plymale—6.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution adopted.

On motion of Senator Takubo, at 3:04 p.m., the Senate recessed to present Senate Resolution 105.

The Senate reconvened at 3:31 p.m. and proceeded to the seventh order of business.

Senate Bill 1040, Education Savings Account Act.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

Senate Resolution 104, Congratulating Webster County High School Highlanders boys' basketball team for winning 2019 Class A State Championship.

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

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

The Senate proceeded to the ninth order of business.

Senate Bill 1039, Establishing Student Success Act.

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

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

On page thirty-three, section forty-five-a, by striking out all of section forty-five-a and inserting in lieu thereof a new section, designated forty-five-a, to read as follows:

§18-5-45a. Legislative findings; time lost due to work stoppage or strike; effect on pay and extracurricular activities; closure of schools due to work stoppage or strike prohibited.

(a) Legislative findings. –

(1) The West Virginia Supreme Court of Appeals held, in *Jefferson County Bd. of Educ. v. Jefferson County Educ. Ass'n*, 183 W. Va. 15 (1990), that “[p]ublic employees have no right to strike in the absence of express legislation or, at the very least, appropriate statutory provisions for collective bargaining, mediation, and arbitration.”

(2) Public employees in West Virginia have no right, statutory or otherwise, to engage in collective bargaining, mediation, or arbitration, and any work stoppage or strike by public employees is hereby declared to be unlawful. Furthermore, any work stoppage or strike by employees of a county board of education poses a serious disruption to the thorough and efficient system of free schools, guaranteed to the children of West Virginia by Article XII, §1 of the Constitution of West Virginia.

(3) Section 18-5-45 of this code is designed to define the school term both for employment of school personnel and for instruction of students. The employment term consists of at least 200 days and, within the employment term, an instructional term for students must consist of at least 180 separate instructional days. Section 18-5-45 of this code also requires instruction to be offered to students for at least an average of five hours per day throughout the 180-day instructional term. This means that there can be zero hours of instruction on one or more days so long as the average instructional time per day over the 180 days is at least five hours. Furthermore, §18-5-45 allows a county board, subject to approval of its plan by the state board, to deliver instruction through alternative methods on up to five days when schools are closed and provides that these days are considered to be instructional days, notwithstanding the closure of schools.

(4) The Legislature intended, by providing for the ability to have zero hours of instruction on an instructional day and the use of alternative methods to deliver instruction on days when schools are closed, as defined in §18-5-45 of this code, to: (1) Provide flexibility for collaborative time and other methods of improving instruction and (2) Lessen the disruption to the planned school calendar if rescheduling and adding instructional days became necessary to make up lost days due to closures pursuant to §18-4-10(5) of this code, when conditions are detrimental to the health, safety, or welfare of pupils. The Legislature did not intend with the enactment of these provisions to permit a reduction in the instructional term for students or in the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees.

(b) For the purposes of this section, an employee of a county board of education is considered to be participating in a concerted work stoppage or strike if, on any day during a concerted stoppage of work or interruption of operations by the employees of the county board of education:

(1) The employee does not report to work as required by his or her contract of employment;

(2) The employee is not on leave, as specifically permitted by any provision of this code: *Provided*, That nothing in this section permits an employee to use personal leave in connection with a work stoppage or strike, in violation of §18A-4-10 of this code; and

(3) The employee is not otherwise prevented from reporting to work based on circumstances beyond the employee's control, that are unrelated to the employee's participation in the ongoing concerted work stoppage or strike, as determined by the county superintendent.

(c) The provisions of §18-5-45 of this code, allowing zero hours of instruction, so long as at least an average of 5 hours per day is attained, and the delivery of instruction through alternative methods, do not apply to and may not be used to cancel days lost due to a concerted work stoppage or strike. Notwithstanding any provision of this code to the contrary, the state board may not grant a waiver to a county board of education for its noncompliance with the 200-day minimum employment term or the 180-day average instructional day requirements if such noncompliance is the result of a concerted work stoppage or strike.

(d) If an employee remains employed by the county board of education, notwithstanding his or her participation in a concerted work stoppage or strike, which the Legislature hereby determines to be a ground for termination, the county board of education shall withhold the prorated salary or hourly pay of each employee participating in the concerted work stoppage or strike for each day that such employee participates in a concerted work stoppage or strike, and such sums shall be forfeited to the county board of education.

(e) If an originally scheduled instructional day or noninstructional day is canceled due to a concerted work stoppage or strike by the employees assigned to a school, the school for which the day was canceled may not participate in any extracurricular activities during any part of that same day.

(f) No superintendent may close a school in anticipation of or to facilitate a concerted work stoppage or strike.

Following extended discussion,

The question being on the adoption of Senator Trump's amendment to the bill, and on this question, Senator Ihlenfeld demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Maroney, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—17.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—14.

Absent: Mann, Maynard, and Plymale—3.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Trump's amendment to the bill adopted.

On motion of Senator Weld, the following amendments to the bill (S. B. 1039) were next reported by the Clerk, considered simultaneously, and adopted:

On page forty-four, section two, lines eight through ten, by changing the colon to a semicolon and striking out the proviso;

On page forty-four, section two, lines twenty-two through twenty-four by striking out all of paragraph (C) and relettering the remaining paragraph;

On pages fifty-one and fifty-two, section five, lines one through seventeen, by striking out all of subsection (a) and inserting in lieu thereof a new subsection, designated subsection (a), to read as follows:

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That nothing prohibits a noncharter public school subject to consolidation from being converted to a public charter school upon application pursuant to the provisions of this article.;

On page sixty, section seven, lines forty-five and forty-six, by striking out the words "the institutional board of governors of a public institution of higher education,";

And,

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

(c) The state board shall remand the authorizer's decision back to the authorizer for further proceedings if the substantial rights of the applicant have been prejudiced because the authorizer's findings, inferences, conclusions or decisions are:

(1) In violation of constitutional or statutory provisions or state board policy;

(2) In excess of the statutory authority or jurisdiction of the authorizer;

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

(5) Clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

On motion of Senator Tarr, the following amendment to the bill (S. B. 1039) was next reported by the Clerk and adopted:

On page thirty-three, after section forty-six, by inserting a new section, designated section forty-eight, to read as follows:

§18-5-48. County board exceptional needs expenditures from surplus funds.

Each county board may by policy establish an exceptional needs fund from surpluses for students who are likely to perform better outside of the public school setting. The policy may include:

(1) Allowing the county board to use excess funds or donated funds for expenditures related to services and materials necessary for that student's educational success that are not met within the public education school district;

(2) The amount of funds that is to be deposited into the fund each year which may vary based on availability of surpluses;

(3) The qualifying expenses that funds in the fund may be used for;

(4) Measures for protecting against improper use of the funds which may include auditing all expenditures related to an individual student for services outside of the public education district;

(5) The conditions under which payments from the Exceptional Needs Success Fund are to cease;

(6) Eligibility requirements for education service providers that can accept payments from the fund;

(7) A requirement that any overpayments recaptured from refunded expenditures revert to the Exceptional Student Success Fund; and

(8) Any other provision the county board determines appropriate.

On motion of Senator Rucker, the following amendments to the bill (S. B. 1039) were next reported by the Clerk, considered simultaneously, and adopted:

On page eighty, section two, line thirty-three, by striking out the words "regular secondary";

On page eighty, section two, line thirty-seven, by striking out the words "regular secondary";

And,

On page eighty, section two, line thirty-seven, by striking out the words "in the prior year".

On motion of Senator Hamilton, the following amendments to the bill (S. B. 1039) were next reported by the Clerk and considered simultaneously:

On page forty-six, section three, line nine, by inserting a new subsection, designated subsection (b), to read as follows:

(b) A public charter school may not be authorized under this article until a local option election is held in the county in which the public charter school will be located and a majority of the voters of that county voting on the question approve authorization of the public charter school.

(1) A local option election shall be held in conjunction with the next primary or general election scheduled more than 90 days following receipt by the county commission of a written notice from an authorizer requesting that the question be placed on the ballot.

(2) The county commission of the county in which the public charter school will be located shall give notice to the public of the election by publication of the notice 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 the publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date at least 30 days preceding the day of the election.

(3) On the local option election ballot shall be printed the following:

Shall a public charter school be permitted in [Name of County] County ?

[] Yes [] No (Place a cross mark in the square next to your choice.)

Relettering the remaining subsections;

On page fifty-one, section five, line four, by inserting a new subdivision, designated subdivision (1), to read as follows:

(1) A local option election is held in accordance with §18-5G-3(b) of this code in the county in which the public charter school will be located and a majority of the voters of that county voting on the question approve authorization of the public charter school.;

And,

Renumbering the remaining subdivisions.

Following discussion,

The question being on the adoption of Senator Hamilton's amendments to the bill, the same was put and did not prevail.

The bill (S. B. 1039), as amended, was then ordered to engrossment and third reading.

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Takubo, at 4:17 p.m., the Senate recessed for 15 minutes.

The Senate reconvened at 4:36 p.m. and, at the request of Senator Takubo, unanimous consent being granted, returned to the fourth order of business,

Senator Carmichael (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Senate Bill 1040, Education Savings Account Act.

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

Respectfully submitted,

Mitch Carmichael,
Chairman ex officio.

Senator Takubo requested unanimous consent that the bill (S. B. 1040) contained in the preceding report from the Committee on Rules be taken up for immediate consideration, read a first time, and ordered to second reading.

Which consent was not granted, Senator Unger objecting.

On motion of Senator Takubo, the bill (S. B. 1040) contained in the preceding report from the Committee on Rules was taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Blair and Tarr.

Senator Prezioso arose to a point of order stating current remarks were a gross misrepresentation of remarks made during session on yesterday, Saturday, June 1, 2019.

Which point of order, the President ruled not well taken.

Remarks were made by Senators Tarr, Beach, Romano, Takubo, and Woelfel.

At the request of Senator Woelfel, unanimous consent being granted, the Senate stood in observance of a moment of silence in recognition of the victims of a mass shooting on Friday, May 31, 2019, in Virginia Beach, Virginia.

Remarks were made by Senators Azinger and Prezioso.

Thereafter, at the request of Senator Blair, and by unanimous consent, the remarks by Senators Takubo and Prezioso were ordered printed in the Appendix to the Journal.

At the request of Senator Trump, unanimous consent being granted, the remarks by Senator Romano were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 5:17 p.m., the Senate adjourned until tomorrow, Monday, June 3, 2019, at 9 a.m.

MONDAY, JUNE 3, 2019

The Senate met at 9:18 a.m.

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

Prayer was offered by the Honorable Stephen Baldwin, a senator from the tenth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Chandler Swope, a senator from the sixth district.

Pending the reading of the Journal of Sunday, June 2, 2019,

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

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

The Senate then proceeded to the seventh order of business.

Senate Resolution 104, Congratulating Webster County High School Highlanders boys' basketball team for winning 2019 Class A State Championship.

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

Without object, the resolution was taken up for immediate consideration.

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

The Senate proceeded to the eighth order of business.

Eng. Senate Bill 1039, Establishing Student Success Act.

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

Pending extended discussion,

The question being "Shall Engrossed Senate Bill 1039 pass?"

Senator Mann requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as his wife is an administrator in the public school system.

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

Senator Palumbo requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as his wife is a teacher in the public school system.

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

Senator Ihlenfeld requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as his wife is an employee of the Ohio County public school system.

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

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 1039) passed.

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

Eng. Senate Bill 1039—A Bill to amend and reenact §5-16-2 and §5-16-22 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-21-25; to amend and reenact §15-1B-24 of said code; to amend said code by adding thereto a new section, designated §18-1-5; to amend said code by adding thereto a new section, designated §18-2E-12; to amend and reenact §18-2I-4 of said code; to amend and reenact §18-5-16, §18-5-16a, §18-5-18a, §18-5-18b, §18-5-45, and §18-5-46 of said code; to amend said code by adding thereto two new sections, designated §18-5-45a and §18-5-48; to amend and reenact §18-5E-1, §18-5E-2, §18-5E-3, §18-5E-4, §18-5E-5, and §18-5E-6 of said code; to amend said code by adding thereto a new article, designated §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-6, §18-5G-7, §18-5G-8, §18-5G-9, §18-5G-10, §18-5G-11, §18-5G-12, and §18-5G-13; to amend and reenact §18-7A-3 of said code as contained in Chapter 89, Acts of the Legislature, Regular Session, 2019; to amend and reenact §18-7B-2 of said code as contained in Chapter 89, Acts of the Legislature, Regular Session, 2019; to amend and reenact §18-8-4 of said code; to amend and reenact §18-9A-2 of said code as contained in Chapter 133, Acts of the Legislature, Regular Session, 2019; to amend and reenact §18-9A-8 and §18-9A-9 of said code; to amend said code by adding thereto a new section, designated §18-9A-19; to amend said code by adding thereto a new section, designated §18-9B-22; to amend and reenact §18-20-5 of said code; to amend and reenact §18A-4-2, §18A-4-5, §18A-4-5a, §18A-4-7a, §18A-4-8a, and §18A-4-10 of said code; to amend and reenact §18A-5-2 of said code; to amend and reenact §18C-4-1, §18C-4-2, §18C-4-3, §18C-4-4, and §18C-4-5 of said code; to amend and reenact §18C-4A-1, §18C-4A-2, and §18C-4A-3 of said code; and to amend and reenact §29-12-5a of said code, all relating to establishing the Student Success Act; allowing public charter schools to participate in the Public Employees Insurance Agency insurance program; creating personal income tax credits for educational expenses incurred by certain school employees for the purchase of supplementary educational materials or professional development costs; requiring Governor to expand Mountaineer Challenge Academy at its existing location and to a new location

subject to agreement required under federal law; requiring the State Board of Education to implement the Mountain State Digital Literacy Project as a pilot project; providing that professional development for classroom teachers should be individualized; requiring all teachers to receive professional development on addressing social, emotional, and behavioral needs of students; requiring state board to establish the Principals Academy; requiring county boards to establish attendance zones; replacing existing provisions pertaining to student transfers with requirement for county boards to establish an open enrollment policy; requiring appeal process whereby a parent or guardian can appeal the refusal of a county board to accept the transfer of the student; requiring the county to which a student is transferred include the student in its net enrollment in certain instances; providing that certain transfer provisions do not supersede eligibility requirements for participation in extracurricular activities established by the Secondary School Activities Commission; requiring the West Virginia Department of Education to survey districts to determine where overcrowding is impeding student achievement; increasing percentage of work time school counselors are required to spend in a direct counseling relationship with pupils; replacing the required number of instructional minutes per day with a requirement for at least an average of five hours per day throughout the instructional day; allowing public notice of meetings to discuss school calendar to be accomplished by publishing prominently on the county board of education's website; making legislative findings and declaring that any concerted work stoppage or strike by public employees is unlawful; providing criteria for determining whether an employee of a county board of education is participating in a concerted work stoppage or strike; providing that statutory provisions allowing zero hours of instruction or alternative methods of instruction delivery on instructional days when schools are closed, due to certain circumstances, do not apply to days when schools are closed due to a concerted work stoppage or strike; prohibiting the state board of education from granting a waiver for a county board's noncompliance with minimum instructional and work day requirements if noncompliance is due to a concerted work stoppage or strike; requiring the county board of education to withhold the salary or pay of an employee for each day on which such employee participates in a concerted work stoppage or strike; providing that participation in a concerted work stoppage or strike is grounds for termination of an employee of a county board of education; providing that if a school is closed because of a concerted work stoppage or strike, the school may not participate in any extracurricular activities during any part of that same day; prohibiting a county superintendent from closing a school in anticipation of or to facilitate a concerted work stoppage or strike; providing that the teacher's recommendation is a primary consideration in determining student promotion; allowing each county board to establish by policy an exceptional needs fund from surpluses for students who are likely to perform better outside of the public school setting; setting forth provisions that the policy may include; removing requirement that an Innovation in Education school have a focus on certain specified areas; removing certain provisions required in an Innovation in Education application and plan; providing county boards instead of the state board the authority to designate schools as Innovation in Education schools; allowing appeals to the State Board of Education certain Innovation in Education-related determinations made by a county board; exempting public charter schools from all statutes and administrative regulations applicable to the state board, a county board, or a school, with exceptions; providing that no elected official can profit from a charter school, with exception; setting forth public charter school requirements and authority; requiring a public charter school be administered by a governing board; allowing a public charter school to enroll any student in the state; requiring randomized and transparent lottery if capacity at a public charter school is insufficient; creating and allowing certain enrollment preferences at a public charter school; requiring a public charter school to submit a student recruitment and retention plan; requiring an applicant to submit an application to an authorizer in order to establish a new public charter school or to convert an existing noncharter public school to a public charter school; setting forth minimum requirements for application for a public charter school; allowing state board, subject to funding, to offer an incentive grant for a public charter school; setting forth duties of the

authorizer of a public charter school; establishing process for authorizer's approval or denial of public charter school application; limiting liability of certain persons and entities relating to the operation of a public charter school; requiring each public charter school to remit to its authorizer an oversight fee; requiring a charter contract between the governing board and the authorizer; setting forth requirements for the charter contract; making the authorizer responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school; setting forth requirements pertaining to renewal, nonrenewal, and revoking a charter contract; requiring state board rule establishing the process for renewing or not renewing a charter contract; requiring an authorizer to develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status; allowing a charter applicant or governing board to appeal certain authorizer decisions; setting forth prohibitions for a public charter school; requiring or allowing state board rules pertaining to public charter school funding, clarifying certain requirements, addressing unforeseen circumstances, prohibiting discrimination against employees involved with establishing charter schools, ensuring accountability, allowing the Schools for the Deaf and Blind to apply for authorization, and facilitating the creation of two youth programs modeled after the Mountaineer Challenge Academy; providing for public charter school access to public facilities; setting forth reporting requirements for certain authorizers and the State Superintendent; allowing public charter schools to elect to participate in certain state retirement systems; modifying requirements applicable after certain numbers of unexcused student absences; including professional personnel providing direct social and emotional support services to students and professional personnel addressing chronic absenteeism within the definition of "professional student support personnel"; modifying provisions pertaining to adults that are to be included in net enrollment; increasing calculated net enrollment for the purposes of determining a county's basic foundation program of certain counties with an actual net enrollment of less than 1,400; decreasing the percent of the levy rate used to calculate local share; basing the basic foundation allowance for professional student support personnel on a ratio; increasing the percentage used to calculate each county's allowance for current expense; requiring that each county board receive its allocated state aid share of the county's basic foundation program in the form of block grants; requiring the State Superintendent to provide the State Auditor with the required data for use by the searchable budget data website; including public charter schools in the provisions pertaining to an appropriation to serve certain exceptional children; increasing teacher salaries; providing that certain math and special education teachers be considered to have three additional years of experience for the purposes of the salary schedule; removing definition of salary equity among the counties; removing requirement that Department of Education include in its budget request a request for funding sufficient to meet the objective of salary equity; adding to exceptions to requirement that county salary schedules be uniform; permitting a county board of education to base its reductions in force determinations on an individual's qualifications as defined in county board policy; modifying provisions pertaining to the preferred recall list and posting of position openings; removing requirement for county board to annually make available a list of all professional personnel employed, their areas of certification, and their seniority; providing that all personnel in a public charter school accrue seniority for the purpose of employment in noncharter public schools; increasing salaries for service personnel; increasing leave without cause days from three to four; requiring a bonus for classroom teachers who have not used more than four days of personal leave during the employment term; renaming the Underwood-Smith Teacher Scholarship and Loan Assistance programs the Underwood-Smith Teaching Scholars Program and the Teacher Education Loan Repayment Program; modifying requirements for Higher Education Policy Commission rules providing for administration of the programs; requiring that Underwood-Smith Teaching Scholars award recipients receive additional academic support and training from mentors in their academic field; continuing the Underwood-Smith Teacher Scholarship and Loan Assistance Fund as the Underwood-Smith Teaching Scholars Program Fund; requiring each

award recipient to be distinguished as an Underwood-Smith Teaching Scholar; establishing uses for moneys in the Underwood-Smith Teaching Scholars Program Fund; providing for continuation of certain terms, conditions, requirements, and agreements; requiring the Vice Chancellor for Administration to appoint a selection panel to select Underwood-Smith Teaching Scholars; modifying eligibility criteria for Underwood-Smith Teaching Scholars; modifying Underwood-Smith Teaching Scholars award agreement requirements; modifying renewal requirements for an Underwood-Smith Teaching Scholars award; modifying conditions under which a recipient is not in violation of the agreement; requiring Underwood-Smith Teaching Scholars award to be used in preparation for becoming a teacher in a critical shortage field in the public schools of this state; increasing the amount of the annual award; requiring as a condition of loan repayment award eligibility an applicant to be currently employed in a public school in this state in a critical teacher shortage field or as a school counselor in a school or geographic area of the state identified as an area of critical need for such field; requiring as a condition of eligibility an applicant to agree to be employed full time for two school years in a critical teacher shortage field or as a school counselor in a school or geographic area of critical need for such field for each year for which a loan repayment assistance award is received; modifying provisions pertaining to the amount of loan assistance and the requirements for eligibility; modifying eligibility requirements for renewal of a loan repayment assistance award; removing accumulated limit on loan repayment awards; increasing minimum Board of Risk and Insurance Management coverage; requiring at least annual written notice of Board of Risk and Insurance Management insurance coverages by county boards to employee insureds; and allowing public charter schools to obtain insurance coverage from the Board of Risk and Insurance Management.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

Absent: Plymale—1.

So, less than two thirds of all the members elected to the Senate having voted in the affirmative, the President declared Senator Takubo's aforesaid motion had not prevailed.

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

Thereafter, at the request of Senator Beach, and by unanimous consent, the remarks by Senators Hardesty, Baldwin, Woelfel, Hamilton, Romano, and Mann regarding the passage of Engrossed Senate Bill 1039 were ordered printed in the Appendix to the Journal.

At the request of Senator Takubo, unanimous consent being granted, the remarks by Senators Rucker, Weld, Tarr, Smith, and Swope regarding the passage of Engrossed Senate Bill 1039 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:52 a.m., the Senate recessed until 12:45 p.m. today.

The Senate reconvened at 12:52 p.m. and proceeded to the ninth order of business.

Senate Bill 1040, Education Savings Account Act.

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

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

On page sixteen, section six, lines eight and nine, by striking out all of paragraph (B) and inserting in lieu thereof a new paragraph, designated paragraph (B), to read as follows:

(B) Shall include four members appointed by the Governor and three members appointed by the Treasurer all of whom shall serve for one calendar year and may be reappointed; and.

The bill (S. B. 1040), as amended, was then ordered to engrossment and third reading.

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

On suspending the constitutional rule, the yeas were: Azinger, Beach, Blair, Boley, Boso, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Prezioso, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, and Carmichael (Mr. President)—30.

The nays were: Baldwin and Unger—2.

Absent: Plymale and Romano—2.

Engrossed Senate Bill 1040 was then read a third time and put upon its passage.

Pending extended discussion and a point of inquiry to the President, with resultant response thereto,

The question being “Shall Engrossed Senate Bill 1040 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Boso, Clements, Cline, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Carmichael (Mr. President)—18.

The nays were: Baldwin, Beach, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Palumbo, Prezioso, Romano, Stollings, Unger, and Woelfel—15.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 1040) passed with its title.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Romano.

Under authority of House Concurrent Resolution 101, adopted March 10, 2019,

On motion of Senator Takubo, at 1:36 p.m., the Senate adjourned until subsequently called back into session by the presiding officer.
