

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE
REGULAR SESSION, 2021
THIRTY-FOURTH DAY

Charleston, West Virginia, Monday, March 15, 2021

The Senate met at 11:01 a.m.

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

Prayer was offered by Bishop Joe Thomas, Nondenominational Fellowship Pentecostal Ministries, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Richard D. Lindsay II, a senator from the eighth district.

Pending the reading of the Journal of Friday, March 12, 2021,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Senate Bill 295, Relating generally to economic development loans and loan insurance issued by state.

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

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

On page eight, section eleven, beginning on line one hundred forty-four, following the words "transaction records" and the period, by striking out the words "Records of the authority that may be held from time to time by the board pursuant to this subsection shall not be considered public records and shall be exempt from disclosure pursuant to the provisions of §29B-1-1 et seq. of this code" and the period, and inserting in lieu thereof the words "Records of the authority held from

time to time by the board pursuant to this subsection that are exempt from disclosure pursuant to the provisions of §31-15-22 of this code or §29B-1-1 et seq. of this code shall remain so while held by the board” and a period;

On page ten, section eleven-a, line forty-one, following the words “authorized by this”, by striking out the word “subsection” and inserting in lieu thereof the word “section”;

On page ten, section eleven-a, line forty-four, following the word “pool” and the period, by striking out the words “The rate shall be set on July 1, 2017” and the comma and inserting in lieu thereof the words “The rate shall be the rate set on July 1, 2017, under prior enactment of §12-6C-11(h) of this code” and a comma;

On page eleven, section eleven-a, line eighty, following the words “insurance agreements” and the comma, by striking out the word “board” and inserting in lieu thereof the words “authority meeting”;

On page eighteen, section eight-a, line thirty, by striking out the section designation “§31G-1-1” and inserting in lieu thereof the section designation “§31G-1-2”;

On page eighteen, section eight-a, line thirty-two, following the words “wireless technology” and the semicolon, by inserting the word “and”;

On page eighteen, section eight-a, line thirty-six, following the words “by the council”, by striking out the period and inserting in lieu thereof a semicolon and the word “or”;

On page twenty-one, section eight-a, line one hundred twelve, following the subdivision designation “(4)” and the word “This”, by striking out the word “provision” and inserting in lieu thereof the word “subsection”;

On page twenty-one, section eight-a, line one hundred eighteen, following the word “section”, by striking out the words “for such applications”;

And,

On page twenty-two, section eight-a, line one hundred thirty-two, following the words “reports and”, by striking out the words “annual legislative audit” and inserting in lieu thereof the words “biennial legislative audits” .;

And,

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

Eng. Com. Sub. for Senate Bill 295—A Bill to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §12-6C-11a; to amend and reenact §31-15-8 of said code; and to amend said code by adding thereto a new section, designated §31-15-8a, all relating generally to economic development loans and loan insurance issued by the state; clarifying provision stating that the Board of Treasury Investments has no fiduciary duty with regard to economic development loans administered by the Economic Development Authority; providing that the Board of Treasury Investments may inspect and copy, upon written notice, all records related to loans made available by the board to the Economic Development Authority and providing that certain records

so copied and inspected shall be exempt from disclosure pursuant to the provisions of chapter 29B of the code and other law; defining terms; limiting the total amount of loan moneys that the board shall make available to the authority for the Broadband Loan Insurance Program to \$80 million; establishing requirements that must be met before broadband loan insurance moneys will be made available to the authority; limiting the amount of loan insurance that the authority may award in a single year to a single broadband provider to \$20 million; providing that the authority shall maintain broadband loan insurance loan moneys in a separate and segregated account; providing that broadband loan insurance moneys may only be drawn upon in the event of a broadband provider default on an insured debt or security instrument; clarifying that the authority may not deduct administrative or operational costs from broadband loan insurance loan moneys; setting forth requirements that must be met before the authority may withdraw loan insurance moneys in the event of a broadband provider's default; providing that the authority may only use loan insurance moneys to satisfy certain obligations arising under a loan insurance agreement; requiring the authority to submit quarterly reports to the Joint Committee on Government and Finance and to the Governor containing certain information related to its loan insurance program; requiring the authority to make application forms for broadband loan insurance publicly available on its website; establishing the minimum information an applicant for broadband loan insurance shall be required to submit to the authority; establishing minimum criteria that the authority must consider in its broadband loan insurance application review process; establishing that the authority may provide loan insurance for eligible broadband providers pursuant to awards made by federally funded broadband expansion programs; providing that the authority may not issue loan insurance to a broadband provider that has previously defaulted on any debt or security instrument insured by the authority; requiring the authority to post certain information regarding loan insurance agreements on its website; requiring the authority to adhere to certain accounting and record-keeping practices; requiring the authority to submit quarterly reports to the Board of Treasury Investments, the Joint Committee on Government and Finance, and the Governor containing certain information on insured loans and broadband projects financed by insured loans; requiring a biennial legislative audit of the Broadband Loan Insurance Program; removing obsolete language; and making technical corrections.

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

Engrossed Committee Substitute for Senate Bill 295, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 295) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 295) takes effect from passage.

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

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

Eng. Com. Sub. for House Bill 2382—A Bill to amend and reenact §64-3-1 of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Environmental Protection to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from combustion of solid waste; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of air pollution from municipal solid waste landfills; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to control of greenhouse gas emissions from existing coal-fired electric utility generating units; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to requirements governing water quality standards; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management system; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to voluntary remediation and redevelopment rule.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2682—A Bill to amend and reenact §33-12-8 and §33-12-9 of the Code of West Virginia, 1931, as amended, and to amend and reenact §33-12B-13 and §33-12B-14 of said code, all relating to the issuance of license suspensions to insurance producers and insurance adjusters who have failed to meet continuing education requirements; changing the requirement that the Insurance Commissioner send license suspensions to insurance producers by certified mail with a requirement that the suspensions be sent by electronic mail or regular mail, if requested; providing that each agent, insurance agency, solicitor, or service representative must report his or her respective electronic mail address to the Insurance

Commissioner and providing time periods to report changes of information provided to Insurance Commissioner; changing the requirement that the Insurance Commissioner send license suspensions to insurance adjusters by certified mail with a requirement that the suspensions be sent by electronic mail or regular mail, if requested; and providing that each insurance adjuster must report his or her respective electronic mail address to the Insurance Commissioner and providing time periods to report changes of information provided to Insurance Commissioner.

At the request of Senator Takubo, and by unanimous consent, the bill was taken up for immediate consideration and reference to a committee dispensed with.

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

Eng. Com. Sub. for House Bill 2758—A Bill to amend and reenact §51-10-1 and §51-10-8 of the Code of West Virginia, 1931, as amended, all relating to requiring the Insurance Commissioner to regulate professional bondsmen; providing definitions; requiring the Insurance Commissioner to promulgate and propose rules and regulations to carry out the intent, administration and enforcement of the article; requiring the Insurance Commissioner to promulgate and propose rules and regulations regarding qualifications of bondsman; setting forth requirements for bondsman applicants; setting forth filing requirements for bondsmen with the Insurance Commissioner; setting forth renewal requirements for bondsman authorization; providing criminal penalty for false affidavit; requiring Insurance Commissioner to keep a list of authorized bondsmen and furnish to a place of detention upon request; and, after July 1, 2022, requiring all bondsmen to be authorized by the Insurance Commissioner.

Referred to the Committee on the Judiciary.

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

Eng. Com. Sub. for House Bill 2763—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5A-6C-1, §5A-6C-2, §5A-6C-3, and §5A-6C-4, all relating to “West Virginia Cyber Incident Reporting;” providing for definitions; applying the scope to all state agencies within the executive branch, Constitutional officers, all local government entities, county boards of education, the judicial branch, and the legislative branch; providing criteria for reporting incidents; and providing for an annual report.

Referred to the Committee on Government Organization.

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

Eng. House Bill 2788—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2021, in the amount of \$6,497,548 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2789—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2021, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2802—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Homeland Security, Division of Emergency Management, fund 0443, fiscal year 2021, organization 0606, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2803—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Commerce, Division of Forestry, fund 0250, fiscal year 2021, organization 0305, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

Eng. House Bill 2804—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2021 in the amount of \$13,500,000 from the Department of Administration, Board of Risk and Insurance Management, Mine Subsidence Insurance Fund, fund 2361, fiscal year 2021, organization 0218; and in the amount of \$2,000,000 from the Department of Veterans' Assistance, Veterans' Facilities Support Fund, fund 6703, fiscal year 2021, organization 0613.

Referred to the Committee on Finance.

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

Eng. Com. Sub. for House Bill 2916—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §4-13A-1, §4-13A-2, §4-13A-3, §4-13A-4, §4-13A-5, §4-13A-6, and §4-13A-7, relating to the creation of the West Virginia Semiquincentennial Commission and Fund to support the celebration of the 250th anniversary of our nation's founding; providing for the method and manner by which the commission shall be

appointed; providing for expense reimbursement for the commission's members; establishing the powers and duties of the commission; and providing a sunset provision for the commission.

Referred to the Committee on Government Organization.

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

Eng. House Bill 2932—A Bill to amend §1-7-2 and §1-7-3 of the Code of West Virginia, 1931, as amended, relating to the protection of an individual's freedom of association.

Referred to the Committee on the Judiciary.

The Senate proceeded to the fourth order of business.

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

Your Committee on the Judiciary has had under consideration

Senate Bill 562, Relating to juvenile competency proceedings.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 562 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §49-4-712 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto nine new sections, designated §49-4-727, §49-4-728, §49-4-729, §49-4-730, §49-4-731, §49-4-732, §49-4-733, §49-4-734, and §49-4-735, all relating to juvenile competency proceedings generally; creating a process to raise and resolve questions of a competency in juvenile delinquency matters; prohibiting a juvenile found to be incompetent to stand trial to be placed in Bureau of Juvenile Services facility; defining terms; creating a rebuttable presumption that juveniles 14 years of age and older are competent to proceed; creating a rebuttable presumption that juveniles under 14 years of age are incompetent to proceed; all proceeding stayed until competency resolved; requiring the appointment of a guardian *ad litem* when a juvenile is determined to be incompetent; establishing qualifications for qualified forensic evaluators; requiring written competency evaluation report; requesting the Supreme Court to establish a training program for guardians ad litem; establishing time frames for jurisdiction and competency attainment services; and establishing procedures for competency hearings; providing disposition alternatives for incompetent juveniles and staying transfer to criminal jurisdiction.

And,

Senate Bill 566, Relating to interpretations of school laws.

And reports back a committee substitute for same with the following title:

Com. Sub. for Senate Bill 566 (originating in the Committee on the Judiciary)—A Bill to amend and reenact §18-3-6 of the Code of West Virginia, 1931, as amended, relating to upholding and applying the Superintendent of Schools' interpretation of school law and State Board of Education rules.

With the recommendation that the two committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,
Chair.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2372, Allow pre-candidacy papers to be filed the day after the general election.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

The Senate proceeded to the sixth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills were considered introduced, read by their titles, and referred to the appropriate committees:

By Senators Phillips and Stollings:

Senate Bill 641—A Bill to amend and reenact §11-13A-6a of the Code of West Virginia, 1931, as amended, relating to coal severance tax, providing for the use of severance funds for litter programs.

Referred to the Committee on Government Organization.

By Senator Rucker:

Senate Bill 642—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §6-15-1, §6-15-2, and §6-15-3, all relating to requiring the State Auditor to establish a website centralizing access to all postings of legal advertisements required by law.

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

By Senator Smith:

Senate Bill 643—A Bill to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-4C-24 of said code, all relating to volunteer fire departments and emergency medical services units; and providing that any increased costs or expenditures to volunteer fire departments that result from the implementation of a state legislative rule shall be funded respectively by the State Fire Commission and the Commissioner of the Bureau for Public Health.

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

By Senator Weld:

Senate Bill 644—A Bill to amend and reenact §30-26-2 of the Code of West Virginia, 1931, as amended, relating to engaging in the practice of hearing-aid dealer; and creating exemption for pursuing a course of study leading to a degree in speech pathology.

Referred to the Committee on Health and Human Resources.

Senator Smith offered the following resolution:

Senate Concurrent Resolution 26—Requesting the Division of Highways name bridge number 39-68/8-000.01 (39A234), locally known as King's Trees Bridge, carrying CR 68/8 over Interstate 68 in Preston County, the "U.S. Army TEC5 William 'Bill' Thurman King Memorial Bridge".

Whereas, William "Bill" Thurman King was born on June 24, 1925, in Bruceton Mills, Preston County, West Virginia; and

Whereas, William "Bill" Thurman King was a Technician Fifth Grade, Battery A of the 364th Field Artillery in the United States Army, in the 1940s, honorably discharged in 1946; and

Whereas, William "Bill" Thurman King was honored in his military service with the European-African-Middle Eastern Theater Ribbon; the Good Conduct Medal; the World War II Victory Ribbon; and the Army Occupation Medal (Germany); and

Whereas, From the late 1940s until the 1980s, William "Bill" Thurman King was a bus operator for the Preston County Board of Education; and

Whereas, It is fitting that an enduring memorial be established to commemorate TEC5 William "Bill" Thurman King and his contributions 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 39-68/8-000.01 (39A234), locally known as King's Trees Bridge, carrying County Route 68/8 over Interstate 68 in Preston County, the "U.S. Army TEC5 William 'Bill' Thurman King 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 TEC5 William 'Bill' Thurman King 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.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 25, McClintic Family Bridge.

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

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for Senate Bill 346, Authorizing DMV use electronic means when providing notice for licensees and vehicle owners.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 346) passed with its title.

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

Eng. Com. Sub. for Senate Bill 472, Updating criteria for regulating certain occupations and professions.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 472) passed with its title.

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

Eng. Senate Bill 523, Correcting improper code references.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips,

Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 523) passed with its title.

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

Eng. Senate Bill 529, Correcting improper citation relating to DMV registration.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 529) passed with its title.

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

Eng. Com. Sub. for House Bill 2011, Eliminating any time requirements for part time personnel to work during a working year.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2011) passed.

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

Eng. Com. Sub. for House Bill 2011—A Bill to amend and reenact §29-6-4 of the Code of West Virginia, 1931, as amended, relating to eliminating any time requirements for temporary employees to work during a working year to be exempt from classified service; and exempting temporary employees in state forests, parks, and recreational areas from classified service.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2011) takes effect from passage.

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

Eng. Com. Sub. for House Bill 2263, Update the regulation of pharmacy benefit managers.

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

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 303, Creating Local Government Labor and Consumer Marketing Regulatory Limitation Act.

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

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

Com. Sub. for Com. Sub. for Senate Bill 318, Relating generally to public notice of unclaimed property held by State Treasurer.

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

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

On page two, section nine, line twenty-five, by striking out the word “once” and inserting in lieu thereof the word “twice”.

The bill (Com. Sub. for Com. Sub. for S. B. 318), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 500, Prohibiting intimidation and retaliation against public officers and employees, jurors, and witnesses.

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

Com. Sub. for Senate Bill 518, Relating to grounds for administrative dissolution of certain companies, corporations, and partnerships.

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

Eng. Com. Sub. for House Bill 2006, Relating to the West Virginia Contractor Licensing Act.

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

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk:

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

CHAPTER 4. THE LEGISLATURE.

ARTICLE 10. PERFORMANCE REVIEW ACT.

§4-10-10. Regulatory board review schedule.

(a) A regulatory board review is required for all regulatory boards.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years, commencing as follows:

(1) 2017: Board of Accountancy; Board of Respiratory Care Practitioners; and Board of Social Work Examiners.

(2) 2018: Board of Examiners of Psychologists; Board of Optometry; and Board of Veterinary Medicine.

(3) 2019: Board of Acupuncture; Board of Barbers and Cosmetologists; and Board of Examiners in Counseling.

(4) 2020: Board of Hearing Aid Dealers; Board of Licensed Dietitians; and Nursing Home Administrators Board.

(5) 2021: Board of Dental Examiners; Board of Medicine; and Board of Pharmacy.

(6) 2022: Board of Chiropractic Examiners; Board of Osteopathy; and Board of Physical Therapy.

(7) 2023: Board of Occupational Therapy; Board of Examiners for Speech-Language Pathology and Audiology; and Medical Imaging and Radiation Therapy Board of Examiners.

(8) 2024: Board of Professional Surveyors; Board of Registration for Foresters; Contractor Licensing Board; and Board of Registration for Professional Engineers.

(9) 2025: Board of Examiners for Licensed Practical Nurses; Board of Examiners for Registered Professional Nurses; and Massage Therapy Licensure Board.

(10) 2026: Board of Architects; Board of Embalmers and Funeral Directors; and Board of Landscape Architects; and

(11) 2027: Board of Registration for Sanitarians; Real Estate Appraiser Licensure and Certification Board; and Real Estate Commission.

CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL; BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES, COMMISSIONS, OFFICES, PROGRAMS, ETC.

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

Any person, including a worker, contractor, engineer or architect, who in good faith provides services or materials, without remuneration, to build or install basic universal design features as set forth in ~~section ten-a, article eleven, chapter twenty-one~~ §30-42-10 of this code may not be liable for any civil damages as the result of any act or omission in providing such services or materials: *Provided*, That the basic universal design feature or features shall be built or constructed in accordance with applicable state and federal laws and applicable building codes.

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1. Bidding required; government construction contracts to go to lowest qualified responsible bidder; procedures to be followed in awarding government construction projects; penalties for violation of procedures and requirements debarment; exceptions.

(a) This section and the requirements in this section may be referred to as the West Virginia Fairness in Competitive Bidding Act.

(b) As used in this section:

(1) "Lowest qualified responsible bidder" means the bidder that bids the lowest price and that meets, at a minimum, all the following requirements in connection with the bidder's response to the bid solicitation. The bidder shall certify that it:

(A) Is ready, able, and willing to timely furnish the labor and materials required to complete the contract;

(B) Is in compliance with all applicable laws of the State of West Virginia; and

(C) Has supplied a valid bid bond or other surety authorized or approved by the contracting public entity.

(2) "The state and its subdivisions" means the State of West Virginia, every political subdivision thereof, every administrative entity that includes such a subdivision, all municipalities, and all county boards of education.

(3) "State spending unit" means a department, agency, or institution of the state government for which an appropriation is requested, or to which an appropriation is made by the Legislature.

(4) "Alternates" means any additive options or alternative designs included in a solicitation for competitive bids that are different from and priced separately from what is included in a base bid.

(5) "Construction project" means a specifically identified scope of work involving the act, trade, or process of building, erecting, constructing, adding, repairing, remodeling, rehabilitating, reconstructing, altering, converting, improving, expanding, or demolishing of a building, structure, facility, road, or highway. Repair and maintenance of existing public improvements that are recurring or ongoing in nature and that are not fully identified or known at any one time shall be considered a construction project and procured according to this article on an open-ended basis, so long as the work to be performed under the contract falls into a generally accepted single class, or type, and bidders are notified of the open-ended nature of the work in the solicitation: *Provided*, That no open-ended repair or maintenance contract may exceed \$500,000.

(c) The state and its subdivisions shall, except as provided in this section, solicit competitive bids for every construction project exceeding \$25,000 in total cost.

(1) If a solicitation contains a request for any alternates, the alternates shall be listed numerically in the order of preference in the solicitation.

(2) A vendor who has been debarred pursuant to §5A-3-33b through §5A-3-33f of this code, may not bid on or be awarded a contract under this section.

(d) All bids submitted pursuant to this chapter shall include a valid bid bond or other surety as approved by the State of West Virginia or its subdivisions.

(e) Following the solicitation of bids, the construction contract shall be awarded to the lowest qualified responsible bidder who shall furnish a sufficient performance and payment bond. The state and its subdivisions may reject all bids and solicit new bids on the project.

(f) Any solicitation of bids shall include no more than five alternates. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Any unaccepted alternate contained within a bid shall expire 90 days after the date of the opening of bids for review.

Determination of the lowest qualified responsible bidder shall be based on the sum of the base bid and any alternates accepted.

(g) The apparent low bidder on a contract valued at more than \$250,000 for the construction, alteration, decoration, painting, or improvement of a new or existing building or structure with a state spending unit shall submit a list of all subcontractors who will perform more than \$25,000 worth of work on the project including labor and materials. This section does not apply to other construction projects such as highway, mine reclamation, water, or sewer projects. The list shall include the names of the bidders and the license numbers as required by ~~§24-11-1~~ §30-42-1 *et seq.* of this code. This information shall be provided to the state spending unit within one business day of the opening of bids for review prior to the awarding of a construction contract. If the

apparent low bidder fails to submit the subcontractor list, the spending unit shall promptly request by telephone and electronic mail that the low bidder and second low bidder provide the subcontractor list within one business day of the request. Failure to submit the subcontractor list within one business day of receiving the request shall result in disqualification of the bid. A subcontractor list may not be required if the bidder provides notice in the bid submission or in response to a request for a subcontractor list that no subcontractors who will perform more than \$25,000 worth of work will be used to complete the project.

(h) Written approval must be obtained from the state spending unit before any subcontractor substitution is permitted. Substitutions are not permitted unless:

(1) The subcontractor listed in the original bid has filed for bankruptcy;

(2) The state spending unit refuses to approve a subcontractor in the original bid because the subcontractor is under a debarment pursuant to §5A-3-33d of this code or a suspension under §5A-3-32 of this code; or

(3) The contractor certifies in writing that the subcontractor listed in the original bill fails, is unable, or refuses to perform the subcontract.

(i) The contracting public entity may not award the contract to a bidder which fails to meet the minimum requirements set out in this section. As to a prospective low bidder which the contracting public entity determines not to have met one or more of the requirements of this section or other requirements as determined by the public entity in the written bid solicitation, prior to the time a contract award is made, the contracting public entity shall document in writing and in reasonable detail the basis for the determination and shall place the writing in the bid file. After the award of a bid under this section, the bid file of the contracting public agency and all bids submitted in response to the bid solicitation shall be open and available for public inspection.

(j) The contracting public entity shall not award a contract pursuant to this section to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees. Any governmental entity may submit to the Division of Purchasing information which identifies vendors that qualify as being in default on a monetary obligation to the entity. The contracting public entity shall take reasonable steps to verify whether the lowest qualified bidder is in default pursuant to this subsection prior to awarding a contract.

(k) A public official or other person who individually or together with others knowingly makes an award of a contract under this section in violation of the procedures and requirements of this section is subject to the penalties set forth in §5A-3-29 of this code.

(l) No officer or employee of this state or of a public agency, public authority, public corporation, or other public entity and no person acting or purporting to act on behalf of an officer or employee or public entity may require that a performance bond, payment bond, or surety bond required or permitted by this section be obtained from a particular surety company, agent, broker, or producer.

(m) All bids shall be open in accordance with the provisions of §5-22-2 of this code, except design-build projects which are governed by §5-22A-1 *et seq.* of this code and are exempt from these provisions.

(n) Nothing in this section applies to:

(1) Work performed on construction or repair projects by regular full-time employees of the state or its subdivisions;

(2) Prevent students enrolled in vocational educational schools from being utilized in construction or repair projects when the use is a part of the student's training program;

(3) Emergency repairs to building components, systems, and public infrastructure. For the purpose of this subdivision, the term "emergency repairs" means repairs that if not made immediately will seriously impair the use of building components, systems, and public infrastructure or cause danger to persons using the building components, systems, and public infrastructure; and

(4) A situation where the state or subdivision thereof reaches an agreement with volunteers, or a volunteer group, in which the governmental body will provide construction or repair materials, architectural, engineering, technical, or other professional services, and the volunteers will provide the necessary labor without charge to, or liability upon, the governmental body.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§21-1-3. Inspections by commissioner; duties and records of employers; commissioner may appoint assistants.

The commissioner of labor and his or her authorized representatives shall have the power and authority in the discharge of their duties, to enter any place of employment or public institution, for the purpose of collecting facts and statistics relating to the employment of workers and of making inspections for the proper enforcement of all labor laws of the state. No employer or owner shall refuse to admit the commissioner of labor or his or her authorized representative when they so seek admission to his place of employment, public building, or place of public assembly.

The commissioner or his or her authorized representative shall, at least once each year, visit and inspect the principal factories and workshops of the state, and shall, upon complaint and request of any three or more reputable citizens, visit and inspect any place where labor is employed and make true report of the result of his or her inspection.

Every employer and owner shall furnish to the ~~department~~ division of labor all information which the commissioner of labor or his or her representative is ~~authorize~~ authorized to require, and shall make true and specific answers to all questions submitted by the ~~department~~ division of labor, orally or in writing as required by said division ~~department~~. Every employer shall keep a true and accurate record of the name, address, and occupation of each person employed by him or her and of the daily and weekly hours worked by each such person, and of the wages paid each pay period to each such person. Such records shall be kept on file for at least one year after the date of the record. No employer shall make or cause to be made any false entries in any such record.

In addition to such other powers and duties as may be conferred upon the commissioner of labor by law, the ~~said~~ commissioner of labor shall have the power, duty, jurisdiction, and authority to employ, promote, and remove deputies, inspectors, clerks, and other assistants, as needed,

and to fix their compensation, with regard to existing laws applicable to the employment and compensation of officers and employees of the State of West Virginia, and to assign to them their duties; to make or cause to be made all necessary inspections, including inspections relating to enforcing the West Virginia Contractor Licensing Act, §30-42-1 et seq., of this code, to see that all laws and lawful orders which the department has the duty, power, and authority to enforce, are promptly and effectively carried out.

ARTICLE 3C. ELEVATOR SAFETY.

§21-3C-10a. License requirements for elevator mechanics, accessibility technicians, limited technicians; contractors license requirements; supervision of elevator apprentices requirements.

(a) A person may not engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or related conveyances covered by this article in this state, unless he or she has a license issued by the commissioner in accordance with this article.

(b) A person licensed under this article shall:

(1) Have in his or her possession a copy of the license issued pursuant to this article on any job on which he or she is performing elevator mechanic work; and

(2) Be, or be employed by, a contractor licensed pursuant to the provisions of ~~article eleven, chapter twenty-one~~ §30-42-1 et seq., of this code unless the work is performed by a historic resort hotel's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the historic resort hotel which is not intended for speculative sale or lease;

(c) *Elevator mechanic license.* —

(1) To obtain an elevator mechanic's license, a person shall:

(A) Successfully complete educational programs that are registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, including all required examinations and work experience: *Provided*, That if an applicant successfully completes such educational program prior to being registered with the Bureau of Apprenticeship and Training of the United States Department of Labor, the division may grant a license to the applicant after he or she demonstrates to the commissioner that he or she has successfully completed all the test and work experience requirements; or

(B) (i) Provide to the commissioner an acceptable combination of documented experience and educational credits of not less than four years of recent and active experience in the elevator industry in construction, maintenance, or service/repair or any combination thereof, as verified by current and previous employers listed to do business in this state, on a sworn affidavit; and

(ii) Obtain a score of 70 percent or better on a written competency examination approved or provided by the division.

(2) A licensed elevator mechanic may work on all elevators covered by this article.

(d) *Accessibility technician license.* —

(1) To obtain an accessibility technician's license a person shall:

(A) Provide to the commissioner a certificate of completion of an accessibility training program for the elevator industry such as the Certified Accessibility Training (CAT) program by the National Association of Elevator Contractors, or an equivalent nationally recognized training program; or

(B) (i) Have at least 18 months experience in the construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit, of accessibility lifts;

(ii) Have at least one year of documented vocational training and/or an associate degree in a related field; and

(iii) Obtain a score of 70 percent or better on a written competency examination approved or provided by the commissioner.

(2) A person holding an accessibility technician license may only perform work on accessibility equipment.

(3) A person holding an accessibility technician license may obtain a limited use/limited application (LULA) elevator endorsement. To obtain the LULA elevator endorsement, such person shall:

(A) (i) Hold a current accessibility technician license;

(ii) Provide the commissioner with a certificate of LULA manufacturer's training; and

(iii) Provide at least one year of documented work experience to the commissioner, on a sworn affidavit, in the construction, maintenance, service and repair of LULA elevators and comparable equipment, which was completed under the supervision of a licensed accessibility technician; or

(B) As of July 1, 2012, have at least 18 months of accessibility technician's experience in construction, maintenance, service and repair, or any combination thereof, as verified by current and previous employers, licensed to do business in this state, on a sworn affidavit: *Provided*, That an additional one year of documented work as an accessibility technician with certification of manufacturer's factory training, is required before a LULA endorsement may be obtained.

(4) Any person carrying an accessibility license as of July 1, 2012, shall receive the required endorsement to continue to work on this type of equipment, and will be qualified to supervise future applicants as described in this section.

(e) *Limited technician license.* —

(1) To obtain a limited technician's license an applicant shall:

(A) Complete a certified apprenticeship program, registered by the United States Department of Labor established at a historic resort hotel, qualifying for a limited technician license; or

(B) Provide an acceptable combination of documented experience, and educational credits of not less than three years of recent and active experience in the elevator industry, in maintenance,

or service/repair or any combination thereof, as verified by current and previous employers authorized to do business in this state, on a sworn affidavit; and obtain a score of 70_percent or better on a written competency examination approved or provided by the division.

(2) A person holding a limited technician license may only perform work at a historic resort hotel: *Provided*, That for purposes of this section, "historic resort hotel" has the same meaning ascribed to it in §29-25-2 of this code.

(f) *Elevator apprentice.* —

(1) An elevator apprentice who is enrolled in an apprenticeship program approved by the commissioner, and who is in good standing in the program, may work under the supervision of a licensed elevator mechanic, as follows:

(A) An apprentice who has not successfully completed the equivalent of at least one year of the program may work only under the direct supervision of a licensed elevator mechanic who is present on the premises and available to the apprentice at all times.

(B) An apprentice who has successfully completed the equivalent of at least one year of the program may:

(i) Work under the direct supervision of a licensed elevator mechanic as set forth in subdivision (1) of this subsection; and

(ii) Perform the tasks set forth in this paragraph, only if delegated by and performed under the general supervision of a licensed elevator mechanic, who must, at a minimum, meet the apprentice on the job at the beginning of each day to delegate the specific tasks, and who remains responsible for the delegated tasks:

(I) Oiling, cleaning, greasing and painting;

(II) Replacing of combplate teeth;

(III) Relamping and fixture maintenance;

(iv) Inspection, cleaning and lubricating of hoistway doors, car tops, bottoms and pits; and

(IV) Observing operation of equipment.

§21-3C-10b. Issuance and renewal of licenses.

(a) Upon approval of a properly completed application for licensure, the commissioner may issue a person a license under the provisions of this article.

(b) The licenses issued under the provisions of this article shall be renewed biennially upon application for renewal on a form prescribed by the commissioner and payment of a fee established by legislative rule.

(c) Upon a proper application for renewal, the commissioner shall renew a license, even if the license holder is unemployed or not working in the industry at the time of renewal: *Provided*, That before the license holder may engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered

by this article, the license holder shall be a contractor, or be employed by a contractor licensed pursuant to the provisions of ~~section ten(a); article eleven, chapter twenty one of the code~~ §30-42-1 et seq., of this code.

§21-3C-11. Disposition of fees; legislative rules.

(a) The division shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code, for the implementation and enforcement of the provisions of this article, which shall provide:

(1) Standards, qualifications, and procedures for submitting applications, taking examinations and issuing and renewing licenses, certificates of competency and certificates of operation of the three licensure classifications set forth in §21-3C-10a of this code;

(2) For the renewal of a license, even if the licensee is unemployed or not working in the industry: *Provided*, That to engage or offer to engage in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining an elevator or related conveyance covered by this article, the licensee shall be a contractor, or be employed by a contractor licensed pursuant to ~~§21-11-6 of the code~~ §30-42-1 et seq., of this code;

(3) Qualifications and supervision requirements for elevator apprentices;

(4) Provisions for the granting of licenses without examination, to applicants who present satisfactory evidence of having the expertise required to perform work as defined in this article and who apply for licensure on or before July 1, 2010: *Provided*, That if a license issued under the authority of this subsection subsequently lapses, the applicant may, at the discretion of the commissioner, be subject to all licensure requirements, including the examination;

(5) Provisions for the granting of emergency licenses in the event of an emergency due to disaster, act of God, or work stoppage when the number of persons in the state holding licenses issued pursuant to this article is insufficient to cope with the emergency;

(6) Provisions for the granting of temporary licenses in the event that there are no elevator mechanics available to engage in the work of an elevator mechanic as defined by this article;

(7) Continuing education requirements;

(8) Procedures for investigating complaints and revoking or suspending licenses, certificates of competency and certificates of operation, including appeal procedures;

(9) Fees for testing, issuance and renewal of licenses, certificates of competency and certificates of operation, and other costs necessary to administer the provisions of this article;

(10) Enforcement procedures; and

(11) Any other rules necessary to effectuate the purposes of this article.

(b) The rules proposed for promulgation pursuant to subsection (a) of this section shall establish the amount of any fee authorized pursuant to the provisions of this article: *Provided*, That in no event may the fees established for the issuance of certificates of operation exceed \$90.

(c) 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 known as the Elevator Safety Fund and expended for the implementation and enforcement of this article. Through June 30, 2019, 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 obligations: *Provided*, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

(d) The division may enter into agreements with counties and municipalities whereby such counties and municipalities be permitted to retain the inspection fees collected to support the enforcement activities at the local level.

(e) The commissioner or his or her authorized representatives may consult with engineering authorities and organizations concerned with standard safety codes, rules and regulations governing the operation, maintenance, servicing, construction, alteration, installation and the qualifications which are adequate, reasonable and necessary for the elevator mechanic and inspector.

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-2. Definitions.

(a) "Board" means the West Virginia Manufactured Housing Construction and Safety Board created in this article.

(b) "Commissioner" means the Commissioner of the West Virginia State Division of Labor.

(c) "Contractor" means any person who performs operations in this state at the occupancy site which render a manufactured home fit for habitation. The operations include, without limitation, installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units. The operations also include transporting the unit to the occupancy site by other than a motor carrier regulated by the West Virginia Public Service Commission.

Contractor does not include:

(1) A person who personally does work on a manufactured home which the person owns or leases; or

(2) A person who is licensed under ~~article eleven of this chapter~~ §30-42-1 et seq., of this code and is performing work on a manufactured home pursuant to a contract with a person licensed under §21-9-9 of this code.

(d) "Dealer" means any person engaged in this state in the sale, leasing, or distributing of new or used manufactured homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale.

(e) "Defect" includes any defect in the performance, construction, components, or material of a manufactured home that renders the home or any part of the home not fit for the ordinary use for which it was intended.

(f) "Distributor" means any person engaged in this state in the sale and distribution of manufactured homes for resale.

(g) "Federal standards" means the National Manufactured Housing Construction and Safety Standards Act of 1974, and federal manufactured home construction and safety standards and regulations promulgated by the Secretary of HUD to implement that act.

(h) "HUD" means the United States Department of Housing and Urban Development.

(i) "Manufacturer" means any person engaged in manufacturing or assembling manufactured homes, including any person engaged in importing manufactured homes for resale.

(j) "Manufactured home" means a structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or ~~forty~~ 40 or more feet in length or, when erected on site, is 320 or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certificate which complies with the applicable federal standards. Calculations used to determine the number of square feet in a structure will be based on the structure's exterior dimensions measured at the largest horizontal projections when erected on site.

(k) "Purchaser" means the first person purchasing a manufactured home in good faith for purposes other than resale.

§21-9-9. License required; fees; form of license; display of license; denial, suspension, or revocation.

(a) No manufacturer, dealer, distributor, or contractor shall engage in business in this state without first having applied for and received a license pursuant to this section. The license shall authorize the holder to engage in the business permitted by the license. All license applications shall be accompanied by the required fee and surety bond or other form of assurance or fee assessed in satisfaction of assurance as required by rule or regulation promulgated by the board.

(b) All licenses shall be granted or refused within 30 days after proper and complete application. All licenses shall expire on June 30 of each year, unless sooner revoked or suspended. Applications shall be deemed valid for a period of 30 days.

(c) The annual license fees shall be in the amounts prescribed ~~from time to time~~ by rules promulgated by the board but in no event less than the following amounts:

(1) For manufacturers, \$300;

(2) For dealers, \$100;

(3) For distributors, \$100; and

(4) For contractors, \$50: *Provided*, That if a contractor has met the licensing requirements of this article and the West Virginia Contractor Licensing Act in ~~§21-11-1 et seq.~~ §30-42-1 et seq.

of this code, has paid the annual license fee under ~~§21-11-8~~ §30-42-8 of this code and has furnished bond or other assurance or fee under §21-9-10 of this code, he or she shall not be required to pay the annual license fee set forth in this section.

(d) The board shall prescribe the form of license and each license shall have affixed thereon the seal of the State Division of Labor.

(e) Each licensee shall conspicuously display the license in its established place of business.

(f) Pursuant to such rules and regulations as may be promulgated by the board, the board may deny the issuance of a license or revoke or suspend any license.

(g) All fees paid pursuant to this article shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account in the State Treasury to be known as the State Manufactured Housing Administration Fund. Expenditures from the fund shall be for the administration and enforcement of this article. Through June 30, 2019, 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 obligations: *Provided*, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations.

ARTICLE 11. WEST VIRGINIA CONTRACTOR LICENSING ACT.

§21-11-1. Short title.

[Repealed.]

§21-11-2. Policy declared.

[Repealed.]

§21-11-3. Definitions.

[Repealed.]

§21-11-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

[Repealed.]

§21-11-5. Administrative duties of the board; regulations.

[Repealed.]

§21-11-6. Necessity for license; exemptions.

[Repealed.]

§21-11-7. Application for and issuance of license.

[Repealed.]

§21-11-8. Licenses; expiration date; fees; renewal.

[Repealed.]

§21-11-9. Unlawful use, assignment, transfer of license; revocation.

[Repealed.]

§21-11-10. Prerequisites to obtaining building permit; mandatory written contracts.

[Repealed.]

§21-11-10a. Informational list for basic universal design features; penalties.

[Repealed.]

§21-11-11. Notice included with invitations to bid and specifications.

[Repealed.]

§21-11-12. License renewal, lapse and reinstatement.

[Repealed.]

§21-11-13. Violation of article; injunction; criminal penalties.

[Repealed.]

§21-11-14. Disciplinary powers of the board.

[Repealed.]

§21-11-15. Administrative duties of division.

[Repealed.]

§21-11-16. Rules.

[Repealed.]

§21-11-17. Recordkeeping; fees.

[Repealed.]

§21-11-18. Reciprocity.

[Repealed.]

§21-11-20. Board authorized to provide training.

[Repealed.]

ARTICLE 11A. NOTICE AND OPPORTUNITY TO CURE CONSTRUCTION DEFECTS.**§21-11A-2. Applicability of article.**

This article does not apply to an action:

(1) Against a contractor for which a claimant, as a consumer, is entitled to a specific remedy pursuant to chapter 46A of this code;

(2) Against a contractor who is not licensed under the provisions of ~~article eleven of this chapter~~ §30-42-1 et seq., of this code;

(3) Demanding damages of \$5,000 or less;

(4) Alleging a construction defect that poses an imminent threat of injury to person or property;

(5) Alleging a construction defect that causes property not to be habitable;

(6) Against a contractor who failed to provide the notice required by §21-11A-5 or §21-11A-6 of this code;

(7) Against a contractor if the parties to the contract agreed to submit claims to mediation, arbitration, or another type of alternative dispute resolution; or

(8) Alleging claims for personal injury or death.

§21-11A-4. Applicability of definitions; definitions.

For the purposes of this article, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Action" means any civil action, or any alternative dispute resolution proceeding other than the negotiation required under this article, for damages, asserting a claim for injury or loss to real or personal property caused by an alleged defect arising out of or related to residential improvements.

(2) "Claim" means a demand for damages by a claimant based upon an alleged construction defect in residential improvements.

(3) "Claimant" means a homeowner, including a subsequent purchaser, who asserts a claim against a contractor concerning an alleged construction defect in residential improvements.

(4) "Construction defect" means a deficiency in, or a deficiency arising out of, the design, specifications, planning, supervision or construction of residential improvements that results from any of the following:

(A) Defective material, products, or components used in the construction of residential improvements;

(B) Violation of the applicable codes in effect at the time of construction of residential improvements;

(C) Failure in the design of residential improvements to meet the applicable professional standards of care;

(D) Failure to complete residential improvements in accordance with accepted trade standards for good and workmanlike construction: *Provided*, That compliance with the applicable codes in effect at the time of construction is *prima facie* evidence of construction in accordance with accepted trade standards for good and workmanlike construction, with respect to all matters specified in those codes; or

(E) Failure to properly oversee, supervise, and inspect services or goods provided by the contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services.

(5) "Contract" means a written contract between a contractor and a claimant by the terms of which the contractor agrees to provide goods or services, by sale or lease, to or for a claimant.

(6) "Contractor" means a contractor, licensed under the provisions of ~~article eleven of this chapter~~ §30-42-1 et seq., of this code, who has entered into a contract directly with a claimant. The term does not include the contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a claimant.

(7) "Day" means a calendar day. If an act is required to occur on a day falling on a Saturday, Sunday or holiday, the first working day which is not one of these days should be counted as the required day for purposes of this article.

(8) "Goods" means supplies, materials, or equipment.

(9) "Parties" means: (A) The claimant; and (B) any contractor, subcontractor, agent or other person furnishing goods or services and upon whom a claim of an alleged construction defect has been served under this article.

(10) "Residential improvements" means: (A) The construction of a residential dwelling or appurtenant facility or utility; (B) an addition to, or alteration, modification, or rehabilitation of an existing dwelling or appurtenant facility or utility; or (C) repairs made to an existing dwelling or appurtenant facility or utility; In addition to actual construction or renovation, residential improvements actually added to residential real property include the design, specifications, surveying, planning, goods, services and the supervision of a contractor's subcontractor, officer, employee, agent, or other person furnishing goods or services to a claimant.

(11) "Services" means the furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof.

(12) "Subcontractor" means a contractor who performs work on behalf of another contractor on residential improvements.

(13) "Supplier" means a person who provides goods for residential improvements.

ARTICLE 16. REGULATION OF HEATING, VENTILATING AND COOLING WORK.

§21-16-4. Scope of practice.

(a) A An HVAC technician in training is authorized to assist in providing heating, ventilating, and cooling work only under the direction and control of a HVAC technician.

(b) A An HVAC technician is authorized to provide heating, ventilating, and cooling work without supervision.

(c) Persons licensed under this article are subject to the applicable provisions of the Contractor Licensing Act in ~~article eleven of this chapter~~ §30-42-1 et seq., of this code in the performance of work authorized by this article.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 10. GENERAL PROVISIONS.

§21A-10-11. Reporting requirements and required information; use of information; libel and slander actions prohibited.

(a) Each employer, including labor organizations as defined in subsection (i) of this section, shall, quarterly, submit certified reports on or before the last day of the month next following the calendar quarter, on forms to be prescribed by the commissioner. The reports shall contain:

(1) The employer's assigned unemployment compensation registration number, the employer's name and the address at which the employer's payroll records are maintained;

(2) Each employee's Social Security account number, name, and the gross wages paid to each employee, which shall include the first \$12,000 of remuneration and all amounts in excess of that amount, notwithstanding §21-1A-28(b)(1) of this code;

(3) The total gross wages paid within the quarter for employment, which includes money wages and the cash value of other remuneration, and shall include the first \$12,000 of remuneration paid to each employee and all amounts in excess of that amount, notwithstanding §21-1A-28(b)(1) of this code; and

(4) Other information that is reasonably connected with the administration of this chapter.

(b) Information obtained may not be published or be open to public inspection to reveal the identity of the employing unit or the individual.

(c) Notwithstanding the provisions of subsection (b) of this section, the commissioner may provide information obtained to the following governmental entities for purposes consistent with state and federal laws:

(1) The United States Department of Agriculture;

(2) The state agency responsible for enforcement of the Medicaid program under Title XIX of the Social Security Act;

(3) The United States Department of Health and Human Services or any state or federal program operating and approved under Title I, Title II, Title X, Title XIV or Title XVI of the Social Security Act;

(4) Those agencies of state government responsible for economic and community development; early childhood, primary, secondary, postsecondary, and vocational education; the West Virginia P-20 longitudinal data system established pursuant to §18B-1D-10 of this code; and

vocational rehabilitation, employment and training, including, but not limited to, the administration of the Perkins Act and the Workforce Innovation and Opportunity Act;

(5) The Tax Division, but only for the purposes of collection and enforcement;

(6) The Division of Labor for purposes of enforcing the wage bond pursuant to the provisions of §21-5-14 of this code and ~~the contractor licensing provisions of chapter twenty one of this code;~~

(7) The contractors licensing board for the purpose of enforcing the contractors licensing provisions pursuant to §30-42-1 et seq., of this code;

~~(7)~~ (8) Any agency of this or any other state, or any federal agency, charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices;

~~(8)~~ (9) Any claimant for benefits or any other interested party to the extent necessary for the proper presentation or defense of a claim; and

~~(9)~~ (10) The Insurance Commissioner for purposes of its Workers Compensation regulatory duties.

(d) The agencies or organizations which receive information under subsection (c) of this section shall agree that the information shall remain confidential as not to reveal the identity of the employing unit or the individual consistent with the provisions of this chapter.

(e) The commissioner may, before furnishing any information permitted under this section, require that those who request the information shall reimburse ~~the Bureau of Employment Programs~~ WorkForce West Virginia for any cost associated for furnishing the information.

(f) The commissioner may refuse to provide any information requested under this section if the agency or organization making the request does not certify that it will comply with the state and federal law protecting the confidentiality of the information.

(g) A person who violates the confidentiality provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$20 nor more than \$200 or confined in a county or regional jail not longer than 90 days, or both.

(h) An action for slander or libel, either criminal or civil, may not be predicated upon information furnished by any employer or any employee to the commissioner in connection with the administration of any of the provisions of this chapter.

(i) For purposes of subsection (a) of this section, the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. It includes any entity, also known as a hiring hall, which is used by the organization and an employer to carry out requirements described in 29 U. S. C. §158(f)(3) of an agreement between the organization and the employer.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.**ARTICLE 42. WEST VIRGINIA CONTRACTOR LICENSING ACT.****§30-42-1. Short title.**

This article shall be known and may be cited as the “West Virginia Contractor Licensing Act”.

§30-42-2. Policy declared.

It is hereby declared to be the policy of the State of West Virginia that all persons desiring to perform contracting work in this state be duly licensed to ensure capable and skilled craftsmanship utilized in construction projects in this state, both public and private; fair bidding practices between competing contractors through uniform compliance with the laws of this state; and protection of the public from unfair, unsafe, and unscrupulous bidding and construction practices.

§30-42-3. Definitions.

(a) “Basic universal design” means the design of products and environments to be useable by all people, to the greatest extent possible, without the need for adaptation or specialization.

(b) “Board” means the West Virginia Contractor Licensing Board.

(c) “Cease and desist order” means an order issued by the board pursuant to the provisions of this article.

(d) “Contractor” means a person who in any capacity for compensation, other than as an employee of another, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, structure, or excavation associated with a project, development, or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is \$5,000 or more for residential work or \$25,000 or more for commercial work.

Contractor includes a construction manager who performs management and counseling services for a construction project for a professional fee.

Contractor does not include:

(1) One who merely furnishes materials or supplies without fabricating or consuming them in the construction project;

(2) A person who personally performs construction work on the site of real property which the person owns or leases whether for commercial or residential purposes;

(3) A person who is licensed or registered as a professional and who functions under the control of any other licensing or regulatory board, whose primary business is real estate sales, appraisal, development, management, and maintenance, who acting in his or her respective professional capacity and any employee of the professional, acting in the course of his or her employment, performs any work which may be considered to be performing contracting work;

(4) A pest control operator licensed under the provisions of §19-16A-7 of this code to engage in the application of pesticides for hire, unless the operator also performs structural repairs exceeding \$1,000 on property treated for insect pests;

(5) A corporation, partnership, or sole proprietorship whose primary purpose is to prepare construction plans and specifications used by the contractors defined in this subsection and who employs full-time a registered architect licensed to practice in this state or a registered professional engineer licensed to practice in this state. Employees of the corporation, partnership or sole proprietorship shall also be exempt from the requirements of this article; or

(6) A person who performs landscaping or painting services for commercial or residential customers.

(e) "Electrical contractor" means a person who engages in the business of contracting to install, erect, repair, or alter electrical equipment for the generation, transmission, or utilization of electrical energy.

(f) "General building contractor" means a person whose principal business is in connection with any structures built, being built, or to be built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in the construction the use of more than two contractor classifications, or a person who supervises the whole, or any part, of the construction.

(g) "General engineering contractor" means a person whose principal business is in connection with public or private works projects, including, but not limited to, one or more of the following: Irrigation, drainage, and water supply projects; electrical generation projects; swimming pools; flood control; harbors; railroads; highways; tunnels; airports and airways; sewers and sewage disposal systems; bridges; inland waterways; pipelines for transmission of petroleum and other liquid or gaseous substances; refineries; chemical plants and other industrial plants requiring a specialized engineering knowledge and skill; piers and foundations; and structures or work incidental thereto.

(h) "Heating, ventilating and cooling contractor" means a person who engages in the business of contracting to install, erect, repair, service, or alter heating, ventilating and air conditioning equipment or systems to heat, cool, or ventilate residential and commercial structures.

(i) "License" means a license to engage in business in this state as a contractor in one of the classifications set out in this article.

(j) "Multifamily contractor" means a person who is engaged in construction, repair, or improvement of a multifamily residential structure.

(k) "Person" includes an individual, firm, sole proprietorship, partnership, corporation, association, or other entity engaged in the undertaking of construction projects or any combination thereof.

(l) "Piping contractor" means a person whose principal business is the installation of process, power plant, air, oil, gasoline, chemical, or other kinds of piping; and boilers and pressure vessels using joining methods of thread, weld, solvent weld, or mechanical methods.

(m) "Plumbing contractor" means a person whose principal business is the installation, maintenance, extension, and alteration of piping, plumbing fixtures, plumbing appliances and plumbing appurtenances, venting systems and public or private water supply systems within or adjacent to any building or structure; included in this definition is installation of gas piping, chilled water piping in connection with refrigeration processes and comfort cooling, hot water piping in connection with building heating and piping for stand pipes.

(n) "Residential contractor" means a person whose principal business is in connection with construction, repair, or improvement of real property used as, or intended to be used for, residential occupancy.

(o) "Specialty contractor" means a person who engages in specialty contracting services which do not substantially fall within the scope of any contractor classification as set out herein.

(p) "Residential occupancy" means occupancy of a structure for residential purposes for periods greater than 30 consecutive calendar days.

(q) "Residential structure" means a building or structure used or intended to be used for residential occupancy, together with related facilities appurtenant to the premises as an adjunct of residential occupancy, which contains not more than three distinct floors which are above grade in any structural unit regardless of whether the building or structure is designed and constructed for one or more living units. Dormitories, hotels, motels, or other transient lodging units are not residential structures.

(r) "Subcontractor" means a person who performs a portion of a project undertaken by a principal or general contractor or another subcontractor.

§30-42-4. West Virginia contractor licensing board created; members; appointment; terms; vacancies; qualifications; quorum.

(a) The West Virginia Contractor Licensing Board is continued. The board shall consist of 10 members appointed by the Governor by and with the advice and consent of the Senate for terms of four years. The members shall serve until their successors are appointed and have qualified. Eight of the appointed members shall be owners of businesses engaged in the various contracting industries, with at least one member appointed from each of the following contractor classes: One electrical contractor; one general building contractor; one general engineering contractor; one heating, ventilating and cooling contractor; one multifamily contractor; one piping contractor; one plumbing contractor; and one residential contractor, as defined in §30-42-3 of this code. Two of the appointed members shall be building code officials who are not members of any contracting industry. At least three members of the board shall reside, at the time of their appointment, in each congressional district as existing on January 1, 2018. The Secretary of the Department of Tax and Revenue or his or her designee, and the Commissioner of WorkForce West Virginia or his or her designee shall be ex-officio nonvoting members of the board.

(b) Terms of the members first appointed shall be two members for one year, two members for two years, three members for three years, and three members for four years, as designated by the Governor at the time of appointment. Thereafter, terms shall be for four years. A member who has served all or part of two consecutive terms shall not be subject to reappointment unless four years have elapsed since the member last served. Vacancies shall be filled by appointment by the Governor for the unexpired term of any member whose office is vacant and shall be made

within 60 days of the occurrence of the vacancy. A vacancy on the board shall not impair the right of the remaining members to exercise all the powers of the board.

(c) The board shall elect a chair from one of the voting members of the board. The board shall meet at least once annually and at such other times as called by the chair or a majority of the board. Board members shall receive compensation not to exceed the amount paid to members of the Legislature for the interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion of a day spent attending meetings of the board and shall be reimbursed for all reasonable and necessary expenses incurred incident to his or her duties as a member of the board. A majority of the members appointed shall constitute a quorum of the board.

§30-42-5. Administrative duties and powers of the board; rules.

(a) The board shall propose rules for legislative approval in accordance with §29A-3-1 et seq., of this code relating to the following:

(1) The minimum qualifications for applicants for examination and license in each of the following specified classes of contractor:

(A) Electrical contractor;

(B) General building contractor;

(C) General engineering contractor;

(D) Heating, ventilating, and cooling contractor;

(E) Multifamily contractor;

(F) Piping contractor;

(G) Plumbing contractor;

(H) Residential contractor; or

(I) Specialty contractor;

(2) The content of examinations for applicants in each class;

(3) Procedures for application, examination, and license renewal, and the manner in which the examination will be conducted;

(4) The continued competency of licensees for purposes of renewal and reinstatement of licenses; and

(5) Procedures for disciplinary action before the board.

(b) The board shall:

(1) Hold at least one examination in each calendar quarter for each specific classification of contractor, designate the time and place of the examinations, and notify applicants thereof;

(2) Investigate alleged violations of this article and legislative rules, orders, and final decisions of the board;

(3) Notify the board members of meeting dates and agenda items at least five days prior to the meetings; and

(4) Take minutes and records of all meetings and proceedings.

(c) The board has all the powers and duties set forth in this article, including:

(1) Maintaining an office and hire, discharge, establish the job requirements and fix the compensation of employees, and contract persons necessary to enforce the provisions of this article;

(2) To sue and be sued in its official name as an agency of this state; and

(3) Conferring with the Attorney General or assistants of the Attorney General in connection with legal matters and questions.

(d) The board shall perform the following administrative duties:

(1) Collect and record all fees;

(2) Maintain records and files;

(3) Issue and receive application forms;

(4) Notify applicants of the results of the board examination;

(5) Arrange space for holding examinations and other proceedings;

(6) Issue licenses and temporary licenses as authorized by this article;

(7) Issue duplicate licenses upon submission of a written request by the licensee attesting to loss of or the failure to receive the original and payment by the licensee of a fee established by regulation adopted by the division;

(8) Notify licensees of renewal dates at least 30 days before the expiration date of their license;

(9) Answer routine inquiries;

(10) Maintain files relating to individual licensees;

(11) Arrange for printing and advertising;

(12) Purchase supplies;

(13) Employ additional help when needed;

(14) Contract with the Division of Labor for, and the Division of Labor shall provide, inspection, enforcement, and investigative services for 24 months after the effective date of this article. After

24 months, the board shall be responsible for providing inspection, enforcement, and investigative services; and

(15) Issue cease and desist orders to persons engaging in contracting within the state without a valid license.

(e) Following successful completion of the examination, and prior to the issuance of the license, the applicant shall certify by affidavit that the applicant:

(1) Is in compliance with the business franchise tax provisions of chapter 11 of this code;

(2) Has registered, and is in compliance, with the workers' compensation fund and the employment security fund, as required by §23-1-1 et seq., and §21A-1-1 et seq., of this code; and

(3) Is in compliance with the applicable wage bond requirements of §21-5-14 of this code: Provided, That in the case of an out-of-state contractor not doing business in this state and seeking licensure for bidding purposes only, the applicant may be granted a conditional license for bid purposes only.

§30-42-6. Necessity for license; exemptions.

(a) No person may engage in this state in any activity as a contractor or submit a bid to perform work as a contractor, as defined in this article, unless that person holds a license issued under the provisions of this article. No firm, partnership, corporation, association, or other entity may engage in contracting in this state unless an officer thereof holds a license issued pursuant to this article.

(b) Any person to whom a license has been issued under this article shall keep the license or a copy thereof posted in a conspicuous position at every construction site where work is being done by the contractor. The contractor's license number shall be included in all contracting advertisements and all fully executed and binding contracts. Any person violating the provisions of this subsection is subject, after hearing, to a warning, a reprimand, or a fine of not more than \$200.

(c) Except as otherwise provided in this code, the following are exempt from licensure:

(1) Work done exclusively by employees of the United States Government, the State of West Virginia, a county, municipality or municipal corporation, and any governmental subdivision or agency thereof;

(2) The sale or installation of a finished product, material or article, or merchandise which is not actually fabricated into and does not become a permanent fixed part of the structure;

(3) Work performed personally by an owner or lessee of real property on property the primary use of which is for agricultural or farming enterprise;

(4) A material supplier who renders advice concerning use of products sold and who does not provide construction or installation services;

(5) Work performed by a public utility company regulated by the West Virginia Public Service Commission and its employees;

(6) Repair work contracted by the owner of the equipment on an emergency basis in order to maintain or restore the operation of the equipment;

(7) Work performed by an employer's regular employees, for which the employees are paid regular wages and not a contract price, on property owned or leased by the employer which is not intended for speculative sale or lease;

(8) Work personally performed on a structure by the owner or occupant thereof; and

(9) Work performed when the specifications for the work have been developed or approved by engineering personnel employed by the owner of a facility by registered professional engineers licensed pursuant to the laws of this state when the work to be performed because of its specialized nature or process cannot be reasonably or timely contracted for within the general area of the facility.

§30-42-7. Application for and issuance of license.

(a) A person desiring to be licensed as a contractor under this article shall submit to the board a written application requesting licensure, providing the applicant's social security number and such other information as the board may require on forms supplied by the board. The applicant shall pay a license fee not to exceed \$150: *Provided*, That electrical contractors already licensed under §29-3B-4 of this code shall pay no more than \$20.

(b) No license may be issued without examination pursuant to this subsection: *Provided*, That any person issued a contractor's license by the board pursuant to this subsection may apply to the board for transfer of the license to a new business entity in which the license holder is the principal owner, partner, or corporate officer: *Provided, however*, That a license holder may hold a license on behalf of only one business entity during a given time period. The board may transfer the license issued pursuant to this subsection to the new business entity without requiring examination of the license holder.

§30-42-8. Licenses; expiration date; fees; renewal.

(a) A license issued under the provisions of this article expires one year from the date on which it is issued. The board shall establish application and annual license fees not to exceed \$150.

(b) The board may propose rules for legislative approval in accordance with §29A-3-1 *et seq.*, of this code to establish license and renewal fees.

§30-42-9. Unlawful use, assignment, transfer of license; revocation.

No license may be used for any purpose by any person other than the person to whom the license is issued. No license may be assigned, transferred, or otherwise disposed of so as to permit the unauthorized use thereof. No license issued pursuant to the provisions of §30-42-7(b) of this code may be assigned, transferred, or otherwise disposed of except as provided in said subsection. Any person who violates this section is subject to the penalties imposed in §30-42-14 of this code.

§30-42-10. Prerequisites to obtaining building permit; mandatory written contracts.

(a) Any person making application to the building inspector or other authority of any incorporated municipality or other political subdivision in this state charged with the duty of issuing

building or other permits for the construction of any building, highway, sewer, or structure, or for any removal of materials or earth, grading or improvement shall, before issuance of the permit, either furnish satisfactory proof to the inspector or authority that the person is duly licensed under the provisions of this article to carry out or superintend the construction, or file a written affidavit that the person is not subject to licensure as a contractor or subcontractor as defined in this article. The inspector or authority may not issue a building permit to any person who does not possess a valid contractor's license when required by this article.

(b) No person licensed under the provisions of this article may perform contracting work of an aggregate value of \$10,000 or more, including materials and labor, without a written contract, setting forth a description and cost of the work to be performed, signed by the licensee and the person for whom the work is to be performed.

(c) The board shall file a procedural rule setting forth a standard contract form which meets the minimum requirements of this subsection for use by licensees. The board shall post the contract form on its website and shall assist licensees in the correct completion of the form. The board shall mail a written notice of the requirements imposed by the rule to each licensed contractor at the address provided to the board by the contractor on his or her last application for licensure or renewal.

§30-42-11. Informational list for basic universal design features.

(a) Ninety days after the Contractor Licensing Board certifies and makes available to the general public the standard form informational list of basic universal design features pursuant to this section, a licensed contractor of any proposed residential housing in the state shall provide to the buyer an informational list of basic universal design features that would make the home entrance, interior routes of travel, the kitchen, and the bathroom or bathrooms universally accessible. Basic universal design features are to include, but not be limited to, the following:

(1) At least one nonstep entrance into the dwelling;

(2) All doors on the entry-level floor, including bathrooms, have a minimum of 36 inches;

(3) At least one accessible bathroom on the entry-level floor with ample maneuvering space;

(4) Kitchen, general living space, and one room capable of conversion into a bedroom, all with ample maneuvering space, on the entry-level floor; and

(5) Any other external or internal feature requested at a reasonable time by the buyer and agreed to by the seller.

(b) If a buyer is interested in a specific informational feature on the list established by subsection (a) of this section, the seller or builder upon request of the buyer shall indicate whether the feature is standard, limited, optional, or not available and, if available, shall further indicate the cost of such a feature to the buyer.

(c) The standard form informational list of basic universal design features shall be certified and made available for reproduction by the board, in accordance with the provisions of subsection (a) of this section, based on mutual recommendation of the board, the American Institute of Architects-West Virginia, the Home Builders Association of West Virginia, and the West Virginia Center for Excellence in Disabilities.

§30-42-12. Notice included with invitations to bid and specifications.

Any architect or engineer preparing any plan and specification for contracting work to be performed in this state shall include in the plan, specification, and invitation to bid a reference to this article informing any prospective bidder that the person's contractor's license number must be included on any bid submission. A subcontractor shall furnish that person's contractor's license number to the contractor prior to the award of the contract.

§30-42-13. License renewal, lapse, and reinstatement.

(a) A license which is not renewed on or before the renewal date shall lapse. The board may establish by rule on a delayed renewal fee to be paid for issuance of any license which has lapsed: *Provided*, That no license which has lapsed for a period of 90 days or more may be renewed: *Provided, however*, That if a licensee is in a dispute with a state agency, and it is determined that the licensee is not at fault, the board shall renew the license.

(b) If continuing education or other requirements are made a condition of license reinstatement after lapse, suspension, or revocation, these requirements must be satisfied before the license is reissued.

§30-42-14. Violation of article; injunction; criminal penalties.

(a)(1) Upon a determination that a person is engaged in contracting business in the state without a valid license, the board shall issue a cease and desist order requiring the person to immediately cease all operations in the state. The order shall be withdrawn upon issuance of a license to that person.

(2) After affording an opportunity for a hearing, the board may impose a penalty of not less than \$200 nor more than \$1,000 upon any person engaging in contracting business in the state without a valid license. The board may accept payment of the penalty in lieu of a hearing.

(3) Within 30 days after receipt of the final order issued pursuant to this section, any party adversely affected by the order may appeal the order to the circuit court of Kanawha County, West Virginia, or to the circuit court of the county in which the petitioner resides or does business.

(b) Any person continuing to engage in contracting business in the state without a valid license after service of a cease and desist order is guilty of a misdemeanor and, upon conviction, is subject to the following penalties:

(1) For a first offense, a fine of not less than \$200 nor more than \$1,000;

(2) For a second offense, a fine of not less than \$500 nor more than \$5,000, or confinement in jail for not more than six months, or both fined and confined;

(3) For a third or subsequent offense, a fine of not less than \$1,000 nor more than \$5,000, and confinement in jail for not less than 30 days nor more than one year.

(c) The board may institute proceedings in the circuit court of the county in which the alleged violations of the provisions of this article occurred or are now occurring to enjoin any violation of any provision of this article.

(d) Any person who undertakes any construction work without a valid license when a license is required by this article, when the total cost of the contractor's construction contract on any project upon which the work is undertaken is \$25,000 or more, shall, in addition to any other penalty herein provided, be assessed by the board an administrative penalty not to exceed \$200 per day for each day the person is in violation.

§30-42-15. Disciplinary powers of the board.

(a) The board may impose the following disciplinary actions:

(1) Permanently revoke a license;

(2) Suspend a license for a specified period;

(3) Censure or reprimand a licensee;

(4) Impose limitations or conditions on the professional practice of a licensee;

(5) Impose requirements for remedial professional education to correct deficiencies in the education, training, and skill of a licensee;

(6) Impose a probationary period requiring a licensee to report regularly to the board on matters related to the grounds for probation; the board may withdraw probationary status if the deficiencies that require the sanction are remedied;

(7) Order a contractor who has been found, after hearing, to have violated any provision of this article or the rules of the board to provide, as a condition of licensure, assurance of financial responsibility. The form of financial assurance may include, but is not limited to, a surety bond, a cash bond, a certificate of deposit, an irrevocable letter of credit, or performance insurance: *Provided*, That the amount of financial assurance required under this subdivision may not exceed the total of the aggregate amount of the judgments or liens levied against the contractor or the aggregate value of any corrective work ordered by the board or both: *Provided, however*, That the board may remove this requirement for licensees against whom no complaints have been filed for a period of five continuous years; and

(8) A fine not to exceed \$1,000.

(b) No license issued under the provisions of this article may be suspended or revoked without a prior hearing before the board: *Provided*, That the board may summarily suspend a licensee pending a hearing or pending an appeal after hearing upon a determination that the licensee poses a clear, significant, and immediate danger to the public health and safety.

(c) The board may reinstate the suspended or revoked license of a person if, upon a hearing, the board finds and determines that the person is able to practice with skill and safety.

(d) The board may accept the voluntary surrender of a license: *Provided*, That the license may not be reissued unless the board determines that the licensee is competent to resume practice and the licensee pays the appropriate renewal fee.

(e) A person or contractor adversely affected by disciplinary action may appeal to the board within 60 days of the date the disciplinary action is taken. The board shall hear the appeal within

30 days from receipt of notice of appeal in accordance with the provisions of chapter 29A of this code. Hearings shall be held in Charleston. The board may retain a hearing examiner to conduct the hearings and present proposed findings of fact and conclusions of law to the board for its action.

(f) Any party adversely affected by any action of the board may appeal that action in either the circuit court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner resides or does business, within 30 days after the date upon which the petitioner received notice of the final order or decision of the board.

(g) The following are causes for disciplinary action:

(1) Abandonment, without legal excuse, of any construction project or operation engaged in or undertaken by the licensee;

(2) Willful failure or refusal to complete a construction project or operation with reasonable diligence, thereby causing material injury to another;

(3) Willful departure from or disregard of plans or specifications in any material respect without the consent of the parties to the contract;

(4) Willful or deliberate violation of the building laws or regulations of the state or of any political subdivision thereof;

(5) Willful or deliberate failure to pay any moneys when due for any materials free from defect, or services rendered in connection with the person's operations as a contractor when the person has the capacity to pay or when the person has received sufficient funds under the contract as payment for the particular construction work for which the services or materials were rendered or purchased, or the fraudulent denial of any amount with intent to injure, delay, or defraud the person to whom the debt is owed;

(6) Willful or deliberate misrepresentation of a material fact by an applicant or licensee in obtaining a license or in connection with official licensing matters;

(7) Willful or deliberate failure to comply in any material respect with the provisions of this article or the rules of the board;

(8) Willfully or deliberately acting in the capacity of a contractor when not licensed or as a contractor by a person other than the person to whom the license is issued except as an employee of the licensee;

(9) Willfully or deliberately acting with the intent to evade the provisions of this article by: (i) Aiding or abetting an unlicensed person to evade the provisions of this article; (ii) combining or conspiring with an unlicensed person to perform an unauthorized act; (iii) allowing a license to be used by an unlicensed person; or (iv) attempting to assign, transfer, or otherwise dispose of a license or permitting the unauthorized use thereof;

(10) Engaging in any willful, fraudulent, or deceitful act in the capacity as a contractor whereby substantial injury is sustained by another;

(11) Performing work which is not commensurate with a general standard of the specific classification of contractor or which is below a building or construction code adopted by the municipality or county in which the work is performed;

(12) Knowingly employing a person or persons who do not have the legal right to be employed in the United States;

(13) Failing to execute written contracts prior to performing contracting work in accordance with §30-42-10 of this code;

(14) Failing to abide by an order of the board; or

(15) Failing to satisfy a judgment or execution ordered by a magistrate court, circuit court, or arbitration board.

(h) In all disciplinary hearings the board has the burden of proof as to all matters in contention. No disciplinary action may be taken by the board except on the affirmative vote of at least six members thereof. Other than as specifically set out herein, the board has no power or authority to impose or assess damages.

§30-42-16. Rules.

The board may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code that are necessary to carry out the provisions of this article. The board may disseminate educational or any other material designed to improve performance standards of any contractor group to contractors within the state. The board may adopt, and use, a seal with the words "State Contractor Licensing Board of West Virginia". Any rule previously authorized under the provisions of §21-11-1 *et seq.* of this code shall remain in effect until amended, replaced, or repealed by the Legislature.

§30-42-17. Record keeping.

(a) The board shall keep a record of all actions taken and account for moneys received. All moneys shall be deposited in a special account in the State Treasury to be known as the "West Virginia Contractor Licensing Board Fund". Expenditures from this fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found from time to time to exceed the funds needed for purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

(b) The board shall maintain at the principal office, open for public inspection during office hours, a complete indexed record of all applications, licenses issued, licenses renewed, and all revocations, cancellations, and suspensions of licenses. Applications shall show the date of application, name, qualifications, place of business, and place of residence of each applicant; and whether the application was approved or refused.

(c)(1) All investigations, complaints, reports, records, proceedings, and other information received by the board and related to complaints made to the board or investigations conducted by the board pursuant to this article, including the identity of the complainant or respondent, are

confidential and may not be knowingly and improperly disclosed by any member or former member of the board or staff, except as follows:

(A) Upon a finding that probable cause exists to believe that a respondent has violated the provisions of this article, the complaint and all reports, records, nonprivileged, and nondeliberative materials introduced at any probable cause hearing held pursuant to the complaint are thereafter not confidential: *Provided*, That confidentiality of the information shall remain in full force and effect until the respondent has been served with a copy of the statement of charges.

(B) Any subsequent hearing held in the matter for the purpose of receiving evidence or the arguments of the parties or their representatives shall be open to the public and all reports, records, and nondeliberative materials introduced into evidence at the subsequent hearing, as well as the board's orders, are not confidential.

(C) The board may release any information relating to an investigation at any time if the release has been agreed to in writing by the respondent.

(D) The complaint, as well as the identity of the complainant, shall be disclosed to a person named as respondent in any complaint filed immediately upon the respondent's request.

(E) Where the board is otherwise required by the provisions of this article to disclose the information or to proceed in such a manner that disclosure is necessary and required to fulfill these requirements.

(2) If, in a specific case, the board finds that there is a reasonable likelihood that the dissemination of information or opinion in connection with a pending or imminent proceeding will interfere with a fair hearing or otherwise prejudice the due administration of justice, the board shall order that all or a portion of the information communicated to the board to cause an investigation and all allegations of violations or misconduct contained in a complaint are confidential, and the person providing this information or filing a complaint shall be bound to confidentiality until further order of the board.

(d) If any person violates the provisions of subsection (c) of this section by knowingly and willfully disclosing any information made confidential by this section or by the board, that person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000, or confined in jail not more than one month, or both fined and confined.

§30-42-18. Reciprocity.

To the extent that other states which provide for the licensing of contractors provide for similar action, the board may grant licenses of the same or equivalent classification to contractors licensed by other states, without written examination upon satisfactory proof furnished to the board that the qualifications of the applicants are equal to the qualifications of holders of similar licenses in this state, and upon certification to the board as required by §30-42-15(c) of this code, and upon payment of the required fee.

§30-42-19. Board authorized to provide training.

(a) The board may enter into work-sharing agreements with state vocational and technical training schools to provide classroom training to students who desire to obtain a West Virginia contractor license. The purpose of the training is limited to instruction applicable to the contractor

license examinations required by the board. The terms of the work-sharing agreements shall be determined by the West Virginia Contractor Licensing Board and county boards of education.

(b) For the purposes of this section, the board may expend funds from its special revenue account, known as the West Virginia Contractor Licensing Board Fund, to support this activity.

§30-42-20. Nonapplicability of local ordinances; exclusive license.

After the effective date of this article no municipality, local government, or county may require any license or other evidence of competence as a contractor from any person, firm, or corporation who or which holds a valid and current license issued pursuant to this article, as a condition precedent to permission for the performance of contractor work in such municipality, local government jurisdiction, or county.

On motion of Senator Maynard, the following amendment to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 2006) was reported by the Clerk and adopted:

On page forty-four, section twenty, line two, after the words "require any" by inserting the words "additional occupational".

On motion of Senator Jeffries, the following amendments to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 2006) were next reported by the Clerk and considered simultaneously:

On page twenty-six, section three, line thirty-three, by striking out the words "or painting";

And,

On page twenty-seven, section three, after line thirty-four, by inserting a new subdivision, designated subdivision (7), to read as follows:

(7) A person who performs painting services for residential customers.

Following discussion,

The question being on the adoption of Senator Jeffries amendments to the Government Organization committee amendment to the bill, the same was put and did not prevail.

The question now being on the adoption of the Government Organization committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2006), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2009, Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities.

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

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

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

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5. FISCAL AFFAIRS.

§7-5-25. Prohibition against certain deductions and assignments of earnings from compensation of county officers or employees.

No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of county officers and employees.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 5. ELECTION, APPOINTMENT, QUALIFICATION AND COMPENSATION OF OFFICERS; GENERAL PROVISIONS RELATING TO OFFICERS AND EMPLOYEES; ELECTIONS AND PETITIONS GENERALLY; CONFLICT OF INTEREST.

§8-5-12. Compensation of officers and employees.

(a) Notwithstanding any charter provision to the contrary, the governing body of every municipality shall by ordinance fix or cause to be fixed the salary or compensation of every municipal officer and employee: *Provided*, That the salary of any officer shall not be increased or diminished during his or her term.

(b) The governing body of every municipality shall have plenary power and authority to provide by ordinance for the allowance of time off of officers and employees with pay for vacations and illness and for personnel management incentives, as additional consideration for their services and employment.

(c) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of officers or employees covered by this section.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 3. APPROPRIATIONS, EXPENDITURES, AND DEDUCTIONS.

§12-3-13b. Voluntary deductions by State Auditor from salaries of employees ~~to pay association dues or fees and to pay supplemental health and life insurance premiums;~~ voluntary other deductions.

(a) Any officer or employee of the State of West Virginia may authorize that a voluntary deduction from his or her net wages be made ~~for the payment of membership dues or fees to an employee association. Voluntary deductions may also be authorized by an officer or employee~~ for any supplemental health and life insurance premium, subject to prior approval by the Auditor. Such deductions shall be authorized on a form provided by the Auditor of the State of West Virginia and shall state:

(a) (1) The identity of the employee;

~~(b) the~~ (2) The amount and frequency of such deductions; and

~~(c) the (3) The identity and address of the association or insurance company to which such dues shall be paid.~~

~~(b) Upon execution of such authorization and its receipt by the office of the Auditor, such deductions shall be made in the manner specified on the form and remitted to the designated association or insurance company on the tenth day of each month: *Provided*, That the Auditor may approve and authorize voluntary other deductions, as ~~approved and authorized by the Auditor, may defined under §21-5-1 of this code, to be made in accordance with rules proposed by the Auditor pursuant to §29A-3-1 et seq. of this code: *Provided, however*, That deductions shall be made at least twice monthly. Deduction authorizations may be revoked at any time 30 days prior to the date on which the deduction is regularly made and on a form to be provided by the office of the State Auditor: *Provided further*, That nothing in this section shall interfere with or remove any existing arrangement for dues deduction between an employer or any political subdivision of the state and its employees.~~~~

~~(c) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of officers and employees covered by this section.~~

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-9. Payment of teachers and other employees; withholdings.

Teachers and all other employees whose salaries or wages are payable out of the school current fund shall be paid for their services by orders duly signed by the president and secretary of the board in accordance with the following provisions:

(1) Notwithstanding any other provisions of this chapter and §18-1-1 *et seq.* of this code, the number of pays to be made during the school year to the various classes of employees shall be determined by the board: *Provided*, That the sum of such pays for any employee does not exceed the equivalent of an annual salary based upon 12 calendar months.

(2) In the event a teacher or other employee is not paid the full salary or wage earned in the fiscal year in which the work is performed, the unpaid amount may be paid during July and August of the following fiscal year.

(3) Adjustments for time loss due to absence may be made in the next paycheck following such time loss.

(4) The county board may withhold the pay of any teacher or employee until he or she has made the reports required by the board or the state superintendent.

(5) Accompanying the pay of each employee shall be an accounting of gross earnings, all withholdings, and the dollar value of all benefits provided by the state on behalf of the employee.

(6) No deductions or assignments of earnings shall be allowed for union, labor organization, or club dues or fees from the compensation of teachers and other employees covered by this section.

CHAPTER 21. LABOR**ARTICLE 5. WAGE PAYMENT AND COLLECTION.****§21-5-1. Definitions.**

As used in this article:

(a) The term “firm” includes any partnership, association, joint-stock company, trust, division of a corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, or officer thereof, employing any person.

(b) The term “employee” or “employees” includes any person suffered or permitted to work by a person, firm, or corporation.

(c) The term “wages” means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission, or other basis of calculation. As used in §21-5-4, §21-5-5, §21-5-8a, §21-5-10, and §21-5-12 of this code, the term “wages” shall also include then accrued fringe benefits capable of calculation and payable directly to an employee: *Provided*, That nothing herein contained shall require fringe benefits to be calculated contrary to any agreement between an employer and his or her employees which does not contradict the provisions of this article.

(d) The term “commissioner” means Commissioner of Labor or his or her designated representative.

(e) The term “railroad company” includes any firm or corporation engaged primarily in the business of transportation by rail.

(f) The term “special agreement” means an arrangement filed with and approved by the commissioner whereby a person, firm, or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks: *Provided*, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term “deductions” includes amounts required by law to be withheld, and amounts authorized for union, labor organization, or club dues or fees, pension plans, payroll savings plans, credit unions, charities, and ~~hospitalization and medical~~ any form of insurance offered by an employer: *Provided*, That for a public employee, the term “deductions” shall not include any amount for union, labor organization, or club dues or fees.

(h) The term “officer” shall include officers or agents in the management of a corporation or firm who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term “wages due” shall include at least all wages earned up to and including the twelfth day immediately preceding the regular payday.

(j) The term “construction” means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting, or improvement of a new or existing building, structure, roadway, or pipeline, or any part thereof, or for the alteration, improvement, or

development of real property: *Provided*, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term “minerals” means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore, and any other metallurgical ore.

(l) The term “fringe benefits” means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits, and benefits relating to medical and pension coverage.

(m) The term “employer” means any person, firm, or corporation employing any employee.

(n) The term “doing business in this state” means having employees actively engaged in the intended principal activity of the person, firm, or corporation in West Virginia.

(o) The term “assignment”, as used in §21-5-3 of this code, shall have the same meaning as the term “assignment of earnings” set forth in §46A-2-116(2)(b) of this code.

§21-5-3. Payment of wages by employers other than railroads; assignments of wages.

(a) Every person, firm, or corporation doing business in this state, except railroad companies as provided in §21-5-1 of this code, shall settle with its employees at least twice every month and with no more than 19 days between settlements, unless otherwise provided by special agreement, and pay them the wages due, less authorized deductions and authorized wage assignments, for their work or services.

(b) Payment required in subsection (a) of this section shall be made:

(1) In lawful money of the United States;

(2) By cash order as described and required in §21-5-4 of this code;

(3) By deposit or electronic transfer of immediately available funds into an employee’s payroll card account in a federally insured depository institution. The term “payroll card account” means an account in a federally insured depository institution that is directly or indirectly established through an employer and to which electronic fund transfers of the employee’s wages, salary, commissions, or other compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third person payroll processor, a depository institution, or another person. “Payroll card” means a card, code, or combination thereof or other means of access to an employee’s payroll card account, by which the employee may initiate electronic fund transfers or use a payroll card to make purchases or payments. Payment of employee compensation by means of a payroll card must be agreed upon in writing by both the person, firm, or corporation paying the compensation and the person being compensated; or

(4) By any method of depositing immediately available funds in an employee’s demand or time account in a bank, credit union, or savings and loan institution that may be agreed upon in writing between the employee and such person, firm, or corporation, which agreement shall specifically identify the employee, the financial institution, the type of account, and the account number: *Provided*, That nothing herein contained shall be construed in a manner to require any person, firm, or corporation to pay employees by depositing funds in a financial institution.

(c) If, at any time of payment, any employee is absent from his or her regular place of labor and does not receive his or her wages through a duly authorized representative, he or she is entitled to payment at any time thereafter upon demand upon the proper paymaster at the place where his or her wages are usually paid and where the next pay is due.

(d) Nothing herein contained may affect the right of an employee to assign part of his or her claim against his or her employer except as in subsection (e) of this section.

(e) No assignment of or order for future wages may be valid for a period exceeding one year from the date of the assignment or order. An assignment or order shall be ~~acknowledged by the party making the same before a notary public or other officer authorized to take acknowledgments, and any order or assignment in writing and~~ shall specify thereon the total amount due and collectible by virtue of the same and, unless otherwise provided for in subsection (f) of this section, three-fourths of the periodical earnings or wages of the assignor are all times exempt from such assignment or order and no assignment or order is valid which does not so state upon its face: *Provided*, That no such order or assignment is valid unless the written acceptance of the employer of the assignor to the making thereof is endorsed thereon: *Provided, however*, That nothing herein contained may be construed as affecting the right of a private employer and its employees to agree between themselves as to deductions to be made from the payroll of employees.

(f) If an employee of the state has been overpaid wages, including incremental salary increases pursuant to §5-5-2 of this code, an employee may voluntarily authorize a written assignment or order for future wages to the state to repay the overpayment in an amount not to exceed three-fourths of his or her periodical earnings or wages.

(g) Nothing in this chapter shall be construed to interfere with the right of an employee to join, become a member of, contribute to, donate to, or pay dues or fees to a union, labor organization, or club.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-116. Assignment of earnings.

(1) The maximum part of the aggregate disposable earnings of an individual for any workweek which may be subjected to any one or more assignments of earnings for the payment of a debt or debts arising from one or more consumer credit sales, consumer leases, or consumer loans, or one or more sales as defined in §46A-6-102 of this code, may not exceed 25 percent of his or her disposable earnings for that week.

(2) As used in this section:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Assignment of earnings" includes all forms of assignments, deductions, transfers, or sales of earnings to another, either as payment or as security, and whether stated to be revocable or nonrevocable, and includes any deductions authorized under the provisions of §21-5-3 of this code, except deductions for union, labor organization, or club dues or fees, pension plans, payroll

savings plans, charities, stock purchase plans, and ~~hospitalization and medical~~ any form of insurance offered by an employer.

(3) Any assignment of earnings and any deduction under ~~said~~ §21-5-3 of this code shall be revocable by the employee at will at any time, notwithstanding any provision to the contrary.

(4) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.

On motion of Senator Trump, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2009) were next reported by the Clerk, considered simultaneously, and adopted:

On page two, section twelve, line eleven, after the word "section", by changing the period to a colon and inserting the following proviso: *Provided*, That this subsection shall not apply to municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.;

On page four, section one, line six, after the word "corporation", by changing the period to a comma and inserting the words "except those classified as an independent contractor pursuant to §21-51-4 of this code.";

And,

On page five, section one, line twenty-six, by striking out the proviso and inserting in lieu thereof a new proviso, to read as follows: *Provided*, That for a public employee, other than a municipal employee covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021, the term "deductions" shall not include any amount for union, labor organization, or club dues or fees.

On motion of Senator Romano, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2009) were next reported by the Clerk and considered simultaneously:

On page one, section twenty-five, line two, after the word "fees" by inserting the words "for use as contributions to any candidate or political committee, or for any other political activities which tend to influence the voting at any election";

On page two, section twelve, line ten, after the word "fees" by inserting the words "for use as contributions to any candidate or political committee, or for any other political activities which tend to influence the voting at any election";

On page three, section thirteen-b, line twenty-three, after the word "fees" by inserting the words "for use as contributions to any candidate or political committee, or for any other political activities which tend to influence the voting at any election";

And,

On page four, section nine, line eighteen, after the word "fees" by inserting the words "for use as contributions to any candidate or political committee, or for any other political activities which tend to influence the voting at any election".

Following discussion,

The question being on the adoption of Senator Romano's amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2009), and on this question, Senator Lindsay demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Stover, Unger, and Woelfel—14.

The nays were: Azinger, Boley, Clements, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—20.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendments to the Judiciary committee amendment to the bill rejected.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2009), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

Com. Sub. for Senate Bill 28, Creating Open and Equal Opportunities in Student Activities Act.

Com. Sub. for Senate Bill 297, Relating generally to modernizing Board of Treasury Investments.

Senate Bill 391, Relating to study of child protective services and foster care workforce.

Com. Sub. for Senate Bill 431, Relating to school attendance notification requirements to DMV.

Com. Sub. for Senate Bill 502, Providing lifetime hunting, fishing, and trapping license to residents, adopted, and foster children under 15.

Eng. Com. Sub. for House Bill 2008, Amending requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers.

Eng. Com. Sub. for House Bill 2013, Relating to the Hope Scholarship Program.

And,

Eng. Com. Sub. for House Bill 2616, Amend the reporting to the Governor and the Legislature to have information continuously available on the Office of Health Facility Licensure and Certification's website.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Stollings, Lindsay, and Trump.

The Senate then proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolutions on March 12, 2021:

Senate Bill 589: Senator Rucker;

Senate Bill 622: Senator Ihlenfeld;

Senate Bill 633: Senators Phillips and Smith;

Senate Bill 634: Senators Stollings, Lindsay, Beach, and Baldwin;

Senate Bill 635: Senator Lindsay;

Senate Bill 636: Senators Phillips, Smith, and Roberts;

Senate Bill 637: Senator Stollings;

Senate Bill 640: Senators Romano, Woelfel, and Stollings;

Senate Joint Resolution 11: Senator Martin;

And,

Senate Concurrent Resolution 25: Senators Stollings and Woelfel.

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

On motion of Senator Takubo, at 11:58 a.m., the Senate adjourned until tomorrow, Tuesday, March 16, 2021, at 11 a.m.

SENATE CALENDAR

**Tuesday, March 16, 2021
11:00 AM**

UNFINISHED BUSINESS

S. C. R. 26 - US Army TEC5 William "Bill" Thurman King Memorial Bridge

THIRD READING

Eng. Com. Sub. for Com. Sub. for S. B. 318 - Relating generally to public notice of unclaimed property held by State Treasurer

Eng. Com. Sub. for S. B. 500 - Prohibiting intimidation and retaliation against public officers and employees, jurors, and witnesses

Eng. Com. Sub. for S. B. 518 - Relating to grounds for administrative dissolution of certain companies, corporations, and partnerships

Eng. Com. Sub. for H. B. 2006 - Relating to the West Virginia Contractor Licensing Act - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 2009 - Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities

Eng. Com. Sub. for H. B. 2263 - Update the regulation of pharmacy benefit managers

SECOND READING

Com. Sub. for S. B. 28 - Creating Open and Equal Opportunities in Student Activities Act

Com. Sub. for S. B. 297 - Relating generally to modernizing Board of Treasury Investments

Com. Sub. for S. B. 303 - Creating Local Government Labor and Consumer Marketing Regulatory Limitation Act (original similar to HB2907)

S. B. 391 - Relating to study of child protective services and foster care workforce

Com. Sub. for S. B. 431 - Relating to school attendance notification requirements to DMV

Com. Sub. for S. B. 502 - Providing lifetime hunting, fishing, and trapping license to residents, adopted, and foster children under 15

Eng. Com. Sub. for H. B. 2008 - Amending requirements for licensure relating to elevator mechanics, crane operators, HVAC, electricians, and plumbers - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2013 - Relating to the Hope Scholarship Program

Eng. Com. Sub. for H. B. 2616 - Amend the reporting to the Governor and the Legislature to have information continuously available on the Office of Health Facility Licensure and Certification's website - (Com. amend. pending)

FIRST READING

Com. Sub. for S. B. 562 - Relating to juvenile competency proceedings

Com. Sub. for S. B. 566 - Relating to interpretations of school laws

Eng. Com. Sub. for H. B. 2372 - Allow pre-candidacy papers to be filed the day after the general election - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2682 - Relating to the issuance of license suspensions to insurance producers and insurance adjusters who have failed to meet continuing education requirements (original similar to SB493)

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2021

Tuesday, March 16, 2021

10 a.m.

Transportation & Infrastructure

(Room 451M)