

**JOURNAL**  
OF THE  
**HOUSE OF DELEGATES**  
EIGHTY-FOURTH  
**LEGISLATURE**  
OF  
**WEST VIRGINIA**



**VOLUME II**  
**REGULAR SESSION, 2019**

WEST VIRGINIA HOUSE OF DELEGATES  
**HONORABLE ROGER HANSHAW**  
SPEAKER OF THE HOUSE

\*\*\*\*\*

COMPILED AND PUBLISHED  
UNDER THE DIRECTION  
OF

**STEPHEN J. HARRISON**  
CLERK OF THE HOUSE



**OFFICE OF THE CLERK OF THE HOUSE**

212 MAIN UNIT  
STATE CAPITOL  
CHARLESTON, WEST VIRGINIA

\*\*\*\*\*

**CLERK'S OFFICE LEGISLATIVE GROUP**

BO HOOVER  
Assistant Clerk/Parliamentarian

Lynn Lewis  
Journal Clerk

Robert Altmann

Anne Landgrebe

Lori Skull

# TABLE OF CONTENTS

## VOLUME II

Schedule showing legislative and calendar days.....	V
Journal of proceedings	
(Regular Session, 2019) <i>See</i> Vol. I.....	1
(Regular Session, 2019) Vol. II.....	1017
(Regular Session, 2019) <i>See</i> Vol. III.....	2167
(Regular Session, 2019) <i>See</i> Vol. IV.....	3529
(First Extraordinary Session, 2019) <i>See</i> Vol. IV.....	4143
(Second Extraordinary Session, 2019) <i>See</i> Vol. IV.....	4435
(Second Extraordinary Session, 2018) <i>See</i> Vol. IV.....	4455
Index .....	4529
(This index is arranged as follows: Delegates, etc., House Bills, House Concurrent Resolutions, House Joint Resolutions, House Resolutions, Senate Bills, Senate Concurrent Resolutions and Senate Joint Resolutions.)	
Topical Index .....	4755
(This is an index by subject to all House Bills introduced for the Regular Session.)	
Disposition of bills enacted.....	4809
Appendix.....	4825



**SCHEDULE SHOWING LEGISLATIVE DAYS  
AND CALENDAR DAYS  
AND PAGES OF JOURNAL COVERING SAME**

**REGULAR SESSION, 2019**

	Page
1st Day..... Wednesday..... January 9.....	1
2nd Day ..... Thursday ..... January 10.....	191
3rd Day.....Friday..... January 11.....	223
6th Day ..... Monday ..... January 14.....	241
7th Day ..... Tuesday ..... January 15.....	265
8th Day ..... Wednesday..... January 16.....	287
9th Day ..... Thursday ..... January 17.....	305
10th Day ..... Friday..... January 18.....	343
13th Day ..... Monday ..... January 21.....	359
14th Day ..... Tuesday ..... January 22.....	395
15th Day ..... Wednesday..... January 23.....	419
16th Day ..... Thursday ..... January 24.....	437
17th Day ..... Friday..... January 25.....	473
20th Day ..... Monday ..... January 28.....	501
21st Day..... Tuesday..... January 29.....	529
22nd Day ..... Wednesday..... January 30.....	553
23rd Day ..... Thursday ..... January 31.....	593
24th Day ..... Friday..... February 1.....	617
27th Day ..... Monday ..... February 4.....	649
28th Day ..... Tuesday..... February 5.....	683
29th Day ..... Wednesday..... February 6.....	763
30th Day ..... Thursday ..... February 7.....	795
31st Day..... Friday..... February 8.....	825
34th Day ..... Monday ..... February 11.....	879
35th Day ..... Tuesday..... February 12.....	921
36th Day ..... Wednesday..... February 13.....	1017
37th Day ..... Thursday ..... February 14.....	1427
38th Day ..... Friday..... February 15.....	1459
41st Day..... Monday ..... February 18.....	1481
42nd Day ..... Tuesday..... February 19.....	1515
43rd Day ..... Wednesday..... February 20.....	1723
44th Day ..... Thursday ..... February 21.....	1755
45th Day ..... Friday..... February 22.....	1843
48th Day ..... Monday ..... February 25.....	1901
49th Day ..... Tuesday..... February 26.....	1961

50th Day .....	Wednesday .....	February 27.....	2035
51st Day.....	Thursday .....	February 28.....	2093
52nd Day .....	Friday .....	March 1.....	2127
53rd Day .....	Saturday .....	March 2.....	2167
55th Day .....	Monday .....	March 4.....	2267
56th Day .....	Tuesday .....	March 5.....	2325
57th Day .....	Wednesday.....	March 6.....	2449
58th Day .....	Thursday .....	March 7.....	2607
59th Day .....	Friday .....	March 8.....	3285
60th Day .....	Saturday .....	March 9.....	3529

**FIRST EXTRAORDINARY SESSION, 2019**

1st Day.....	Saturday .....	March 9.....	4143
2nd Day .....	Sunday .....	March 10.....	Senate only
3rd Day.....	Monday .....	May 20.....	4147
4th Day .....	Saturday .....	June 1.....	Senate only
5th Day .....	Sunday .....	June 2.....	Senate only
6th Day .....	Monday .....	June 3.....	Senate only
7th Day .....	Monday .....	June 17.....	4225
8th Day .....	Tuesday .....	June 18.....	4291
9th Day .....	Wednesday.....	June 19.....	4321
10th Day .....	Monday .....	June 24.....	Senate only
11th Day .....	Monday .....	July 22 .....	4401
12th Day .....	Tuesday .....	July 23 .....	4425
13th Day .....	Monday .....	September 23 .....	Senate only

**SECOND EXTRAORDINARY SESSION, 2019**

1st Day.....	Monday .....	November 18 .....	4435
2nd Day .....	Tuesday .....	November 19 .....	Senate only
3rd Day.....	Monday .....	December 16.....	4449

**SECOND EXTRAORDINARY SESSION, 2018**

1st Day.....	Tuesday .....	June 26.....	4455
2nd Day .....	Monday .....	August 13 .....	4467
3rd Day.....	Tuesday .....	August 14 .....	4495
4th Day .....	Monday .....	August 20 .....	Senate only
5th Day .....	Wednesday.....	August 29 .....	4517
6th Day .....	Tuesday .....	September 11 .....	Senate only
7th Day .....	Monday .....	October 1 .....	Senate only
8th Day .....	Tuesday .....	October 2 .....	Senate only
9th Day .....	Monday .....	October 15 .....	Senate only
10th Day .....	Monday .....	December 10.....	Senate only

---

Wednesday, February 13, 2019

### THIRTY-SIXTH DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Tuesday, February 12, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

#### Reordering of the Calendar

Delegate Summers announced that the Committee on Rules had transferred H. B. 2692 and H. B. 2819, on Second Reading, Special Calendar, to the House Calendar; and Com. Sub. for S. B. 451 to the foot of bills on the Special Calendar.

#### Committee Reports

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**H. B. 2718**, Requiring purchasers of roundwood to collect and maintain certain information,

**H. B. 2774**, Relating to the right to farm,

And,

**H. B. 2796**, Relating to analysis of samples of industrial hemp production,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (H. B. 2718, H. B. 2774 and H. B. 2796) were each referred to the Committee on the Judiciary.

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**H. B. 2694**, Relating to the state's ability to regulate hemp,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (H. B. 2694) was referred to the Committee on Government Organization.

Delegate Harshbarger, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**S. B. 331**, Using leashed dogs to track mortally wounded deer or bear,

And,

**S. B. 332**, Relating to Class Q special hunting permit for disabled persons,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on the Judiciary.



In accordance with the former direction of the Speaker, the bills (S. B. 331 and S. B. 332) were each referred to the Committee on the Judiciary.

Delegate Harshbarger, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**H. B. 2727**, Relating to conducting a study of the Upper Mud River Lake,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (H. B. 2727) was referred to the Committee on Government Organization.

Delegate Harshbarger, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**H. B. 2597**, Creating a hunting permit to safely accommodate visually impaired hunters,

And,

**Com. Sub. for S. B. 389**, Allowing developmentally disabled person purchase base hunting license,

And reports the same back, with amendment, with the recommendation that they each do pass, as amended, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (H. B. 2597 and Com. Sub. for S. B. 389) were each referred to the Committee on the Judiciary.

Delegate Fast, Chair of the Committee on Industry and Labor, submitted the following report, which was received:

Your Committee on Industry and Labor has had under consideration:

**H. B. 2049**, Relating to a prime contractor's responsibility for wages and benefits,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2049) was referred to the Committee on the Judiciary.

Delegate Anderson, Chair of the Committee on Energy, submitted the following report, which was received:

Your Committee on Energy has had under consideration:

**H. B. 2834**, Updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2834** - "A Bill to amend and reenact §22C-9-4 of the Code of West Virginia, 1931, as amended, relating to updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells, which will allow exploration and production companies to implement evidence based best practices; establishing no spacing limitations on horizontal deep wells that are operated by the same operator or different operators pursuant to written agreement; establishing setbacks from unit boundaries between different operators; establishing the spacing between the wells of different operators; and limiting certain

distances that may be established to only those between the producing portions of horizontal deep wells and not the entire well bore,”

With the recommendation that the committee substitute do pass.

Delegate Anderson, Chair of the Committee on Energy, submitted the following report, which was received:

Your Committee on Energy has had under consideration:

**H. B. 2866**, Relating to the termination, expiration, or cancellation of oil or natural gas leases,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2866) was referred to the Committee on the Judiciary.

On motion for leave, a bill was introduced (Originating in the Committee on Health and Human Resources and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Ellington, Hill, Summers, Rohrbach, Hollen, Pack, Atkinson, D. Jeffries and Rowan:**

**H. B. 3131** - “A Bill to amend and reenact §5-5-4 and §5-5-4a of the Code of West Virginia, as amended; and to amend said code by adding thereto a new section, designated §5-5-4b, all relating to providing salary adjustments to employees of the Department of Health and Human Resources; requiring the department to conduct a marketplace analysis; and exempting the department from certain functions of the Division of Personnel.”

The Speaker referred the bill to the Committee on Government Organization.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**H. B. 2100**, Establishing a pilot program to develop school-based mental and behavioral health services,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Education.

In accordance with the former direction of the Speaker, the bill (H. B. 2100) was referred to the Committee on Education.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**H. B. 2768**, Reducing the use of certain prescription drugs,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2768** – “A Bill to amend and reenact §16-54-1, §16-54-3, §16-54-4, §16-54-5, §16-54-6, §16-54-7, and §16-54-8 of the Code of West Virginia, 1931, as amended, all relating to reducing the use of certain prescription drugs; defining terms; clarifying types of examinations; requiring certain information in a narcotics contract; clarifying that the drug being regulated is a schedule II opioid drug; providing exceptions; and requiring coverage for certain procedures to treat chronic pain,”

And,

**H. B. 2849**, Establishing different classes of pharmacy technicians,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2849** - "A Bill to amend and reenact §30-5-11 and §30-5-12 of the Code of West Virginia, 1931, as amended, all relating to establishing different classes of pharmacy technicians; establishing an application process for a registered pharmacy technician to obtain an endorsement as a pharmacy technician; establishing an application process for a nuclear pharmacy technician endorsement; expanding the scope of practice for a registered pharmacy technician endorsement; and defining the scope of practice for a nuclear pharmacy technician endorsement,"

With the recommendation that the committee substitutes each do pass.

### **Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2191**, Relating generally to limited video lottery.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had agreed to the appointment of a Committee of Conference of three from each house on the disagreeing votes of the two houses as to

**H. B. 2351**, Relating to regulating prior authorizations.

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

Senators Maroney, Takubo and Stollings.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 13** - “A Bill to amend and reenact §29-22-18a of the Code of West Virginia, 1931, as amended, relating to distributions from the State Excess Lottery Fund”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 26** - “A Bill to amend and reenact §18-7A-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7B-2 of said code, all relating to permitting full-time employees of educational services cooperatives to participate in the State Teachers Retirement System; and permitting full-time employees of educational services cooperatives to participate in the State Teachers’ Defined Contribution Retirement System”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 440** - “A Bill to amend and reenact §18-16-2 of the Code of West Virginia, 1931, as amended, relating to the Antihazing Law; and modifying the definition of ‘hazing’ to address any type of organization whose members include students at any public or private institution of higher education”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 442** - “A Bill supplementing and amending by decreasing an existing appropriation and adding a new appropriation of federal funds out of the Treasury to the Department of Revenue –

Insurance Commissioner, fund 8883, fiscal year 2019, organization 0704, by supplementing, amending, decreasing, and adding the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 443** - “A Bill making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Health and Human Resources, Division of Health – Community Mental Health Services, fund 8794, fiscal year 2019, organization 0506, to the Department of Health and Human Resources, Division of Human Services – Energy Assistance, fund 8755, fiscal year 2019, organization 0511, and to the Department of Health and Human Resources, Division of Human Services – Child Care and Development, fund 8817, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 444** - “A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund, fund 5163, fiscal year 2019, organization 0506, and to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2019, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 452** - “A Bill making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2019, to the Department of Military Affairs and Public Safety, Division of Justice and Community Services – Second Chance Driver’s License Program Account, fund 6810, fiscal year 2019, organization 0620, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 491** - “A Bill to amend and reenact §3-2-11 of the Code of West Virginia, 1931, as amended, relating generally to automatic voting registration through the Division of Motor Vehicles; adding United States citizenship status to information that applicants must provide; requiring the Division of Motor Vehicles to confirm and maintain a record of an applicant’s citizenship status; requiring the Division of Motor Vehicles to provide notice to the Secretary of State and the appropriate county clerk if voting registration information related to a noncitizen is released to the Secretary of State in error; requiring the Division of Motor Vehicles and the Secretary of State to cooperate to develop a process by January 1, 2020, to compare all information regarding a person’s citizenship status available to the Division of Motor Vehicles with voter information released to the Secretary of State in order to detect and cancel voting registration by noncitizens; delaying the effective date for automatic voter registration in conjunction with certain Division of Motor Vehicle transactions until July 1, 2021; and requiring the Division of Motor Vehicles, the Department of Transportation, and the Secretary of State to file certain reports with and appear before the Joint Committee on



Government and Finance and the Joint Standing Committee on the Judiciary during the first interim meetings occurring after September 1, 2019”; which was referred to the Committee on the Judiciary.

### **Resolutions Introduced**

Delegates Atkinson, Westfall, Canestraro, D. Jeffries and Hollen offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 70** - “Requesting the Division of Highways name bridge number: 44-119-9.04 (44A109), locally known as Walton Bridge, carrying U.S. 119 over the Pocatalico River in Roane County, the ‘Danny Wayne Marks Memorial Bridge’.”

Whereas, Danny Wayne Marks was a lifelong resident of Walton, West Virginia. Walton is a small community where the work and dedication of one person can make a significant difference in the lives of the residents in this rural town. Danny Wayne Marks was such a person; and

Whereas, Danny Wayne Marks was dedicated to making his community a better and stronger place in which to live; and

Whereas, Danny Wayne Marks not only contributed money to buy land for a community park, but also contributed his labor to help clear the lot for the park. When Danny noticed that people were standing on a ladder at the Walton Middle School announcers booth, Danny Wayne Marks built a safer structure. As is the mark of a true leader, Danny would often take the first step when community projects needed to be completed; and

Whereas, Danny Wayne Marks lived his life to matter: To be productive, to be useful, to have made a difference for others. The tremendous outpouring of love and appreciation expressed by the residents of Walton and the surrounding area at his death demonstrates how much difference Danny Wayne Marks made for his community; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Commissioner of the Division of Highways is hereby requested to name bridge number: 44-119-9.04 (44A109), locally known as Walton Bridge, carrying U.S. 119 over the Pocatalico River in Roane County, the ‘Danny Wayne Marks Memorial Bridge’; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the ‘Danny Wayne Marks Memorial Bridge’; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

### **Motions**

Delegate Hartman filed a written motion to remove from the table the motion by Delegate Fluharty of February 7, 2019, that pursuant to House Rule 82, that H. B. 2733 be discharged from the Committee on Industry and Labor.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 129**), and there were—yeas 37, nays 59, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, S. Brown, Byrd, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin and Walker.

Absent and Not Voting: Canestraro, Fluharty, Kump and Skaff.

So, a majority of the members present and voting not having voted in the affirmative, the motion did not prevail.

Delegate Summers asked and obtained unanimous consent that, for the remainder of the session, members of Conference Committees be permitted to vote on any question or issue before the House which they have missed as a direct result of their duties on Conference Committees, provided that such members notify the Clerk of the House in writing as to how they wish to vote, before the daily Journal is published, and that any such vote will not change the outcome on any question.

### **Special Calendar**

#### **Third Reading**

**Com. Sub. for S. B. 18**, Relating to crimes committed on State Capitol Complex; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 130**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Canestraro, Fluharty, Kump and Skaff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 18) passed.

Delegate Summers moved that the bill take effect from passage.

On this question, the yeas and nays were taken (**Roll No. 131**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Canestraro, Fluharty, Kump and Skaff.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 18) takes effect from passage.

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

**Com. Sub. for S. B. 61**, Adding certain crimes for which prosecutor may apply for wiretap; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 132**), and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan, Phillips and Pushkin.

Absent and Not Voting: Canestraro, Kump and Skaff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 61) passed.

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

**Com. Sub. for S. B. 323**, Establishing revenue fund and source to support Department of Agriculture's improvement to facilities; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 133**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 323) passed.

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

On this question, the yeas and nays were taken (**Roll No. 134**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cowles and McGeehan.

Absent and Not Voting: Kump.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 323) takes effect from its passage.

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

**Com. Sub. for H. B. 2109**, Extending the maximum period of confinement a judge may impose for certain, first-time probationary violations; on third reading, coming up in regular order, was reported by the Clerk.

On motion of Delegate Capito, the bill (Com. Sub. for H. B. 2109) was committed to the Committee on Finance.

**Com. Sub. for H. B. 2468**, Department of Agriculture Capital Improvements Fund; on third reading, coming up in regular order, was, on motion of Delegate Summers, laid upon the table.

**Com. Sub. for H. B. 2609**, Relating to presumptions of abandonment and indication of ownership in property; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 135**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: J. Jeffries and Paynter.

Absent and Not Voting: Doyle, Kump and Robinson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2609) passed.

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

**H. B. 2647**, Self Storage Limited License Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 136**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2647) passed.

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

**Com. Sub. for H. B. 2720**, Authorizing certain investigators and first responders to carry firearms; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 137**), and there were—yeas 91, nays 8, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, S. Brown, Caputo, Doyle, Fleischauer, Lavender-Bowe, Longstreth and Walker.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2720) passed.

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

**H. B. 2878**, Relating to updating the controlled substances listed on schedule one; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 138**), and there were—yeas 87, nays 11, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: S. Brown, Byrd, Diserio, Estep-Burton, Fluharty, Hansen, Hornbuckle, Pushkin, Steele, C. Thompson and Walker.

Absent and Not Voting: Doyle and Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2878) passed.

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

#### Second Reading

**Com. Sub. for H. B. 2173**, Allowing state and federal law-enforcement officers to testify as to the contents and evidence of a wiretap or electronic surveillance; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2338**, Allowing the owner of an antique military vehicle to display alternate registration insignia; on second

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

**Com. Sub. for H. B. 2359**, Relating to exemptions to the commercial driver's license requirements; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2673**, Creating the Oil and Gas Abandoned Well Plugging Fund; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2709**, Relating to hunting licenses; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2715**, Relating to Class Q special hunting permit for disabled persons; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Dean, the bill was amended on page two, line twenty, following the word "nurse", by inserting the words "chiropractic physician".

The bill was then ordered to engrossment and third reading.

**H. B. 2739**, Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2743**, Eliminating reference to municipal policemen's pension and relief funds and firemen's pension and relief funds in section restricting investment; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.



**Com. Sub. for H. B. 2761**, Modernizing the self-service storage lien law; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Robinson, the bill was amended on page ten, section five, line one hundred thirty-six, before the word “website”, by inserting a comma and the words “via fixed price or timed listings that allow bidding on an internet”.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2793**, Expanding applicability of educational facilities for the West Virginia College Prepaid Tuition and Savings Program; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2821**, Updating provisions for command, clerical and other pay; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2848**, Relating to the West Virginia ABLE Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2992**, Relating to governmental websites; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

#### **First Reading**

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**S. B. 377**, Relating to minimum wage and maximum hour standards,

**H. B. 2472**, Providing a special license plate for pollinators,

**Com. Sub. for H. B. 2538**, Providing banking services for medical cannabis,

**Com. Sub. for H. B. 2579**, Relating to the collection of tax and the priority of distribution of an estate or property in receivership,

**Com. Sub. for H. B. 2618**, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person,

**H. B. 2716**, Relating to motorboat lighting and equipment requirements,

And,

**H. B. 2846**, Designating a ‘Back the Blue’ plate in support of law-enforcement personnel.

#### **Second Reading**

**Com. Sub. for S. B. 451**, Comprehensive education reform; on second reading, having been moved to the foot of the calendar in earlier proceedings, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk, on page four, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“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 16. WEST VIRGINIA PUBLIC EMPLOYEES  
INSURANCE ACT.**

#### **§5-16-2. Definitions.**

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) ‘Agency’ means the Public Employees Insurance Agency created by this article.

(2) ‘Director’ means the Director of the Public Employees Insurance Agency created by this article.

(3) ‘Employee’ means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia and, for the purpose of this article only, the term ‘employee’ also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the Public Employees Insurance program; a county, city, or town in the State; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or ~~comprehensive mental — retardation~~ intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 et seq. of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until

September 1 following that instructional term: *Provided, however,* That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an 'employee' during the term of office of the elected member. Upon election by the state Board of Education to allow appointed board members to participate in the Public Employees Insurance Program pursuant to this article, any person appointed to the state Board of Education is considered an 'employee' during the term of office of the appointed member: *Provided further,* That the elected member of a county board of education and the appointed member of the state Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an 'employee' if that person meets the following criteria:

(A) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;

(B) Has been designated, in writing, by all other participants in that job-sharing arrangement as the 'employee' for purposes of this section; and

(C) Works at least one-third of the time required for a full-time employee.

(4) 'Employer' means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the Public Employees Insurance Agency

program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or ~~comprehensive mental retardation~~ intellectually and developmentally disabled facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county or municipal funds; a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21<sup>st</sup> Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21<sup>st</sup> Century Learner Fellow. Any matters of doubt as to who is an ‘employer’ within the meaning of this article shall be decided by the director. The term ‘employer’ does not include within its meaning the National Guard.

(5) ‘Finance board’ means the Public Employees Insurance Agency finance board created by this article.

(6) ‘Person’ means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) ‘Plan’, unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.

(8) ‘Retired employee’ means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education

or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements of the State Teachers Retirement System and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to 5-16D-1 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

#### **§5-16-22. Permissive participation; exemptions.**

The provisions of this article are not mandatory upon any employee or employer who is not an employee of or is not the State

of West Virginia, its boards, agencies, commissions, departments, institutions or spending units, or a county board of education, and nothing contained in this article ~~compels~~ any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article: Provided, That nothing in this section requires a public charter school to participate in the Public Employees Insurance Agency program.

Those employees enrolled in the insurance program authorized under the provisions of §21A-2B-1 *et seq.* of this code ~~are~~ not required to enroll in or subscribe to an insurance plan or plans authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs.

~~Any plan established or administered by the Public Employees Insurance Agency pursuant to this article is exempt from the provisions of chapter thirty three of this code unless explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees Insurance Agency is not an insurer or engaged in the business of insurance as defined in chapter thirty three of this code.~~

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than 10 days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the Public Employees Insurance Agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education pay for their retired employees, their dependents and surviving dependents of deceased retired employees, as determined by the finance board: *Provided*, That after June 30, 1996, an employer not mandated to participate in the plan is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years: *Provided, however*, That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, who have participated in the plan as active employees of the employer for less than five years are responsible for the entire premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect the entire premium from the retired employees, unless the employer elects to pay the employer share of the premium. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

## CHAPTER 11. TAXATION.

### ARTICLE 8. LEVIES.

#### **§11-8-6f. Regular school board levy rate; creation and implementation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.**

(a) Notwithstanding any other provision of law except §11-8-6f(c) of this code, where any annual appraisal, triennial appraisal, or general valuation of property would produce a statewide



aggregate assessment that would cause an increase of two percent or more in the total property tax revenues that would be realized were the then current regular levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause the rate of levy to produce no more than 102 percent of the previous year's projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the following manner: (1) The total assessed value of each class of property as it is defined by section five of this article for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Classes III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred two percent: *Provided*, That the 102 percent figure shall be increased by the amount the boards of education's increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply the resulting product by 100; the resulting number is the Class I regular levy rate, stated as cents-per-100 of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.

An additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of the improvements be included in calculating the new tax levy for purposes of this

section. Special levies shall not be included in any calculations under this section.

(b) After conducting a public hearing, the Legislature may, by act, increase the rate above the reduced rate required in subsection (a) of this section if an increase is determined to be necessary.

(c) Beginning with the 2020 fiscal year and the 2019 tax year, §11-8-6f(a) and (b) of this code shall expire and the regular levy rates for the county boards of education shall be the following: (1) For Class I property, 19.4 cents per \$100; (2) for Class II property, 38.8 cents per \$100; and (3) for Class III and Class IV property, 77.6 cents per \$100: *Provided*, That county boards of education may increase their regular levy rates through a majority vote of their members up to the sum of the levy rates set forth in subdivisions (1), (2), and (3), section six-c of this article for each class of property, which are: (1) For Class I property, 22.95 cents per \$100; (2) for Class II property, 45.9 cents per \$100; and (3) for Class III and Class IV property, 91.8 cents per \$100: *Provided, however*, That prior to any regular levy rate increase, such increase must be approved by a majority vote of the voters of the county.

~~(e)~~ (d) The State Tax Commissioner shall report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability by March 1 of each year on the progress of assessors in each county in assessing properties at the Constitutionally required 60 percent of market value and the effects of increasing the limit on the increase in total property tax revenues set forth in this section to two percent.

~~(e)~~ (e) *Growth County School Facilities Act. — Legislative findings.* —

The Legislature finds and declares that there has been, overall, a statewide decline in enrollment in the public schools of this state; due to this decline, most public schools have ample space for students, teachers, and administrators; however, some counties of this state have experienced significant increases in enrollment due to significant growth in those counties; that those counties experiencing significant increases do not have adequate facilities

to accommodate students, teachers, and administrators. Therefore, the Legislature finds that county boards of education in those high-growth counties should have the authority to designate revenues generated from the application of the regular school board levy due to new construction or improvements placed in a Growth County School Facilities Act Fund be used for school facilities in those counties to promote the best interests of this state's students.

(1) For the purposes of this subsection, 'growth county' means any county that has experienced an increase in second month net enrollment of 50 or more during any three of the last five years, as determined by the state Department of Education.

(2) The provisions of this subsection shall only apply to any growth county, as defined in subdivision (1) of this subsection, that, by resolution of its county board of education, chooses to use the provisions of this subsection.

(3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this subsection, assessed values resulting from additional appraisal or valuation due to new construction or improvements to existing real property shall be designated as new property values and identified by the county assessor. The statewide regular school board levy rate as established by the Legislature shall be applied to the assessed value designated as new property values and the resulting property tax revenues collected from application of the regular school board levy rate shall be placed in a separate account designated as the Growth County School Facilities Act Fund. Revenues deposited in the Growth County School Facilities Act Fund shall be appropriated by the county board of education for construction, maintenance or repair of school facilities. Revenues in the fund may be carried over for an indefinite length of time and may be used as matching funds for the purpose of obtaining funds from the School Building Authority or for the payment of bonded indebtedness incurred for school facilities. For any growth county choosing to use the provisions of this subsection, estimated school board revenues generated from application of the regular school board levy rate to new property values are not to be considered as

local funds for purposes of the computation of local share under the provisions of §18-9A-11 of this code.

(e) (f) This section, as amended during the legislative session in the year 2004, shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after July 1, 2004. If any provision of this section is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-25. Education expenses tax credits.**

(a) Credit allowed. — For those tax years beginning on or after January 1, 2019, there is allowed a nonrefundable credit for expenditures on qualified educational expenses incurred by a teacher or service person employed by a public or private school. ‘Teacher’ and ‘service person’ have the meanings ascribed to them in §18-1-1 of this code except that the teacher or service person may be employed in either a public school or in a comparable position in a private school in this state.

(b) Amount of credit. — A teacher or service person employed by a public or private school may claim a tax credit not to exceed \$250.

(c) Qualifying educational expenses. — Qualifying expenses include costs relating to computer equipment including education-related software and services, textbooks, workbooks, curricula and other written or supplementary materials used for curricular, cocurricular, or extra-curricular instruction and expenses for curricular or cocurricular activities.

(d) Unused credit. — If any credit remains after application of §11-21-25(c) of this code, that amount is forfeited. A carryback to a prior taxable year is not allowed for the amount of any unused portion of any annual credit allowance.

## CHAPTER 18. EDUCATION.

## ARTICLE 5. COUNTY BOARD OF EDUCATION.

**§18-5-16. Student transfers; definitions; ~~legislative findings~~; appeals; calculating net enrollment; fees for transfer.**

(a) ~~County districts and school attendance.~~ — ~~Establishment of attendance zones within counties.~~ — ~~The county board may divide~~ shall establish attendance zones within the county into such districts as are necessary to determine to designate the schools the that its resident students of its county shall attend. Upon the written request of any parent or guardian, or person legally responsible for any student, or for reasons affecting the best interests of the schools, the superintendent may transfer students from one school to another within the county. Any aggrieved person may appeal the decision of the county superintendent to the county board, and the decision of the county board ~~shall be~~ is final.

~~(b) Transfers between counties; legislative findings —~~

~~(1) Transfers of students from one county to another may be made by the county board of the county in which the student desiring to be transferred resides. The transfer shall be subject to the approval of both the board of the county in which the student resides and the board to which the student wishes to be transferred.~~

~~(2) Legislative findings. — Over the past several years, counties have been forced to close a number of schools because of declining student enrollment. School officials predict that an additional eighteen percent loss in enrollment may occur between 2002 and 2012. This continued decrease in the number of students enrolled in the public schools of the state may result in more instances of consolidation which will increase the problem of long bus rides for students if they remain in a school in their county of residence.~~

~~Therefore the Legislature makes the following findings:~~

~~(A) County lines may impede the effective and efficient delivery of education services;~~

~~(B) Students often must endure long bus rides to a school within their county of residence when a school in an adjacent county is a fraction of the distance away;~~

~~(C) The wishes of parents or guardians to have their children transferred to a county other than their county of residence should be considered by the county boards; and~~

~~(D) Where counties cannot agree, it is necessary to establish a process to determine when transfers are appropriate.~~

~~(3) The state board shall establish a process whereby a parent or guardian of a student may appeal the refusal of a county board to enter into an agreement to transfer or accept the transfer of the student.~~

~~(A) The process shall designate the state superintendent to hear the appeal. In determining whether to overturn a decision of a county board, the state superintendent shall consider such factors as the following:~~

~~(i) Travel time for the student;~~

~~(ii) Impact on levies or bonds;~~

~~(iii) Other financial impact on the county of residence; and~~

~~(iv) Such other factors as the state superintendent may determine.~~

~~(B) If, during the appeal process, the state superintendent discovers that the education and the welfare of students in the transferring county could be enhanced, the state superintendent may direct that students may be permitted to attend a school in another county.~~

~~(C) If multiple appeals are received from the same geographical area of a county, the state superintendent may impose on the receiving county restrictions including, but not limited to, requiring the receiving county to accept all students in that~~

~~geographical area of the sending county who wish to transfer to the receiving county.~~

~~(D) If a student is transferred on either a full-time or a part-time basis without the agreement of both boards by official action as reflected in the minutes of their respective meetings and if the student's parent or guardian fails to appeal or loses the appeal under the process established in subdivision (3) of this subsection, the student shall be counted only in the net enrollment of the county in which the student resides.~~

~~(4) If, after two county boards have agreed to a transfer arrangement for a student, that student chooses to return to a school in his or her county of residence after the second month of any school year, the following shall apply:~~

~~(A) The county of residence may issue an invoice to the county from which the student transferred for the amount, determined on a pro-rata basis, that the county of residence otherwise would have received under the state basic foundation program established in article nine a [ §§ 18-9A-1 et seq. ] of this chapter; and~~

~~(B) The county from which the student transferred shall reimburse the county of residence for the amount of the invoice.~~

~~(c) *Transfers between high schools.* — In any county where a high school is maintained, but topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of any students to such high school, the board may transfer them to a high school in an adjoining county. In any such case, the county boards may enter into an agreement providing for the payment of the cost of transportation, if any, of the students.~~

~~(b) Definitions. — For the purposes of this section, unless a different meaning clearly appears from the context:~~

~~'Nonresident student' means a student who resides in this state and who is enrolled in or is seeking enrollment in a county school district other than the county school district in which the student resides.~~

‘Open enrollment’ means a policy adopted and implemented by a county board to allow nonresident students to enroll in any school within the district. Open enrollment is distinct from a mutual agreement of two county boards regarding mass transfer of students, as contemplated in §18-5-13(f)(1)(C) of this code.

(c) Enrollment policies. – County boards may establish and implement an open enrollment policy without charging tuition and without obtaining approval from the board of the county in which a student resides and transfers. These policies shall clearly articulate any admission criteria, application procedures, transportation provisions, timelines for open enrollment periods, and restrictions on transfers due to building capacity constraints. Enrollment policies are subject to the following:

(1) A county board may give enrollment preference to:

(A) Siblings of students already enrolled through the open enrollment policy;

(B) Secondary students who have completed tenth grade and, due to family relocation, become nonresident students, but express the desire to remain in a specific school to complete their education;

(C) Students who are children, grandchildren, or legal wards of employees;

(D) Students whose legal residences, though geographically within another county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time; and

(E) Students who reside in a portion of a county where topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of the student to a school within the county, and a school within a contiguous county is more easily accessible.

(2) A county must comply with all enrollment requirements for children who are in foster care or who meet the definition of



unaccompanied youth prescribed in the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(6)).

(3) The county board for the county educating the nonresident student may provide an adequate means of transportation to nonresident students when students have complied with the procedure for obtaining authorization to attend school outside their county of residence, subject to the following:

(A) County boards of education are not required to uniformly provide nonresident student transportation, and may consider whether a nonresident student meets the eligibility criteria for free or reduced price lunches and milk established within the Richard B. Russell National School Lunch Act (42 U.S.C. §1758); and

(B) The county board for the county educating the nonresident student shall provide transportation to and from the school of attendance, or to and from an agreed pickup point on a regular transportation route, or for the total miles traveled each day for the nonresident student to reach the school of enrollment if the nonresident student with disabilities has an individualized education program that specifies that transportation is necessary for fulfillment of the program.

(d) *Appeal.* – The state board of education shall establish a process whereby a parent or guardian of a student may appeal the refusal of a county board to accept the transfer of the student. If during the appeal process, the State Superintendent discovers that the education and the welfare of the student could be enhanced, the State Superintendent may direct that the student may be permitted to attend a school in the receiving county.

(e) *Net enrollment.* – For purposes of net enrollment as defined in §18-9A-2 of this code, whenever a student is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the student is transferred shall include the student in its net enrollment, subject to the following:

(1) If, after transferring to another county, a student chooses to return to a school in his or her county of residence after the second month of any school year, the following applies:

(A) The county of residence may issue an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county of residence otherwise would have received under the state basic foundation program established in §18-9A-1 et seq. of this code; and

(B) The county from which the student transferred shall reimburse the county of residence for the amount of the invoice.

~~(c) *Transfers between high schools.* — In any county where a high school is maintained, but topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of any students to such high school, the board may transfer them to a high school in an adjoining county. In any such case, the county boards may enter into an agreement providing for the payment of the cost of transportation, if any, of the students.~~

~~(d) (f) *Transfers between states.* — Transfer of students from this state to another state shall be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board of the transferring receiving county and the authorities board of the school to or district from which the transfer is made.~~

~~(e) (g) No parent, guardian, or person acting as parent or guardian shall be is required to pay for the transfer of a student or for the tuition of the student after the transfer when such the transfer is carried out under the terms of this section.~~

(h) Nothing in this section supersedes the eligibility requirements for participation in extra-curricular activities established by the Secondary Schools Activities Commission.

(i) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

**§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.**

(a) The provisions of this section expire effective July 1, 2019: Provided, That any agreements made pursuant to this section prior to July 1, 2019, shall remain in effect.

(b) Whenever, in the opinion of the board of Education of any county, the education and welfare of a pupil will be enhanced, the board of Education of such county shall have the authority to transfer any such pupil or pupils on a part-time or full-time basis from one school district to another school district within the state: *Provided*, That the boards of education of both the transferor and the transferee districts agree to the same by official action of both boards as reflected in the minutes of their respective meetings.

(c) Any pupil attending a school in a district of this state adjacent to the district of residence during the school year one thousand nine hundred eighty-four—eighty-five, is authorized to continue such attendance in the adjacent district, and, upon written request therefor by the parent or guardian, any person who is entitled to attend the public schools of this state and who resides in the same household and is a member of the immediate family of such pupil is authorized to enroll in such adjacent district. The transferor and transferee school districts shall effectuate any transfer herein authorized in accordance with the provisions of this section.

(d) Whenever a pupil is transferred from one school district to another district on a full-time or part-time basis, the board of Education of the school district in which the pupil is a bona fide resident shall pay to the board of Education of the school district to which the pupil is transferred a tuition that is agreed upon by both such boards. Tuition for each full-time pupil shall not exceed the difference between the state aid per pupil received by the county to which the pupil is transferred and the county cost per pupil in the county to which said pupil is transferred.

(e) For purposes of net enrollment as defined in section two, article nine-a of this chapter: (1) Whenever a pupil is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the pupil is transferred shall include such pupil in its net enrollment; and (2) whenever a pupil is transferred on a part-time basis from one school district to another school district pursuant to the provisions of this section, the county in which the student is a bona fide resident shall count the pupil in its net enrollment.

**§18-5-18b. School counselors in public schools.**

(a) A school counselor means a professional educator who holds a valid school counselor's certificate in accordance with §18-3-1 *et seq.* of this code.

(b) Each county board shall provide counseling services for each pupil enrolled in the public schools of the county.

(c) The school counselor shall work with individual pupils and groups of pupils in providing developmental, preventive and remedial guidance and counseling programs to meet academic, social, emotional, and physical needs; including programs to identify and address the problem of potential school dropouts. The school counselor also may provide consultant services for parents, teachers, and administrators and may use outside referral services, when appropriate, if no additional cost is incurred by the county board.

(d) The state board may adopt rules consistent with the provisions of this section that define the role of a school counselor based on the 'National Standards for School Counseling Programs' of the American school counselor association. A school counselor is authorized to perform such services as are not inconsistent with the provisions of the rule as adopted by the state board. To the extent that any funds are made available for this purpose, county boards shall provide training for counselors and administrators to implement the rule as adopted by the state board.

(e) Each county board shall develop a comprehensive drop-out prevention program utilizing the expertise of school counselors and any other appropriate resources available.

(f) School counselors shall be full-time professional personnel shall spend at least ~~seventy five~~ eighty percent of work time in a direct counseling relationship with pupils, and shall devote no more than ~~one fourth~~ twenty percent of the work day to administrative activities: *Provided*, That such activities are counselor related.

(g) Nothing in this section prohibits a county board from exceeding the provisions of this section, or requires any specific level of funding by the Legislature.

**§18-5-32. Assistant superintendents; directors and supervisors of instruction and other educational activities.**

(a) The county board, upon the recommendation of the county superintendent, may employ an assistant whose term of employment may be not less than one nor more than four years: *Provided*, That his or her term may not extend beyond that of the incumbent county superintendent.

(b) The board may not employ more than one assistant for each 200 teachers or major fraction thereof.

(c) The county board, upon the recommendation of the county superintendent, is authorized to employ general and special supervisors or directors of instruction and of other educational activities as may be considered necessary.

(d) The employment of the assistant superintendent shall be on a 12-month basis. ~~The period of employment for all others named herein shall be at the discretion of the county board.~~

(e) Rules for qualifications of assistant superintendents, and directors and supervisors of instruction and of other educational activities shall be fixed by the state board: *Provided*, That the qualifications required for any assistant superintendent may not be higher than those required for the county superintendent: *Provided*, *however*, That the rules do not affect the status of any incumbent

nor his or her right to succeed himself or herself in his or her assigned position.

(f) The county board is authorized to reimburse the employees for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

~~(g) Any person employed under the foregoing provision of this section, provided he or she holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall hold that status unless dismissed for statutory reasons: *Provided*, That central office administrators, supervisors, and directors who begin employment in their new position after July 1, 2020 shall serve at the will and pleasure of the superintendent and may be removed by the superintendent upon approval of the county board.~~

(h) The job duties of a professional educator employed under the provisions of this section, including a professional educator employed as a 'supervisor' or 'central office administrator' as defined in §18A-1-1 of this code, shall include substitute teaching on at least three instructional days each school year: *Provided*, That the substitute teaching requirement of this subsection does not apply to the superintendent and those who have never held a teaching certificate or an administrative certificate.

(i) All acts or parts of acts inconsistent with this section are hereby repealed.

**§18-5-46. Requiring teacher to change grade prohibited; teacher recommendation relating to promotion.**

(a) No teacher may be required by a principal or any other person to change a student's grade on either an individual assignment or a report card unless there is clear and convincing evidence that there was a mathematical error in calculating the student's grade.

(b) The teacher's recommendation relating to whether or not a student should be promoted to the next grade level shall be a primary consideration when making such a determination.

**ARTICLE 5B. SCHOOL INNOVATION ZONES ACT****§18-5B-14. Termination of funding for School Innovation Zones and Local Solution Dropout Prevention and Recovery Innovation Zones. Funding for Innovation Zones.**

~~No school, group of schools, district, subdivision or department of a group of schools, or a subdivision or department of a school designated or to be designated as an Innovation Zone or Local Solution Dropout Prevention and Recovery Innovation Zone shall receive any funding pursuant to this article after June 30, 2016.~~

Nothing in this section prevents counties from establishing magnet schools within their boundaries and such magnet schools shall be eligible for funding under the terms of the Act.

**§18-5B-15. Funding for Innovation Zones.**

There is hereby created in the State Treasury a special revenue fund to be known as the 'Innovation Zone Fund'. The fund shall consist of all moneys received from whatsoever source to further the purpose of this article. At a minimum, these funds shall consist of a 5 million dollar line item appropriation for the purposes of this article. The fund shall be administered by the state board solely for the purposes of this article, including providing grants and other financial assistance to innovation zone designated schools to implement and carry out such school's innovation zone plans. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's consolidated investment fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

**ARTICLE 5G. PUBLIC CHARTER SCHOOLS.****§18-5G-1. Legislative purpose and intent.**

(a) The West Virginia Legislature hereby authorizes a pilot program under which existing public schools may be converted into public charter schools to allow new, innovative, and more flexible ways of educating all children who choose to attend and

advance a renewed commitment to the mission, goals, and diversity of public education. The purposes of this public charter school initiative are to:

(1) Improve student learning by creating more diverse public schools with high standards for student performance;

(2) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(3) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(4) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means an organization or group comprised primarily of parents and others who reside within the community served by the school who:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status;

(B) Develop and submit an application to become a conversion public charter school to an authorizer;

(C) May include as partner organizations a public or private institution or institutions of higher education and partners in business and industry; and

(D) With respect to an application for a conversion public charter school, in addition to the other requirements of this article, the applicants shall demonstrate support for the proposed conversion to a public charter school by:



(i) Submitting a petition for conversion signed by a majority of the employees of the school proposed for conversion; and

(ii) Submitting a petition for conversion signed by a majority of the parents, guardians or custodians of the students enrolled in the school proposed for conversion.

(2) ‘Authorizer’ means the county board of education of the county in which the conversion public charter school is proposed to be located;

(3) ‘Charter application’ means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) ‘Charter contract’ or ‘contract’ means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(6) ‘Conversion public charter school’ means a public charter school that existed as a noncharter public school before becoming a public charter school;

(7) ‘County board’ means a county board of education;

(8) ‘Education service provider’ means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(9) ‘Governing board’ means a board of directors as provided for in §18-5G-3 of this code;

(10) ‘Noncharter public school’ means a public school other than a public charter school established pursuant to this article;

(11) ‘Parent’ means a parent, guardian, or other person or entity having legal custody over a child;

(12) ‘Public charter school’ means a public school established pursuant to this article that:

(A) Is a public school and is part of the state’s system of public education but is exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article: *Provided*, That nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools;

(B) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(C) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(D) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(E) Is established and operating under the terms of a charter contract between the public charter school’s governing board and its authorizer;

(F) Is a public school to which parents choose to send their children;

(G) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(H) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(I) Operates under the oversight of its authorizer in accordance with its charter contract;

(13) ‘State board’ means the West Virginia Board of Education; and

(14) ‘Student’ means any person that is eligible for attendance in a public school in West Virginia.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) The authorization for the establishment of public charter schools in this state is limited as a pilot project to two elementary schools that are low performing, that have been designated as federal Title I eligible schools, that meet the definition of an applicant to become a conversion public charter school, and that are authorized by their respective county board.

(b) No elected official may profit or receive any monetary consideration from a charter school: *Provided*, That this prohibition does not apply with respect to the continued employment of an elected official who was employed by a public school prior to its conversion to a public charter school.

(c) A public charter school authorized under this article shall:

(1) Adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools;

(2) Have no entrance requirements or charge any tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(3) Have no power to levy taxes.

(4) Be governed by a governing board as specified in subsection (d) of this section;

(5) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(6) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(7) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(8) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(9) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(10) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(11) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(12) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(13) Operate under the oversight of its authorizer in accordance with its charter contract;

(14) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(15) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(16) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(17) Serve one or more of grades and limit admission to students within the grade levels served; and

(18) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(d) A public charter school authorized under this article may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and

shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(e) A county board may not require any employee of the local school district to be employed in a charter school. A county board may not harass, threaten, discipline, discharge, retaliate or in any manner discriminate against any district employee involved directly or indirectly with an application to establish a charter school as authorized under this section.

(f) All personnel in a public charter school shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county for purposes of employment in noncharter public schools.

(g) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board of a conversion public charter school authorized under this article shall consist of the following members elected or selected in a manner specified in the charter application:

(A) Two parents of students attending the public charter school;

(B) Two members who reside in the community serves by the public charter school;

(C) Two faculty members employed at the public charter school;

(D) Two persons appointed by the authorizing county board;  
and

(E) One representative of the State Superintendent.

(3) Members of the governing board shall:

(A) Not be an employee of an education service provider that provides services to the public charter school; and

(B) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and may only be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state. A student enrolled in a public charter school shall be included in the net enrollment of the county in which the school is located for the purposes of §18-9A-1 et seq., and shall be allocated to the public charter school in accordance with the State Board rule promulgated pursuant to section §18-5G-13 of this article.

(b) A conversion public charter school shall guarantee enrollment to all students who were previously enrolled in the noncharter public school and to all students who reside in the school's attendance area. All students who reside in the attendance area of a public school that converts to a public charter school may enroll in the public charter school if they choose to do so. The school shall adopt and maintain a policy that gives enrollment preference to students who reside within the attendance area as established prior to the conversion of the school. An enrollment preference also shall be given to students enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. If the school has excess capacity after enrolling students within the attendance area and those with preference, students outside the attendance area are eligible for enrollment;

(c) Except as provided in subsection (b) of this section, if the capacity of a public charter school is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(d) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(b) of this code.



(e) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(f) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(g) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(h) If a student who was previously enrolled in a public charter school transfers enrollment to a noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools or that consider content competency when appropriate due to differences in curriculum delivery, instructional methods and strategies, or course designations and sequence.

**§18-5G-5. Application to establish public charter school.**

(a) To convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: Only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory

bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan; and

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract;  
and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a

charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2020.

(g) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(h) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-12 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.



**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by the county board.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board during an open meeting; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened.

(f) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

#### **§18-5G-11. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school may not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-12. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 et seq. of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 et seq. of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

(c) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. If an authorizer fails to close a charter school that does not meet the standards, the authorizer shall appear before the State Board to justify it's decision. The State Board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize charter schools.

**§18-5G-13. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available for use or lease to the charter school that are not a currently in use as an operating public school or which are available at the time the charter school seeks to use in whole or in part for a legitimate public school use.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-14. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State



Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program.

## **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

### **§18-7A-3. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(1) 'Accumulated contributions' means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) 'Accumulated net benefit' means the aggregate amount of all benefits paid to or on behalf of a retired member.

(3) 'Actuarially equivalent' or 'of equal actuarial value' means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, 'actuarially equivalent' shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) 'Annuities' means the annual retirement payments for life granted beneficiaries in accordance with this article.

(5) 'Average final salary' means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation

allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(6) ‘Beneficiary’ means the recipient of annuity payments made under the retirement system.

(7) ‘Contributor’ means a member of the retirement system who has an account in the teachers accumulation fund.

(8) ‘Deposit’ means a voluntary payment to his or her account by a member.

(9) ‘Employer’ means the agency of and within the state which has employed or employs a member.

(10) ‘Employer error’ means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(11) ‘Employment term’ means employment for at least 10 months, a month being defined as 20 employment days.

(12) ‘Gross salary’ means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member’s rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay or any other fringe

benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(13) 'Internal Revenue Code' means the Internal Revenue Code of 1986, as it has been amended.

(14) 'Member' means any person who has accumulated contributions standing to his or her credit in the state Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

(15) 'Members of the administrative staff of the public schools' means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(16) 'Members of the extension staff of the public schools' means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

(17) 'New entrant' means a teacher who is not a present teacher.

(18) 'Nonteaching member' means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; ~~or~~ (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the retirement systems under this article and §18-7B-1 et seq. of this code, subject to the provisions of §18-7B-7a of this code; Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing

board commences on or after July 1, 1991, is not considered a nonteaching member.

(19) 'Plan year' means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

(20) 'Present member' means a present teacher or nonteacher who is a member of the retirement system.

(21) 'Present teacher' means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) 'Prior service' means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(23) 'Public schools' means all publicly supported schools, including colleges and universities in this state.

(24) 'Refund beneficiary' means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(25) 'Regular interest' means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) 'Regularly employed for full-time service' means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(27) 'Required beginning date' means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar year

in which the member retires or ceases covered employment under the system after having attained the age of 70 and one-half years.

(28) 'Retirant' means any member who commences an annuity payable by the retirement system.

(29) 'Retirement board' means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(30) 'Retirement system' means the state Teachers Retirement System established by this article.

(31) 'Teacher member' means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads, and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; ~~and~~ (L) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 *et seq.* of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (M) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its approved charter application a

determination to participate in the retirement systems under this article and §18-7B-1 et seq. of this code, subject to the provisions of §18-7B-7a of this code.

(32) ‘Total service’ means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of 70 years shall be considered to be 70 years.

## **ARTICLE 7B. TEACHERS’ DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

### **§18-7B-2. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(1) ‘Annual addition’ means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member’s account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts or contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan shall not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

(2) ‘Annuity account’ or ‘annuity’ means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(3) ‘Compensation’ means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue

Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, ‘compensation’ has the meaning given it in §18-7B-13(d) of this code;

(4) ‘Consolidated board’ or ‘board’ means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 *et seq.* of this code;

(5) ‘Defined contribution system’ or ‘system’ means the Teachers’ Defined Contribution Retirement System created and established by this article;

(6) ‘Employer’ means the agency of and within the State of West Virginia which has employed or employs a member;

(7) ‘Employer contribution’ means an amount deposited into the member’s individual annuity account on a periodic basis coinciding with the employee’s regular pay period by an employer from its own funds;

(8) ‘Employment term’ means employment for at least 10 months in any plan year with a month being defined as 20 employment days;

(9) ‘Existing employer’ means any employer who employed or employs a member of the system;

(10) ‘Existing retirement system’ means the State Teachers Retirement System established in §18B-7A-1 *et seq.* of this code;

(11) ‘Internal Revenue Code’ means the Internal Revenue Code of 1986, as it has been amended;

(12) ‘Member’ or ‘employee’ means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher’s certificate; (F) members of the research, extension,

administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; ~~and~~ (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the retirement systems under this article, subject to the provisions of §18-7B-7a and §18-7A-1 et seq. of this code;

(13) 'Member contribution' means an amount reduced from the employee's regular pay periods, and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System;

(14) 'Permanent, total disability' means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, 'permanent, total disability' means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected



to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness;

(15) 'Plan year' means the 12 month period commencing on July 1 of any designated year and ending on the following June 30;

(16) 'Public schools' means all publicly supported schools, including normal schools, colleges and universities in this state;

(17) 'Regularly employed for full-time service' means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;

(18) 'Required beginning date' means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of 70 and one-half years;

(19) 'Retirement' means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(20) 'Year of employment service' means employment for at least 10 months, with a month being defined as 20 employment days: *Provided*, That no more than one year of service may be accumulated in any 12 month period.

## **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

### **§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.**

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article;

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so; and

(3) For the purposes of this article, the following definitions shall apply:

(A) 'Excused absence' shall be defined to include:

(i) Personal illness or injury of the student or in the family;

(ii) Personal illness or injury of the student's parent, guardian, custodian, or family member: Provided, That the excuse must provide reasonable explanation for why the student's absence was necessary and caused by the illness or injury in the family;

~~(iii)~~ Medical or dental appointment with written excuse from physician or dentist;

(iv) Chronic medical condition or disability that impacts attendance;

(v) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

(vi) Calamity, such as a fire or flood;

(vii) Death in the family;

(viii) School-approved or county-approved curricular or extra-curricular activities;

~~(ix)~~ Judicial obligation or court appearance involving the student;

(x) Military requirement for students enlisted or enlisting in the military;

(xi) Personal or academic circumstances approved by the principal; and

(xii) Such other situations as may be further determined by the county board: *Provided*, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith.

(B) 'Unexcused absence' shall be any absence not specifically included in the definition of 'excused absence'.

(b) In the case of three total unexcused absences of a student during a school year, the attendance director, or assistant, or principal shall ~~serve written notice to the parent, guardian or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal or other designated representative will be required.~~ make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending and not incurring any additional unexcused absences.

(c) In the case of five total unexcused absences, the attendance director or assistant, or principal shall ~~serve written notice to the parent, guardian or custodian of the student that within five days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the unexcused absences of the student, including the adjustment of unexcused absences based upon such meeting.~~ again make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring any

additional unexcused absences. Such measures may include, with approval of the principal, reducing the number of unexcused absences.

(d) In the case of 10 total unexcused absences of a student during a school year, the attendance director or assistant shall make a complaint against the parent, guardian, or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within 10 calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days' advance notice of the date, time, and place of the hearing.

(f) When any doubt exists as to the age of a student absent from school, the attendance director and assistants have authority to require a properly attested birth certificate or an affidavit from the parent, guardian, or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director and assistants have authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(g) The county attendance director and assistants shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(h) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors also shall perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to §29A-3B-1 *et seq.* of this code that sets forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule include, but are not limited to, excused student absences, students not in attendance due to disciplinary measures, and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers' conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal, or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

## **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

### **§18-9A-2. Definitions.**

For the purpose of this article:

(a) 'State board' means the West Virginia Board of Education.

(b) 'County board' or 'board' means a county board of education.

(c) 'Professional salaries' means the state legally mandated salaries of the professional educators as provided in §18-4-1 *et seq.* of this code.

(d) 'Professional educator' shall be synonymous with and shall have the same meaning as 'teacher' as defined in §18-1-1 of this code, and includes technology integration specialists.

(e) 'Professional instructional personnel' means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director, or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is

assigned and serves on a regular full-time basis in appropriate instruction, library, attendance, or psychologist duties.

(f) ‘Professional student support personnel’ means a ‘teacher’ as defined in §18-1-1 of this code who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor’s degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. Professional student support personnel shall also include professional personnel providing direct social and emotional support services to students, including but not limited to, social workers and psychologists. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) ‘Service personnel salaries’ means the state legally mandated salaries for service personnel as provided in §18A-4-8a of this code.

(h) ‘Service personnel’ means all personnel as provided in §18A-4-8 of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by 200: *Provided*, That the computation for any service person employed for three and one-half hours or less per day as provided in §18A-4-8a of this code shall be calculated as one half an employment day.

(i) ‘Net enrollment’ means the number of pupils enrolled in special education programs, kindergarten programs, and grades one to twelve, inclusive, of the public schools of the county. Net enrollment further shall include:

(1) Adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:

(A) Net enrollment includes no more than ~~1,000~~ 2,500 of those adults counted on the basis of full-time equivalency and

apportioned annually to each county to support Advanced Career Education programs, as provided in §18-2E-11 of this code, in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency: *Provided, That beginning with the 2021 fiscal year and every year thereafter, a career technical education center may only receive the funding for enrollment as authorized by this paragraph if the center has satisfied the requirements of §18-2E-11 of this code;* and

(B) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student;

(2) Students enrolled in early childhood education programs as provided in §18-5-44 of this code, counted on the basis of full-time equivalency;

(3) ~~No pupil shall~~ A pupil may not be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state;

(4) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) ~~For the purposes of determining the county's basic foundation program only~~ For any county whose net enrollment as determined under all other provisions of this definition is less than 1,400, the net enrollment of the county shall be ~~increased by an amount to be determined in accordance with the following~~ considered to be 1,400 for the purposes of determining the county's basic foundation program only. During the 2019-2020 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and sparse population density.



~~(A) Divide the state's lowest county student population density by the county's actual student population density;~~

~~(B) Multiply the amount derived from the calculation in paragraph (A) of this subdivision by the difference between one thousand four hundred and the county's actual net enrollment;~~

~~(C) If the increase in net enrollment as determined under this subdivision plus the county's net enrollment as determined under all other provisions of this subsection is greater than one thousand four hundred, the increase in net enrollment shall be reduced so that the total does not exceed one thousand four hundred; and~~

~~(D) During the 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and a sparse population density.~~

(j) 'Sparse-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of 'net enrollment', to the square miles of the county is less than five.

(k) 'Low-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of 'net enrollment', to the square miles of the county is equal to or greater than five but less than 10.

(l) 'Medium-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of 'net enrollment', to the square miles of the county is equal to or greater than 10 but less than 20.

(m) 'High-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section,

of the definition of 'net enrollment', to the square miles of the county is equal to or greater than 20.

(n) 'Levies for general current expense purposes' means 90 percent of the levy rate for county boards of education ~~calculated or set by the Legislature as established in pursuant to §11-8-6f of this code.~~ The levy rate shall be assumed to be the rate established in that section and not an increased rate established by a county board.

(o) 'Technology integration specialist' means a professional educator who has expertise in the technology field and is assigned as a resource teacher to provide information and guidance to classroom teachers on the integration of technology into the curriculum.

(p) 'State aid eligible personnel' means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this article and whose salaries are not funded by a specific funding source such as a federal or state grant, donation, contribution or other specific funding source not listed.

(q) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

#### **§18-9A-8. Foundation allowance for professional student support services.**

(a) The basic foundation allowance to the county for professional student support personnel shall be the amount of money determined in accordance with the following:

(1) The sum of the state minimum salaries, as determined in accordance with the provisions of §18-4-1 *et seq* of this code, for all state aid eligible school nurse and counselor positions in the county during the 2008 fiscal year which number shall be reduced

in the same proportion as the number of professional educators allowed to be funded under §18-9A-4 of this code to the total number of professional educators employed that are state aid eligible. In performing this calculation, the numerator shall be the number of professional educators actually funded under section four of this article and the denominator shall be the total number of professional educators employed that are eligible to be funded under §18-9A-4 of this code;

(2) The amount derived from the calculation in §18-9A-8(a)(1) of this code is increased by one half percent;

(3) The amount derived from the calculation in §18-9A-8(a)(2) of this code is the basic foundation allowance to the county for professional student support personnel for the 2009 fiscal year;

(4) For fiscal years 2010, 2011, 2012 and 2013, the basic foundation allowance to the county for professional student support personnel increases by one-half percent per year over the allowance for the previous year; and

(5) For all fiscal years thereafter until fiscal year 2020, the basic foundation allowance to the county for professional student support personnel remains the same amount as in the 2013 fiscal year, plus any additional amount of funding necessary to cover the increases in the State Minimum Salary Schedule set forth in §18A-4-2 of this code effective for the fiscal year beginning July 1, 2018, and thereafter.

(b) The additional positions for counselors that may be created as a result of the one percent increase provided pursuant to this section shall be assigned to schools where the counselor can:

(1) Enhance student achievement;

(2) Provide early intervention for students in grades prekindergarten through five; and

(3) Enhance student development and career readiness.

(c) Effective for the 2019-20 fiscal year and thereafter, the basic foundation allowance to the county for professional student support personnel is the amount of money required to pay the state minimum salaries, in accordance with provisions of §18A-4-1 et seq. of this code, subject to the following:

(1) In making this computation, each county shall receive an allowance for four and seventy hundredths state aid eligible professional student support personnel positions to each 1,000 students in net enrollment;

(2) For any professional student support personnel positions, or fraction thereof, determined for a county pursuant to §18-9A-8(c)(1) of this code that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of professional student support personnel for the county;

(3) The number of and the allowance for all personnel paid in part by state and county funds shall be prorated; and

(4) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional student support personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(5) For the 2019-20 fiscal year only, the number of positions funded for each county by subdivision (1) cannot be less than the number of positions that would have been funded in accordance with the previous methodology for determining the number of professional student support personnel positions funded for each county.

**§18-9A-9. Foundation allowance for other current expense and substitute employees and faculty senates.**

The total allowance for other current expense and substitute employees is the sum of the following:

(1) For current expense:

(A) The non-salary related expenditures for operations and maintenance, exclusive of expenditures reported in special revenue funds, for the latest available school year, in each county, divided by the total square footage of school buildings in each county is used to calculate a state average expenditure per square foot for operations and maintenance;

(B) The total square footage of school buildings in each county divided by each county's net enrollment for school aid purposes is used to calculate a state average square footage per student;

(C) Each county's net enrollment for school aid purposes multiplied by the state average expenditure per square foot for operations and maintenance as calculated in paragraph (A) of this subdivision and multiplied by the state average square footage per student as calculated in paragraph (B) of this subdivision is that county's state average costs per square footage per student for operations and maintenance;

(D) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the allowance for current expense may be prorated among the participating counties by adjusting the net enrollment for school aid purposes utilized in the calculation by the number of students enrolled therein for each county; and

(E) Each county's allowance for current expense is 70.25% of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (C) of this subdivision: Provided, That effective July 1, 2019, each county's allowance for current expense is 71.25 percent of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (c) of this subdivision; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators and professional student support personnel

as determined in sections four and eight of this article. Distribution to the counties is made proportional to the number of professional educators and professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties is made proportional to the number of service personnel authorized for the county in compliance with section five of this article; plus

(4) For academic materials, supplies, and equipment for use in instructional programs, \$200 multiplied by the number of professional instructional personnel and professional student support personnel employed in the schools of the county. Distribution is made to each county for allocation to the faculty senate of each school in the county on the basis of \$200 per professional instructional personnel employed at the school. 'Faculty Senate' means a faculty senate created pursuant to §18-5A-5 of this code. Decisions for the expenditure of such funds are made at the school level by the faculty senate in accordance with the provisions of ~~said~~ §18-5A-5 of this code and may not be used to supplant the current expense expenditures of the county. Beginning on September 1, 1994, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

**§18-9A-12. County basic foundation; total basic state aid allowance.**

(a) The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine, and ten of this article. On the first working day of July in each year, the State Board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional

educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in §18-9A-11 of this code except as provided in subsection (b) of this section: *Provided, That for all fiscal years after 2018-2019, in calculating the allocated state aid share of the county's basic foundation program, when subtracting the amount of the county's local share, if the county's local share as determined in §18-9A-11 of this code is greater than the county's local share was determined to be for fiscal year 2015-2016, then the allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's 2015-2016 determined local share.*

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: *Provided, That* prior to such adjustment, the State Tax Commissioner shall provide the State Board, by January 15 of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue which will not be available to each county board in the ensuing fiscal year as a result of the circumstance:

(1) In those instances where the local share as computed under §18-9A-11 of this code is not reflective of local funds available because the county is under a final court order, or a final decision of a board of assessment appeals under §11-3-24b of this code, to refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under §18-9A-11 of this code, plus the amount of property tax the county is unable to collect or must refund due to the final court order or final decision of a board of assessment appeals: *Provided, That* said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund, or funds only in part, the public school basic foundation support plan state share at a level sufficient to cover the

reduction in state share: *Provided, however,* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(2) In those instances where the local share as computed under §18-9A-11 of this code is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the tax commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the tax commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under §18-9A-11 of this code, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county: *Provided,* That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however,* That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under §18-9A-11 of this code, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the tax commissioner: *Provided,* That the county is required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however,* That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided further,* That nothing herein provided shall



be construed to require or mandate any level of funding by the Legislature.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or contributions in lieu of property taxes, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under §18-9A-11 of this code, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The State Tax Commissioner then shall provide the State Board, by January 15 of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the State Board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-5. Powers and duties of state superintendent.**

(a) The State Superintendent of Schools shall organize, promote, administer, and be responsible for:

(1) Stimulating and assisting county boards of ~~education~~ in establishing, organizing, and maintaining special schools, classes,

regular class programs, home-teaching, and visiting-teacher services for exceptional children.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating, and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) (A) Preparing the necessary rules, policies, ~~formula~~ and formulas for distribution of available appropriated funds, reporting forms, and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification, and approval of qualified teachers and therapists subject to approval by the State Board of Education: *Provided*, That no state rule, policy, or standard under this article or any county board rule, policy, or standard governing special education may exceed the requirements of federal law or regulation.

(B) ~~An~~ A separate appropriation shall be made to the Department of Education to be ~~distributed~~ disbursed to county boards and public charter schools authorized pursuant to §18-5G-1 et seq. of this code to support children assist them with serving exceptional children with high cost/high acuity special needs that exceed the capacity of county to provide with funds available. Each county board and public charter school shall apply to the state superintendent ~~for receipt of~~ to receive this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When possible, federal funds shall be ~~distributed~~ disbursed to county boards and public charter schools for this purpose before any of the state appropriation is ~~distributed~~ disbursed. The state board shall promulgate a rule in accordance with the provisions of §29A-3B-1 et seq. of this code that implements the provisions of this subdivision relating to ~~distributing~~ disbursing the funds to the county boards and public charter schools. The rule at least shall include a definition for 'children with high acuity needs'.

(4) Receiving from county boards of ~~education and public charter schools~~, their applications, annual reports, and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims, and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in §18-2-13f of this code receive an education in accordance with state and federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

~~(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight Commission on Education Accountability no later than December 1, 1995~~

(b) Nothing contained in this section shall be construed to prevent any county board of ~~education~~ from establishing and maintaining special schools, classes, regular class programs, home-teaching, or visiting-teacher services for exceptional children out of funds available from local revenue.

## CHAPTER 18A. SCHOOL PERSONNEL.

### ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.

#### §18A-4-2. State minimum salaries for teachers.

(a) It is the goal of the Legislature to increase the state minimum salary for teachers with zero years of experience and an A. B. degree, including the equity supplement, to at least \$43,000 by fiscal year 2019.

(b) For school year 2018–2019, ~~and continuing thereafter~~, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule I as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year: Provided, That for the school year 2019-2020, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule II as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

### STATE MINIMUM SALARY SCHEDULE I

Years Exp.	4th Class	3rd Class	2nd Class	A.B. A.B.	A.B. +15	M.A. M.A.	M.A. +15	M.A. +30	M.A. +45	Doc- torate
0	29,937	30,626	30,892	32,335	33,096	34,863	35,624	36,385	37,146	38,181
1	30,265	30,954	31,220	32,853	33,614	35,382	36,143	36,903	37,664	38,699
2	30,594	31,282	31,548	33,372	34,133	35,900	36,661	37,422	38,183	39,218
3	30,922	31,610	31,876	33,891	34,651	36,419	37,180	37,940	38,701	39,736
4	31,494	32,182	32,448	34,653	35,414	37,182	37,943	38,703	39,464	40,499
5	31,822	32,510	32,776	35,172	35,933	37,700	38,461	39,222	39,983	41,018
6	32,150	32,838	33,104	35,690	36,451	38,219	38,980	39,740	40,501	41,536
7	32,478	33,167	33,432	36,209	36,970	38,737	39,498	40,259	41,020	42,055
8	32,806	33,495	33,761	36,727	37,488	39,256	40,017	40,777	41,538	42,573
9	33,134	33,823	34,089	37,246	38,007	39,774	40,535	41,296	42,057	43,092
10	33,463	34,151	34,417	37,766	38,526	40,294	41,055	41,816	42,576	43,611
11	33,791	34,479	34,745	38,284	39,045	40,813	41,573	42,334	43,095	44,130
12	34,119	34,807	35,073	38,803	39,563	41,331	42,092	42,853	43,613	44,648
13	34,447	35,135	35,401	39,321	40,082	41,850	42,610	43,371	44,132	45,167
14	34,775	35,463	35,729	39,840	40,600	42,368	43,129	43,890	44,650	45,685

2019]

## HOUSE OF DELEGATES

1111

15	35,103	35,791	36,057	40,358	41,119	42,887	43,647	44,408	45,169	46,204
16	35,431	36,119	36,385	40,877	41,637	43,405	44,166	44,927	45,687	46,722
17	35,759	36,448	36,713	41,395	42,156	43,924	44,685	45,445	46,206	47,241
18	36,087	36,776	37,042	41,914	42,675	44,442	45,203	45,964	46,725	47,760
19	36,415	37,104	37,370	42,432	43,193	44,961	45,722	46,482	47,243	48,278
20	36,743	37,432	37,698	42,951	43,712	45,479	46,240	47,001	47,762	48,797
21	37,072	37,760	38,026	43,469	44,230	45,998	46,759	47,519	48,280	49,315
22	37,400	38,088	38,354	43,988	44,749	46,516	47,277	48,038	48,799	49,834
23	37,728	38,416	38,682	44,507	45,267	47,035	47,796	48,556	49,317	50,352
24	38,056	38,744	39,010	45,025	45,786	47,554	48,314	49,075	49,836	50,871
25	38,384	39,072	39,338	45,544	46,304	48,072	48,833	49,594	50,354	51,389
26	38,712	39,400	39,666	46,062	46,823	48,591	49,351	50,112	50,873	51,908
27	39,040	39,728	39,994	46,581	47,341	49,109	49,870	50,631	51,391	52,426
28	39,368	40,057	40,322	47,099	47,860	49,628	50,388	51,149	51,910	52,945
29	39,696	40,385	40,651	47,618	48,378	50,146	50,907	51,668	52,428	53,463
30	40,024	40,713	40,979	48,136	48,897	50,665	51,425	52,186	52,947	53,982
31	40,353	41,041	41,307	48,655	49,416	51,183	51,944	52,705	53,465	54,500
32	40,681	41,369	41,635	49,173	49,934	51,702	52,463	53,223	53,984	55,019
33	41,009	41,697	41,963	49,692	50,453	52,220	52,981	53,742	54,503	55,538
34	41,337	42,025	42,291	50,210	50,971	52,739	53,500	54,260	55,021	56,056
35	41,665	42,353	42,619	50,729	51,490	53,257	54,018	54,779	55,540	56,575

STATE MINIMUM SALARY SCHEDULE II

<u>Years</u> <u>Exp.</u>	<u>4th</u> <u>Class</u>	<u>3rd</u> <u>Class</u>	<u>2nd</u> <u>Class</u>	<u>A.B.</u>	<u>A.B.</u> <u>+15</u>	<u>M.A.</u>	<u>M.A.</u> <u>+15</u>	<u>M.A.</u> <u>+30</u>	<u>M.A.</u> <u>+45</u>	<u>Doc-</u> <u>torate</u>
0	<u>32,057</u>	<u>32,746</u>	<u>33,012</u>	<u>34,455</u>	<u>35,216</u>	<u>36,983</u>	<u>37,744</u>	<u>38,505</u>	<u>39,266</u>	<u>40,301</u>
1	<u>32,385</u>	<u>33,074</u>	<u>33,340</u>	<u>34,973</u>	<u>35,734</u>	<u>37,502</u>	<u>38,263</u>	<u>39,023</u>	<u>39,784</u>	<u>40,819</u>

<u>2</u>	<u>32,714</u>	<u>33,402</u>	<u>33,668</u>	<u>35,492</u>	<u>36,253</u>	<u>38,020</u>	<u>38,781</u>	<u>39,542</u>	<u>40,303</u>	<u>41,338</u>
<u>3</u>	<u>33,042</u>	<u>33,730</u>	<u>33,996</u>	<u>36,011</u>	<u>36,771</u>	<u>38,539</u>	<u>39,300</u>	<u>40,060</u>	<u>40,821</u>	<u>41,856</u>
<u>4</u>	<u>33,614</u>	<u>34,302</u>	<u>34,568</u>	<u>36,773</u>	<u>37,534</u>	<u>39,302</u>	<u>40,063</u>	<u>40,823</u>	<u>41,584</u>	<u>42,619</u>
<u>5</u>	<u>33,942</u>	<u>34,630</u>	<u>34,896</u>	<u>37,292</u>	<u>38,053</u>	<u>39,820</u>	<u>40,581</u>	<u>41,342</u>	<u>42,103</u>	<u>43,138</u>
<u>6</u>	<u>34,270</u>	<u>34,958</u>	<u>35,224</u>	<u>37,810</u>	<u>38,571</u>	<u>40,339</u>	<u>41,100</u>	<u>41,860</u>	<u>42,621</u>	<u>43,656</u>
<u>7</u>	<u>34,598</u>	<u>35,287</u>	<u>35,552</u>	<u>38,329</u>	<u>39,090</u>	<u>40,857</u>	<u>41,618</u>	<u>42,379</u>	<u>43,140</u>	<u>44,175</u>
<u>8</u>	<u>34,926</u>	<u>35,615</u>	<u>35,881</u>	<u>38,847</u>	<u>39,608</u>	<u>41,376</u>	<u>42,137</u>	<u>42,897</u>	<u>43,658</u>	<u>44,693</u>
<u>9</u>	<u>35,254</u>	<u>35,943</u>	<u>36,209</u>	<u>39,366</u>	<u>40,127</u>	<u>41,894</u>	<u>42,655</u>	<u>43,416</u>	<u>44,177</u>	<u>45,212</u>
<u>10</u>	<u>35,583</u>	<u>36,271</u>	<u>36,537</u>	<u>39,886</u>	<u>40,646</u>	<u>42,414</u>	<u>43,175</u>	<u>43,936</u>	<u>44,696</u>	<u>45,731</u>
<u>11</u>	<u>35,911</u>	<u>36,599</u>	<u>36,865</u>	<u>40,404</u>	<u>41,165</u>	<u>42,933</u>	<u>43,693</u>	<u>44,454</u>	<u>45,215</u>	<u>46,250</u>
<u>12</u>	<u>36,239</u>	<u>36,927</u>	<u>37,193</u>	<u>40,923</u>	<u>41,683</u>	<u>43,451</u>	<u>44,212</u>	<u>44,973</u>	<u>45,733</u>	<u>46,768</u>
<u>13</u>	<u>36,567</u>	<u>37,255</u>	<u>37,521</u>	<u>41,441</u>	<u>42,202</u>	<u>43,970</u>	<u>44,730</u>	<u>45,491</u>	<u>46,252</u>	<u>47,287</u>
<u>14</u>	<u>36,895</u>	<u>37,583</u>	<u>37,849</u>	<u>41,960</u>	<u>42,720</u>	<u>44,488</u>	<u>45,249</u>	<u>46,010</u>	<u>46,770</u>	<u>47,805</u>
<u>15</u>	<u>37,223</u>	<u>37,911</u>	<u>38,177</u>	<u>42,478</u>	<u>43,239</u>	<u>45,007</u>	<u>45,767</u>	<u>46,528</u>	<u>47,289</u>	<u>48,324</u>
<u>16</u>	<u>37,551</u>	<u>38,239</u>	<u>38,505</u>	<u>42,997</u>	<u>43,757</u>	<u>45,525</u>	<u>46,286</u>	<u>47,047</u>	<u>47,807</u>	<u>48,842</u>
<u>17</u>	<u>37,879</u>	<u>38,568</u>	<u>38,833</u>	<u>43,515</u>	<u>44,276</u>	<u>46,044</u>	<u>46,805</u>	<u>47,565</u>	<u>48,326</u>	<u>49,361</u>
<u>18</u>	<u>38,207</u>	<u>38,896</u>	<u>39,162</u>	<u>44,034</u>	<u>44,795</u>	<u>46,562</u>	<u>47,323</u>	<u>48,084</u>	<u>48,845</u>	<u>49,880</u>
<u>19</u>	<u>38,535</u>	<u>39,224</u>	<u>39,490</u>	<u>44,552</u>	<u>45,313</u>	<u>47,081</u>	<u>47,842</u>	<u>48,602</u>	<u>49,363</u>	<u>50,398</u>
<u>20</u>	<u>38,863</u>	<u>39,552</u>	<u>39,818</u>	<u>45,071</u>	<u>45,832</u>	<u>47,599</u>	<u>48,360</u>	<u>49,121</u>	<u>49,882</u>	<u>50,917</u>
<u>21</u>	<u>39,192</u>	<u>39,880</u>	<u>40,146</u>	<u>45,589</u>	<u>46,350</u>	<u>48,118</u>	<u>48,879</u>	<u>49,639</u>	<u>50,400</u>	<u>51,435</u>
<u>22</u>	<u>39,520</u>	<u>40,208</u>	<u>40,474</u>	<u>46,108</u>	<u>46,869</u>	<u>48,636</u>	<u>49,397</u>	<u>50,158</u>	<u>50,919</u>	<u>51,954</u>
<u>23</u>	<u>39,848</u>	<u>40,536</u>	<u>40,802</u>	<u>46,627</u>	<u>47,387</u>	<u>49,155</u>	<u>49,916</u>	<u>50,676</u>	<u>51,437</u>	<u>52,472</u>
<u>24</u>	<u>40,176</u>	<u>40,864</u>	<u>41,130</u>	<u>47,145</u>	<u>47,906</u>	<u>49,674</u>	<u>50,434</u>	<u>51,195</u>	<u>51,956</u>	<u>52,991</u>
<u>25</u>	<u>40,504</u>	<u>41,192</u>	<u>41,458</u>	<u>47,664</u>	<u>48,424</u>	<u>50,192</u>	<u>50,953</u>	<u>51,714</u>	<u>52,474</u>	<u>53,509</u>
<u>26</u>	<u>40,832</u>	<u>41,520</u>	<u>41,786</u>	<u>48,182</u>	<u>48,943</u>	<u>50,711</u>	<u>51,471</u>	<u>52,232</u>	<u>52,993</u>	<u>54,028</u>
<u>27</u>	<u>41,160</u>	<u>41,848</u>	<u>42,114</u>	<u>48,701</u>	<u>49,461</u>	<u>51,229</u>	<u>51,990</u>	<u>52,751</u>	<u>53,511</u>	<u>54,546</u>
<u>28</u>	<u>41,488</u>	<u>42,177</u>	<u>42,442</u>	<u>49,219</u>	<u>49,980</u>	<u>51,748</u>	<u>52,508</u>	<u>53,269</u>	<u>54,030</u>	<u>55,065</u>

<u>29</u>	<u>41,816</u>	<u>42,505</u>	<u>42,771</u>	<u>49,738</u>	<u>50,498</u>	<u>52,266</u>	<u>53,027</u>	<u>53,788</u>	<u>54,548</u>	<u>55,583</u>
<u>30</u>	<u>42,144</u>	<u>42,833</u>	<u>43,099</u>	<u>50,256</u>	<u>51,017</u>	<u>52,785</u>	<u>53,545</u>	<u>54,306</u>	<u>55,067</u>	<u>56,102</u>
<u>31</u>	<u>42,473</u>	<u>43,161</u>	<u>43,427</u>	<u>50,775</u>	<u>51,536</u>	<u>53,303</u>	<u>54,064</u>	<u>54,825</u>	<u>55,585</u>	<u>56,620</u>
<u>32</u>	<u>42,801</u>	<u>43,489</u>	<u>43,755</u>	<u>51,293</u>	<u>52,054</u>	<u>53,822</u>	<u>54,583</u>	<u>55,343</u>	<u>56,104</u>	<u>57,139</u>
<u>33</u>	<u>43,129</u>	<u>43,817</u>	<u>44,083</u>	<u>51,812</u>	<u>52,573</u>	<u>54,340</u>	<u>55,101</u>	<u>55,862</u>	<u>56,623</u>	<u>57,658</u>
<u>34</u>	<u>43,457</u>	<u>44,145</u>	<u>44,411</u>	<u>52,330</u>	<u>53,091</u>	<u>54,859</u>	<u>55,620</u>	<u>56,380</u>	<u>57,141</u>	<u>58,176</u>
<u>35</u>	<u>43,785</u>	<u>44,473</u>	<u>44,739</u>	<u>52,849</u>	<u>53,610</u>	<u>55,377</u>	<u>56,138</u>	<u>56,899</u>	<u>57,660</u>	<u>58,695</u>

(c) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(d) Effective July 1, 2020, each classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in §18A-4-2(b) of this code.

~~(d) (c) To meet the objective of salary equity among the counties as set forth in §18A-4-5 of this code, In accordance with §18A-4-5 of this code, each teacher shall be paid an equity supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:~~

(1) For '4th Class' at zero years of experience, \$1,781. An additional \$38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For '3rd Class' at zero years of experience, \$1,796. An additional \$67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For '2nd Class' at zero years of experience, \$1,877. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For 'A. B.' at zero years of experience, \$2,360. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For 'A. B. + 15' at zero years of experience, \$2,452. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For 'M. A.' at zero years of experience, \$2,644. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For 'M. A. + 15' at zero years of experience, \$2,740. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For 'M. A. + 30' at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For 'M. A. + 45' at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For 'Doctorate' at zero years of experience, \$2,927. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.



**§18A-4-2d. Mathematics teacher incentive.**

(a) The Legislature recognizes that receiving quality math instruction is vital to a student's post-secondary success and that there is a shortage of certified math teachers to provide such instruction.

(b) To ensure that students are receiving the appropriate level of math instruction that will enable post-secondary success, the Department of Education shall develop or approve specialized mathematics courses and make the courses available to classroom teachers.

(c) Effective July 1, 2019, a classroom teacher who completes a specialized mathematics course established or approved pursuant to this section by May 1 of the fiscal year shall receive a one-time payment of \$2,000 from the Mathematics Incentive Program line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, each applicable teacher shall receive their proportionate share of the funding available for the year. This one-time payment may not be counted as part of the teacher's average final salary for the purpose of calculating retirement and no retirement contribution will be withheld from the payment.

(d) A classroom teacher who completes the mathematics enrichment course established or approved by the Department of Education after May 1 of the fiscal year shall receive the one-time payment described in subsection (a) of this section during the subsequent fiscal year, subject to appropriation by the Legislature.

(e) The one-time payment provided for in this section may only be paid to a classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students.

**§18A-4-5. Salary equity among the counties; state salary supplement.**

~~(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees employed by the various districts throughout the state does not differ by greater than ten percent between those offering the highest salaries and those offering the lowest salaries. In the case of professional educators, the difference shall be calculated using the average of the professional educator salary schedules, degree classifications B. A. through doctorate and the years of experience provided in the most recent state minimum salary schedule for teachers, in effect in the ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty five counties. In the case of school service personnel, the difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades A through H and the years of experience provided in the most recent state minimum pay scale pay grade for service personnel, in effect in the ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty five counties.~~

(a) The Legislature recognizes its constitutional responsibility to provide for a thorough and efficient system of education. To carry out this responsibility the Legislature enacted, and continues to update, as necessary, the public school support program as set forth in §18-9A-1, et seq. The public school support program is a non-discriminatory funding mechanism for financing the educational system in this state as it takes into account each county's specific characteristics, and ensures that all counties are provided equitable funding.

(b) The Legislature further finds that the purpose of the public school support program is not to deter counties from growing economically or from using county resources in a manner that best meets their specific educational needs and the desires of their citizens. To that end, counties must have the discretion and flexibility to use local county funds, not otherwise factored into the public school support program, to provide the best education

possible to their students, including, but not limited to, providing salary supplements to teachers.

~~(b) (c) To meet the objective of salary equity among the counties, as defined in subsection (a) of this section, on and after July 1, 1984, subject Subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive an equity supplement amount as specified in sections two and eight-a, respectively, of this article in addition to the amount from the State Minimum Salary Schedules provided in those sections. State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with §18-9A-1 et seq. of this code. The amount allocated for this supplement shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under §18-9A-4, §18-9A-5, and §18-9A-8 of this code.~~

~~(c) State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four, five and eight, article nine a, chapter eighteen of this code. In the event the Department of Education determines that the objective of salary equity among the counties has not been met, it shall include in its budget request for the public school support plan for the next school year a request for funding sufficient to meet the objective of salary equity through an across-the-board increase in the equity supplement amount of the affected class of employees.~~

(d) Pursuant to this section, each teacher and service person shall receive from state funds the equity supplement amount indicated in subsection (c), ~~section two and subsection (f), section eight a of this article~~ §18A-4-2 and §18A-4-8a of this code, as applicable, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on January 1, 1984.

(e) The amount received pursuant to this section shall not be decreased as a result of any county supplement increase instituted after January 1, 1984: *Provided*, That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose. No county may reduce any salary supplement that was in effect on January 1, 1984, except as permitted by sections five-a and five-b of this article.

#### **§18A-4-5a. County salary supplements for teachers.**

(a) County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform ~~throughout the county~~ as to the classification of training, experience, responsibility and other requirements subject to the following:

(1) Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, and for teachers of one-teacher schools; ~~and they~~

(2) Counties may provide additional compensation for any teacher assigned duties in addition to the teacher's regular instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day; ~~Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county: *Provided*, That~~

(3) Counties may provide additional compensation for teachers who are assigned and fully certified to teach in a subject area in which the county board finds it has a critical need and shortage of fully certified teachers;

(4) Counties may provide additional compensation or other financial assistance to teachers who teach in schools that are in remote geographical locations or have experienced high rates of turnover in experienced teachers; and

(5) Counties may provide additional compensation to teachers who, in addition to regularly assigned teaching duties, are assigned as a master teacher, mentor, academic coach, or other title whose duties include providing strong school-based support and supervision to assist licensure candidates in a clinical internship, beginning teachers, and other teachers at the school to improve their professional practice as set forth in the county's comprehensive system of support for teacher and leader induction and professional growth provided for in section §18A-3C-3 of this code.

(b) In establishing ~~such~~ local salary schedules authorized in subsection (a) of this section, ~~no county shall~~ a county may not reduce local funds allocated for salaries in effect on January 1, 1990, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

(c) Counties may provide, in a uniform manner, benefits for teachers which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state Teachers Retirement System. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on January 1, 1984, by any county board of education.

**§18A-4-7a. Employment, promotion, and transfer of professional personnel; ~~Seniority qualifications.~~**

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to §18-4-2 of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure, or both;

(2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

(3) The amount of course work, degree level, or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) In the case of a principal or classroom teaching position, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to performing the duties of the job;

(7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) When filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more permanently employed instructional

personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) of said subsection shall each be double weighted.

(d) For a classroom teaching position, if the principal and faculty senate recommend the same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the superintendent concurs with those recommendations, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with ~~the provisions of~~ §29A-3B-1 *et seq.* article three-b, chapter twenty-nine-a of this code to implement and interpret ~~the provisions of~~ this section. The rule may provide for a classroom teacher who directly participates in making recommendations pursuant to this section to be compensated at the appropriate daily rate during periods of participation beyond his or her individual contract.

(f) The recommendations of the principal and faculty senate made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to which applicant is the most highly qualified for the position: *Provided*, That nothing in this subsection may require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(h) Upon completion of 133 days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(i) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided*, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that employee is employed in another professional area. For the purposes of accruing seniority under this subsection, employment as principal, supervisor or central office administrator, as defined in §18A-1-1 of this code, shall be considered one area of employment.

(j) Employment for a full employment term equals one year of seniority, but an employee may not accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. ~~A random selection system established by the employees and approved by the county board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority. All~~ decisions on reductions in force shall be based on qualifications as set forth in a county board policy. Furthermore, for the purposes of this subsection and subsections (k) through (s), inclusive, of this section, the word 'qualifications' means the qualifications set forth in county board policy and only means qualifications set forth in subsection (b) of this section to the extent those qualifications are set forth in county board policy: *Provided*, That in defining the word 'qualifications' in its policy, the county board:



(1) Shall consider including the criteria set forth in subsection (b) of this section;

(2) Shall consider other criteria set forth in subsection (b) of this section to the extent they are included in the county board policy only after considering personnel whose last performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code as applicable, is less than satisfactory; and

(3) May not include salary as one of the criteria in the definition.

(k) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee ~~with the least amount of seniority who is least qualified, as set forth in county board policy,~~ shall be properly notified and released from employment pursuant to ~~the provisions of §18A-2-2 of this code. The provisions of this~~ This subsection ~~are~~ is subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) Notwithstanding any provision of this code to the contrary, for any vacancy in an established, existing or newly created position that, on or before March 1, is known to exist for the ensuing school year, upon recommendation of the superintendent, the board shall appoint the successful applicant from among all qualified applicants. All employees subject to release shall be considered applicants for the positions for which they are qualified and shall be considered before posting such vacancies for application by nonemployees;

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both: ~~if the employees seniority is greater than the seniority of any other employee in that area of~~

~~certification, licensure or both~~ Provided, That the employee is the most qualified person for that position;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee's ~~seniority is~~ qualifications are greater than the ~~seniority~~ qualifications of any other employee in one or more of those areas of certification, licensure, or both, the employee subject to release shall be employed in the professional position held by the employee ~~with the least seniority~~ who is least qualified in any of those areas of certification, licensure, or both; and

(5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and ~~higher seniority~~ has greater qualifications, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(l) For the purpose of this article, all positions which meet the definition of 'classroom teacher' as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board ~~shall~~ may give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; and certification, licensure or both, ~~and~~ along with the days in the period of employment.

(m) All professional personnel whose ~~seniority~~ lesser qualifications, as determined by county board policy, with the

county board is insufficient to allow their retention by the county board during a reduction in workforce shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of seniority qualifications if no regular, full-time professional personnel, or those returning from leaves of absence with greater ~~seniority~~ are qualified qualifications, apply for and accept the position.

~~(n) Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both~~ The board shall annually notify professional personnel on the preferred list of the job application procedures and any websites used to advertise vacancies. The notice shall be sent by certified mail via the U.S. Postal Service to the last known address of the employee, and it shall be the duty of each professional person to notify the board of continued availability annually of any change in address, or of any change in certification, licensure or both.

(o) Openings in established, existing, or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may ~~post~~ repost an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants ~~only if fewer than three individuals apply during the first posting~~ subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days which may include any website maintained by the county board;

(B) At least one notice shall be posted within 20 working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy may be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within 30 working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed, or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein may prevent the county board of education from eliminating a position due to lack of need.

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six,

teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: *Provided*, That the employee and the county board mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be determined pursuant to the considerations set forth in county board policy and processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority qualifications with the least senior qualified classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior qualified employee in the school is not in that grade level, the senior least qualified classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the senior least qualified classroom teacher in the school without that position being posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

(r) Any board failing to comply with ~~the provisions of~~ this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

~~(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.~~

(†) (s) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(t) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

#### **§18A-4-8a. Service personnel minimum monthly salaries.**

(a) The minimum monthly pay for each service employee shall be as follows:

(1) For school year 2018–2019, ~~and continuing thereafter,~~ the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule I and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision: Provided, That for school year 2019-2020, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule II and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE I

Years

Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,770	1,791	1,833	1,886	1,939	2,002	2,034	2,107
1	1,802	1,824	1,865	1,918	1,972	2,035	2,066	2,140
2	1,835	1,856	1,898	1,951	2,004	2,067	2,099	2,172
3	1,867	1,889	1,931	1,984	2,037	2,100	2,132	2,205
4	1,900	1,922	1,963	2,016	2,069	2,133	2,164	2,239
5	1,933	1,954	1,996	2,049	2,102	2,165	2,197	2,271
6	1,965	1,987	2,030	2,082	2,135	2,198	2,230	2,304
7	1,999	2,019	2,062	2,114	2,167	2,231	2,262	2,337
8	2,032	2,052	2,095	2,147	2,200	2,263	2,295	2,369
9	2,064	2,085	2,128	2,181	2,233	2,296	2,327	2,402
10	2,097	2,118	2,160	2,213	2,265	2,330	2,361	2,435
11	2,130	2,151	2,193	2,246	2,298	2,362	2,394	2,467
12	2,162	2,184	2,225	2,279	2,332	2,395	2,426	2,500
13	2,195	2,216	2,258	2,311	2,364	2,427	2,459	2,533
14	2,228	2,249	2,291	2,344	2,397	2,460	2,492	2,565
15	2,260	2,282	2,323	2,376	2,429	2,493	2,524	2,598
16	2,293	2,314	2,356	2,409	2,462	2,525	2,557	2,631
17	2,325	2,347	2,390	2,442	2,495	2,558	2,590	2,664

18	2,358	2,380	2,422	2,474	2,527	2,591	2,622	2,697
19	2,392	2,412	2,455	2,507	2,560	2,623	2,655	2,729
20	2,424	2,445	2,488	2,541	2,593	2,656	2,688	2,763
21	2,457	2,477	2,520	2,573	2,625	2,689	2,720	2,797
22	2,490	2,511	2,553	2,606	2,658	2,722	2,754	2,829
23	2,522	2,544	2,586	2,639	2,692	2,756	2,788	2,863
24	2,555	2,576	2,618	2,671	2,724	2,790	2,821	2,897
25	2,588	2,609	2,651	2,704	2,758	2,822	2,855	2,929
26	2,620	2,642	2,683	2,738	2,792	2,856	2,887	2,963
27	2,653	2,674	2,716	2,770	2,824	2,888	2,921	2,996
28	2,686	2,707	2,750	2,804	2,858	2,922	2,955	3,030
29	2,718	2,741	2,783	2,836	2,891	2,956	2,987	3,064
30	2,752	2,773	2,817	2,870	2,924	2,988	3,021	3,097
31	2,785	2,807	2,851	2,904	2,958	3,022	3,055	3,130
32	2,819	2,840	2,883	2,937	2,990	3,056	3,087	3,164
33	2,853	2,873	2,917	2,971	3,024	3,088	3,121	3,197
34	2,885	2,907	2,951	3,005	3,058	3,122	3,155	3,230
35	2,919	2,941	2,983	3,037	3,090	3,156	3,188	3,264
36	2,953	2,974	3,017	3,071	3,125	3,189	3,222	3,296
37	2,985	3,008	3,051	3,105	3,159	3,223	3,255	3,330
38	3,019	3,040	3,083	3,137	3,191	3,256	3,288	3,364
39	3,053	3,074	3,117	3,171	3,225	3,289	3,322	3,396
40	3,085	3,108	3,150	3,204	3,259	3,323	3,355	3,430



STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE IIYears

<u>Exp.</u>	<u>PAY GRADE</u>							
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
<u>0</u>	<u>1,885</u>	<u>1,906</u>	<u>1,948</u>	<u>2,001</u>	<u>2,054</u>	<u>2,117</u>	<u>2,149</u>	<u>2,222</u>
<u>1</u>	<u>1,917</u>	<u>1,939</u>	<u>1,980</u>	<u>2,033</u>	<u>2,087</u>	<u>2,150</u>	<u>2,181</u>	<u>2,255</u>
<u>2</u>	<u>1,950</u>	<u>1,971</u>	<u>2,013</u>	<u>2,066</u>	<u>2,119</u>	<u>2,182</u>	<u>2,214</u>	<u>2,287</u>
<u>3</u>	<u>1,982</u>	<u>2,004</u>	<u>2,046</u>	<u>2,099</u>	<u>2,152</u>	<u>2,215</u>	<u>2,247</u>	<u>2,320</u>
<u>4</u>	<u>2,015</u>	<u>2,037</u>	<u>2,078</u>	<u>2,131</u>	<u>2,184</u>	<u>2,248</u>	<u>2,279</u>	<u>2,354</u>
<u>5</u>	<u>2,048</u>	<u>2,069</u>	<u>2,111</u>	<u>2,164</u>	<u>2,217</u>	<u>2,280</u>	<u>2,312</u>	<u>2,386</u>
<u>6</u>	<u>2,080</u>	<u>2,102</u>	<u>2,145</u>	<u>2,197</u>	<u>2,250</u>	<u>2,313</u>	<u>2,345</u>	<u>2,419</u>
<u>7</u>	<u>2,114</u>	<u>2,134</u>	<u>2,177</u>	<u>2,229</u>	<u>2,282</u>	<u>2,346</u>	<u>2,377</u>	<u>2,452</u>
<u>8</u>	<u>2,147</u>	<u>2,167</u>	<u>2,210</u>	<u>2,262</u>	<u>2,315</u>	<u>2,378</u>	<u>2,410</u>	<u>2,484</u>
<u>9</u>	<u>2,179</u>	<u>2,200</u>	<u>2,243</u>	<u>2,296</u>	<u>2,348</u>	<u>2,411</u>	<u>2,442</u>	<u>2,517</u>
<u>10</u>	<u>2,212</u>	<u>2,233</u>	<u>2,275</u>	<u>2,328</u>	<u>2,380</u>	<u>2,445</u>	<u>2,476</u>	<u>2,550</u>
<u>11</u>	<u>2,245</u>	<u>2,266</u>	<u>2,308</u>	<u>2,361</u>	<u>2,413</u>	<u>2,477</u>	<u>2,509</u>	<u>2,582</u>
<u>12</u>	<u>2,277</u>	<u>2,299</u>	<u>2,340</u>	<u>2,394</u>	<u>2,447</u>	<u>2,510</u>	<u>2,541</u>	<u>2,615</u>
<u>13</u>	<u>2,310</u>	<u>2,331</u>	<u>2,373</u>	<u>2,426</u>	<u>2,479</u>	<u>2,542</u>	<u>2,574</u>	<u>2,648</u>
<u>14</u>	<u>2,343</u>	<u>2,364</u>	<u>2,406</u>	<u>2,459</u>	<u>2,512</u>	<u>2,575</u>	<u>2,607</u>	<u>2,680</u>
<u>15</u>	<u>2,375</u>	<u>2,397</u>	<u>2,438</u>	<u>2,491</u>	<u>2,544</u>	<u>2,608</u>	<u>2,639</u>	<u>2,713</u>
<u>16</u>	<u>2,408</u>	<u>2,429</u>	<u>2,471</u>	<u>2,524</u>	<u>2,577</u>	<u>2,640</u>	<u>2,672</u>	<u>2,746</u>
<u>17</u>	<u>2,440</u>	<u>2,462</u>	<u>2,505</u>	<u>2,557</u>	<u>2,610</u>	<u>2,673</u>	<u>2,705</u>	<u>2,779</u>

<u>18</u>	<u>2,473</u>	<u>2,495</u>	<u>2,537</u>	<u>2,589</u>	<u>2,642</u>	<u>2,706</u>	<u>2,737</u>	<u>2,812</u>
<u>19</u>	<u>2,507</u>	<u>2,527</u>	<u>2,570</u>	<u>2,622</u>	<u>2,675</u>	<u>2,738</u>	<u>2,770</u>	<u>2,844</u>
<u>20</u>	<u>2,539</u>	<u>2,560</u>	<u>2,603</u>	<u>2,656</u>	<u>2,708</u>	<u>2,771</u>	<u>2,803</u>	<u>2,878</u>
<u>21</u>	<u>2,572</u>	<u>2,592</u>	<u>2,635</u>	<u>2,688</u>	<u>2,740</u>	<u>2,804</u>	<u>2,835</u>	<u>2,912</u>
<u>22</u>	<u>2,605</u>	<u>2,626</u>	<u>2,668</u>	<u>2,721</u>	<u>2,773</u>	<u>2,837</u>	<u>2,869</u>	<u>2,944</u>
<u>23</u>	<u>2,637</u>	<u>2,659</u>	<u>2,701</u>	<u>2,754</u>	<u>2,807</u>	<u>2,871</u>	<u>2,903</u>	<u>2,978</u>
<u>24</u>	<u>2,670</u>	<u>2,691</u>	<u>2,733</u>	<u>2,786</u>	<u>2,839</u>	<u>2,905</u>	<u>2,936</u>	<u>3,012</u>
<u>25</u>	<u>2,703</u>	<u>2,724</u>	<u>2,766</u>	<u>2,819</u>	<u>2,873</u>	<u>2,937</u>	<u>2,970</u>	<u>3,044</u>
<u>26</u>	<u>2,735</u>	<u>2,757</u>	<u>2,798</u>	<u>2,853</u>	<u>2,907</u>	<u>2,971</u>	<u>3,002</u>	<u>3,078</u>
<u>27</u>	<u>2,768</u>	<u>2,789</u>	<u>2,831</u>	<u>2,885</u>	<u>2,939</u>	<u>3,003</u>	<u>3,036</u>	<u>3,111</u>
<u>28</u>	<u>2,801</u>	<u>2,822</u>	<u>2,865</u>	<u>2,919</u>	<u>2,973</u>	<u>3,037</u>	<u>3,070</u>	<u>3,145</u>
<u>29</u>	<u>2,833</u>	<u>2,856</u>	<u>2,898</u>	<u>2,951</u>	<u>3,006</u>	<u>3,071</u>	<u>3,102</u>	<u>3,179</u>
<u>30</u>	<u>2,867</u>	<u>2,888</u>	<u>2,932</u>	<u>2,985</u>	<u>3,039</u>	<u>3,103</u>	<u>3,136</u>	<u>3,212</u>
<u>31</u>	<u>2,900</u>	<u>2,922</u>	<u>2,966</u>	<u>3,019</u>	<u>3,073</u>	<u>3,137</u>	<u>3,170</u>	<u>3,245</u>
<u>32</u>	<u>2,934</u>	<u>2,955</u>	<u>2,998</u>	<u>3,052</u>	<u>3,105</u>	<u>3,171</u>	<u>3,202</u>	<u>3,279</u>
<u>33</u>	<u>2,968</u>	<u>2,988</u>	<u>3,032</u>	<u>3,086</u>	<u>3,139</u>	<u>3,203</u>	<u>3,236</u>	<u>3,312</u>
<u>34</u>	<u>3,000</u>	<u>3,022</u>	<u>3,066</u>	<u>3,120</u>	<u>3,173</u>	<u>3,237</u>	<u>3,270</u>	<u>3,345</u>
<u>35</u>	<u>3,034</u>	<u>3,056</u>	<u>3,098</u>	<u>3,152</u>	<u>3,205</u>	<u>3,271</u>	<u>3,303</u>	<u>3,379</u>
<u>36</u>	<u>3,068</u>	<u>3,089</u>	<u>3,132</u>	<u>3,186</u>	<u>3,240</u>	<u>3,304</u>	<u>3,337</u>	<u>3,411</u>
<u>37</u>	<u>3,100</u>	<u>3,123</u>	<u>3,166</u>	<u>3,220</u>	<u>3,274</u>	<u>3,338</u>	<u>3,370</u>	<u>3,445</u>
<u>38</u>	<u>3,134</u>	<u>3,155</u>	<u>3,198</u>	<u>3,252</u>	<u>3,306</u>	<u>3,371</u>	<u>3,403</u>	<u>3,479</u>
<u>39</u>	<u>3,168</u>	<u>3,189</u>	<u>3,232</u>	<u>3,286</u>	<u>3,340</u>	<u>3,404</u>	<u>3,437</u>	<u>3,511</u>
<u>40</u>	<u>3,200</u>	<u>3,223</u>	<u>3,265</u>	<u>3,319</u>	<u>3,374</u>	<u>3,438</u>	<u>3,470</u>	<u>3,545</u>

(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE	PAY GRADE
Accountant I .....	D
Accountant II .....	E
Accountant III .....	F
Accounts Payable Supervisor .....	G
Aide I .....	A
Aide II .....	B
Aide III .....	C
Aide IV .....	D
Audiovisual Technician .....	C
Auditor .....	G
Autism Mentor .....	F
Braille Specialist .....	E
Bus Operator .....	D
Buyer .....	F
Cabinetmaker .....	G
Cafeteria Manager .....	D
Carpenter I .....	E
Carpenter II .....	F
Chief Mechanic .....	G

Clerk I .....	B
Clerk II .....	C
Computer Operator .....	E
Cook I .....	A
Cook II .....	B
Cook III .....	C
Crew Leader .....	F
Custodian I .....	A
Custodian II .....	B
Custodian III .....	C
Custodian IV .....	D
Director or Coordinator of Services .....	H
Draftsman .....	D
Early Childhood Classroom Assistant Teacher I .....	E
Early Childhood Classroom Assistant Teacher II .....	E
Early Childhood Classroom Assistant Teacher III .....	F
Educational Sign Language Interpreter I .....	F
Educational Sign Language Interpreter II .....	G
Electrician I .....	F
Electrician II .....	G
Electronic Technician I .....	F
Electronic Technician II .....	G

Executive Secretary .....	G
Food Services Supervisor .....	G
Foreman .....	G
General Maintenance .....	C
Glazier .....	D
Graphic Artist .....	D
Groundsman .....	B
Handyman .....	B
Heating and Air Conditioning Mechanic I .....	E
Heating and Air Conditioning Mechanic II .....	G
Heavy Equipment Operator .....	E
Inventory Supervisor .....	D
Key Punch Operator .....	B
Licensed Practical Nurse .....	F
Locksmith .....	G
Lubrication Man .....	C
Machinist .....	F
Mail Clerk .....	D
Maintenance Clerk .....	C
Mason .....	G
Mechanic .....	F
Mechanic Assistant .....	E

Office Equipment Repairman I .....	F
Office Equipment Repairman II .....	G
Painter .....	E
Paraprofessional .....	F
Payroll Supervisor .....	G
Plumber I .....	E
Plumber II .....	G
Printing Operator .....	B
Printing Supervisor .....	D
Programmer .....	H
Roofing/Sheet Metal Mechanic .....	F
Sanitation Plant Operator .....	G
School Bus Supervisor .....	E
Secretary I .....	D
Secretary II .....	E
Secretary III .....	F
Sign Support Specialist .....	E
Supervisor of Maintenance .....	H
Supervisor of Transportation .....	H
Switchboard Operator-Receptionist .....	D
Truck Driver .....	D
Warehouse Clerk .....	C

Watchman ..... B

Welder ..... F

WVEIS Data Entry and Administrative Clerk ..... B

(b) An additional \$12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional \$40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;

(4) A service person who holds a doctorate degree.

(e) An additional \$11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus 15 college hours;

(2) A service person who holds a master's degree plus 15 college hours;

(3) A service person who holds a master's degree plus 30 college hours;

(4) A service person who holds a master's degree plus 45 college hours; and

(5) A service person who holds a master's degree plus 60 college hours.



(f) ~~To meet the objective of salary equity among the counties, each~~ Each service person is paid ~~an equity~~ a supplement, as set forth in §18A-4-5 of this code, of \$164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article, and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of 6:00 p.m. and 5:00 a.m. the following day, the employee is paid no less than an additional \$10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one-seventh of the person's daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is

approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: *Provided, however,* That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment, and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional \$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor,

escort, or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, 'under the direct supervision of a certified professional person' means that certified professional person is present, with and accompanying the aide.

**§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.**

(a) *Personal Leave.*

(1) ~~At the beginning of the employment term,~~ any full-time employee of a county board is entitled ~~annually to~~ at least one and one-half days personal leave for each employment month or major fraction thereof in the first one-half of the employee's employment term. ~~At the beginning of the second one-half of the employment term,~~ any full-time employee of a county board is entitled to at least one and one-half days personal leave for each employment month or major fraction thereof in the second one-half of the employee's employment term. Unused leave shall be accumulative without limitation and is transferable within the state. A change in job assignment during the school year does not affect the employee's rights or benefits.

(2) A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child, or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation during the period which the employee is absent, but not to exceed the total amount of leave to which the employee ~~is entitled.~~

(3) Each employee is permitted to use three days of leave annually without regard to the cause for the absence. Personal leave without cause may not be used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as appropriate. The employee shall give notice of leave without cause to the principal or immediate supervisor at least 24

hours in advance, except that in the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is given, either 15 percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, have previously given notice of their intention to use that day for leave. Personal leave may not be used in connection with a concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term, but not to exceed the total amount of leave to which the employee is entitled. ~~If an employee uses personal leave which the employee has not yet accumulated on a monthly basis is not yet entitled and subsequently leaves the employment, the employee is required to reimburse the board for the salary or wages paid for the unaccumulated leave.~~

(4) The State Board shall maintain a rule to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the county board by which the person is employed. If an employee is awarded this benefit, the employee shall receive personal leave compensation only to the extent the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the workers' compensation benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

(5) The county board may establish reasonable rules for reporting and verification of absences for cause. If any error in reporting absences occurs, the county board may make necessary salary adjustments:

(A) In the next pay after the employee has returned to duty; or

(B) In the final pay if the absence occurs during the last month of the employment term.

(b) *Leave Banks.*

(1) Each county board shall establish a personal leave bank that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employee may contribute up to two days of personal leave per school year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days accumulated personal leave who is absent from work due to accident or illness of the employee; and

(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to §5-16-13 of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of the cause for the absence.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before August 31 from the budget of the next fiscal year.

(5) A county board may supplement the leave provisions in any manner it considers advisable in accordance with applicable rules of the state Board and the provisions of this chapter and chapter eighteen of this code.

(c) (1) Any full-time employee of a county board who has not utilized more than four personal leave days during the 200-day employment term shall receive a bonus of \$500 at the end of the school year.

(2) If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable full-time employees, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all applicable employees. This payment may not be counted as part of the final average salary for the purpose of calculating retirement.

(d) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

## **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

### **§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.**

(a) Schools shall be closed on Saturdays and on the following days which are designated as legal school holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and West Virginia Day. Schools also shall be closed on any day on which a primary election, general election or special election is held throughout the state or school district and on any day appointed and set apart by the president or the Governor as a holiday of special observance by the people of the state.

(b) When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday. When any designated holiday falls on Sunday, the schools shall be closed on the following Monday.

(c) Special classes may be conducted on Saturdays for pupils and by teachers and service personnel. Saturday classes shall be conducted on a voluntary basis and teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

(d) Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control.

(1) Under any or all of the above provisions, the time lost by the school closings may not be counted as days of employment and may not be counted as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. A school

employee's pay per pay period may not change as a result of a school closing not being counted as a day of employment, and the employee shall be paid the same amount during any pay period in which a school closing occurs that the employee would have been paid during the pay period if a school closing had not occurred.

(2) On the day or days when a school or schools are closed, county boards may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the provisions of this subsection. Professional and service personnel shall receive pay the same as if school were in session.

(3) Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term.

(e) In addition to any other provisions of this chapter, the board further is authorized to provide in its annual budget for meetings, workshops, vacation time or other holidays through extended employment of personnel at the same rate of pay.

## **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

### **ARTICLE 4. UNDERWOOD-SMITH TEACHER TEACHING SCHOLARSHIP SCHOLARS PROGRAM.**

#### **§18C-4-1. ~~Scholarship and loan assistance fund~~ Underwood-Smith Teaching Scholars Program Fund created; purposes; funding.**

(a) It is the purpose of this article ~~and article four a of this chapter~~ to improve the quality of education in the public schools of West Virginia by encouraging and enabling individuals who have demonstrated outstanding academic abilities to pursue teaching careers in the public schools in this state in mathematics, science, or special education at the ~~preschool~~ elementary, middle, or secondary levels. ~~in the public schools of this state. In addition, of those individuals who have demonstrated outstanding academic~~



~~abilities to pursue teaching careers, for scholarships initially awarded for the fall semester, 2014, and thereafter~~ Particular efforts shall be made in the scholarship selection criteria and procedures to reflect the state's present and projected ~~subject and~~ geographic areas of critical need.

(b) In consultation with the State Board of Education and the State Superintendent of Schools the commission shall propose legislative rules in accordance with the provisions of ~~article three-a, chapter twenty-nine a of this code~~ §29A-3A-1, *et seq.* The rules shall provide for the administration of the Underwood-Smith Teacher Scholarship and Loan Assistance programs Teaching Scholars Program by the vice chancellor for administration in furtherance of the purposes of this article, ~~and article four a of this chapter~~ including, but not limited to, the following:

(1) Establishing scholarship selection criteria and procedures;

(2) Establishing criteria and procedures for identifying ~~subject areas~~ public schools or geographic areas in critical need of teachers;

(3) Requiring scholarship recipients to teach in a public school in this state in mathematics, science, or special education at the elementary, middle, or secondary level in a geographic area of critical need pursuant to the provisions of §18C-4-3 of this code;

~~Awarding loan assistance, including establishing conditions under which partial awards may be granted for less than a full year of teaching in an area of critical need;~~

(4) ~~Determining eligibility for loan assistance renewal;~~

(5) ~~Establishing procedures ensuring that loan assistance funds are paid directly to the proper lending entity; and~~

(6) (4) Establishing criteria for determining participant compliance or noncompliance with terms of the agreement and establishing procedures to address noncompliance including, but not limited to, repayment, deferral and excusal; and

~~(7)~~ (5) Developing model agreements.

(c) The commission and State Board of Education jointly shall ensure that Underwood-Smith Teaching Scholars recipients receive additional academic support and training from mathematics, science, or special education mentors beginning with the freshman year and continuing through degree completion and the teaching obligation.

~~(d) There is created in the State Treasury a special revolving fund in the State Treasury to be known as The Underwood-Smith Teacher Scholarship and Loan Assistance Fund is continued in the State Treasury as a special revolving fund and is hereafter to be known as the Underwood-Smith Teaching Scholars Program Fund. The fund shall to be administered by the vice chancellor for administration solely for granting scholarships and loan assistance to teachers and prospective teachers in accordance with this article. and article four a of this chapter. Any moneys which may be appropriated by the Legislature, or received by the vice chancellor for administration from other sources, for the purposes of this article and article four a of this chapter shall be deposited in the fund. Any moneys remaining in the fund at the close of a fiscal year shall be carried forward for use in the next fiscal year. Any moneys repaid to the vice chancellor for administration by reason of default of a scholarship or loan assistance agreement under this article or article four a of this chapter also shall be deposited in the fund. Fund balances shall be invested with the state's consolidated investment fund, and any and all interest earnings on these investments shall be used solely for the purposes for which moneys invested were appropriated or otherwise received.~~

~~(d)~~ (e) The vice chancellor for administration may accept and expend any gift, grant, contribution, bequest, endowment, or other money for the purposes of this article ~~and article four a of this chapter~~ and shall make a reasonable effort to encourage external support for the scholarship ~~and loan assistance programs~~ program.

~~(e)~~ (f) For the purpose of encouraging support for the scholarship ~~and loan assistance programs~~ program from private sources, the vice chancellor for administration may set aside no

more than half of the funds appropriated by the Legislature for Underwood-Smith ~~Teacher Scholarships and Loan Assistance~~ Teaching Scholar awards to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.

(g) In recognition of the high academic achievement necessary to receive an award under this article, each recipient shall be distinguished as an 'Underwood-Smith Teaching Scholar' in a manner befitting the distinction as determined by the commission.

#### **§18C-4-2. Selection criteria and procedures for awarding scholarships.**

(a) ~~The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter~~ §18C-1-5 of this code to shall select the recipients of Underwood-Smith ~~teacher scholarships~~ Teaching Scholars who meet the eligibility criteria set forth in subsection (b) of this section.

(b) Eligibility for an Underwood-Smith ~~Teacher Scholarship~~ Teaching Scholars award shall be limited to students who meet the following criteria:

(1) Have graduated or are graduating from high school and rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the ACT test with a cumulative grade point average of at least 3.25 on a 4.0 scale, and:

(A) For mathematics and science majors, met the college algebra ready assessment standards and college readiness English, reading, and writing standards as established by the commission;  
or

(B) For special education majors, met the college statistics readiness standards and college readiness English, reading, and writing standards as established by the commission;

(2) Agree to teach in the subject area of mathematics, science or special education in a public school in the state in a geographic

area of critical need pursuant to the provisions of §18C-4-3 of this code; and

(3) In the case of a student pursuing a certificate in special education, have a cumulative grade point average of at least 3.25 on a 4.0 scale possible scale of four after successfully completing two years of course work at an approved institution of higher education in West Virginia; are public school aides or paraprofessionals as defined in section eight, article four, chapter eighteen a of this code and who have a cumulative grade point average of at least 3.25 on a possible scale of four after successfully completing two years of course work at an approved institution of higher education in West Virginia; or

(4) Are graduate students at the master's degree level; who have graduated or are graduating in the top ten percent of their college graduating class.

(c) To be eligible for an award, a non-citizen of the United States shall hold a valid Employment Authorization Document (EAD), or work permit, issued by the United States Citizenship and Immigration Services (USCIS).

(d) In accordance with the rules of the commission, the vice chancellor for administration shall develop criteria and procedures for the selection of scholarship recipients. The selection criteria shall reflect the purposes of this article and shall specify the areas in which particular efforts will be made in the selection of scholars as set forth in section one of this article §18C-4-1 of this code. Selection procedures and criteria also may include, but are not limited to, the grade point average of the applicant, involvement in extracurricular activities, financial need, current academic standing and an expression of interest in teaching as demonstrated by an essay written by the applicant. These criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others. It is the intent of the Legislature that academic abilities be the primary criteria for selecting scholarship recipients. However, the qualified applicants with the highest academic abilities who intend to pursue teaching

~~careers in areas of critical need and shortage pursuant to section one of this article shall be given priority.~~

~~(d)~~ (e) In developing the selection criteria and procedures to be used by the Higher Education Student Financial Aid Advisory Board, the vice chancellor for administration shall solicit the views of public and private education agencies and institutions and other interested parties. Input from interested parties shall be solicited by means of written and published selection criteria and procedures in final form for implementation and may be solicited by means of public hearings on the present and projected teacher needs of the state or any other methods the vice chancellor for administration may determine to be appropriate to gather the information.

~~(e)~~ (f) The vice chancellor for administration shall make application forms for Underwood-Smith ~~Teacher Scholarships~~ Teaching Scholars available to public and private high schools in the state and in other locations convenient to applicants, parents and others, and shall make an effort to attract students from low-income backgrounds, ethnic or racial minority students, students with disabilities, and women or minority students who show interest in pursuing teaching careers in mathematics, ~~and science~~ and special education and who are under-represented in those fields.

### **§18C-4-3. Scholarship agreement.**

(a) Each recipient of an Underwood-Smith ~~teacher scholarship~~ Teaching Scholars award shall enter into an agreement with the vice chancellor for administration under which the recipient shall meet the following conditions:

(1) Provide the commission with evidence of compliance with subsection (a), section four of this article;

(2) Beginning within a ~~ten-year period~~ one year after completing the teacher education program for which the scholarship was awarded, ~~(A)~~ teach full-time in the subject area of mathematics, science, or special education at the elementary, middle, or secondary level, or special education at the elementary,

middle or secondary level, in a geographic area of critical need, under contract with a county board of education in a public education program in the state, for a period of not fewer than ~~two~~ five consecutive years for ~~each year~~ the four academic years for which a scholarship was received. ~~or~~

~~(B) Teach full time under contract for not less than one year for each year for which a scholarship was received with a county board of education in this state in a teacher shortage area pursuant to section one of this article, in an exceptional children program in this state, in a school having less than average academic results or in a school in an economically disadvantaged area of this state; or~~

~~(C) Within the ten year period, while seeking and unable to secure a full time teaching position under contract with a county board of education which satisfies the conditions of paragraph (A) of this subdivision;~~

~~(i) Teach full time in a private school, parochial or other school approved for the instruction of students of compulsory school age pursuant to section one, article eight, chapter eighteen of this code; or~~

~~(ii) Teach in an institution of higher education in this state as defined in section two, article one, chapter eighteen b of this code or in a post secondary vocational education program in this state for a period of not fewer than two years for each year for which a scholarship was received; or~~

~~(iii) Perform alternative service or employment in this state pursuant to rules promulgated by the commission, in federal, state, county or local supported programs with an educational component, including mental or physical health care, or with bona fide tax exempt charitable organizations dedicated to the above, for a period of not fewer than two years for each year for which a scholarship was received. Any teaching time accrued during the required five-year period as a substitute teacher for a county board of education under paragraph (A) or (B) of this subdivision in the subject area of mathematics, science, or special education at the elementary, middle, or secondary level, or special education at the~~

elementary, middle or secondary level, shall be credited pro rata in accordance with rules promulgated by the commission; or

(3) Repay all or part of an Underwood-Smith ~~teacher scholarship~~ Teaching Scholars award received under this article plus interest and, if applicable, reasonable collection fees in accordance with ~~subsection (c), section four of this article, except as provided in subsection (d) of section four of this article~~ §18C-4-4 of this code.

(b) Scholarship agreements shall disclose fully the terms and conditions under which assistance under this article is provided and under which repayment may be required. The agreements shall include the following:

(1) A description of the conditions and procedures to be established under ~~section four of this article~~ §18C-4-4 of this code; and

(2) A description of the appeals procedure required to be established under ~~section four of this article~~ §18C-4-4 of this code.

(c) ~~Individuals who were~~ The scholarship terms, conditions, requirements, and agreements applicable to awarded an Underwood-Smith teacher scholarship recipient prior to the effective date of this section may apply the provisions of paragraph (A), (B) or (C), subdivision (2), subsection (a) of this section to teaching or other service performed by them after July 1, 1997 shall continue in effect and are not altered by the reenactment of this section during the 2019 regular session of the Legislature.

**§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.**

(a) The recipient of an Underwood-Smith ~~Teacher Scholarship~~ Teaching Scholars award is eligible for scholarship renewal only during those periods when the recipient meets the following conditions:

(1) Is enrolled as a full-time student in an accredited institution of higher education in this state;

(2) Is pursuing a ~~course~~ program of study leading to teacher certification in mathematics, science, or special education at the ~~preschool~~ elementary, middle or secondary level; ~~in this state~~

(3) Is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending; ~~and~~

(4) Is maintaining a cumulative grade point average of at least 3.25 on a 4.0 scale; and

(5) Is complying with such other standards as the commission may establish by rule.

(b) Recipients found to be in noncompliance with the agreement entered into under ~~section three of this article~~ §18C-4-3 of this code shall be required to repay the amount of the scholarship awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in the program guidelines. Guidelines also shall provide for proration of the amount to be repaid by a recipient who teaches for part of the period required under subsection (a), ~~section three of this article~~ §18C-4-3 of this code and for appeal procedures under which a recipient may appeal any determination of noncompliance.

(c) A recipient is not in violation of the agreement entered into under ~~section three of this article~~ §18C-4-3 of this code during any period in which the recipient is meeting any of the following conditions:

(1) Pursuing a full-time course of study at an accredited institution of higher education;

(2) Serving, not in excess of four years, as a member of the armed services of the United States;

(3) ~~Seeking and unable to find full time employment in accordance with paragraph (A), subdivision (2), subsection (a), section three of this article and is fulfilling any of the alternatives specified in paragraph (B) or (C) of that subdivision;~~



(4) Satisfying the provisions of ~~additional~~ any repayment exemptions that may be prescribed by the commission by rule; or

~~(5)~~ (4) Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician.

(d) The rules adopted by the commission may provide guidelines under which the vice chancellor for administration may extend the time period for beginning or fulfilling the teaching obligation to ~~fifteen years~~ if extenuating circumstances exist.

**§18C-4-5. Amount and duration of scholarship; relation to other assistance.**

(a) ~~Subject to subsection (b) of this section, each recipient of An Underwood-Smith teacher scholarship is eligible to receive assistance of up to \$5,000 for each academic year of higher education~~ Teaching Scholars award shall be used in preparation for becoming a ~~pre-school~~ an elementary, middle or secondary mathematics, science, or special education teacher in the public schools of this state. The annual award is equal to the lesser of the cost of tuition or \$7,800 and an institution may not charge a scholar any tuition and mandatory fees above that covered by this award and other federal, state, and institutional scholarships and grants. ~~No individual may receive scholarship assistance for more than~~

(b) An Underwood-Smith Teaching Scholars award is available for a maximum of four academic years for the completion of a bachelor's degree and two additional academic years for completion of a ~~master's degree~~ certification in special education that meets the requirements set by the State Board of Education.

~~(b) No individual shall~~

(c) An individual may not receive a scholarship award under this article which exceeds the cost of attendance at the institution the individual is attending. The cost of attendance shall be based upon the actual cost of tuition and fees, and reasonable allowances for books, educational supplies, room and board and other expenses necessitated by individual circumstances, in accordance

with the program guidelines. For the purposes of establishing an award amount, the ~~senior administrator~~ vice chancellor for administration shall take into account the amount of financial aid assistance the recipient has or will receive from all other sources. If the amount of the Underwood-Smith ~~teacher scholarship assistance~~ Teaching Scholars award and the amount of assistance awards which the recipient has received from all other sources exceed the cost of attendance, the institution's financial aid officer, in consultation with the scholar, will determine what aid is to be reduced and shall do so in a manner to the best advantage of the scholar.

(d) The amendments to this article during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this article existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

#### **ARTICLE 4A. UNDERWOOD-SMITH TEACHER LOAN ASSISTANCE PROGRAM.**

##### **§18C-4A-1. Selection criteria and procedures for loan assistance.**

(a) The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter to select recipients to receive Underwood-Smith Teacher Loan Assistance Awards.

(b) To be eligible for a loan award, a teacher shall agree to teach, or shall currently be teaching, a subject area of critical need or in a school or geographic area of the state identified as an area of critical need. The advisory board shall make decisions regarding loan assistance pursuant to section one, article four of this chapter.

(c) In accordance with the rule promulgated pursuant to section one, article four of this chapter, the Vice Chancellor for Administration shall develop additional eligibility criteria and procedures for the administration of the loan program.

(d) The Vice Chancellor for Administration shall make available program application forms to public and private schools in the state via the website of the commission and the State Department of Education and in other locations convenient to potential applicants.

(e) The provisions of this section expire effective July 1, 2019.

**§18C-4A-2. Loan assistance agreement.**

(a) Before receiving an award, each eligible teacher shall enter into an agreement with the Vice Chancellor for Administration and shall meet the following criteria:

(1) Provide the commission with evidence of compliance with subsection (b), section four, article four of this chapter;

(2) Teach in a subject area of critical need or in a school or geographic area of critical need full time under contract with a county board for a period of two school years for each year for which loan assistance is received pursuant to this article. The Vice Chancellor for Administration may grant a partial award to an eligible recipient whose contract term is for less than a full school year pursuant to criteria established by commission rule.

(3) Acknowledge that an award is to be paid to the recipient's student loan institution, not directly to the recipient, and only after the commission determines that the recipient has complied with all terms of the agreement; and

(4) Repay all or part of an award received pursuant to this article if the award is not paid to the student loan institution or if the recipient does not comply with the other terms of the agreement.

(b) Each loan agreement shall disclose fully the terms and conditions under which an award may be granted pursuant to this article and under which repayment may be required. The agreement also is subject to and shall include the terms and conditions established by section five, article four of this chapter.

(c) The provisions of this section expire effective July 1, 2019.

**§18C-4A-3. Amount and duration of loan assistance; limits.**

(a) Each award recipient is eligible to receive loan assistance of up to \$3,000 annually, subject to limits set forth in subsection (b) of this section:

(1) If the recipient has taught for a full school year under contract with a county board in a subject area of critical need or in a school or geographic area of critical need; and

(2) If the recipient otherwise has complied with the terms of the agreement and with applicable provisions of this article and article four of this chapter, and any rules promulgated pursuant thereto.

(b) The recipient is eligible for renewal of loan assistance only during periods when the recipient is under contract with a county board to teach in a subject area of critical need or in a school or geographic area of critical need and complies with other criteria and conditions established by rule, except that a teacher who is teaching under a contract in a position that no longer meets the definition of critical need under rules established in accordance with section one, article four of this chapter is eligible for renewal of loan assistance until the teacher leaves his or her current position.

(c) A recipient may not receive loan assistance pursuant to this article which accumulates in excess of \$15,000.

(d) The provisions of this section expire effective July 1, 2019.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.****ARTICLE 12. STATE INSURANCE.****§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, public charter schools electing to obtain coverage, and for employees and officers of the state Department of Corrections; written notice of coverage to insureds.**

(a) In accordance with the provisions of this article, the state Board of Risk and Insurance Management shall provide

appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members and for all employees and officers of the state ~~Department of Corrections~~ Division of Corrections and Rehabilitation: *Provided*, That the Board of Risk and Insurance Management is not required to provide insurance for every property, activity, or responsibility of county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members, and for all employees and officers of the state ~~Department of Corrections~~ Division of Corrections and Rehabilitation.

(b) Insurance provided by the Board of Risk and Insurance Management pursuant to the provisions of §29-12-5a(a) of this code shall cover claims, demands, actions, suits, or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the ~~Department of Corrections~~ Division of Corrections and Rehabilitation was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the county board of education, or Commissioner of the Division of Corrections and Rehabilitation, or in an official capacity as a county superintendent or as a school board member or as Commissioner of the Division of Corrections and Rehabilitation.

(c) Insurance coverage provided by the Board of Risk and Insurance Management pursuant to §29-12-5a(a) of this code shall be in an amount to be determined by the state Board of Risk and Insurance Management, but in no event less than ~~\$1 million~~ for each occurrence. In addition, each county board of education shall purchase, through the Board of Risk and Insurance Management, excess coverage of at least \$5 million for each occurrence. The cost of this excess coverage will be paid by the respective county boards

of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the Board of Risk and Insurance Management pursuant to §29-12-5a(a) of this code shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage, as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit, or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

(e) The county superintendent and other school personnel shall be defended by the county board or an insurer in the case of suit, unless the act or omission shall not have been within the course or scope of employment or official responsibility or was motivated by malicious or criminal intent.

(f) At least annually, beginning with the 2019-2020 school year, the county board shall provide written notice of insurance coverage to each of its insureds, including teachers, supervisors, administrators, service personnel employees, county superintendent, and school board members. The notice shall identify the coverages, monetary limits of insurance, and duty to defend for each occurrence as provided to insureds by the Board of Risk and Insurance Management under this section. The written notice may be sent via email, or via first-class mail to the insured's last mailing address known to the county board. The written notice shall also include contact information for the Board of Risk and Insurance Management.

(g) The provisions of this section apply to public charter schools that have been authorized pursuant to §18-5G-1 et seq. of this code and have included in their approved charter application a determination to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to this section. If a public charter school elects to obtain coverage pursuant to this section:

(1) Any provision in this section applicable to a county board also applies to a charter school governing board;

(2) Any provision in this section applicable to a school board member also applies to a member of a charter school governing board; and

(3) Any provision of this section applicable to teachers, supervisory and administrative staff members, and service personnel employed by a county board also applies to teachers, supervisory and administrative staff members, and service personnel employed by a public charter school.”

Delegates Bates, Hornbuckle, Hartman and Miley moved to amend the amendment on page eleven, following the chapter heading, by inserting a new section, to read as follows:

**“ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-42. Education Adequacy Cost Study.**

(a) Not later than ten days after the effective date of this subsection, the State Board of Education shall issue a request for proposals to conduct an adequacy cost study of public school funding in West Virginia. Upon receipt and consideration of the proposals, the State Board of Education shall select a person or organization that has expertise in public education funding to conduct the study. The study shall consist of an analysis and estimation of the cost associated with achieving adequate educational outcomes to fulfill the demands of a thorough and efficient education, with consideration given to how costs vary by setting, location, and student backgrounds and characteristics.

(b) By December 15, 2019, a preliminary report on the adequacy cost study shall be submitted to the State Board of Education and to the Legislature’s Joint Committee on Government and Finance. No later than December 15, 2021, a final report on the adequacy cost study shall be submitted to the State Board of Education and to the Legislature’s Joint Committee on Government and Finance.”

On the adoption of the amendment to the amendment, Delegate Bates demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 139**), and there were—yeas 49, nays 50, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Howell, Lavender-Bowe, Linville, Longstreth, Lovejoy, C. Martin, McGeehan, Miley, Miller, Pack, Paynter, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Skaff, Sponaule, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin and Walker.

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

On motion of Delegate Espinosa, the amendment was amended on page sixty-three, following line forty-five, by striking out section §18-9A-12 in its entirety, and inserting in lieu thereof section §18-9A-10 to read as follows:

**“§18-9A-10. Foundation allowance to improve instructional programs; instructional technology; ~~and~~ dual credit, advanced placement and international baccalaureate; teacher and leader induction and professional growth; and allocations of growth in local share.”**

(a) The total allowance to improve instructional programs and instructional technology is the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by §18-2E-5 of this code, an amount equal to ten percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the



immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by §18-2E-5 of this code and approved by the state board.

Up to fifty percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in the county. Prior to the use of any funds from this subdivision for personnel costs, the county board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy.

The funds available for personnel under this subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of improving instructional technology, an amount equal to twenty percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional technology programs according to the county board's strategic technology learning plan.

This allocation for the improvement of instructional technology programs may also be used for the employment of technology system specialists essential for the technology systems of the schools of the county to be fully functional and readily available when needed by classroom teachers. The amount of this allocation used for the employment of technology system specialists shall be included and justified in the county board's strategic technology learning plan; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) For the purpose of supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code, an amount equal to twenty percent of the increase in the local share amount

for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties in a manner established by the State Board which takes into account the following factors:

(A) The number of full-time-equivalent teachers employed by the county with zero years of experience;

(B) The total number of full-time-equivalent teachers employed by the county with one year of experience, with two years of experience and with three years of experience;

(C) The number of full-time-equivalent principals, assistant principals and vocational administrators employed by the county who are in their first or second year of employment as a principal, assistant principal or vocational administrator;

(D) The number of full-time-equivalent principals, assistant principals and vocational administrators employed by the county who are in their first year in an assignment at a school with a programmatic level in which they have not previously served as a principal, assistant principal or vocational administrator; and

(E) Needs identified in the strategic plans for continuous improvement of schools and school systems including those identified through the performance evaluations of professional personnel.

Notwithstanding any provision of this subsection to the contrary, no county may receive an allocation for the purposes of this subdivision which is less than the county's total 2016-2017 allocation from the Teacher Mentor and Principals Mentorship appropriations to the Department of Education. Moneys allocated by this subdivision shall be used for implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code; plus

(5) For school year 2019-20, and thereafter, all of the increases in the local share amount for the next school year remaining after subtracting the amounts as otherwise provided for in this section,

shall be allocated to each county board in the amount attributable to the growth in local share of the county: *Provided*, That no county shall receive less than \$150,000; plus

~~(5)~~ (6) An amount not less than the amount required to meet debt service requirements on any revenue bonds issued prior to January 1, 1994, and the debt service requirements on any revenue bonds issued for the purpose of refunding revenue bonds issued prior to January 1, 1994, shall be paid by the Department of Education in accordance with the expenditure schedule approved by the state budget office into the School Building Capital Improvements Fund created by §18-9D-6 of this code and shall be used solely for the purposes of that article. The School Building Capital Improvements Fund shall not be utilized to meet the debt services requirement on any revenue bonds or revenue refunding bonds for which moneys contained within the School Building Debt Service Fund have been pledged for repayment pursuant to that section.

(b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to twenty-five percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to fifty percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board's strategic technology learning plan or amendments thereto.

~~(c) When the school improvement bonds secured by funds from the School Building Capital Improvements Fund mature, the State Board of Education shall annually deposit an amount equal to \$24,000,000 from the funds allocated in this section into the School Construction Fund created pursuant to the provisions of §18-9D-6 of this code to continue funding school facility construction and improvements.~~

~~(d) Any project funded by the School Building Authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the School Building Authority.”~~

Delegate Linville moved to amend the amendment on page eight, section six-f, line thirty-two, by striking out subsection (c) in its entirety and re-lettering the remaining subsections accordingly.

Pursuant to House Rule 119, the Speaker announced that an amendment submitted by Delegate Sypolt would be considered prior to the amendment offered by Delegate Linville.

Delegate Sypolt moved to amend the amendment on page eight, section §11-8-6f, line forty-one, following the words “voters of the county”, by inserting the words “at a general election”.

On the adoption of the amendment to the amendment, Delegate Sypolt demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 140**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cowles, Kessinger, Staggers, C. Thompson and Zukoff.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

The House then returned to further consideration of the amendment by Delegate Linville.

On the adoption of the amendment to the amendment, Delegate Linville demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 141**), and there were—yeas 50, nays 49, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Atkinson, Azinger, Barrett, Bibby, S. Brown, Cadle, Capito, Cooper, Cowles, Criss, Doyle, Ellington, Espinosa, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Hartman, Higginbotham, Hill, Hollen, Hott, Householder, Howell, Jennings, J. Kelly, Lavender-Bowe, Malcolm, Mandt, Nelson, Pack, Phillips, Pyles, Queen, Rowan, Rowe, Shott, Steele, Storch, Summers, Swartzmiller, Sypolt, Waxman, Westfall, Wilson, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegates Skaff, Evans, Nelson, Miley, Doyle, Westfall and Graves moved to amend the Finance Committee amendment on page ninety-nine, section ten, line eight-four, by striking out the number “500” and inserting in lieu thereof the number “1,000”.

During debate on the amendment, Delegate D. Kelly moved to reconsider the adoption of the amendment by Delegate Linville.

The Speaker replied that the Delegate’s motion would be considered at the conclusion of action on the pending amendment.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 142**), and there were—yeas 65, nays 33, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Speaker Hanshaw, Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Criss, Espinosa, Fast, Foster, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Malcolm, Phillips, Porterfield, Rowan, Summers, Sypolt, Waxman and Wilson.

Absent and Not Voting: Kump and Storch.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

The question now being on the motion by Delegate D. Kelly that the House reconsider its action by which it adopted the amendment by Delegate Linville, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 143**), and there were—yeas 51, nays 47, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Angelucci, Bates, Boggs, N. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Estep-Burton, Evans, Fast, Fleischauer, Fluharty, Hanna, Hansen, Hicks, D. Jeffries, J. Jeffries, Lavender-Bowe, Linville, Longstreth, Lovejoy, C. Martin, P. Martin, Maynard, McGeehan, Miller, Paynter, Porterfield, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Toney, Walker, Williams and Zukoff.

Absent and Not Voting: Kump and Tomblin.

So, a majority of the members present and voting having voted in the affirmative, the motion to reconsider the amendment was adopted.

The question now being on the adoption of the amendment by Delegate Linville, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 144**), and there were—yeas 47, nays 52, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Angelucci, Bates, Boggs, N. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Estep-Burton, Evans, Fast, Fleischauer, Hansen, Hicks, Hornbuckle, Householder, J. Jeffries, Lavender-Bowe, Linville, Longstreth, Lovejoy, C. Martin, P. Martin, Maynard, McGeehan, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney and Walker.

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

At 2:19 p.m., the House of Delegates recessed until 2:39 p.m.

\* \* \* \* \*

### Afternoon Session

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

Delegates Skaff and Miley moved to amend the amendment on page eighteen, section 18b, line four, following the period, by inserting the following:

“Each county board should provide counseling services for each pupil enrolled in the county public schools based on the American School Counselor Association suggested guidelines for student to counselors ratios as funds are available.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.



The yeas and nays having been ordered, they were taken (**Roll No. 145**), and there were—yeas 46, nays 50, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Toney, Walker, Westfall and Williams.

Absent and Not Voting: Hicks, Kump, Porterfield and Tomblin.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Sponaugle, Hornbuckle, Miley and Williams moved to amend the amendment on page fifty-six, section two, line two, by inserting the following:

“(a) Law enforcement personnel” means state or local law enforcement personnel hired on as a per diem or salaried employee to provide security services to the school during the hours the school is open to students during a normal school day. Law enforcement personnel includes but is not limited to local city police, deputy sheriffs or other officers assigned by any law enforcement agency to the school to provide security for students at the school.”

And by re-lettering subsequent definitions accordingly.

And,

On page sixty-one, section eight, line fifty, following the period, by inserting a new subsection (d), to read as follows:

(d) Effective for the 2019-20 fiscal year and thereafter, the basic foundation allowance to the county for law enforcement personnel is the amount of money required to pay the state

minimum salaries, in accordance with provisions of §18A-4-1 et seq. of this code, subject to the following:

(1) In making this computation, each county shall receive an allowance for four and seventy hundredths state aid eligible law enforcement personnel positions to each 1,000 students in net enrollment;

(2) For any law enforcement personnel positions, or fraction thereof, determined for a county pursuant to §18-9A-8(c)(1) of this code that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of law enforcement support personnel for the county: *Provided*, That if law enforcement personnel are obtained through a contractual arrangement with an outside law enforcement agency, the county average state funded salary of the professional student personnel shall be used;

(3) The number of and the allowance for all personnel paid in part by state and county funds shall be prorated; and

(4) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the law enforcement personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(5) For the 2019-20 fiscal year only, the number of positions funded for each county by subdivision (1) cannot be less than the number of positions that would have been funded in accordance with the previous methodology for determining the number of professional student support personnel positions funded for each county.

(6) The County is authorized to reimburse the law enforcement agency for the costs of providing a salaried employee to the school or may hire and pay law enforcement personnel as per diem employees outside his or her normal work hours to serve as law enforcement personnel, as provided in this section.”

Delegate Steele was debating the amendment to the amendment and moved the previous question.

Delegate Caputo rose to a point of order regarding a member not being permitted to move the previous question if that member had spoken on the question.

The Speaker replied that the point was well taken.

Subsequently,

Delegate Wilson moved the previous question, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 146**), and there were—yeas 53, nays 46, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hardy, Hartman, Hicks, Hornbuckle, Hott, Lavender-Bowe, Longstreth, Lovejoy, Malcolm, McGeehan, Miley, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Walker, Westfall, Williams and Zukoff.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the previous question was ordered.

Delegate Sponaugle then asked unanimous consent to be permitted to offer a reformed amendment to the amendment, which consent was not granted, objection being heard.

Delegate Sponaugle then moved to be permitted to offer a reformed amendment.

On this question, the yeas and nays were demanded, which demand was sustained.

Having been ordered, the yeas and nays were taken (**Roll No. 147**), and there were—yeas 93, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cadle, Cooper, Cowles, Ellington, Hollen and Porterfield.

Absent and Not Voting: Kump.

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

Consent having been granted, Delegates Sponaugle, Hornbuckle, Miley and Williams offered the following reformed amendment to the amendment on page fifty-six, section two, line two, by inserting the following:

“(a) Law enforcement personnel” means state or local law enforcement personnel hired on as a per diem or salaried employee to provide security services to the school during the hours the school is open to students during a normal school day. Law enforcement personnel includes but is not limited to local city police, deputy sheriffs or other officers assigned by any law enforcement agency to the school to provide security for students at the school.”

And by re-lettering subsequent definitions accordingly.

And,

On page sixty-one, section eight, line fifty, following the period, by inserting a new subsection (d), to read as follows:

“(d) Effective for the 2019-20 fiscal year and thereafter, the basic foundation allowance to the county for law enforcement personnel is the amount of money required to pay the state minimum salaries, in accordance with provisions of §18A-4-1 et seq. of this code, subject to the following:

(1) In making this computation, each county shall receive an allowance sufficient to provide for one law enforcement officer for each school in the county;

(2) For any law enforcement personnel positions, or fraction thereof, determined for a county pursuant to §18-9A-8(c)(1) of this code that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of law enforcement support personnel for the county, less any federal or other funds received to cover such costs: *Provided*, That if law enforcement personnel are obtained through a contractual arrangement with an outside law enforcement agency, the county average state funded salary of the professional student personnel shall be used;

(3) The number of and the allowance for all personnel paid in part by state and county funds shall be prorated; and

(4) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the law enforcement personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(5) For the 2019-20 fiscal year only, the number of positions funded for each county by subdivision (1) cannot be less than the number of positions that would have been funded in accordance with the previous methodology for determining the number of professional student support personnel positions funded for each county.

(6) The County is authorized to reimburse the law enforcement agency for the costs of providing a salaried employee to the school or may hire and pay law enforcement personnel as per diem employees outside his or her normal work hours to serve as law enforcement personnel, as provided in this section.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 148**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Bibby, Butler, Cadle, Cooper, Cowles, Ellington, Fast, Foster, Graves, Hardy, Harshbarger, Householder, D. Jeffries, Malcolm, Porterfield, Waxman and Wilson.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

Delegate Hanna moved to amend the amendment on page fifty-eight, section two, line fifty-four, by striking out the number “1,400” and inserting in lieu thereof the number “1,500”.

And,

On page fifty-eight, line fifty-five, by striking out the number “1,400” and inserting in lieu thereof the number “1,500”.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 149**), and there were—yeas 39, nays 58, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Evans, Fleischauer, Fluharty, Hanna, Hansen, Hartman, Hicks, Hill, Hornbuckle, Lavender-Bowe, Lovejoy, C. Martin, P. Martin, Miley, Miller, Paynter, Pethtel, Phillips, Pyles, Queen, Skaff, Sponaule, Staggers, Steele, C. Thompson, R. Thompson and Tomblin.

Absent and Not Voting: S. Brown, Kump and Worrell.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Storch moved to amend the amendment on page one hundred one, section one, line nine, following the words “areas of critical need”, by striking out the period and inserting in lieu thereof a colon and the words “*Provided*, That nothing in this article shall prohibit any individual who has demonstrated outstanding academic abilities from eligibility for an award from the Underwood-Smith Teacher Scholarship and Loan Assistance Fund under the provisions of this article as they existed prior to reenactment of this article during the 2019 Regular Session of the Legislature to pursue a teaching career in the field of music education.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 150**), and there were—yeas 60, nays 37, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Bibby, Butler, Cadle, Cooper, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, D. Jeffries, J. Jeffries, Jennings, J. Kelly, Kessinger, C. Martin, P. Martin, Maynard, Pack, Paynter, Phillips, Porterfield, Rowan, Shott, Summers, Sypolt, Wilson, and Hanshaw (Mr. Speaker).

Absent and Not Voting: S. Brown, Kump and Worrell.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegate Shott moved to amend the amendment on page seventy-seven, section seven-a, following line thirty-seven, by striking out section seven-a in its entirety and inserting in lieu thereof the following:

**“§18A-4-7a. Employment, promotion, and transfer of professional personnel; Seniority qualifications.**

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on

the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to §18-4-2 of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure, or both;

(2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

(3) The amount of course work, degree level, or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) In the case of a principal or classroom teaching position, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to performing the duties of the job;

(7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established



pursuant to the provisions of §18-5A-5 of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) When filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) of said subsection shall each be double weighted.

(d) For a classroom teaching position, if the principal and faculty senate recommend the same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the superintendent concurs with those recommendations, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with ~~the provisions of~~ §29A-3B-1 *et seq.* article three-b, chapter twenty-nine-a of this code to implement and interpret ~~the provisions of~~ this section. The rule may provide for a classroom teacher who directly participates in making recommendations pursuant to this section to be compensated at the appropriate daily rate during periods of participation beyond his or her individual contract.

(f) The recommendations of the principal and faculty senate made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to which applicant is the most highly qualified for the position: *Provided*, That nothing in this subsection may require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(h) Upon completion of 133 days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(i) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided*, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that employee is employed in another professional area. For the purposes of accruing seniority under this subsection, employment as principal, supervisor or central office administrator, as defined in §18A-1-1 of this code, shall be considered one area of employment.

(j) Employment for a full employment term equals one year of seniority, but an employee may not accrue more than one year of seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. If two or more employees with the same certification establish an identical seniority date as a result of initial employment as a regular teacher on or after July 1, 2019, the priority between these employees shall be determined by a random selection system established by the employees and approved by the the county board. A board shall conduct the random selection within 30 days of the time the

employees with the same certification establish an identical seniority date. All employees with an identical date and the same certification shall participate in the random selection. As long as the affected employees hold the identical seniority date within a certification, the initial random selection conducted by the board shall be permanent for the duration of the employment of the employees by the board. A random selection system established by the employees and approved by the county board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority.

(k) All decisions on reductions in force shall be based on qualifications as set forth in a county board policy. Furthermore, for the purposes of this subsection and subsections (l) through (t), inclusive, of this section, the word “qualifications” means the qualifications set forth in county board policy and only means qualifications set forth in subsection (b) of this section to the extent those qualifications are set forth in county board policy: *Provided*, That in defining the word ‘qualifications’ in its policy, the county board:

(1) Shall consider including the criteria set forth in subsection (b) of this section;

(2) Shall consider other criteria set forth in subsection (b) of this section to the extent they are included in the county board policy only after considering personnel whose last performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code as applicable, is less than satisfactory; and

(3) May not include salary as one of the criteria in the definition.

~~(l)~~ (l) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee with the least amount of seniority who is least qualified, as set forth in county board policy, shall be properly notified and released from employment pursuant to the provisions of §18A-2-2 of this code.

~~The provisions of this~~ This subsection ~~are~~ is subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) Notwithstanding any provision of this code to the contrary, for any vacancy in an established, existing or newly created position that, on or before March 1, is known to exist for the ensuing school year, upon recommendation of the superintendent, the board shall appoint the successful applicant from among all qualified applicants. All employees subject to release shall be considered applicants for the positions for which they are qualified and shall be considered before posting such vacancies for application by nonemployees;

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both: ~~if the employee's seniority is greater than the seniority of any other employee in that area of certification, licensure or both~~ Provided, That the employee is the most qualified person for that position;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee's ~~seniority is~~ qualifications are greater than the ~~seniority~~ qualifications of any other employee in one or more of those areas of certification, licensure, or both, the employee subject to release shall be employed in the professional position held by the employee ~~with the least seniority~~ who is least qualified in any of those areas of certification, licensure, or both; and

(5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right

to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and ~~higher seniority~~ has greater qualifications, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(~~h~~) (m) For the purpose of this article, all positions which meet the definition of "classroom teacher" as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board ~~shall~~ may give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; and certification, licensure or both, ~~and along with the days in the period of employment~~.

(~~m~~) (n) All professional personnel whose ~~seniority~~ lesser qualifications, as determined by county board policy, with the county board is insufficient to allow their retention by the county board during a reduction in workforce shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of ~~seniority~~ qualifications if no regular, full-time professional personnel, or those returning from leaves of absence with greater ~~seniority~~ are qualified qualifications, apply for and accept the position.

(~~n~~) (o) ~~Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of~~

~~the employee and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both~~ The board shall annually notify professional personnel on the preferred list of the job application procedures and any websites used to advertise vacancies. The notice shall be sent by certified mail via the U.S. Postal Service to the last known address of the employee, and it shall be the duty of each professional person to notify the board of continued availability annually of any change in address, or of any change in certification, licensure or both.

~~(e)~~ (p) Openings in established, existing, or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may ~~post~~ repost an opening for a classroom teacher one additional time after the first posting in order to attract more qualified applicants ~~only if fewer than three individuals apply during the first posting~~ subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days which may include any website maintained by the county board;

(B) At least one notice shall be posted within 20 working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy may be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within 30 working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed, or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein may prevent the county board of education from eliminating a position due to lack of need.

~~(p)~~ (q) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: *Provided*, That the employee and the county board mutually agree to the reassignment.

~~(r)~~ (r) Reductions in classroom teaching positions in elementary schools shall be determined pursuant to the considerations set forth in county board policy and processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority qualifications with the least senior qualified classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior qualified employee in the school is not in that grade level, the ~~senior~~ least qualified classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the ~~senior~~ least qualified classroom

teacher in the school without that position being posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

~~(r)~~ (s) Any board failing to comply with ~~the provisions of~~ this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable to any party prevailing against the board for any court reporter costs including copies of transcripts.

~~(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.~~

(t) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(u) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.”

Subsequently,

In the absence of objection, further consideration of the amendment to the amendment was moved to the foot all amendments.



Delegate J. Jeffries moved to amend the amendment on page eleven, following the chapter heading, following line fifteen, by inserting a new article to read as follows:

**“ARTICLE 4. COUNTY SUPERINTENDENT OF SCHOOLS.**

**§18-4-4. COMPENSATION.**

On or before June 1 of the year in which the superintendent is appointed, the board shall fix the annual salary of the superintendent for the period of appointment for the term beginning on the following July 1. The board shall pay the salary from the general current expense fund of the district. The salary of any superintendent may not exceed \$130,000.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 151**), and there were—yeas 10, nays 89, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Butler, Foster, Hanna, J. Jeffries, Linville, P. Martin, Maynard, McGeehan, Robinson and Wilson.

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Espinosa, Cowles, Bibby and Wilson moved to amend the amendment on page twenty-one, following line ten, by striking out article §18-5G-1 *et seq.* in its entirety and inserting in lieu thereof a new article §18-5G-1 *et seq.* to read as follows:

**“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

(a) The West Virginia Legislature hereby authorizes a pilot program under which public charter schools may be authorized to

allow new, innovative, and more flexible ways of educating all children who choose to attend and advance a renewed commitment to the mission, goals, and diversity of public education. The purposes of this public charter school initiative are to:

(1) Improve student learning by creating more diverse public schools with high standards for student performance;

(2) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(3) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(4) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

#### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer: *Provided*, That in the case of a conversion public charter school, ‘Applicant’ means an organization or group comprised primarily of parents and others who reside within the community served by a noncharter public school who:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status;

(B) Develop and submit an application to become a conversion public charter school to the county board of the county wherein the school is located;

(C) May include as partner organizations a public or private institution or institutions of higher education and partners in business and industry; and

(D) Include in the application for conversion to a public charter school, in addition to the other requirements of this article, the demonstrated support for the proposed conversion to a public charter school as evidenced by:

(A) A petition for conversion signed by a majority of the employees of the school proposed for conversion; and

(B) A petition for conversion signed by a majority of the parents, guardians or custodians of the students enrolled in the school proposed for conversion.

(2) ‘Authorizer’ means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) The West Virginia Public Charter School Commission established pursuant to §18-5G-10 of this code: *Provided*, That the Commission may authorize a public charter schools only upon the request by a county board that the Commission assume the role of authorizer;

(3) ‘Charter application’ means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) ‘Charter contract’ or ‘contract’ means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers,

responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(6) ‘Conversion public charter school’ means a public charter school that existed as a noncharter public school before becoming a public charter school;

(7) ‘County board’ means a county board of education;

(8) ‘Education service provider’ means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(9) ‘Governing board’ means a board of directors as provided for in §18-5G-3 of this code;

(10) ‘Noncharter public school’ means a public school other than a public charter school established pursuant to this article;

(11) ‘Parent’ means a parent, guardian, or other person or entity having legal custody over a child;

(12) ‘Public charter school’ means a public school established pursuant to this article that:

(A) Is a public school and is part of the state’s system of public education but is exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article: *Provided*, That nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools;

(B) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(C) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(D) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(E) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(F) Is a public school to which parents choose to send their children;

(G) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(H) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(I) Operates under the oversight of its authorizer in accordance with its charter contract;

(13) 'State board' means the West Virginia Board of Education; and

(14) 'Student' means any person that is eligible for attendance in a public school in West Virginia.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) The authorization for the establishment of public charter schools in this state is limited as a pilot project to five public charter schools: *Provided*, That the West Virginia Schools for the Deaf and the Blind may be an applicant to the West Virginia Board of Education to become a public charter school and if authorized by the West Virginia Board of Education, this public charter school is

not within the five school limit. The West Virginia Board of Education may request the West Virginia Public Charter School Commission to assume the role of authorizer.

(b) No elected official may profit or receive any monetary consideration from a charter school: *Provided*, That this prohibition does not apply with respect to the employment of an elected official who was employed by a school prior to conversion to a public charter school.

(c) A public charter school authorized under this article is part of the state's system of public education but is exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article. A public charter school shall:

(1) Adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools;

(2) Have no entrance requirements or charge any tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(3) Have no power to levy taxes.

(4) Be governed by a governing board as specified in subsection (d) of this section;

(5) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(6) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(7) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when

students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(8) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(9) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(10) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(11) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(12) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(13) Operate under the oversight of its authorizer in accordance with its charter contract;

(14) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(15) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(16) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(17) Serve one or more of grades and limit admission to students within the grade levels served; and

(18) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(d) A public charter school authorized under this article may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and



(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(e) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(f) A county board may not require any employee of the local school district to be employed in a charter school. A county board may not harass, threaten, discipline, discharge, retaliate or in any manner discriminate against any district employee involved directly or indirectly with an application to establish a charter school as authorized under this section.

(g) All personnel employed by a public charter school shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county, but only for purposes of employment in noncharter public schools.

(g) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board of a conversion public charter school authorized under this article shall consist of the following members elected or selected in a manner specified in the charter application:

(2) The governing board shall consist of at least two parents of students attending the public charter school operating under the governing board; and

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and may only be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state. A student enrolled in a public charter school shall be included in the net enrollment of the county in which the school is located for the purposes of §18-9A-1 *et seq.* and shall be allocated to the public charter school in accordance with the State Board rule promulgated pursuant to section §18-5G-13 of this article.

(b) A conversion public charter school shall guarantee enrollment to all students who were previously enrolled in the noncharter public school and to all students who reside in the school's attendance area. All students who reside in the attendance

area of a public school that converts to a public charter school may enroll in the public charter school if they choose to do so. The school shall adopt and maintain a policy that gives enrollment preference to students who reside within the attendance area as established prior to the conversion of the school. An enrollment preference also shall be given to students enrolled in the public charter school the previous school year and to siblings of students already enrolled in the public charter school. If the school has excess capacity after enrolling students within the attendance area and those with preference, students outside the attendance area are eligible for enrollment;

(c) Except as provided in subsection (b) of this section, if the capacity of a public charter school is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(d) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(b) of this code.

(e) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(f) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(g) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll,

and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(h) If a student who was previously enrolled in a public charter school transfers enrollment to a noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools or that consider content competency when appropriate due to differences in curriculum delivery, instructional methods and strategies, or course designations and sequence.

**§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan; and

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic

achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;



(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation;  
and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2020.

(g) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State

of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(h) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-12 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

#### **§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, as applicable, or by the chairman of the West Virginia Public Charter School Commission for the charter schools for which the Commission is serving as the authorizer.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by the county board.

(g) A copy of the charter contract shall be provided to the State Superintendent of Schools.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal

with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board or boards, or by the West Virginia Public Charter School Commission, during an open meeting; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened.

(f) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or



transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. West Virginia Public Charter School Commission; members; appointments; meetings.**

(a) There is hereby created the West Virginia Public Charter School Commission which shall report directly to and be responsible to the state board, separate from the Department of Education, for carrying out its duties in accordance with this article. The mission of the Commission is to assist county boards in the authorization of high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. The commission and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of this code. Except as otherwise authorized in this article, no other governmental agency or entity may assume any charter authorizing function or duty in any form.

(b) The commission shall consist of seven voting members, as follows:

(1) The State Superintendent of Schools, or designee;

(2) The Chancellor of the Higher Education Policy Commission, or designee;

(3) The Chancellor for Community and Technical College Education, or designee; and

(4) Four members appointed by the Governor, with the advice and consent of the Senate.

(c) The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting ex officio members of the commission.

(d) Each appointed member shall represent the public interest and must satisfy the following requirements:

(1) Be a citizen of the state;

(2) Possess experience and expertise in public or nonprofit governance, management and finance, public school leadership, assessment, curriculum or instruction, or public education law; and

(3) Have demonstrated an understanding of, and commitment to, charter schooling as a strategy for strengthening public education.

(e) No more than three of the appointed members of the commission may be of the same political party. No more than two of the appointed members may be residents of the same congressional district. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions, or who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the commission or any charter school governing board. No person may be appointed who is engaged in, or employed by a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards.

(f) The initial appointments made pursuant to this section shall be for staggered one- and two-year terms. Thereafter, all appointments shall be for a term of two years. The initial appointments shall be made before February 1, 2020. The

commission shall meet as soon as practical after February 1, 2020, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(g) An appointed member of the commission may be removed from office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also be removed if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the commission as determined and specified by the commission in its bylaws. Whenever an appointed member vacancy on the commission exists, the Governor shall appoint, with the advice and consent of the Senate, a qualified person for the remainder of the vacated term.

(h) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the commission and members of the commission in their official capacity are immune from civil liability with respect to all activities related to a public charter school approved by the commission. The official actions of the members of the commission who are serving in an ex officio capacity by virtue of their designation or employment in another position are commission member actions only, and may not be construed as official actions or positions of such member's employing entity.

(i) The commission may appoint an executive director and may employ such additional staff as may be necessary. The executive director shall serve at the will and pleasure of the commission. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law.

(j) The commission shall meet as needed, but at least bi-annually. From funds appropriated or otherwise made available for such purpose, its members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties upon submission of an itemized statement in a manner

consistent with guidelines of the Travel Management Office of the Department of Administration.

**§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school may not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

(c) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. If an authorizer fails to close a charter school that does not meet the standards, the authorizer shall appear before the State Board to justify its decision. The State Board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize charter schools.

#### **§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available for use or lease to the charter school that are not a currently in use as an operating public school or which are available at the time the charter school seeks to use in whole or in part for a legitimate public school use.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

During debate, Delegate McGeehan moved that the House of Delegates recess until 8:45 p.m., which motion did not prevail.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 152**), and there were—yeas 40, nays 59, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, D. Jeffries, Jennings, J. Kelly, Kessinger,

Malcolm, C. Martin, P. Martin, Nelson, Phillips, Porterfield, Rowan, Shott, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Waxman, Espinosa, Wilson and Bibby moved to amend the bill page sixty-eight, following section §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Savings Account Act’ or ‘ESA Act’. The program created by the ESA Act shall be known as the ‘Education Savings Account Program’ or ‘ESA Program’.

**§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Account’ or ‘ESA’ means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) ‘Curriculum’ means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) ‘Education service provider’ means a person or organization that receives payments from education savings

accounts to provide educational goods and services to ESA students;

(4) ‘Eligible student’ means a student who has attended a West Virginia public elementary or secondary school in the prior school year and who:

(i) Possesses and Individualized Education Plan (IEP) written in accordance with rules established by the State Board;

(ii) Was determined IDEA eligible by a multidisciplinary evaluation team;

(iii) possesses a 504 plan;

(iv) Is medically diagnosed by a licensed physician in one of the IDEA disability categories under 20 USC 1401(3)(A); or

(v) Was the victim of a prohibited incident of harassment, intimidation or bullying pursuant to §18-2C-1, *et seq.*, of this code.

(5) ‘ESA student’ means a student who receives an account pursuant to this article;

(6) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) ‘Participating school’ means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) ‘Resident school district’ means the county school district in which the student resides; and

(9) ‘Treasurer’ means the West Virginia State Treasurer’s Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.



**§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year's statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by a tutoring facility or a tutor who is:

(i) A teacher licensed in any state;

(ii) Has taught at an eligible postsecondary institution;

(iii) Is a subject matter expert; or

(iv) Is otherwise approved by the West Virginia Department of Education;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are used solely for a student's educational needs and approved by the Treasurer or licensed physician;

(7) Educational software and applications that are used solely for a student's educational needs and approved by the Treasurer or licensed physician;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student.

The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 2,500 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer and the treasurer verifies the enrollment status and eligibility of the student through the West Virginia Department of Education;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program and all applicable federal and state law and regulations.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(f) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(g) If an eligible student decides to return to the ESA Program, they must reapply.

(h) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with

Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year;

but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall coordinate with the State Auditor to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program to the Parent Review Committee pursuant to §18-31-6 of this code.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs to the Parent Review Committee pursuant to §18-31-6 of this code.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer shall adopt rules and policies in accordance with §29A-3A-1 *et seq.* and §29A-3B-1 *et seq.* that are necessary for the administration of this article and to meet the duties and responsibilities set forth herein.

(16) The treasurer may adopt rules and policies in accordance with §29A-3A-1 *et seq.* and §29A-3B-1 *et seq.* that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;



(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(17) The treasurer shall create procedures for verifying the eligibility and enrollment status of students through the West Virginia Department of Education.

(18) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the treasurer's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of:

(1) Parents or ESA students who have been found ineligible due to intentional and substantial misuse of ESA funds; and

(2) Education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

**§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

#### **§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

#### **§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this article to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.

**ARTICLE 2. SCHOOL PERSONNEL.****§18A-2-8. Suspension and dismissal of school personnel by board; appeal.**

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted.

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING,  
PROFESSIONAL DEVELOPMENT.****§18A-3-6. Grounds for revocation of certificates; recalling  
certificates for correction.**

(a) The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a teacher may not be revoked for any matter for which the teacher was disciplined, less than dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or has met an improvement plan determined by the county board, unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent: *Provided further*, That a teacher convicted under §61-8D-5 or a finding of abuse under §49-1-1 et seq. of this code shall have his or her certificate or license automatically revoked.

(b) It shall be the duty of any county superintendent who knows of any acts on the part of any teacher for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent

for such action as in the state superintendent's judgment may be proper.

(c) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent has authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 153**), and there were—yeas 37, nays 62, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Householder, Howell, D. Jeffries, Jennings, Kessinger, Malcolm, C. Martin, P. Martin, Pack, Phillips, Porterfield, Shott, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

On motion of Delegates Espinosa, Cowles, Bibby and Wilson, the amendment was amended on page sixty-eight, following the chapter heading "Chapter 18A. School Personnel.", by inserting two new sections to read as follows:

## **"ARTICLE 2. SCHOOL PERSONNEL.**

### **§18A-2-8. Suspension and dismissal of school personnel by board; appeal.**

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance,

willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 et seq. of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted.

### **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**

#### **§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.**

(a) The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for any

of the following causes: Intemperance; untruthfulness; cruelty; immorality; a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a teacher may not be revoked for any matter for which the teacher was disciplined, less than dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or has met an improvement plan determined by the county board, unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent: *Provided further*, That a teacher convicted under §61-8D-5 or a finding of abuse under §49-1-1 et seq. of this code shall have his or her certificate or license automatically revoked.

(b) It shall be the duty of any county superintendent who knows of any acts on the part of any teacher for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent for such action as in the state superintendent's judgment may be proper.

(c) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent has authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board.”



Delegates Bates, Barrett, Boggs, Estep-Burton, Longstreth, Rowe, Hornbuckle, Pethel, Sponaugle, Williams and Hartman moved to amend the amendment, by deleting the following sections from the amendment:

On pages one through seven, by striking out §5-16-2 from the amendment.

On pages twenty-one through forty-three, by striking out Chapter 18, Article 5G in its entirety.

On pages forty-three through forty-eight, by striking out §18-7A-3 in its entirety.

On pages forty-eight through fifty-one, by striking out §18-7B-2 in its entirety.

And,

On pages sixty through sixty-nine, by striking out §18-20-5 in its entirety.

The House then proceeded to consideration of amendments to sections affected by the previously reported amendment.

Delegate Wilson moved to amend the bill on pages twenty-one through forty-three, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of two (2) public charter schools per county to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) ‘Authorizer’ means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) ‘Charter application’ means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) ‘Charter contract’ or ‘contract’ means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) ‘County board’ means a county board of education;

(6) ‘Education service provider’ means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) ‘Governing board’ means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) ‘Noncharter public school’ means a public school other than a public charter school established pursuant to this article;

(9) ‘Parent’ means a parent, guardian, or other person or entity having legal custody over a child;

(10) ‘Public charter school’ means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) 'State board' means the West Virginia Board of Education;

(12) 'Student' means any person that is eligible for attendance in a public school in West Virginia; and

(13) 'Virtual public charter school' means a public charter school that offers education services primarily or completely through an online program.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 et seq. of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.



**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

**§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract;  
and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.



(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer (and the public charter school);

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes

members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. Appeal of authorizer’s decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer’s decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

**§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.



**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 et seq. of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 et seq. of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

**§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

### **§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 154**), and there were—yeas 31, nays 68, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, Howell, D. Jeffries, Jennings, Kessinger, Malcolm, C. Martin, P. Martin, Pack, Porterfield, Summers, Sypolt, Waxman and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on pages twenty-one through forty-three, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of one (1) public charter school per county to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

**§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) ‘Authorizer’ means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) ‘Charter application’ means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) ‘Charter contract’ or ‘contract’ means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) ‘County board’ means a county board of education;

(6) ‘Education service provider’ means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) ‘Governing board’ means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) ‘Noncharter public school’ means a public school other than a public charter school established pursuant to this article;

(9) ‘Parent’ means a parent, guardian, or other person or entity having legal custody over a child;

(10) ‘Public charter school’ means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school’s governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than

can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) ‘State board’ means the West Virginia Board of Education;

(12) ‘Student’ means any person that is eligible for attendance in a public school in West Virginia; and

(13) ‘Virtual public charter school’ means a public charter school that offers education services primarily or completely through an online program.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state’s system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds,



liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

**§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board,

school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract;  
and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and



(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a

charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the

effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application;

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.



(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. Appeal of authorizer's decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer's decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

### **§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

### **§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

### **§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

### **§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 155**), and there were—yeas 27, nays 72, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bibby, Butler, Capito, Cowles, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, D. Jeffries, Jennings, Malcolm, Porterfield, Shott, Summers, Sypolt, Waxman and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on pages twenty-one through forty-three, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of twenty-five (25) public charter schools to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

**§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) ‘Authorizer’ means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) ‘Charter application’ means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) ‘Charter contract’ or ‘contract’ means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) ‘County board’ means a county board of education;

(6) ‘Education service provider’ means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) ‘Governing board’ means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) ‘Noncharter public school’ means a public school other than a public charter school established pursuant to this article;

(9) ‘Parent’ means a parent, guardian, or other person or entity having legal custody over a child;

(10) ‘Public charter school’ means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school’s governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) ‘State board’ means the West Virginia Board of Education;

(12) ‘Student’ means any person that is eligible for attendance in a public school in West Virginia; and

(13) ‘Virtual public charter school’ means a public charter school that offers education services primarily or completely through an online program.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state’s system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;



(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

#### **§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter

public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally



require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract;  
and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: Provided, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to

be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that

has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;



(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. Appeal of authorizer's decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer's decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this

Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

**§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

**§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

**§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state’s public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program’s successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 156**), and there were—yeas 24, nays 75, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bibby, Butler, Capito, Cowles, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Hollen, Householder, D. Jeffries, Jennings, Malcolm, Porterfield, Shott, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on pages twenty-one through forty-three, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of twenty (20) public charter schools to benefit

students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

#### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) ‘Authorizer’ means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) 'Charter application' means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) 'Charter contract' or 'contract' means a fixed-term, renewable contract between a public charter school's governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) 'County board' means a county board of education;

(6) 'Education service provider' means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) 'Governing board' means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) 'Noncharter public school' means a public school other than a public charter school established pursuant to this article;

(9) 'Parent' means a parent, guardian, or other person or entity having legal custody over a child;

(10) 'Public charter school' means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to



contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) 'State board' means the West Virginia Board of Education;

(12) 'Student' means any person that is eligible for attendance in a public school in West Virginia; and

(13) 'Virtual public charter school' means a public charter school that offers education services primarily or completely through an online program.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors,

service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) Public charter school governing board. —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

~~(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.~~

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 et seq. of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll,

and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

#### **§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;



(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

#### **§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally

and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.



**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision

shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter

school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. Appeal of authorizer’s decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer’s decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

**§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

**§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is

located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

### **§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any

suggested changes in state law or policy necessary to strengthen the public charter school program.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 157**), and there were—yeas 28, nays 71, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, D. Jeffries, Jennings, Malcolm, Porterfield, Shott, Summers, Sybolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

At 8:14 p.m., the House of Delegates recessed until 8:29 p.m.

\* \* \* \* \*

### Evening Session

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House returned to consideration of the pending amendment previously offered by Delegate Bates.

On the adoption of the amendment to the amendment, Delegate Bates demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 158**), and there were—yeas 45, nays 49, absent and not voting 6, with the yeas and absent and not voting being as follows:



Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Cooper, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney and Walker.

Absent and Not Voting: Kump, Malcolm, Nelson, Porterfield, Rohrbach and Steele.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegates Walker, S. Brown, C. Thompson, Hornbuckle, Bates, Lavender-Bowe, Barrett, Estep-Burton, Pethtel and Miley moved to amend the amendment on page twenty-four, section three, line eleven, following the words “public schools”, by inserting a comma and the following “and shall not discriminate based on sexual orientation or gender identity”.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 159**), and there were—yeas 37, nays 59, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, S. Brown, Byrd, Campbell, Canestraro, Capito, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson and Walker.

Absent and Not Voting: Kump, Nelson, Storch and Westfall.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Hornbuckle moved to amend the amendment on page twenty-three, section two, line forty-two, following the words “noncharter public schools”, by striking out the semi-colon, inserting a colon and the following proviso: *Provided, however,* That no charter school can be established or operated as a virtual charter school.”

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 160**), and there were—yeas 56, nays 41, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, Kessinger, Malcolm, Mandt, C. Martin, P. Martin, Maynard, McGeehan, Phillips, Porterfield, Rowan, Summers, Sypolt, Waxman, Westfall, Wilson and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump, Nelson and Storch.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegate Wilson moved to amend the bill on pages twenty-one through forty-three, by striking out all of §18-5G-1 *et seq.* and inserting in lieu thereof a new §18-5G-1 *et seq.*, to read as follows:

**“ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of five (5) public charter schools to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment

to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) ‘Authorizer’ means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve; or

(C) Any accredited West Virginia public or private institution of higher education; or

(3) ‘Charter application’ means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) ‘Charter contract’ or ‘contract’ means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) ‘County board’ means a county board of education;

(6) ‘Education service provider’ means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(7) ‘Governing board’ means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(8) ‘Noncharter public school’ means a public school other than a public charter school established pursuant to this article;

(9) ‘Parent’ means a parent, guardian, or other person or entity having legal custody over a child;

(10) ‘Public charter school means a public school established pursuant to this article that:

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is governed by a governing board that is independent of a county board except as otherwise provided in this article;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code; and

(H) Operates under the oversight of its authorizer in accordance with its charter contract;

(11) 'State board' means the West Virginia Board of Education;

(12) 'Student' means any person that is eligible for attendance in a public school in West Virginia; and

(13) 'Virtual public charter school' means a public charter school that offers education services primarily or completely through an online program.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 et seq. of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:



(A) Two parents of students attending the public charter school operating under the governing board; and

~~(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.~~

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 *et seq.* of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll, and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

#### **§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer: *Provided*, That only a county board may authorize the conversion of an existing noncharter public school to a public charter school. Charter authorizers shall accept and document the date and time of receipt of all charter applications.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan;

(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract;  
and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.



(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) An applicant whose charter application has been denied may appeal the authorizer's decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if public charter school authorization is sought directly from the commission, the commission's decision is final.

(h) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(i) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-13 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer (3) and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, or the president of the public or private institution of higher education, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the institutional board of governors of a public or private institution of higher education that has such a board. For any public or private institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president or other chief administrator of the institution.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking; right to appeal.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, or institutional board of governors, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;

(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public or private institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened. A governing board whose charter contract has been revoked pursuant to this provision may appeal the authorizer's action to the West Virginia Public Charter School Commission, subject to the following:

(1) The charter contract shall remain revoked unless and until the Commission directs otherwise; and

(2) If the Commission is the authorizer that revokes the charter contract, the Commission's decision is final.

(f) A governing board whose charter contract has not been renewed or has been revoked may appeal the authorizer's final decision to the West Virginia Public Charter School Commission pursuant to §18-5G-10 of this code: *Provided*, That if the Commission is the authorizer that fails to renew or revokes a charter contract, the Commission's decision is final.

(g) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes



members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. Appeal of authorizer's decision to West Virginia Public Charter School Commission.**

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application, the nonrenewal of a charter contract, or the revocation of a charter contract to the authorizer within 30 days of the authorizer's decision.

(b) The State Board of Education shall promulgate a rule establishing the process and timeline for appeals filed pursuant to §18-5G-10(a) of this code.

(c) If the authorizer finds that the application, applicant, and public charter school, as applicable, meet the requirements of this Act, the authorizer shall approve the application, or renew or reinstate the charter contract.

**§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 et seq. of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 et seq. of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article.

**§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

### **§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 161**), and there were—yeas 33, nays 65, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Espinosa, Fast, Foster, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, D. Jeffries, Jennings, J. Kelly, Kessinger, Malcolm, Nelson, Phillips, Porterfield, Shott, Summers, Sypo and Hanshaw (Mr. Speaker).

Absent and Not Voting: Ellington and Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on page sixty-eight, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.”**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Savings Account Act’ or ‘ESA Act.’ The program created by the ESA Act shall be known as the ‘Education Savings Account Program’ or ‘ESA Program.’

**§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Account’ or ‘ESA’ means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) ‘Curriculum’ means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) ‘Education service provider’ means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) ‘Eligible student’ means an elementary or secondary student who has attended a West Virginia public school in the prior school year and is not attending a public school outside of West Virginia;

(5) ‘ESA student’ means a student who receives an account pursuant to this article;

(6) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) ‘Participating school’ means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) ‘Resident school district’ means the county school district in which the student resides; and

(9) ‘Treasurer’ means the West Virginia State Treasurer’s Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

### **§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year’s statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent’s agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the

amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by an individual or a tutoring facility;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

(7) Educational software and applications;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

**§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:



(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall include the date of withdrawal of the student from the public school. The treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.

A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying

with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.

(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with

Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year;

but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a

recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

**§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

**§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

**§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant."

Delegate Pack requested to be excused from voting on the amendment to the amendment under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the adoption of the amendment to the amendment and directed the Member to vote.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.



The yeas and nays having been ordered, they were taken (**Roll No. 162**), and there were—yeas 26, nays 71, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Criss, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, D. Jeffries, Jennings, Kessinger, Malcolm, Porterfield, Summers, Sybolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cowles, Hicks and Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on page sixty-eight, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Savings Account Act’ or ‘ESA Act.’ The program created by the ESA Act shall be known as the ‘Education Savings Account Program’ or ‘ESA Program.’

**§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Account’ or ‘ESA’ means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) ‘Curriculum’ means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) ‘Education service provider’ means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) ‘Eligible student’ means an elementary or secondary student who has attended a West Virginia public school in the prior school year and is not attending a public school outside of West Virginia;

(5) ‘ESA student’ means a student who receives an account pursuant to this article;

(6) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) ‘Participating school’ means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) ‘Resident school district’ means the county school district in which the student resides; and

(9) ‘Treasurer’ means the West Virginia State Treasurer’s Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

### **§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year’s statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall

be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by an individual or a tutoring facility;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

(7) Educational software and applications;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or

university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds.

However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 10,000 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall include the date of withdrawal of the student from the public school. The treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress

commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.

A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.

(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the

treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.



(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

**§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

#### **§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

#### **§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant."

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 163**), and there were—yeas 26, nays 73, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bibby, Butler, Cadle, Cowles, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hollen, Householder, D. Jeffries, Jennings, Kessinger, Malcolm, P. Martin, Porterfield, Summers, Sypolt and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the bill on page sixty-eight, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Savings Account Act’ or ‘ESA Act’. The program created by the ESA Act shall be known as the ‘Education Savings Account Program’ or ‘ESA Program’.

**§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Account’ or ‘ESA’ means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) ‘Curriculum’ means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) ‘Education service provider’ means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) ‘Eligible student’ means an elementary or secondary student who has attended a West Virginia public school in the prior school year and is not attending a public school outside of West Virginia;

(5) ‘ESA student’ means a student who receives an account pursuant to this article;

(6) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) ‘Participating school’ means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) ‘Resident school district’ means the county school district in which the student resides; and

(9) ‘Treasurer’ means the West Virginia State Treasurer’s Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

### **§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year’s statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall

be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student's ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by an individual or a tutoring facility;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

(7) Educational software and applications;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or



university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds.

However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 5,000 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall include the date of withdrawal of the student from the public school. The treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress

commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.

A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.

(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the

treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the

Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to



§18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

**§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

**§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

**§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant."

Delegate Porterfield requested to be excused from voting on the amendment to Com. Sub. for S. B. 451 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the amendment to the amendment and directed the Member to vote.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 164**), and there were—yeas 32, nays 67, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Householder, D. Jeffries, Jennings, Kessinger, Malcolm, C. Martin, P. Martin, Phillips, Porterfield, Summers, Sypo and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Wilson moved to amend the amendment on page sixty-eight, following §18-20-5, by inserting a new article.

Whereupon,

Delegate Wilson asked and obtained unanimous consent that the amendment be withdrawn.

Delegate Wilson moved to amend the bill on page sixty-eight, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Savings Account Act’ or ‘ESA Act.’ The program created by the ESA Act shall be known as the ‘Education Savings Account Program’ or ‘ESA Program.’

**§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Account’ or ‘ESA’ means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) ‘Curriculum’ means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) ‘Education service provider’ means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) ‘Eligible student’ means an elementary or secondary student who

(a) Has attended a West Virginia public school in the prior school year;

(b) Is not attending a public school outside of West Virginia;

(c) And has been assigned an individual education plan for developmental delay or physical impairment.

(5) ‘ESA student’ means a student who receives an account pursuant to this article;

(6) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) ‘Participating school’ means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) ‘Resident school district’ means the county school district in which the student resides; and

(9) ‘Treasurer’ means the West Virginia State Treasurer’s Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

**§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year’s statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item appropriation established for the purposes of this article.

(b) In exchange for the parent’s agreement pursuant to §18-31-4(c)(4) of this code, the Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code to the treasurer for deposit into a West Virginia ESA.

(c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to the treasurer shall be accomplished.

(d) Parents of an ESA student shall agree to use the funds deposited in their student’s ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by an individual or a tutoring facility;

(4) Services contracted for, and provided by, a public district, charter, or magnet school, including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are primarily used to help meet an ESA student's educational needs;

(7) Educational software and applications;

(8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical school or education provider;

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transportation provider for the student to travel to and from an education service provider; or

(15) Any other educational expense approved by the treasurer.

(e) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(g) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(j) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000 per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in

an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 2,500 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall include the date of withdrawal of the student from the public



school. The treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.

A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.

(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.

(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents

by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

#### **§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

**§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

#### **§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

#### **§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for

the purposes of defending the article’s constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.”

Delegate Foster asked and obtained unanimous consent to place the amendment second from the bottom of amendments.

On motion of Delegate Hamrick, the amendment was amended on page one hundred three, section one, after line sixty-two, following the period, by inserting a new subsection (h) to read as follows:

“(h) Notwithstanding the provisions of subsection (d) of this section, and §18C-4A-3 and 18C-4A-4 of this code:

(1) Moneys in the Underwood-Smith Teaching Scholars Program Fund may be used to satisfy the loan assistance agreement pursuant to §18C-4A-3 of this code for any student who is fulfilling the requirements of an agreement on the effective date of this section;

(2) Moneys in the Underwood-Smith Teaching Scholars Program Fund may be used to fund Underwood-Smith teacher scholarships, and any renewals for which a recipient would be eligible pursuant to the prior enactment of this article, for those students receiving such scholarship on the effective date of this section; and

(3) The terms, conditions, requirements, and agreements applicable to an Underwood-Smith teacher scholarship or loan assistance recipient prior to the effective date of this section shall continue in effect and are not altered by the reenactment of this section during the 2019 regular session of the Legislature.”

Delegates R. Thompson, Hartman, Hornbuckle, Estep-Burton, Miley and Doyle moved to amend the amendment on pages nineteen and twenty, section thirty-two, by striking out the colon and proviso that is located on lines twenty-two and twenty-three,



page nineteen, and on lines twenty-four and twenty-five of page twenty, and inserting in lieu thereof a period.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 165**), and there were—yeas 52, nays 45, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, Jennings, D. Kelly, Kessinger, Malcolm, C. Martin, P. Martin, Maynard, McGeehan, Nelson, Phillips, Porterfield, Queen, Rowan, Shott, Steele, Storch, Summers, Sypolt, Waxman, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: J. Kelly, Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

On motion of Delegate Dean, the amendment was amended on page eighty-one, section seven-a, line ninety, by inserting a new subdivision (1) to read as follows:

“(1) Notwithstanding any provision of this code or county policy to the contrary, all reductions shall first be prioritized by employees with highest certifications and then the seniority of such employee: *Provided, That the employee’s last performance evaluation as provided in §18A-2-12 or §18A-3C-2 of this code, as applicable, was not less than satisfactory.*”

And renumbering the subsequent subdivisions accordingly.

Delegates Hornbuckle, Doyle and R Thompson moved to amend the amendment on page eighty-one, section seven-a, lines one hundred one, one hundred two and one hundred three, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-one, section seven-a, line one hundred five, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-one, section seven-a, line one hundred six by striking out the word “qualifications”.

On page eighty-one, section seven-a, line one hundred eight, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-two, section seven-a, line one hundred seventeen, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-two, section seven-a, lines one hundred twenty-six and one hundred twenty-seven by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-one, section seven-a, line one hundred thirty-one, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-one, section seven-a line one hundred thirty-two, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-four, section seven-a, line one hundred eighty-four, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-four, section seven-a, line one hundred eighty-five, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-four, section seven-a, line one hundred eighty-six, by returning stricken language to the amendment and by striking out the underlined language.

On page eighty-four, section seven-a, line one hundred eighty-seven, by returning stricken language to the amendment and by striking out the underlined language.

And,

On page eighty-four, section seven-a, line one hundred eighty-nine, by returning stricken language to the amendment and by striking out the underlined language.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 166**), and there were—yeas 48, nays 49, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, D. Kelly, Kessinger, Lavender-Bowe, Longstreth, Lovejoy, Mandt, McGeehan, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney and Walker.

Absent and Not Voting: J. Kelly, Kump and Steele.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

In the absence of objection, the pending amendment by Delegate Shott was withdrawn and a reformed amendment was offered.

On motion of Delegate Shott, the amendment was amended on page eighty, section seven-a, at line seventy-three before the word “All”, by inserting the following:

“If two or more employees with the same certification establish an identical seniority date as a result of initial employment as a regular teacher on or after July 1, 2019, the priority between these employees shall be determined by a random selection system established by the employees and approved by the county board. A

board shall conduct the random selection within 30 days of the time the employees with the same certification establish an identical seniority date. All employees with an identical seniority date and the same certification shall participate in the random selection. As long as the affected employees hold the identical seniority date within a certification, the initial random selection conducted by the board shall be permanent for the duration of the employment of the employees by the board.”

Delegate Wilson then obtained unanimous consent to be permitted to offer a reformed amendment.

Delegate Wilson then moved to amend the bill on page sixty-eight, following §18-20-5, by inserting a new article, designated §18-31-1 *et seq.* to read as follows:

**“ARTICLE 31. EDUCATION TAX CREDITS.**

**§18-31-1. Short title.**

This article shall be known as the ‘Education Tax Credit’.

**§18-31-2.**

The parents and/or legal guardians of each child in the state of West Virginia participating in nonpublic schools between the ages 5 and 20 years old and in grade level K through 12 shall be entitled to tax credit against West Virginia state income tax in an amount up to three thousand dollars for qualifying educational expenses which shall include the following:

- (1) Tuition
- (2) Transportation costs
- (3) Curriculum
- (4) Text books
- (5) Lab supplies
- (6) Educational technology

(7) Tutoring

This tax credit is available only as a credit against state taxes actually owed.”

Delegates Cowles, Porterfield, Steele, Pack, Capito and D. Jeffries requested to be excused from voting on the amendment to the amendment to Com. Sub. for S. B. 451 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill and directed the Members to vote.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 167**), and there were—yeas 49, nays 50, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Fluharty, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Lovejoy, Malcolm, Mandt, C. Martin, P. Martin, Maynard, McGeehan, Pack, Phillips, Porterfield, Shott, Steele, Storch, Summers, Sypolt, Waxman and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

An amendment, offered by Delegates Longstreth, Bates, Hornbuckle, Rowe, Doyle and Miley, was reported by the Clerk as follows:

By striking out pages one through sixty-eight, up to but not including §18A-4-2 of the amendment.

Beginning on page seventy-three, by striking out §18A-4-2d, 18A-4-5, §18-4-5a and 18A-4-7a which ends on page eighty-five.

And,

Beginning on page ninety-six, section ten, line one, by striking out §18A-4-10 and the remainder of the amendment to the amendment in its entirety.

Delegate Bates asked and obtained unanimous consent that the amendment be withdrawn.

The question being on the Finance Committee amendment, as amended, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 168**), and there were—yeas 61, nays 38, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Bates, Boggs, N. Brown, S. Brown, Butler, Byrd, Campbell, Canestraro, Caputo, Diserio, Estep-Burton, Evans, Fast, Fleischauer, Fluharty, Hansen, Hornbuckle, Kessinger, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Miller, Paynter, Pethel, Pushkin, Robinson, Rowe, Sponaugle, Swartzmiller, C. Thompson, R. Thompson, Walker, Williams, Wilson and Zukoff.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment as amended was adopted.

The bill was then ordered third reading.

### **Leaves of Absence**

At the request of Delegate Summers, and by unanimous consent, leave of absence for the day was granted Delegate Kump.

### **Miscellaneous Business**

Delegates Rohrbach and Steele noted to the Clerk that they were absent on today when the vote was taken on Roll No. 158, and that had he been present, they would have voted “Yea” thereon.

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the following in the Appendix to the Journal:

- The prayer offered by Delegate Walker

Pursuant to House Rule 94b, Members filed forms with the Clerk’s Office to be added as a cosponsor of the following:

- Delegate N. Brown for H. B. 2046 and H. B. 3125
- Delegate Porterfield for H. B. 2049, H. B. 2716, H. B. 2549, H. B. 2767, H. B. 2834, H. B. 2866 and H. B. 3032
- Delegate Robinson for H. B. 2100
- Delegate Nelson for H. B. 2834
- Delegate Paynter for H. B. 2847
- Delegate Byrd for H. B. 2936
- Delegate Nelson for H. B. 3022
- Delegates Boggs, Canestraro, Graves, Lovejoy, Rohrbach and Staggers for H. B. 3070
- Delegates Hartman, Hornbuckle and Howell for H. B. 3116
- Delegate Fleischauer for H. J. R. 26
- Delegate Mandt for H. J. R. 29

Pursuant to House Rule 94b, a form was filed with the Clerk’s Office to be removed as a cosponsor of the following:

- Delegate Paynter for H. B. 2847

At 10:37 p.m., the House of Delegates adjourned until 11:00 a.m., Thursday, February 14, 2019.





---

Thursday, February 14, 2019

**THIRTY-SEVENTH DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Wednesday, February 13, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Committee Reports**

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2439**, Relating to fire service equipment and training funds for volunteer and part-volunteer fire companies,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2439** - "A Bill to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; to amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new section, designated §12-4-14b; and to amend and reenact §29-3-5f of said code, all relating to fire service equipment and training funds for volunteer and part-volunteer fire companies and departments; authorizing fire departments to file bank statements and check images instead of sworn statements of expenditures; prohibiting the commingling of funds; requiring

retention of payment records; defining terms; changing deadline dates; authorizing forfeiture and redistribution of funds of delinquent fire departments; prohibiting the conversion of funds through returns or refunds of goods or services; providing for deductions from quarterly distributions to offset improper expenditures by a fire company or department; clarifying the responsibility for proposing legislative rules; requiring written notifications of delinquencies and misapplications of funds; providing a procedure to contest findings of Legislative Auditor; removing certain criminal penalties; and updating outdated language,”

With the recommendation that the committee substitute do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2958**, Authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies,

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

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2830**, Establishing Next Generation 911 services in this state,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2830) was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2542**, Permitting directors of county emergency phone systems to obtain mobile-phone emergency lines,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2542** - "A Bill to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to permitting directors of county emergency phone systems to obtain mobile-phone emergency lines and enter into service provider contracts; establishing payment of emergency mobile-phone contracts; and requiring a report,"

With the recommendation that the committee substitute do pass.

Delegate Hollen, Chair of the Committee on Pensions and Retirement, submitted the following report, which was received:

Your Committee on Pensions and Retirement has had under consideration:

**H. B. 2229**, Adding violations of law upon which a public servant's retirement plan may be forfeited,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2229) was referred to the Committee on the Judiciary.

Delegate Hollen, Chair of the Committee on Pensions and Retirement, submitted the following report, which was received:

Your Committee on Pensions and Retirement has had under consideration:

**H. B. 3095**, Establishing a minimum monthly retirement annuity for certain retirants,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 3095) was referred to the Committee on Finance.

Delegate Hollen, Chair of the Committee on Pensions and Retirement, submitted the following report, which was received:

Your Committee on Pensions and Retirement has had under consideration:

**H. B. 2595**, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System,

And,

**H. B. 3070**, Relating to the accrued benefit of retirees in the West Virginia State Police Retirement System,

And reports the same back, with amendment, with the recommendation that they each do pass, as amended, but that they first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bills (H. B. 2595 and H. B. 3070) were each referred to the Committee on Finance.

Delegate Hanshaw (Mr. Speaker), Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. C. R. 2**, Senator J. Frank Deem Memorial Bridge,

**H. C. R. 4**, Gold Star Families Highway,

**Com. Sub. for H. C. R. 7**, Kidd Brothers Bridge,

**Com. Sub. for H. C. R. 11**, U. S. Army Command Sergeant Major Timothy Allen Bolyard Memorial Bridge,

**H. C. R. 19**, U. S. Marine Sgt. Stephen E. Drummond Memorial Bridge,

**H. C. R. 23**, U. S. Army SGT Rodney David King and U. S. Army SGT James Harris King Memorial Bridge,

**Com. Sub. for H. C. R. 26**, U. S. Army SGT Arthur “George” Roush Memorial Bridge,

**H. C. R. 43**, U. S. Army Air Corps T SGT Ralph H. Ray Bridge,

And,

**H. C. R. 44**, U. S. Marine Corps PFC Randall Carl Phelps Memorial Bridge,

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

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**H. B. 2947**, Relating generally to telemedicine prescription practice requirements and exceptions,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2947** - “A Bill to amend and reenact §30-3-13a of the Code of West Virginia, 1931, as amended; and to amend

and reenact §30-14-12d of said code, all relating to telemedicine prescription practice requirements; providing exceptions; allowing for physician submitted Schedule II telemedicine prescriptions for immediate administration in a hospital,”

With the recommendation that the committee substitute do pass, and with the recommendation that second reference to the Committee on the Judiciary be dispensed with.

In the absence of objection, reference of the bill (Com. Sub. for H. B. 2947) to the Committee on the Judiciary was abrogated.

### **Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2446**, Blue Alert Plan.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 40** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-16-1, §62-16-2, §62-16-3, §62-16-4, and §62-16-5, all relating to establishing a Military Service Members Court program within the Supreme Court of Appeals; defining terms; granting authority to the Supreme Court of Appeals to establish a Military Service Members Court program under the oversight of its administrator; providing for no termination of any program until at least six months after written notice of the intent to terminate the program has been provided by the Supreme Court of Appeal Administrator to the Speaker of the House of Delegates and the President of the Senate; providing for funding mechanisms which may include court fees; providing for limitation of liability; setting forth structure of the court; setting forth eligibility requirements for participation; providing for written agreement to participate in the court; setting forth procedure to participate in court; allowing for mental health and drug treatment services for participants; providing

for sanctions for violation of provisions of the court; setting forth incentives for successful participation; and setting out disposition on successful completion”; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 47** - “A Bill to amend and reenact §11-6A-5a of the Code of West Virginia, 1931, as amended, relating to pollution control facilities tax treatment; clarifying that wind power projects are not pollution control facilities for purposes of this article; and providing that wind power projects be taxed at the real property rate”; which was referred to the Committee on Government Organization then Energy.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 153** - “A Bill to amend and reenact §31-15A-10 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Infrastructure and Jobs Development Council; increasing the percentage of the infrastructure fund that may be used for grants; providing authority to transfer additional funds designated to loans on to the grant program under certain circumstances; clarifying how funding assistance may be spent; and increasing the cap on annual spending that may be made on the preapplication process to project sponsors”; which was referred to the Committee on Technology and Infrastructure then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 285** - “A Bill to amend and reenact §19-35-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-

35-6, all relating to the sale of homemade food items; defining terms; authorizing production and sale of homemade food items under certain circumstances; establishing conditions for exemption from licensure, permitting, inspection, packaging, and labeling laws; providing required notices to consumer; defining manner of providing notices; exempting certain products from the scope of this provision; permitting local health departments to inspect reported foodborne illnesses; authorizing Department of Agriculture to provide assistance, consultation, or inspection at request of producer; providing for preemption by county, local, and municipal ordinances; and providing for exemptions”; which was referred to the Committee on Agriculture and Natural Resources then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 291** - “A Bill to amend and reenact §5H-1-1, §5H-1-2, and §5H-1-3 of the Code of West Virginia, 1931, as amended, all relating generally to survivor benefits for emergency response providers; changing the name of the West Virginia Fire and EMS Survivor Benefit Act to the West Virginia Emergency Responders Survivor Benefit Act; making Division of Forestry personnel who die as a proximate result of their participation in wildland fire fighting, emergency response, or disaster response operations eligible for survivor benefits; defining terms; making technical changes; and reorganizing language in the act for clarity”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 296** - “A Bill to amend and reenact §5-10-18 of the Code of West Virginia, 1931, as amended, relating to providing an 11-month window to permit members of the Public Employees Retirement System to purchase credited service that had been



previously forfeited”; which was referred to the Committee on Pensions and Retirement then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 345** - “A Bill to amend and reenact §8-15-8b of the Code of West Virginia, 1931, as amended; to amend and reenact §12-4-14 of said code; to amend said code by adding thereto a new section, designated §12-4-14b; and to amend and reenact §29-3-5f of said code, all relating to fire service equipment and training funds for volunteer and part-volunteer fire companies and departments; authorizing fire departments to file bank statements and check images instead of sworn statements of expenditures; prohibiting the commingling of funds; requiring retention of payment records; defining terms; changing deadline dates; authorizing forfeiture and redistribution of funds of delinquent fire departments; prohibiting the conversion of funds through returns or refunds of goods or services; providing for deductions from quarterly distributions to offset improper expenditures by a fire company or department; clarifying the responsibility for proposing legislative rules; requiring written notifications of delinquencies and misapplications of funds; providing a procedure to contest findings of Legislative Auditor; removing certain criminal penalties; and updating outdated language”; which was referred to the Committee on Fire Departments and Emergency Medical Services then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 405** - “A Bill to amend and reenact §11A-3-23, §11A-3-25, §11A-3-36, §11A-3-56, §11A-3-57, and §11A-3-58 of the Code of West Virginia, 1931, as amended, all relating to the sale of tax liens by the State Auditor; increasing the limit to \$500 on additional expenses a purchaser may recover in preparing notice list

for redemption of purchase and for licensed attorney's title examination; and requiring any amounts above the surplus of 20 percent of the gross amount of the operating fund be paid to the General School Fund at the end of each fiscal year"; which was referred to the Committee on Government Organization.

A message from the Senate, by

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

**S. B. 461** - "A Bill to amend and reenact §11-21-77 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-22-15a of said code, all relating generally to lottery prizes; defining terms; extending personal income tax withholding requirements to certain lottery winnings; designating lottery winnings as source of income; specifying gross prize threshold for lottery winner anonymity election; specifying exemption from Freedom of Information Act; specifying treatment of lottery pool members; eliminating fee for anonymity option election; specifying limitations and exceptions to anonymity pursuant to lawful legal process, disclosure to local, state, or federal tax agencies, and agencies lawfully entitled to information; authorizing promulgation of rules; specifying method for determining value of gross prize; and specifying effective date"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 481** - "A Bill to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended, relating to the Judicial Vacancy Advisory Commission; altering the in-state residency requirements for members of the commission; providing that no more than four of its appointed members may be residents of the same congressional district; providing that no more than two of its appointed members may be residents of the same state senatorial district; clarifying that current commission members will not be disqualified from serving for the remainder of their terms

based on amendments to in-state residency requirements; and deleting obsolete language”; which was referred to the Committee on the Judiciary.

### **Resolutions Introduced**

Delegates Sponaugle and Hartman offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 71** - “Requesting the Division of Highways name bridge number 16-48-28.54 EB & WB (16A132, 16A133), locally known as Sauerkraut Run Bridge, carrying U.S. 48 (EB & WB) over County Route 23/9 and Sauerkraut Run in Hardy County, the ‘John and Wilbur Hahn Dutch Hollow Memorial Pioneers Bridge’.”

Whereas, John and Wilbur Hahn, the youngest sons of Lorenza and Amanda Rebecca Michael Hahn, a family of five girls and three boys, went to school at Maple Grove, where they had school only about four months a year. The Hahns traced their ancestry back to the Rhine Valley of Germany and immigrants from there who arrived in the United States sometime in the mid-to-late 1800s; and

Whereas, The Hahns came over from Europe on a boat with members of the Michael family, and branches of both families settled in Dutch Hollow, where they farmed, and, when the demand arose, cut timber in the woods around their homesteads. John and Wilbur carried on that pioneering tradition of farming and pulpwood sawmill from 1939; and

Whereas, The brothers owned and operated a small gasoline-powered sawmill on their farm, with some help from John’s son Mickey, in Dutch Hollow, Hardy County despite the changes brought to the industry by modern technology; and

Whereas, The brothers remained part of a close-knit family, still enjoying Sunday dinners with relatives at the Hahn farmhouse, located near the site of the sawmill; and

Whereas, Naming the bridge on Route 259 (Corridor H) crossing Sauerkraut Road in Dutch Hollow is an appropriate recognition of their family's pioneering contributions to their state, community and Hardy County; therefore, be it

*Resolved by the Legislature of West Virginia:*

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

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the "John and Wilbur Hahn Dutch Hollow Pioneers Bridge"; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates Atkinson, J. Kelly, Harshbarger, Westfall, Jennings and Hollen offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 72** - "Requesting the Division of Highways name that portion of County Route 14 in Roane, West Virginia, north of Spencer, from its intersection with County Route 9 (Spring Creek Road) to Route 14/12 (Hospital Drive), the 'U. S. Army PFC Harold Paul Cottle Memorial Highway'."

Whereas Harold Paul Cottle was born August 2, 1913, in Spencer, West Virginia, the son of Mr. and Mrs. Paul F. Cottle of Spencer; and

Whereas, Harold Paul Cottle graduated from Spencer High School, was a trusted employee of the Hardman Supply Company

for over ten years, and attained the rank of Sergeant in the West Virginia State Guard before enlisting in the United States Army in January 1944; and

Whereas, PFC Cottle served as an infantryman with Company G, 179<sup>th</sup> Infantry, 45<sup>th</sup> Infantry Division and was killed in action in ground combat on the November 24, 1944, while advancing with his unit against the enemy in northeastern France; and

Whereas, After his death, in addition to the sympathy letter from General Marshall, Felix S. Smolenski, 1<sup>st</sup> LT, 17<sup>th</sup> Infantry, Personnel Officer, sent PFC Cottle's widow a handwritten letter dated December 22, 1944 that reads in its entirety:

“There is little I can say. The War Department will have informed you, by the time you receive this letter, of the very regrettable death of your husband, Harold P. Cottle, Army Serial Number 35778053. He was killed in action in ground combat on the 24<sup>th</sup> of November 1944, while advancing with his unit against the enemy in northern France.

I realize that words I may say by way of condolences are altogether inadequate to lift the burden of sorrow which must lie heavily upon your heart. It should, however, be a strengthening and consoling thought to contemplate that your husband gave his life on the field of battle that those back home might have a free and better world to live.

A Protestant chaplain conducted services at his grave, and he now rests among his fellow countrymen in a well-cared for American Military Cemetery in Northeastern France.

The Regimental commander asks me to express his sympathy for the loss of your husband and to say his loss has been felt deeply in this Regiment, as he was an excellent soldier and was admired by all who knew him.

I can only assure you that the men of the command will dedicate every effort to achieve ultimate victory, so that the death of your husband may not have been without a solemn purpose.

May God's divine guidance be with you in this time of tribulation.""; and

Whereas, At his death PFC Cottle was survived by his father, three brothers, wife, two sons and three daughters; and

Whereas, It is fitting that a proper memorial be established for this patriot who volunteered for duty in the United States Army and gave his life in service to his country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name that portion of County Route 14 in Roane, West Virginia, north of Spencer, from its intersection with County Route 9 (Spring Creek Road) to Route 14/12 (Hospital Drive), the "U. S. Army PFC Harold Paul Cottle Memorial Highway"; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is requested to erect signs at both ends of the highway containing bold and prominent letters proclaiming that portion of the highway as the "U. S. Army PFC Harold Paul Cottle Memorial Highway"; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

## Special Calendar

### Third Reading

**Com. Sub. for S. B. 451**, Comprehensive education reform; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, Delegate Kump demanded the previous question, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 169**), and there were—yeas 33, nays 65, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Bibby, Butler, Cadle, Cooper, Criss, Ellington, Fast, Hanna, Higginbotham, Hollen, Hott, Householder, D. Jeffries, J. Jeffries, Jennings, Kump, Malcolm, Mandt, C. Martin, P. Martin, Maynard, Phillips, Porterfield, Rohrbach, Shott, Staggers, Steele, Toney, Waxman, Wilson and Worrell.

Absent and Not Voting: Doyle and C. Thompson.

So, a majority of the members present and voting not having voted in the affirmative, the motion was rejected.

Delegates Summers, Toney, Rowan, Mandt, D. Kelly, Storch, Linville, Dean, Householder, Criss, Espinosa, Azinger, Miller, Walker, Tomblin, Campbell, Zukoff, R. Thompson, Fluharty, Pethtel, Angelucci, Boggs, C. Thompson, Porterfield, Rohrbach and Pack requested to be excused from voting on the passage of Com. Sub. for S. B. 451 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill and directed the Members to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 170**), and there were—yeas 71, nays 29, absent and not voting none, with the nays being as follows:

Nays: Angelucci, Bates, Boggs, N. Brown, S. Brown, Butler, Byrd, Canestraro, Caputo, Diserio, Estep-Burton, Evans, Fluharty, Hicks, Hornbuckle, Lovejoy, McGeehan, Paynter, Pushkin, Rodighiero, Rowe, Skaff, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 451) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk.

Delegate Householder then asked and obtained unanimous consent that the title amendment be withdrawn.

Whereupon,

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

**Com. Sub. for S. B. 451** - “A Bill to amend and reenact §5-16-2 and §5-16-22 of the Code of the West Virginia, 1931, as amended; to amend and reenact §11-8-6f of said code; to amend said code by adding thereto a new section, designated §11-21-25; to amend and reenact §18-5-16, §18-5-16a, §18-5-18b, §18-5-32 and §18-5-46 of said code; to amend and reenact §18-15B-14 of said code; to amend said code by adding thereto a new section, designated section §18-15B-15; to amend said code by adding thereto a new article, designated §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-6, §18-5G-7, §18-5G-8, §18-5G-11, §18-5G-12, §18-5G-13 and §18-5G-14; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-8-4 of said code; to amend and reenact §18-9A-2, §18-9A-8, §18-9A-9 and §18-9A-10 of said code; to amend and reenact §18-20-5 of said code; to amend and reenact §18A-2-8 of said code; to amend and reenact §18A-3-6 of said code; to amend and reenact §18A-4-2, §18A-4-5, §18A-4-5a, §18A-4-7a, §18A-4-8a and §18A-4-10 of said code; to amend said code by adding thereto a new section, designated §18A-4-2d; to amend and reenact §18A-5-2 of said code; to amend and reenact §18C-4-1, §18C-4-2, §18C-4-3, §18C-4-4 and §18C-4-5 of said code; to amend and reenact §18C-4A-1, §18C-4A-2 and §18C-4-3 of said code; and to amend and reenact §29-12-5a of said code, all relating generally to comprehensive education reform; permitting a public charter school to participate in the Public Employees Insurance Agency program; expiring tax rollback provisions; fixing regular levy rates of county boards of education and allowing increase of regular levy rates to the statutory maximum subject to voter approval at general election; establishing an educational expense tax credit; requiring county boards to establish attendance zones; addressing the transfer and enrollment policies for students in public schools; establishing open enrollment policy that may be adopted by county boards; applicability of eligibility requirements for participation in extracurricular activities established by the



Secondary Schools Activities Commission; increasing the percentage of time school counselors must spend in direct counseling; removing provisions as to period of employment for certain employees in county board central offices; including teacher recommendations in the considerations for student promotion; allowing funding for magnet schools; creating and funding a new Innovation Zone Fund to provide grants and other financial assistance to innovation zone designated schools; authorizing the establishment of pilot program for two public charter schools and limitations; providing legislative purpose and intent; defining terms; establishing requirements and powers for public charter schools; providing for the creation of governing boards; setting requirements for enrollment in public charter schools and recruitment and retention plans; creating process and requirements for application to establish public charter schools; providing duties and responsibilities for authorizers; establishing requirements for public charter school contracts and process for renewal, nonrenewal, and revocation of contracts, including required rules by State Board of Education; conduct prohibited of public charter schools; establishing funding for public charter school enrollment; allowing public charter schools access to public facilities; establishing reporting requirements; establishing charter school employee eligibility for the State Teachers Retirement System and the Teachers' Defined Contribution Retirement System; modifying provisions for addressing unexcused absences of student; defining law enforcement personnel; expanding social and emotional support services provided to students; expanding the definition of 'professional student support personnel'; increasing the basic foundation allowance for professional student support personnel; increasing maximum enrollment allowed for Advance Career Education programs and requiring programs meet certain performance standards; providing that counties with less than 1,400 in net enrollment shall be considered to have 1,400 in net enrollment for the purposes of determining the county's basic foundation program; modifying definition of 'levies for general current expense purposes'; establishing school aid formula allowance for professional student support personnel at 4.70 positions per 1,000 students in net enrollment; establishing allowance to provide one law enforcement officer for each school

in county; authorizing reimbursements of law enforcement agencies; increasing the county allowance for current expenses to 71.25 percent of the county's state average costs per square footage per student for operations and maintenance amount; providing additional allowance from increases in local share amounts to county boards; removing language relating to school improvement bonds and projects funding by the School Building Authority in accordance with comprehensive educational facility plan; providing appropriation disbursed to the public charter schools to serve needs of exceptional children; allowing the suspension or dismissal of school personnel by a county board upon a finding of abuse by the Department of Health and Human Resources or a misdemeanor with a rational nexus between the conduct and performance of the employee's job; imposing duty and authority to provide safe and secure environment and to take necessary step to ensure; increasing salaries for teachers; granting additional experiences for purposes of pay scale to math teachers meeting specified requirements; providing additional pay for certain teachers providing math instruction who complete specialized course; modifying salary equity provisions; enhancing counties' ability to provide additional compensation to teachers; modifying factors for county board decisions, transfers, reassignments, reductions in the number of professional personnel, reductions in classroom teaching positions, and reductions in the workforce; establishment of seniority; establishing priority of criteria; requiring county board policy as to qualifications; revising requirements for notification and availability of lists; increasing compensation for service personnel; providing for accrual of personal leave at the end of each pay period; providing bonus for four or less absences; providing for holidays and school closings; modifying certain student financial aid resources available to students pursuing public school teaching careers; abolishing the Underwood-Smith Teacher Loan Assistance Program; renaming the Underwood-Smith Teacher Scholarship and Loan Assistance Fund as the Underwood-Smith Teaching Scholars Program Fund; modifying program purpose to target certain academic disciplines and emphasize the academic distinction of award recipients; modifying award eligibility, renewal, and service agreement criteria to reflect modified program purpose; requiring certain

mentoring services be provided to award recipients; preserving eligibility and service agreement criteria for current award recipients; preserving current law provisions for eligibility for future awards to those who pursue a teaching career in field of music education; modifying the amount of an award and limiting tuition and fee charges for program recipients; providing for public charter school coverage by the Board of Risk and Insurance Management; and requiring annual written notice of BRIM insurance coverages by county boards to employee insureds.”

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

**Com. Sub. for H. B. 2173**, Allowing state and federal law-enforcement officers to testify as to the contents and evidence of a wiretap or electronic surveillance; on third reading, coming up in regular order, was, on motion of Delegate Summers, laid upon the table.

**Com. Sub. for H. B. 2338**, Allowing the owner of an antique military vehicle to display alternate registration insignia; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 171**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Steele.

Absent and Not Voting: J. Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2338) passed.

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

**Com. Sub. for H. B. 2359**, Relating to exemptions to the commercial driver's license requirements; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 172**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: J. Kelly.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2359) passed.

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

**Com. Sub. for H. B. 2673**, Creating the Oil and Gas Abandoned Well Plugging Fund; on third reading, coming up in regular order, was read a third time.

Delegates Harshbarger, Capito and C. Thompson requested to be excused from voting on the passage of Com. Sub. for H. B. 2673 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill and directed the Members to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 173**), and there were—yeas 89, nays 11, absent and not voting none, with the nays being as follows:

Nays: S. Brown, Doyle, Estep-Burton, Fleischauer, Fluharty, Hansen, Lavender-Bowe, Pushkin, Rowe, Walker and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2673) passed.

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

**H. B. 2709**, Relating to hunting licenses; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 174**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2709) passed.

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

**Com. Sub. for H. B. 2715**, Relating to Class Q special hunting permit for disabled persons; on third reading, coming up in regular order, was reported by the Clerk.

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

Delegate Porterfield requested to be excused from voting on Com. Sub. for H. B. 2715 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

On motion of Delegate Capito, the bill was amended on page two, line twenty, by striking out the word “or” before the word “advanced” and adding the word “or” after the word “nurse”.

Having been engrossed, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 175**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2715) passed.

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

**Com. Sub. for H. B. 2715** - “A Bill to amend and reenact §20-2-46e of the Code of West Virginia, 1931, as amended, relating to Class Q special hunting permit for disabled persons; expanding the conditions of permanent disability for which an individual can obtain a Class Q permit; and providing that physician assistants, advanced practice registered nurses, and chiropractic physicians may certify Class Q permit applications.”

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

**H. B. 2739**, Relating to contributions on behalf of employees to a retirement plan administered by the Consolidated Public Retirement Board; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 176**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2739) passed.

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

**H. B. 2743**, Eliminating reference to municipal policemen's pension and relief funds and firemen's pension and relief funds in section restricting investment; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 177**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2743) passed.

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

**Com. Sub. for H. B. 2761**, Modernizing the self-service storage lien law; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 178**), and there were—yeas 88, nays 12, absent and not voting none, with the nays being as follows:

Nays: S. Brown, Diserio, Fleischauer, Fluharty, J. Jeffries, Miller, Paynter, Pushkin, Pyles, Robinson, Rowe and Walker.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2761) passed.

Delegate Summers moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 179**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Howell, P. Martin, Paynter and Pyles.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2761) takes effect July 1, 2019.

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

**Com. Sub. for H. B. 2793**, Expanding applicability of educational facilities for the West Virginia College Prepaid Tuition and Savings Program; on third reading, coming up in regular order, was read a third time.

Delegates Cowles, Pack and D. Jeffries requested to be excused from voting on the passage of Com. Sub. for H. B. 2793 under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill and directed the Members to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 180**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2793) passed.

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

**Com. Sub. for H. B. 2821**, Updating provisions for command, clerical and other pay; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 181**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:



Nays: McGeehan and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2821) passed.

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

**Com. Sub. for H. B. 2848**, Relating to the West Virginia ABLE Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 182**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2848) passed.

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

**H. B. 2992**, Relating to governmental websites; on third reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

#### Second Reading

**S. B. 377**, Relating to minimum wage and maximum hour standards; on second reading, coming up in regular order, was reported by the Clerk.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page one, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.**

**§21-5C-1. Definitions.**

As used in this article:

(a) ‘Commissioner’ means the Commissioner of Labor or his or her duly authorized representatives.

(b) ‘Wage and hour director’ means the wage and hour director appointed by the Commissioner of Labor as Chief of the Wage and Hour Division.

(c) ‘Wage’ means compensation due an employee by reason of his or her employment.

(d) ‘Employ’ means to hire or permit to work.

(e) ‘Employer’ includes the State of West Virginia, its agencies, departments, and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct, and permanent location or business establishment: *Provided*, That prior to January 1, 2015, the term ‘employer’ does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to minimum wage, maximum hours, and overtime compensation: *Provided, however*, That after December 31, 2014, for the purposes of §21-5C-3 of this code, the term “employer” does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to maximum hours and overtime compensation.

(f) ‘Employee’ includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal, or nonprofit organization where the employer-employee relationship does not

in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys, and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his or her parent, son, daughter, or spouse; (6) any individual employed in a bona fide professional, executive, or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his or her employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person 62 years of age or over who receives old-age or survivors benefits from the Social Security Administration; (11) any individual employed in agriculture as the word 'agriculture' is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, parts man, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service; (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government and Finance of the Legislature of West Virginia, other employees of the Senate or House of Delegates designated by the presiding officer thereof, and additional employees of the Joint Committee on Government and Finance designated by such joint committee; ~~or~~ (19) any person employed as a seasonal employee of a commercial whitewater outfitter where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the

maximum ~~wage~~ hours provisions of §21-5C-3 of this code; or (20) any person employed as a seasonal employee of an amusement park where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-5C-3 of this code.

(g) ‘Workweek’ means a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) ‘Hours worked’ means the hours for which an employee is employed: *Provided*, That in determining hours worked for the purposes of §21-5C-2 and §21-5C-3 of this code, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which ~~such~~ the employee is employed to perform and activities which are preliminary to or postliminary to ~~said~~ the principal activity or activities, subject to such exceptions as the commissioner may by rules ~~and regulations~~ define.

(i) ‘Amusement park’ means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under §21-10-1 et seq. of this code.’

Delegate Lovejoy moved to amend the Finance Committee amendment on page two, section one, lines twenty-nine, thirty and thirty-one, by striking out “(8) any person having a physical or mental handicap so severe as to prevent his or her employment or employment training in any training or employment facility other than a nonprofit sheltered workshop”.

On motion of Delegate Jennings, the bill was then postponed one day.

**H. B. 2472**, Providing a special license plate for pollinators; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Technology and Infrastructure, was reported by the Clerk and adopted, amending the bill on page thirty, section fourteen, line seven hundred forty-eight, by striking subdivision (60) and inserting in lieu thereof the following:

“(60) The commissioner may issue special beekeeper pollinator plates as follows:

(A) Upon appropriate application, the division shall issue a special registration plate displaying a pollinator species or advocating its protection as prescribed and designated by the commissioner.

(B) The division shall charge a special initial application fee of \$10 for each special pollinator registration plate in addition to all other fees required by law. This special fee shall be collected by the division and deposited in the State Road Fund.

(C) The division shall charge an annual fee of \$15 for each special registration plate in addition to all other fees required by this chapter.”

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2538**, Providing banking services for medical cannabis; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2579**, Relating to the collection of tax and the priority of distribution of an estate or property in receivership; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2618**, Including undue influence as a factor in the definition of financial exploitation of an elderly person

or protected person; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2716**, Relating to motorboat lighting and equipment requirements; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Pack, the bill was amended on page four, section thirteen, line seventy-one, by striking out the word "Motorboats" and inserting in lieu thereof the word "Vessels".

And,

On page four, section thirteen, line seventy-five, by striking out the word "Motorboats" and inserting in lieu thereof the word "Vessels".

The bill was then ordered to engrossment and third reading.

**H. B. 2846**, Designating a "Back the Blue" plate in support of law-enforcement personnel; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

#### First Reading

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for H. B. 2768**, Reducing the use of certain prescription drugs,

**Com. Sub. for H. B. 2834**, Updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells,

And,

**Com. Sub. for H. B. 2849**, Establishing different classes of pharmacy technicians.

**Miscellaneous Business**

Pursuant to House Rule 132, consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Barrett regarding the superintendent of Berkeley County Schools on yesterday

- Delegates Diserio and Evans during Remarks by Members

- Delegates Cowles and Wilson regarding amendment #13 offered by Delegate Wilson on yesterday

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be added as a cosponsor of the following:

- Delegate Hanshaw (Mr. Speaker) for H. B. 2941

- Delegate C. Thompson for H. B. 2994, H. B. 3006, H. B. 3013, H. B. 3026 and H. B. 3030

- Delegate S. Brown for H. B. 3009

- Delegate Phillips for H. C. R. 61

Pursuant to House Rule 94b, forms were filed with the Clerk's Office to be removed as a cosponsor of the following:

- Delegate Nelson for H. B. 2475, H. B. 2558, H. B. 2566, H. B. 2762, H. B. 2764 and H. B. 3060

At 2:30 p.m., the House of Delegates adjourned until 11:00 a.m., Friday, February 15, 2019.





---

Friday, February 15, 2019

**THIRTY-EIGHTH DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Thursday, February 14, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Committee Reports**

Delegate Higginbotham, Chair of the Committee on Small Business Entrepreneurship and Economic Development, submitted the following report, which was received:

Your Committee on Small Business Entrepreneurship and Economic Development has had under consideration:

**H. B. 2943**, Relating to deliveries by wine specialty shop.

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H.B. 2943) was referred to the Committee on the Judiciary.

Delegate Higginbotham, Chair of the Committee on Small Business Entrepreneurship and Economic Development, submitted the following report, which was received:

Your Committee on Small Business Entrepreneurship and Economic Development has had under consideration:

**H. B. 2724**, Small Business Tax Credit,

**H. B. 2887**, Establishing a West Virginia business growth in low-income communities tax credit,

And,

**Com. Sub. for S. B. 106**, Alleviating double taxation on foreign income at state level,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bills (H. B. 2724, H. B. 2887 and Com. Sub. for S. B. 106) were each referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 103**, Relating generally to Public Defender Services,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 103) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2486**, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2486** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22; and to amend and reenact §30-5-11, §30-5-11a, §30-10-8, §30-10-10, §30-13A-9, §30-13A-12, §30-14-11, §30-20-8, §30-20-10, §30-20A-5, §30-21-7, §30-22-10, §30-23-9, §30-23-15, §30-23-17, §30-23-20, §30-25-8, § 30-26-5, §30-26-13, §30-30-8, §30-30-10, §30-30-12, §30-30-14, §30-30-26, §30-31-8, §30-31-9, §30-38-12 and §30-39-6 of said code, all relating to using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation; requiring criminal offenses that can be used as a basis for disqualifying a person from initially applying for a license, certification or registration to bear a rational nexus to the occupation requiring licensure, limiting the time of disqualification for criminal offense; providing exceptions; providing petition process for individual with a criminal record to obtain determination of effect of a criminal record on ability to obtain a license; and requiring boards and licensing authorities to update legislative rules,”

And,

**H. B. 2975**, Relating to imposition of sexual acts on persons incarcerated,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2975** - “A Bill to amend and reenact §61-8B-10 of the Code of West Virginia, 1931, as amended, relating to imposition of sexual acts on persons incarcerated or under supervision; providing for prohibition against sexual acts for any person working at an alternative sentence program who has supervisory duties; and providing that employees working at an alternative sentence program who engage in sexual acts with a person said employee is charged as part of his or her employment with supervising, is guilty of a felony,”

With the recommendation that the committee substitutes each do pass.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 14<sup>th</sup> day of February 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**H. B. 2462**, Issuing a certificate to correctional employees to carry firearms.

Delegate Storch, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

**H. B. 2827**, Removing the residency requirements for hiring deputy assessors,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (H. B. 2827) was referred to the Committee on Government Organization.

Delegate Storch, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

**H. B. 2523**, Increasing the amount of time a taxpayer has to seek relief from a county commission from an erroneous assessment,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2523) was referred to the Committee on Finance.

Delegate McGeehan, Chair of the Committee on Veterans' Affairs and Homeland Security, submitted the following report, which was received:

Your Committee on Veterans' Affairs and Homeland Security has had under consideration:

**H. B. 2672**, Exempting honorably discharged veterans of the from payment of fees and costs for a license to carry deadly weapons,

**H. B. 2695**, Relating to purchases made by the Director of the Division of Protective Services for equipment to maintain security at state facilities,

And,

**H. B. 2698**, Authorizing the Division of Corrections and Rehabilitation to release to county prosecutors of this state certain information,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (H. B. 2672, H. B. 2695 and H. B. 2698) were each referred to the Committee on the Judiciary.

Delegate McGeehan, Chair of the Committee on Veterans' Affairs and Homeland Security, submitted the following report, which was received:

Your Committee on Veterans' Affairs and Homeland Security has had under consideration:

**H. B. 2732**, Defend the Guard Act,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2732) was referred to the Committee on the Judiciary.

Delegate Westfall, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**H. B. 2617**, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers,

And,

**H. B. 2770**, Fairness in Cost-Sharing Calculation Act,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bills (H. B. 2617 and H. B. 2770) were each referred to the Committee on the Judiciary.

Delegate Westfall, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**H. B. 2690**, Relating to guaranty associations,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2690) was referred to the Committee on the Judiciary.

Delegate McGeehan, Chair of the Committee on Veterans' Affairs and Homeland Security, submitted the following report, which was received:

Your Committee on Veterans' Affairs and Homeland Security has had under consideration:

**H. B. 2535**, Relating to purchasing exemptions and procedures,

And,

**H. B. 2926**, Requiring the Secretary of the Department of Veterans' Affairs to study the housing needs of veterans,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bills (H. B. 2535 and H. B. 2926) were each referred to the Committee on Government Organization.

Delegate Nelson, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**S. B. 453**, Relating to background checks of certain financial institutions.

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (S. B. 453) was referred to the Committee on the Judiciary.

On motions for leave, bills were introduced (Originating in the Committee on Prevention and Treatment of Substance Abuse and reported with the recommendation that they each do pass), which were read by their titles, as follows:

**By Delegate Rohrbach:**

**H. B. 3132** - “A Bill to amend §16-5Y-4 of the Code of West Virginia, 1931, as amended, relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment from complying with the legislative rule and exempting licensed behavioral health centers providing office-based medication-assisted treatment from registration requirements but requiring them to attest and provide information to the Office of Health Facilities Licensure and Certification,”

And,

**By Delegate Rohrbach:**

**H. B. 3133** - “A Bill to amend and reenact §62-12-6 and §62-12-17 of the Code of West Virginia, 1931, relating to requiring a parolee or probationer found to have suffered with addiction to participate in a support service upon release for a certain period of time.”

Pursuant to House Rule 80, the Speaker referred H. B. 3132 to the Committee on Health and Human Resources and H. B. 3133 to the Committee on the Judiciary.

Delegate Rohrbach, Chair of the Committee on Prevention and Treatment of Substance Abuse, submitted the following report, which was received:

Your Committee on Prevention and Treatment of Substance Abuse has had under consideration:

**H. B. 2883**, Expanding the definitions of locations where enhanced penalties for selling controlled substances to a minor are applicable,



And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2883) was referred to the Committee on the Judiciary.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2901**, Allowing for the establishment of a secondary location for racetrack video lottery terminals,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2901) was referred to the Committee on Finance.

### **Messages from the Executive**

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on February 14, 2019, he approved **S. B. 177 and Com. Sub. for S. B. 255**.

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 74** - "A Bill to amend and reenact §23-2-1a of the Code of West Virginia, 1931, as amended, relating to exempting nonpaid volunteers at ski areas from workers' compensation benefits"; which was referred to the Committee on Banking and Insurance then the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 339** - “A Bill to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-7-2 of said code, all relating to defining ‘pepper spray’; exempting pepper spray from definition of ‘deadly weapons’; providing that persons over 16 years of age may carry pepper spray for the purpose of self-defense; and providing that such persons may carry pepper spray in the State Capitol Complex”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 5** - “Requesting the Division of Highways to place signs at the following Interstate exits in Beckley: I-77 north bound at mile marker 42.5, I-77 south bound at mile marker 47.8, and I-64 west bound at mile marker 125.2, in Raleigh County, West Virginia, signifying Beckley as the ‘Home of Coach Bob Bolen Mountain State University 2004 NAIA Champions’.”

Whereas, Coach Bob Bolen was born August 28, 1963, in Beckley; and

Whereas, From 1986 to 1988, Coach Bolen was a mathematics teacher and head boys’ basketball coach at Park School in Beckley, where his record was 31-5 and they were regular season champions; and

Whereas, From 1989 to 1993, Coach Bolen was head coach, junior varsity/assistant varsity at Woodrow Wilson High School in Beckley, where in 1990, 1992, and 1993 they were AAA state champions; and

Whereas, From 1993 to 2012, Coach Bolen was director of athletics and head men’s basketball coach at Mountain State University in Beckley. From 2013 to 2015, he was assistant basketball coach at East Tennessee State University. Beginning in

2015 to the present, he has served as an ESPN analyst and Marshall University TV analyst; and

Whereas, Coach Bolen was head coach of the only national championship won by a men's basketball team in West Virginia in the last 71 years. He holds the most all-time wins for a collegiate coach in West Virginia, with 489 wins. He has the highest winning percentage of any coach at any collegiate level this decade, winning 87 percent of his games; and

Whereas, Coach Bolen's record includes: A career record 489 wins with 125 losses; 2010 NABC NAIA National Coach of the Year; 2004 NABC NAIA National Coach of the Year; 2004 West Virginia College Coach of the Year; 2004 Basketball Times National Coach of the Year; Regional Independent Coach of the Year, 13 times; ranked number one 48 times since 2000 NAIA National Poll; forty-nine consecutive weeks ranked in the top five in the country; twelve consecutive 25-win seasons, 2001 – 2012; number one scoring offense in country, six times; top five scoring offense in country for 17 consecutive seasons; and number one field goal percentage defense, three times; and

Whereas, Coach Bolen's collegiate yearly records are:

2011 – 2012	26-9 Record, NAIA Final Four
2010 – 2011	33-4 Record, NAIA National Tournament Runner Up
2009 – 2010	29-3 Record, #3 NAIA Final National Poll, NAIA "Sweet 16"
2008 – 2009	28-5 Record, #3 NAIA Final National Poll, NAIA "Sweet 16"
2007 – 2008	34-3 Record, NAIA National Tournament Runner Up
2006 – 2007	27-6 Record, #4 NAIA Final National Poll;

2005 – 2006 NAIA “Sweet 16”	29-3 Record, #1 NAIA Final National Poll,
2004 – 2005 NAIA “Elite 8”	31-4 Record, #1 NAIA Final National Poll,
2003 – 2004	38-1 Record, NAIA National Champions
2002 – 2003 Runner Up	32-7 Record, NAIA National Tournament
2001 – 2002 “Sweet 16”	27-6 Record, #5 NAIA Final National Poll,
2000 – 2001	25-5 Record, #6 NAIA Final National Poll
1999 – 2000 Poll	22-9 Record, #20 NAIA Final National
1998 – 1999 Poll, “Sweet 16”	29-6 Record, #12 NAIA Final National
1994 – 1998 Poll; and	79-54 Record, #22 NAIA Final National

Whereas, It is fitting that signs be placed at those Beckley exits proclaiming that Beckley is Coach Bolen’s hometown, a man who brought national attention to his city and his state and touched the lives of many athletes, students, fans, and residents of Beckley; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to place signs at the following Interstate exits in Beckley: I-77 north bound at mile marker 42.5, I-77 south bound at mile marker 47.8, and I-64 west bound at mile marker 125.2, in Raleigh County, West Virginia, signifying Beckley as the “Home of Coach Bob Bolen Mountain State University 2004 NAIA Champions”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying Beckley as

the “Home of Coach Bob Bolen Mountain State University 2004 NAI A Champions”; 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.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 7** - “Urging Congress to amend title 23, United States Code, to permit the State of West Virginia to provide exceptions to the maximum gross vehicle weight that will allow the operation of certain vehicles, including tri-axle dump trucks, for the hauling of timber on interstate highways in West Virginia.”

Whereas, Providing an exception to the existing weight limit and restrictions for certain trucks operating on interstate highways in West Virginia will allow these trucks to travel the safer interstate highways and decrease their presence on the more dangerous state and U. S. highways of West Virginia; and

Whereas, Congress has previously provided exceptions to the maximum gross vehicle weight on interstate highways for several states of the United States; therefore, be it

*Resolved by the Legislature of West Virginia:*

That Congress is urged to amend title 23, United States Code, to permit the State of West Virginia to provide exceptions to the maximum gross vehicle weight that will allow the operation of certain vehicles, including tri-axle dump trucks, for the hauling of timber on interstate highways in West Virginia; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the President and Secretary of the United States Senate, to the Speaker and Clerk of

the United States House of Representatives, and to the members of West Virginia's congressional delegation.

### **Motions**

Delegate Angelucci filed a written motion to remove from the table the motion by Delegate Fluharty of February 7, 2019, that pursuant to House Rule 82, that H. B. 2733 be discharged from the Committee on Industry and Labor.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 183**), and there were—yeas 32, nays 63, absent and not voting 5, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, S. Brown, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hornbuckle, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rowe, Skaff, Staggers, Swartzmiller, C. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Boggs, Byrd, Dean, Ellington and Sponaule.

So, a majority of the members present and voting not having voted in the affirmative, the motion did not prevail.

### **Special Calendar**

#### **Unfinished Business**

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk and adopted:

**H. C. R. 2**, Senator J. Frank Deem Memorial Bridge,

**H. C. R. 4**, Gold Star Families Highway,

**Com. Sub. for H. C. R. 7**, Kidd Brothers Bridge,

**Com. Sub. for H. C. R. 11**, U. S. Army Command Sergeant Major Timothy Allen Bolyard Memorial Bridge,

**H. C. R. 19**, U. S. Marine Sgt. Stephen E. Drummond Memorial Bridge,

**H. C. R. 23**, U. S. Army SGT Rodney David King and U. S. Army SGT James Harris King Memorial Bridge,

**Com. Sub. for H. C. R. 26**, U. S. Army SGT Arthur “George” Roush Memorial Bridge,

**H. C. R. 43**, U. S. Army Air Corps T SGT Ralph H. Ray Bridge,

And,

**H. C. R. 44**, U. S. Marine Corps PFC Randall Carl Phelps Memorial Bridge.

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

#### **Third Reading**

**H. B. 2472**, Providing a special license plate for pollinators; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 184**), and there were—yeas 93, nays 2, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: McGeehan and Pushkin.

Absent and Not Voting: Boggs, Byrd, Dean, Ellington and Sponaugle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2472) passed.

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

**Com. Sub. for H. B. 2538**, Providing banking services for medical cannabis; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 185**), and there were, including pairs—yeas 89, nays 7, absent and not voting 4, with the paired, nays and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Byrd

Nay: Fast

Nays: Butler, Hollen, Jennings, P. Martin, Porterfield and Rohrbach.

Absent and Not Voting: Boggs, Dean, Ellington and Sponaugle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2538) passed.

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

On this question, the yeas and nays were taken (**Roll No. 186**), and there were—yeas 87, nays 7, absent and not voting 6, with the nays and absent and not voting being as follows:

Nays: Butler, Fast, Hollen, D. Jeffries, Jennings, P. Martin and Porterfield.

Absent and Not Voting: Boggs, Byrd, Dean, Ellington, Lavender-Bowe and Sponaugle.



So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2538) takes effect from its passage.

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

**Com. Sub. for H. B. 2579**, Relating to the collection of tax and the priority of distribution of an estate or property in receivership; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 187**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, Byrd, Dean, Ellington and Sponaugle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2579) passed.

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

**Com. Sub. for H. B. 2618**, Including undue influence as a factor in the definition of financial exploitation of an elderly person or protected person; on third reading, coming up in regular order, was read a third time.

Delegate J. Kelly requested to be excused from voting on the passage of Com. Sub. for H. B. 2618 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

Delegate Fluharty was recognized and moved that Com. Sub. for H. B. 2618 be recommitted to the Committee on the Judiciary, which motion was rejected.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 188**), and there were—yeas 84, nays 11, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Bates, Fleischauer, Fluharty, Harshbarger, Howell, Jennings, Kump, McGeehan, Steele, C. Thompson and Wilson.

Absent and Not Voting: Boggs, Byrd, Dean, Ellington and Sponaugle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2618) passed.

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

**Com. Sub. for H. B. 2618** - “A Bill to amend and reenact §55-7J-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-2-29b of said code, all relating to including the use of undue influence resulting in financial or asset loss or disadvantage to an elderly person, protected person or incapacitated adult in the definitions of civil and criminal financial exploitation of elderly persons, protected persons and incapacitated adults; defining terms; and revising criminal penalties.”

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

**H. B. 2716**, Relating to motorboat lighting and equipment requirements; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 189**), and there were—yeas 95, nays none,

absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, Byrd, Dean, Ellington and Sponaugle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2716) passed.

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

**H. B. 2716** - “A Bill to amend and reenact §20-7-13 of the Code of West Virginia, 1931, as amended, relating to vessel lighting and equipment requirements.”

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

**H. B. 2846**, Designating a “Back the Blue” plate in support of law-enforcement personnel; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 190**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, Byrd, Dean, Ellington and Sponaugle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2846) passed.

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

**H. B. 2992**, Relating to governmental websites; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 191**), and there were—yeas 87, nays 8, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Barrett, Hardy, Kessinger, Pushkin, Robinson, Steele, Wilson and Worrell.

Absent and Not Voting: Boggs, Byrd, Dean, Ellington and Sponaugle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2992) passed.

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

#### Second Reading

**S. B. 377**, Relating to minimum wage and maximum hour standards; on second reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**Com. Sub. for H. B. 2768**, Reducing the use of certain prescription drugs; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2834**, Updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2849**, Establishing different classes of pharmacy technicians; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

### First Reading

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for H. B. 2439**, Relating to fire service equipment and training funds for volunteer and part-volunteer fire companies,

**Com. Sub. for H. B. 2542**, Permitting directors of county emergency phone systems to obtain mobile-phone emergency lines,

**Com. Sub. for H. B. 2947**, Relating generally to telemedicine prescription practice requirements and exceptions,

And,

**H. B. 2958**, Authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies.

### Leaves of Absence

At the request of Delegate Summers, and by unanimous consent, leaves of absence for the day were granted Delegates Boggs, Byrd, Dean, Ellington and Sponaule.

### Miscellaneous Business

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be added as a cosponsor of the following:

- Delegate Hill for H. B. 2654
- Delegate Porterfield for H. B. 2532, H. B. 2968, H. B. 2969, H. B. 2908, H. B. 3007 and H. B. 3016
- Delegate Zukoff for H. B. 3070
- Delegate Cowles for H. B. 3093

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be removed as a cosponsor of the following:

- Delegates Hornbuckle and Miley for H. R. 11

At 1:04 p.m., the House of Delegates adjourned until 11:00 a.m., Monday, February 18, 2019.

---

Monday, February 18, 2019

## **FORTY-FIRST DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Friday, February 15, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

At the request of Delegate Summers, and by unanimous consent, the House of Delegates proceeded to the Seventh Order of Business for the purpose of introducing a resolution.

### **Resolutions Introduced**

Delegates Fleischauer, Anderson, Angelucci, Atkinson, Azinger, Barrett, Bates, Bibby, Boggs, N. Brown, S. Brown, Butler, Byrd, Cadle, Campbell, Canestraro, Capito, Caputo, Cooper, Cowles, Criss, Dean, Diserio, Doyle, Ellington, Espinosa, Estep-Burton, Evans, Fast, Fluharty, Foster, Graves, Hamrick, Hanna, Hansen, Hanshaw (Mr. Speaker), Hardy, Harshbarger, Hartman, Hicks, Higginbotham, Hill, Hollen, Hornbuckle, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Kump, Lavender-Bowe, Linville, Longstreth, Lovejoy, Malcolm, Mandt, C. Martin, P. Martin, Maynard, McGeehan, Miley, Miller, Nelson, Pack, Paynter, Pethtel, Phillips, Porterfield, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rohrbach, Rowan, Rowe, Shott, Skaff, Sponaugle, Staggers, Steele, Storch, Summers, Swartzmiller, Sypolt, C. Thompson, R. Thompson, Tomblin, Toney, Walker, Waxman, Westfall,

Williams, Wilson, Worrell and Zukoff offered the following resolution:

**H. R. 15** - "Memorializing the life of the Honorable Mary Pearl Compton, teacher and public servant."

Whereas, Mary Pearl Compton was born on September 24, 1930, at Renick, Greenbrier County, West Virginia, the daughter of the late Russel K. and Susie Shisler Geyer; and

Whereas, Mary Pearl graduated from Concord College with a B.S. and went on to earn an M.A., C.A.S. from West Virginia University. She began her career as an educator in 1948 and taught in Monroe and Greenbrier counties; and

Whereas, Mary Pearl was first elected to the West Virginia House of Delegates in 1988 and was reelected in 1990, 1992, 1994, 1996, 1998 and 2000. During her fourteen years in the House of Delegates, she served as a member of the Committee on Education and as Vice Chair of the Committee on Agriculture and Natural Resources for the 70<sup>th</sup> and 71<sup>st</sup> Legislature and Chair of the Committee on Health and Human Resources for the 72<sup>nd</sup>, 73<sup>rd</sup> and 74<sup>th</sup> Legislature; and

Whereas, Mary Pearl was a trustee and elder of the Union Presbyterian Church. She was also a member of Delta Kappa Gamma, Kappa Delta Pi, the International Reading Association, and was a Charter Member of the Monroe Reading Council and a Charter Member and Past President of the West Virginia State Reading Council. In addition, she was a member Monroe County Historical Society and a Charter Member and Past President of the Greenbrier County Historical Society; and

Whereas, Mary Pearl was predeceased by her husband, Delmar R. Compton, a sister, June S. Geyer Hill, and 2 half-brothers, Russell Hill Geyer and Thomas Hill Geyer. She is survived by two sisters, Betty Penrod and Pat Tomlinson of Lewisburg, and a brother, George Shisler Geyer, of Grand Blanc, Michigan. She is also survived by many nieces, nephews and cousins; and



Whereas, Sadly the Honorable Mary Pearl Compton passed away on June 21, 2017; therefore, be it

*Resolved by the House of Delegates:*

That the House of Delegates hereby memorializes the life of the Honorable Mary Pearl Compton, teacher, principal, history buff and public servant; and, be it

*Further Resolved,* That the House of Delegates hereby extends its sincere sympathy at the passing of the Honorable Mary Pearl Compton; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to the family of the Honorable Mary Pearl Compton.

At the respective requests of requests of Delegate Summers, and by unanimous consent, reference of the resolution (H. R. 15) to a committee was dispensed with, and it was taken up for immediate consideration.

The resolution was then read by the Clerk and put upon its adoption.

The question now being on the adoption of the resolution, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 192**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Bates and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the resolution (H. R. 15) adopted.

### **Committee Reports**

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 14<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for H. B. 2307**, Relating to creating a provisional license for practicing barbering and cosmetology.

Delegate Capito, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 15<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for S. B. 240**, Repealing certain legislative rules no longer authorized or are obsolete,

**S. B. 267**, Requiring State Board of Education adopt policy detailing level of computer science instruction,

**S. B. 324**, Relating to Commissioner of Agriculture employees,  
And,

**S. B. 354**, Expiring funds to balance of Auditor's Office - Chief Inspector's Fund.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 3016**, Relating to the State Aeronautics Commission,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 3016) was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2924**, Permitting the West Virginia Tourism Office to decide to contract with the Division of Highways to sell advertising space on the WV511 website,

And,

**H. B. 3093**, Relating to standards for factory-built homes,

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

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2982**, Amending and updating the laws relating to auctioneers,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2982** - "A Bill to amend and reenact §19-2C-1, §19-2C-2, §19-2C-3, §19-2C-5, §19-2C-5a, §19-2C-6, §19-2C-6a, §19-2C-6c, §19-2C-8, §19-2C-8a, and §19-2C-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-2C-5b, all relating to amending and updating the laws relating to auctioneers by providing for definitions; providing for exemptions to license requirements; providing for June 30 as the date all licenses expire; establishing certain conditions for auctioneers to continue working after license expiration; providing for record retention

requirements; providing for exams held twice a year; providing for auctioneers to submit to background checks; providing for authorization to conduct and use information relating to background checks; providing for confidentiality of background checks; providing for penalties for an unlicensed auctioneer; providing for additional circumstances to revoke a license; providing for written contracts with auctioneers and owners of property; and providing for auction houses and business entities to enter into contracts with auctioneers,”

And,

**H. B. 3007**, Authorizing the Commissioner of Agriculture to require background checks,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 3007** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1-3b, relating to authorizing the Commissioner of Agriculture to require background checks as a condition of employment,”

With the recommendation that the committee substitutes each do pass.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2865**, Changing the school aid formula Step 7 allowances for instructional technology and enrollment advanced placement and dual credit,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2865) was referred to the Committee on Finance.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2688**, Requiring air conditioning on all school buses,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2688) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2872**, Authorizing law-enforcement officers to assist the State Fire Marshal,

**H. B. 3083**, Adding temporary work during the legislative session as exclusion to the term employment for purposes of unemployment compensation,

**Com. Sub. for S. B. 356**, Requiring MAPS provide state and federal prosecutors information,

**S. B. 358**, Exempting Purchasing Division purchases for equipment to maintain security at state facilities,

And,

**Com. Sub. for S. B. 387**, Relating generally to extradition,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2966**, County Budget Flexibility Act,

And,

**Com. Sub. for S. B. 373**, Relating to financial responsibility of inmates,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bills (H. B. 2966 and Com. Sub. for S. B. 373) were each referred to the Committee on Finance.

Delegate Householder, Chair of the Committee on Finance submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2856**, Relating to the administration of the operating fund of the securities division of the Auditor's office,

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

Delegate Householder, Chair of the Committee on Finance submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2515**, Exempting the sale and installation of mobility enhancing equipment from the sales and use tax,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2667**, Supplemental appropriation to the Department of Military Affairs and Public Safety, Division of Corrections,

And,

**S. B. 452**, Supplemental appropriation to Second Chance Driver's License Program,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2532**, Allowing certain donations by persons renewing their driver's license or vehicle registration,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2532** - "A Bill to amend and reenact §17A-2-12a of the Code of West Virginia, 1931, as amended, relating to allowing persons to donate to the West Virginia Farm Bureau, the West Virginia 4 H Program, or the West Virginia Future Farmers of America Education Foundation when renewing a driver's license or vehicle registration,"

And,

**H. B. 2855**, Allowing rebate moneys to be used for the operation and maintenance of accounting and transparency systems of the State Auditor,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2855** - “A Bill to amend and reenact §12-3-10d of the Code of West Virginia, 1931, as amended, relating to allowing rebate moneys in Purchasing Card Administration Fund to be used for the operation and maintenance of accounting and transparency systems of the State Auditor,”

With the recommendation that the committee substitutes each do pass.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2854**, Exempting sales from the consumers sales and service tax and use tax by not for profit volunteer school support groups raising funds for schools,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2854** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9q, relating to exempting sales by not-for-profit volunteer school support organizations for the purpose of raising funds for their schools from the consumers sales and service tax and use tax; specifying time limitations for fundraisers; specifying that the exemption applies without regard to whether the organization holds, or does not hold, an exemption under §501(c)(3) or §501(c)(4) of the Internal Revenue Code,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2907**, Requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation,



And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2907** – “A Bill to amend and reenact §62-7-10 of the Code of West Virginia, 1931, as amended; and to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §62-7-10a, all relating to the requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation; requiring a form for commitments to prisons; requiring a form for commitments from magistrate or circuit courts to jails; clarifying the costs of incarceration; and clarifying the method of transmittal of commitment orders,”

**H. B. 2933**, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2933** - “A Bill to amend and reenact §61-8D-3 of the Code of West Virginia, 1931, as amended, relating to modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury and child abuse or neglect creating risk of injury,”

And,

**H. B. 2980**, Mine Trespass Act,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2980** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22A-13-1, §22A-13-2, §22A-13-3, §22A-13-4, §22A-13-5 and §22A-13-6, all relating to creating the Mine Trespass Act; providing a short title; providing for criminal penalties; providing a hold harmless clause; and providing for temporary exemption from environmental regulations,”

With the recommendation that the committee substitutes each do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 3039**, Relating to a court's consideration of the expression of a preference by a child in certain child custody matters,

And,

**Com. Sub. for S. B. 270**, Streamlining process for utilities access to DOH rights-of-way,

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

Delegate Nelson, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**H. B. 2968**, Adding remote service unit to the definition of customer bank communications terminals,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (H. B. 2968) was referred to the Committee on the Judiciary.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2886**, Establishing requirements for a Division of Motor Vehicles office or Division of Motor Vehicles Now kiosk to be present in a county,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2886** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §17A-2-26, relating to establishing requirements for a Division of Motor Vehicles office or Division of Motor Vehicles Now kiosk to be present in a county; establishing definitions for this section; establishing conditions for a Division of Motor Vehicles office location to be within a county; establishing exemptions under certain conditions; establishing requirements for a Division of Motor Vehicles Now kiosk to be located in a county; establishing the maximum number of Division of Motor Vehicles Now kiosks are to be determined; and requiring the provisions of this section be implemented by July 1, 2021,”

And,

**H. B. 2929**, Authorizing the West Virginia Tourism Office to enter into an agreement with the Division of Highways to provide staff at the welcome centers,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2929** - “A Bill to amend and reenact §5B-2I-4 of the Code of West Virginia, 1931, as amended, relating to authorizing the West Virginia Tourism Office to enter into an agreement with the Division of Highways to provide staff at the welcome centers and highway rest areas; and to create displays promoting in state tourism at the welcome centers and rest areas,”

With the recommendation that the committee substitutes each do pass.

### **Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2521**, Relating to permitting fur-bearer parts.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 60** - “A Bill to amend and reenact §30-20A-1, §30-20A-2, §30-20A-3, §30-20A-4, §30-20A-5, §30-20A-6, and §30-20A-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto nine new sections, designated §30-20A-8, §30-20A-9, §30-20A-10, §30-20A-11, §30-20A-12, §30-20A-13, §30-20A-14, §30-20A-15, and §30-20A-16, all relating to licensing the practice of athletic training; making the practice of athletic training unlawful without license or permit; establishing applicable law; defining terms; establishing eligibility for license; defining the scope of practice; establishing requirements for reciprocal agreements; establishing requirements for temporary permits; establishing renewal requirements; establishing requirements for delinquent or expedited licenses; establishing requirements for an active license; creating exemptions; requiring display of license; establishing complaint process and investigation procedures; establishing grounds for disciplinary action; establishing hearing procedures and right to appeal; providing for judicial review of decision; and providing criminal penalties”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 66** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article designated §46A-6N-1, §46A-6N-2, §46A-6N-3, and §46A-6N-4, all relating to prohibiting certain misleading lawsuit advertising practices; providing for certain disclosures and warnings in lawsuit advertising for the protection of patients; and imposing criminal penalties”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 393** - “A Bill to amend and reenact §19-19-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §19-19-7, all relating to the right to farm; providing for an amended definition of ‘agriculture’; providing for protections to agriculture operations from nuisance litigation if the facility has been in operation for more than one year; providing for the exclusive compensatory damages that may be awarded to a claimant where the alleged nuisance originates from an agricultural operation; and prohibiting punitive damages being awarded to a claimant for nuisance actions originating from an agricultural operation”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 516** - “A Bill to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, relating to the payment of attorney’s fees in subsidized adoptions or guardianships directly to the attorney; requiring an attorney to submit certain documentation to the caseworker responsible for the child or children; and requiring Department of Health and Human Resources to pay invoices within 45 days, if funds are available”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 518** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-417, relating to restricting the sale and trade of dextromethorphan; defining terms; setting age limits; and providing for a misdemeanor penalty”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

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

**Com. Sub. for S. B. 563** - “A Bill to amend and reenact §61-8B-11 of the Code of West Virginia, 1931, as amended, relating generally to evidence in prosecutions for sexual offenses; prohibiting an alleged victim from being required to submit to or undergo certain physical examinations in prosecutions for sexual offenses; defining ‘sexual offense’; and providing that an alleged victim’s refusal to submit to or undergo certain physical examinations does not preclude admission of evidence regarding other relevant physical examinations”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 590** - “A Bill to amend and reenact §20-2-22a, §20-2-23, and §20-2-26 of the Code of West Virginia, 1931, as amended, all relating to permitting guided bear hunts by licensed outfitters and guides; providing the Director of the Division of Natural Resources rule-making authority; setting license fee for outfitter and guide applications; and providing penalties for guides and outfitters”; which was referred to the Committee on Agriculture and Natural Resources then the Judiciary.

### **Resolutions Introduced**

Delegates Evans, R. Thompson, Rodighiero, Zukoff, Williams, Pyles, Robinson, Doyle, Hornbuckle, S. Brown and Swartzmiller offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 73** - “Requesting the Division of Highways name bridge number 24-161-14.11 (24A189), locally known as Blackwolf Bridge, carrying WV 161 over the Tug Fork in McDowell County, the ‘U. S. Army SGT Matthew T. Miller Memorial Bridge’.”

Whereas, Matthew Thomas Miller was a resident of Anawalt, West Virginia, in McDowell County, and a 2007 graduate of Mount View High School; and

Whereas, Soon after graduation, Matthew Thomas Miller joined the United States Army and rose to the rank of Sergeant of the 3rd Platoon, Delta Company, 3rd Battalion, 187 Regiment “Rakkasans”, 101 Airborne Division based at Fort Campbell, Kentucky; and

Whereas, SGT Matthew Thomas Miller was deployed to Afghanistan during Operation Enduring Freedom; and

Whereas, SGT Matthew Thomas Miller, a highly trained warrior, was a combat infantryman and paratrooper trained also as a driver and mechanic; and

Whereas, SGT Matthew Thomas Miller was awarded Afghanistan Campaign Medal with Campaign Star, Army Commendation Medal, Army Achievement Medal, Good Conduct Medal, National Defense Service Medal, Global War on Terrorism Service Medal, Noncommissioned Officer Professional Development Ribbon, NATO Medal, Combat Infantryman Badge, Air Assault Badge, and Expert Marksmanship Badge with Carbine Bar; and

Whereas, After being discharged from the U. S. Army, SGT Matthew Thomas Miller suffered from Post Traumatic Stress Disorder (PTSD), a challenge that he worked every day to overcome. Mathews lost his battle with PTSD and his life on January 22, 2018; and

Whereas, SGT Matthew Thomas Miller was a well-loved member of his community; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 24-161-14.11 (24A189), locally known as Blackwolf Bridge, carrying WV 161 over the Tug Fork in

McDowell County, the “U. S. Army SGT Matthew T. Miller Memorial Bridge”; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the “U. S. Army SGT Matthew T. Miller Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates Maynard, J. Jeffries, Paynter, Rohrbach, Hornbuckle, Lovejoy, Linville and Mandt offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 74** - “Requesting the Division of Highways name a portion of Two-Mile Road (WV Route 36) beginning 1.3 miles from the start of the hollow and Two-Mile Road a distance of .6 mile total, or 1.9 miles from the start of the hollow, in Lincoln County, the ‘U. S. Army PFC James Leslie Pridemore Memorial Road’.”

Whereas, James Leslie Pridemore was born October 2, 1949, in Lincoln County, West Virginia, the son of Forrest Pridemore, Jr. and Sara Catherine Pridemore; and

Whereas, PFC James Leslie Pridemore enlisted in the United States Army following graduation from high school and started a Vietnam tour of duty on March 4, 1968; and

Whereas, PFC James Leslie Pridemore was killed on May 29, 1968, by an exploding grenade; and

Whereas, It is fitting that an enduring memorial be established to commemorate PFC James Leslie Pridemore and his contributions and supreme sacrifice to our state and to his country; therefore, be it



*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a portion of Two-Mile Road (WV Route 36) beginning 1.3 miles from the start of the hollow and Two-Mile Road a distance of .6 mile total, or 1.9 miles from the start of the hollow, in Lincoln County, the “U. S. Army PFC James Leslie Pridemore Memorial Road”; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the portion of road as the “U. S. Army PFC James Leslie Pridemore Memorial Road”; and, be it

*Further Resolved,* That the Clerk of the House forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates Tomblin, Maynard, Hicks, Miller, Zukoff, Williams, R. Thompson and Rodighiero offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 75** - “Requesting the Division of Highways name bridge number 23-10-12.56 NB & SB (23A377, 23A378), locally known as Lyburn Bridge, carrying WV 10 over Land Relief in Logan County, the ‘U. S. Army SSG Henry Kilgore Bridge’.”

Whereas, Henry Kilgore was born on December 22, 1922, in Draffin, Kentucky, one of ten children in his family; and

Whereas, Like many in the Appalachian region at the time, Henry Kilgore’s family struggled to make ends meet and at age 14, Henry left school to work in the coal mines to support his family; and

Whereas, Due to a lack of modern equipment, Henry Kilgore mined coal with a pick and shovel and hauled it out with a mule and a cart; and

Whereas, At the age of twenty, Henry Kilgore was drafted into the U. S. Army to serve his country during World War II. He served in the 33<sup>rd</sup> Sig Light Construction where he ultimately reached the rank of Staff Henry; and

Whereas, SSG Kilgore served in Normandy, Northern France, Ardennes, Rhineland, and Central Europe. He was also present at the Battle of the Bulge and arrived on the beaches of Iwo Jima as American soldiers famously raised an American flag; and

Whereas, SSG Kilgore was honorably discharged from the Army on December 19, 1945; and

Whereas, SSG Kilgore came home to go back into the coal mines to continue to work for the rest of his working life; and

Whereas, SSG Kilgore married his soul mate, Leona Bartley Kilgore, on February 6, 1946. They were blessed to raise six daughters; and

Whereas, SSG Kilgore selflessly worked in the mines to support his family, even though working conditions were frequently unsafe. He was injured numerous times while on the job, including an occasion where his head was pinned in a roof fall. He was hospitalized for an extended period of time after the accident, suffering broken bones in his face and severe injuries to his eye; and

Whereas, SSG Kilgore also acted many times, both during his service in the war and his job as a miner, without concern for his own safety; and

Whereas, For these reasons it is fitting and proper that the bridge be named in honor of SSG Kilgore; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 23-10-12.56 NB & SB (23A377, 23A378), locally known as Lyburn Bridge, carrying WV 10 over Land Relief in Logan County, the “U. S. Army SSG Henry Kilgore Bridge”; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the “U. S. Army SSG Henry Kilgore Bridge”; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

### Special Calendar

#### Third Reading

**Com. Sub. for H. B. 2768**, Reducing the use of certain prescription drugs; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 193**), and there were—yeas 73, nays 27, absent and not voting none, with the nays being as follows:

Nays: Angelucci, Barrett, S. Brown, Byrd, Cadle, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hornbuckle, Lavender-Bowe, Miley, Miller, Pushkin, Pyles, Robinson, Rowe, Stagers, C. Thompson, Tomblin, Walker and Zukoff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2768) passed.

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

**Com. Sub. for H. B. 2834**, Updating and modernizing the minimum spacing provisions for the drilling of horizontal deep wells; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 194**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2834) passed.

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

**Com. Sub. for H. B. 2849**, Establishing different classes of pharmacy technicians; on third reading, coming up in regular order, was read a third time.

Delegate Cadle requested to be excused from voting on the passage of Com. Sub. for H. B. 2849 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 195**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2849) passed.

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

#### Second Reading

**S. B. 377**, Relating to minimum wage and maximum hour standards; on second reading, coming up in regular order, was reported by the Clerk.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page one, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 5C. MINIMUM WAGE AND MAXIMUM HOURS STANDARDS FOR EMPLOYEES.**

**§21-5C-1. Definitions.**

As used in this article:

(a) ‘Commissioner’ means the Commissioner of Labor or his or her duly authorized representatives.

(b) ‘Wage and hour director’ means the wage and hour director appointed by the Commissioner of Labor as Chief of the Wage and Hour Division.

(c) ‘Wage’ means compensation due an employee by reason of his or her employment.

(d) ‘Employ’ means to hire or permit to work.

(e) ‘Employer’ includes the State of West Virginia, its agencies, departments, and all its political subdivisions, any individual, partnership, association, public or private corporation, or any person or group of persons acting directly or indirectly in the interest of any employer in relation to an employee; and who employs during any calendar week six or more employees as herein defined in any one separate, distinct, and permanent location or business establishment: *Provided*, That prior to January 1, 2015, the term ‘employer’ does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to any federal act relating to minimum wage, maximum hours, and overtime compensation: *Provided, however*, That after December 31, 2014, for the purposes of §21-5C-3 of this code, the term ‘employer’ does not include any individual, partnership, association, corporation, person or group of persons, or similar unit if 80 percent of the persons employed by him or her are subject to

any federal act relating to maximum hours and overtime compensation.

(f) 'Employee' includes any individual employed by an employer but shall not include: (1) Any individual employed by the United States; (2) any individual engaged in the activities of an educational, charitable, religious, fraternal, or nonprofit organization where the employer-employee relationship does not in fact exist, or where the services rendered to such organizations are on a voluntary basis; (3) newsboys, shoeshine boys, golf caddies, pinboys, and pin chasers in bowling lanes; (4) traveling salesmen and outside salesmen; (5) services performed by an individual in the employ of his or her parent, son, daughter, or spouse; (6) any individual employed in a bona fide professional, executive, or administrative capacity; (7) any person whose employment is for the purpose of on-the-job training; (8) any person having a physical or mental handicap so severe as to prevent his or her employment or employment training in any training or employment facility other than a nonprofit sheltered workshop; (9) any individual employed in a boys or girls summer camp; (10) any person 62 years of age or over who receives old-age or survivors benefits from the Social Security Administration; (11) any individual employed in agriculture as the word "agriculture" is defined in the Fair Labor Standards Act of 1938, as amended; (12) any individual employed as a firefighter by the state or agency thereof; (13) ushers in theaters; (14) any individual employed on a part-time basis who is a student in any recognized school or college; (15) any individual employed by a local or interurban motorbus carrier; (16) so far as the maximum hours and overtime compensation provisions of this article are concerned, any salesman, parts man, or mechanic primarily engaged in selling or servicing automobiles, trailers, trucks, farm implements, or aircraft if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to ultimate purchasers; (17) any employee with respect to whom the United States Department of Transportation has statutory authority to establish qualifications and maximum hours of service; (18) any person employed on a per diem basis by the Senate, the House of Delegates, or the Joint Committee on Government and Finance of

the Legislature of West Virginia, other employees of the Senate or House of Delegates designated by the presiding officer thereof, and additional employees of the Joint Committee on Government and Finance designated by such joint committee; ~~or~~ (19) any person employed as a seasonal employee of a commercial whitewater outfitter where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum ~~wage~~ hours provisions of §21-5C-3 of this code; or (20) any person employed as a seasonal employee of an amusement park where the seasonal employee works less than seven months in any one calendar year and, in such case, only for the limited purpose of exempting the seasonal employee from the maximum hours provisions of §21-5C-3 of this code.

(g) ‘Workweek’ means a regularly recurring period of 168 hours in the form of seven consecutive 24-hour periods, need not coincide with the calendar week, and may begin any day of the calendar week and any hour of the day.

(h) ‘Hours worked’ means the hours for which an employee is employed: *Provided*, That in determining hours worked for the purposes of §21-5C-2 and §21-5C-3 of this code, there shall be excluded any time spent in changing clothes or washing at the beginning or end of each workday, time spent in walking, riding, or traveling to and from the actual place of performance of the principal activity or activities which ~~such~~ the employee is employed to perform and activities which are preliminary to or postliminary to ~~said~~ the principal activity or activities, subject to such exceptions as the commissioner may by rules ~~and regulations~~ define.

(i) ‘Amusement park’ means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under §21-10-1 et seq. of this code.’

Delegate Lovejoy moved to amend the Judiciary Committee amendment on page two, section one, lines twenty-nine, thirty and thirty-one, by striking out “(8) any person having a physical or mental handicap so severe as to prevent his or her employment or

employment training in any training or employment facility other than a nonprofit sheltered workshop”.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 196**), and there were—yeas 46, nays 54, absent and not voting none, with the yeas being as follows:

Yeas: Angelucci, Atkinson, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Higginbotham, Hornbuckle, Lavender-Bowe, Linville, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams, Worrell and Zukoff.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Robinson moved to amend the Judiciary Committee amendment on page two, section one, lines thirty-two and thirty-three, by striking out “(10) any person 62 years of age or over who receives old-age or survivors benefits from the Social Security Administration” and the semicolon.

And,

By renumbering the numerical sequencing contained in subsection (f) accordingly.

On the adoption of the amendment to the amendment, Delegate Robinson demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 197**), and there were—yeas 44, nays 56, absent and not voting none, with the yeas being as follows:



Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Linville, Longstreth, Lovejoy, Mandt, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

Delegate Robinson moved to amend the Judiciary Committee amendment on page two, section one, lines thirty-six and thirty-seven, by striking out “(14) any individual employed on a part-time basis who is a student in any recognized school or college” and the semicolon.

And,

By renumbering the numerical sequencing contained in subsection (f) accordingly.

On the adoption of the amendment to the amendment, Delegate Robinson demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 198**), and there were—yeas 44, nays 55, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Higginbotham, Hornbuckle, Lavender-Bowe, Linville, Longstreth, Lovejoy, Mandt, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Westfall, Williams and Zukoff.

Absent and Not Voting: S. Brown.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

The amendment recommended by the Judiciary Committee was then adopted.

The bill was then ordered to third reading.

**Com. Sub. for H. B. 2439**, Relating to fire service equipment and training funds for volunteer and part-volunteer fire companies; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2542**, Permitting directors of county emergency phone systems to obtain mobile-phone emergency lines; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2947**, Relating generally to telemedicine prescription practice requirements and exceptions; on second reading, coming up in regular order, was read a second time.

Delegate Stagers moved to amend the bill on page five, by striking out lines ninety-eight through one hundred and inserting in lieu thereof the following:

“(3) The prescribing limitations in this subsection do not apply when a physician submits an order to dispense a opioid substance, listed in Schedule II of the Uniform Controlled Substances Act, to a hospital patient for immediate administration in an intensive care setting.”

On the adoption of the amendment, Delegate Stagers demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 199**), and there were—yeas 19, nays 80, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, N. Brown, S. Brown, Cadle, Caputo, Diserio, Estep-Burton, Fleischauer, Hicks, Kump, Lavender-Bowe, Longstreth, Miley, Pyles, Staggers, Swartzmiller, C. Thompson, Walker and Zukoff.

Absent and Not Voting: Wilson.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

**H. B. 2958**, Authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

At 12:47 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 4:00 p.m.

\* \* \* \* \*

### **Afternoon Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### **Committee Reports**

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 3018**, Relating to the West Virginia Public Employees Insurance Agency's reimbursement of air-ambulance providers,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 3018) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 3057**, Relating to the Adult Drug Court Participation Fund,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 3057) was referred to the Committee on Finance.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 3012**, Providing new graduates of an in-state or out-of-state higher educational institution a tax credit on the personal property tax,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 3012) was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2932**, Transferring regulation and licensing of charitable bingo, charitable raffles, and charitable raffle boards,

And,

**H. B. 2954**, Defining certain terms used in insurance,

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

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 157**, Authorizing Department of Administration promulgate legislative rules,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 157) was referred to the Committee on the Judiciary.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 199**, Authorizing certain miscellaneous agencies and boards promulgate legislative rules,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 199) was referred to the Committee on the Judiciary.

## Special Calendar

-continued-

### First Reading

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for H. B. 2486**, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation,

And,

**Com. Sub. for H. B. 2975**, Relating to imposition of sexual acts on persons incarcerated.

Pending announcements, Delegate Summers moved to adjourn.

Delegate Summers subsequently asked unanimous consent that the motion be withdrawn, which consent was not granted, objection being heard.

Delegate Summers then so moved, which motion prevailed.

### Conference Committee Report Availability

At 4:21 p.m., the Clerk announced that the report of the Committee of Conference on **H. B. 2351**, Relating to regulating prior authorizations, was available in the Clerk's Office.

### Miscellaneous Business

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be added as a cosponsor of the following:

- Delegate Westfall for H. B. 2377
- Delegate Porterfield for H. B. 2035, H. B. 2197, H. B. 2203  
H. B. 2212, H. B. 2216, H. B. 2217, H. B. 2447, H. B. 2495  
and H. B. 2814

- Delegate Steele for H. B. 2966

- Delegate Rohrbach for H. B. 3093

At 4:21 p.m., the House of Delegates adjourned until 11:00 a.m., Tuesday, February 19, 2019.





---

Tuesday, February 19, 2019

**FORTY-SECOND DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Monday, February 18, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Committee Reports**

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 3063**, Relating to a home Instruction and private school tax credit,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 3063) was referred to the Committee on Finance.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2551**, Requiring the State Board of Education to develop a method for funding student transportation costs as a stand-alone consideration,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2551) was referred to the Committee on Finance.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 3128**, Changing the recommended guidelines for full-day and half-day cooks to the minimum ratio of one cook for every 110 meals,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 3128) was referred to the Committee on Finance.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2719**, Establishing an optional bus operator in residence program for school districts,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2719) was referred to the Committee on Finance.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 3001**, Increasing compensation of county board of education members,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 3001) was referred to the Committee on Finance.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2882**, Creating a health professionals' student loan programs,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2882) was referred to the Committee on Finance.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 13**, Relating to distributions from State Excess Lottery Fund,

And,

**S. B. 444**, Supplemental appropriation to DHHR divisions,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 442**, Supplementing, amending, and decreasing appropriation to Insurance Commission,

And,

**S. B. 443**, Supplemental appropriation of federal moneys to DHHR divisions,

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

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 259** - “A Bill to amend and reenact §7-7-6e of the Code of West Virginia, 1931, as amended, relating to expanding the Coyote Control Program by providing for an assessment on breeding cows; providing an option for owners of breeding cows not to participate in the program; requiring notice; and setting forth a purpose”; which was referred to the Committee on Agriculture and Natural Resources then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 266** - “A Bill to amend and reenact §3-10-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §23-5-15 of said code; to amend and reenact §29A-5-4 of said code; to amend and reenact §29A-6-1 of said code; to amend and reenact §51-9-1a of said code; to amend said code by adding thereto a new article, designated §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, and §51-11-13; and to amend and reenact §58-5-1 of said code, all relating generally to the West Virginia Appellate Reorganization Act of 2019; creating an

Intermediate Court of Appeals in West Virginia; providing that the Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial vacancies in the Intermediate Court of Appeals; providing that petitions for review of final decisions of the Workers' Compensation Board of Review must be made to the Intermediate Court of Appeals and that petitioners have a right to review in such court; providing that the Supreme Court of Appeals has discretion to review final decisions of the Intermediate Court of Appeals in workers' compensation claims; providing that the Workers' Compensation Board of Review may continue to certify questions of law directly to the Supreme Court of Appeals; requiring that appeal of contested cases under State Administrative Procedures Act be made to the Intermediate Court of Appeals; placing judges of Intermediate Court of Appeals under the judicial retirement system; establishing the Intermediate Court of Appeals by a certain date; providing a short title; providing legislative findings; defining terms; requiring a three-judge panel for proceedings; authorizing jurisdiction of the Intermediate Court of Appeals over certain matters; excluding certain matters from jurisdiction of the Intermediate Court of Appeals; providing eligibility criteria for judges of the Intermediate Court of Appeals; providing a process for initial appointment of judges to the Intermediate Court of Appeals to staggered judicial terms, and to 10-year terms on the expiration of terms thereafter; providing for the filling of vacancies in unexpired judicial terms by appointment; providing that the Governor's appointments are subject to Senate confirmation; providing that judges of the Intermediate Court of Appeals may not be candidates for any elected public office during judicial term; establishing certain requirements for the filing of appeals to the Intermediate Court of Appeals; clarifying that an appeal bond may be required before appeal to the Intermediate Court of Appeals may take effect; requiring the Chief Judge of the Intermediate Court of Appeals to publish and submit certain reports to the Legislature and Supreme Court of Appeals regarding pending cases; authorizing filing fees; providing for deposit of filing fees in a special revenue account to fund the State Police Forensic Laboratory; recognizing the constitutional authority of the Supreme Court of Appeals to exercise administrative authority over the Intermediate Court of Appeals; providing that procedures

and operations of the Intermediate Court of Appeals shall comply with rules promulgated by the Supreme Court of Appeals; requiring that appeals to the Intermediate Court of Appeals be filed with the Clerk of the Supreme Court of Appeals; providing that Intermediate Court of Appeals proceedings shall take place in publicly available facilities as arranged by the Administrative Director of the Supreme Court of Appeals; granting the Intermediate Court of Appeals discretion to require oral argument; authorizing the Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate Court of Appeals operations; providing that the budget for Intermediate Court of Appeals operations shall be included in the appropriation for the Supreme Court of Appeals; authorizing the Intermediate Court of Appeals to issue opinions as binding precedent for lower courts; providing for discretionary review of Intermediate Court of Appeals decisions by Supreme Court of Appeals; authorizing an annual salary, retirement benefits, and reimbursement of expenses for judges of the Intermediate Court of Appeals; providing for reimbursement of expenses of Intermediate Court of Appeals staff; providing that certain appeals are reviewed and a written decision issued by either the Intermediate Court of Appeals or the Supreme Court of Appeals as a matter of right; removing obsolete language from the code; and making technical corrections to the code”; which was referred to the Committee on the Judiciary then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 295** - “A Bill to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating generally to court security; criminalizing the obstruction of a court security officer and certain Fire Marshal’s office personnel while they are acting in their official capacities; criminalizing fleeing from a court security officer and certain Fire Marshal’s office personnel; criminalizing the disarming or attempted disarming of court security officers and certain Fire Marshal’s office personnel; including the investigation of misdemeanor offenses as subject to

prohibition against making false statements; criminalizing the making of materially false statements as to misdemeanor and felony investigations to the state Fire Marshal and fire investigators; and setting criminal penalties”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 451**, Comprehensive education reform.

The following Senate amendment to the House amendment was reported by the Clerk as follows:

**“ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES  
INSURANCE ACT.**

**§5-16-2. Definitions.**

The following words and phrases as used in this article, unless a different meaning is clearly indicated by the context, have the following meanings:

(1) ‘Agency’ means the Public Employees Insurance Agency created by this article.

(2) ‘Director’ means the Director of the Public Employees Insurance Agency created by this article.

(3) ‘Employee’ means any person, including an elected officer, who works regularly full-time in the service of the State of West Virginia and, for the purpose of this article only, the term ‘employee’ also means any person, including an elected officer, who works regularly full-time in the service of a county board of education; a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the Public

Employees Insurance program; a county, city, or town in the State; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns; any comprehensive community mental health center or ~~comprehensive mental—retardation~~ intellectually and developmentally disabled facility established, operated, or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county, or municipal funds; any person who works regularly full-time in the service of the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board, as defined in §18B-1-2 of this code; any person who works regularly full-time in the service of a combined city-county health department created pursuant to §16-2-1 *et seq.* of this code; any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-term substitute as defined in §18A-1-1 of this code in the service of a county board of education: *Provided*, That a long-term substitute who is continuously employed for at least 133 instructional days during an instructional term, and, until the end of that instructional term, is eligible for the benefits provided in this article until September 1 following that instructional term: *Provided, however*, That a long-term substitute employed fewer than 133 instructional days during an instructional term is eligible for the benefits provided in this article only during such time as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and upon election by a county board of education to allow elected board members to participate in the Public Employees Insurance Program pursuant to this article, any person elected to a county board of education shall be considered to be an ‘employee’ during the term of office of the elected member. Upon election by the state Board of Education to allow appointed board members to participate in the Public Employees Insurance Program



pursuant to this article, any person appointed to the state Board of Education is considered an 'employee' during the term of office of the appointed member: *Provided further*, That the elected member of a county board of education and the appointed member of the state Board of Education shall pay the entire cost of the premium if he or she elects to be covered under this article. Any matters of doubt as to who is an employee within the meaning of this article shall be decided by the director.

On or after July 1, 1997, a person shall be considered an 'employee' if that person meets the following criteria:

(A) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;

(B) Has been designated, in writing, by all other participants in that job-sharing arrangement as the 'employee' for purposes of this section; and

(C) Works at least one-third of the time required for a full-time employee.

(4) 'Employer' means the State of West Virginia, its boards, agencies, commissions, departments, institutions, or spending units; a county board of education; a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the Public Employees Insurance program; a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any comprehensive community mental health center or ~~comprehensive mental retardation~~ intellectually and developmentally disabled facility established, operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which is supported in part by state, county or municipal funds; a combined

city-county health department created pursuant to §16-2-1 *et seq.* of this code; and a corporation meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of doubt as to who is an ‘employer’ within the meaning of this article shall be decided by the director. The term ‘employer’ does not include within its meaning the National Guard.

(5) ‘Finance board’ means the Public Employees Insurance Agency finance board created by this article.

(6) ‘Person’ means any individual, company, association, organization, corporation or other legal entity, including, but not limited to, hospital, medical or dental service corporations; health maintenance organizations or similar organization providing prepaid health benefits; or individuals entitled to benefits under the provisions of this article.

(7) ‘Plan’, unless the context indicates otherwise, means the medical indemnity plan, the managed care plan option or the group life insurance plan offered by the agency.

(8) ‘Retired employee’ means an employee of the state who retired after April 29, 1971, and an employee of the Higher Education Policy Commission, the Council for Community and Technical College Education, a state institution of higher education or a county board of education who retires on or after April 21, 1972, and all additional eligible employees who retire on or after the effective date of this article, meet the minimum eligibility requirements for their respective state retirement system and whose last employer immediately prior to retirement under the state retirement system is a participating employer in the state retirement system and in the Public Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who are not covered by a state retirement system, but who are covered by a state-approved or state-contracted retirement program or a system approved by the director, shall, in the case of education employees, meet the minimum eligibility requirements

of the State Teachers Retirement System and in all other cases, meet the minimum eligibility requirements of the Public Employees Retirement System and may participate in the Public Employees Insurance Agency as retired employees upon terms as the director sets by rule as authorized in this article. Employers with employees who are, or who are eligible to become, retired employees under this article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant to §5-16D-1 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but may do so only upon the written certification, under oath, of an authorized officer of the employer that the employer has no employees who are, or who are eligible to become, retired employees and that the employer will defend and hold harmless the Public Employees Insurance Agency from any claim by one of the employer's past, present or future employees for eligibility to participate in the Public Employees Insurance Agency as a retired employee. As a matter of law, the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits to a retired employee of a nonstate employer which has opted out of the West Virginia other post-employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

**§5-16-22. Permissive participation; exemptions.**

The provisions of this article are not mandatory upon any employee or employer who is not an employee of or is not the State of West Virginia, its boards, agencies, commissions, departments, institutions or spending units, ~~or~~ a county board of education, and nothing contained in this article ~~compels~~ any employee or employer to enroll in or subscribe to any insurance plan authorized by the provisions of this article: Provided, That nothing in this section requires a public charter school to participate in the Public Employees Insurance Agency program.

Those employees enrolled in the insurance program authorized under the provisions of §21A-2B-1 *et seq.* of this code ~~are~~ not required to enroll in or subscribe to an insurance plan or plans

authorized by the provisions of this article, and the employees of any department which has an existing insurance program for its employees to which the government of the United States contributes any part or all of the premium or cost of the premium may be exempted from the provisions of this article. Any employee or employer exempted under the provisions of this paragraph may enroll in any insurance program authorized by the provisions of this article at any time, to the same extent as any other qualified employee or employer, but employee or employer may not remain enrolled in both programs.

~~Any plan established or administered by the Public Employees Insurance Agency pursuant to this article is exempt from the provisions of chapter thirty three of this code unless explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees Insurance Agency is not an insurer or engaged in the business of insurance as defined in chapter thirty three of this code.~~

Employers, other than the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education are exempt from participating in the insurance program provided for by the provisions of this article unless participation by the employer has been approved by a majority vote of the employer's governing body. It is the duty of the clerk or secretary of the governing body of an employer who by majority vote becomes a participant in the insurance program to notify the director not later than 10 days after the vote.

Any employer, whether the employer participates in the Public Employees Insurance Agency insurance program as a group or not, which has retired employees, their dependents or surviving dependents of deceased retired employees who participate in the Public Employees Insurance Agency insurance program as authorized by this article, shall pay to the agency the same contribution toward the cost of coverage for its retired employees, their dependents or surviving dependents of deceased retired employees as the State of West Virginia, its boards, agencies, commissions, departments, institutions, spending units, or a county board of education pay for their retired employees, their

dependents and surviving dependents of deceased retired employees, as determined by the finance board: *Provided*, That after June 30, 1996, an employer not mandated to participate in the plan is only required to pay a contribution toward the cost of coverage for its retired employees, their dependents or the surviving dependents of deceased retired employees who elect coverage when the retired employee participated in the plan as an active employee of the employer for at least five years: *Provided, however*, That those retired employees of an employer not participating in the plan who retire on or after July 1, 2010, who have participated in the plan as active employees of the employer for less than five years are responsible for the entire premium cost for coverage and the Public Employees Insurance Agency shall bill for and collect the entire premium from the retired employees, unless the employer elects to pay the employer share of the premium. Each employer is hereby authorized and required to budget for and make such payments as are required by this section.

## CHAPTER 11. TAXATION.

### ARTICLE 8. LEVIES.

#### **§11-8-6f. Regular school board levy rate; creation and implementation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.**

(a) Notwithstanding any other provision of law except §11-8-6f(c) of this code, where any annual appraisal, triennial appraisal, or general valuation of property would produce a statewide aggregate assessment that would cause an increase of two percent or more in the total property tax revenues that would be realized were the then current regular levy rates of the county boards of education to be imposed, the rate of levy for county boards of education shall be reduced uniformly statewide and proportionately for all classes of property for the forthcoming tax year so as to cause the rate of levy to produce no more than 102 percent of the previous year's projected statewide aggregate property tax revenues from extending the county board of education levy rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be calculated in the

following manner: (1) The total assessed value of each class of property as it is defined by section five of this article for the assessment period just concluded shall be reduced by deducting the total assessed value of newly created properties not assessed in the previous year's tax book for each class of property; (2) the resulting net assessed value of Class I property shall be multiplied by .01; the value of Class II by .02; and the values of Classes III and IV, each by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards of education throughout this state and multiply the resulting sum by one hundred two percent: *Provided*, That the 102 percent figure shall be increased by the amount the boards of education's increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply the resulting product by 100; the resulting number is the Class I regular levy rate, stated as cents-per-100 of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and IV, four times the Class I rate as calculated in the preceding subdivision.

An additional appraisal or valuation due to new construction or improvements, including beginning recovery of natural resources, to existing real property or newly acquired personal property shall not be an annual appraisal or general valuation within the meaning of this section, nor shall the assessed value of the improvements be included in calculating the new tax levy for purposes of this section. Special levies shall not be included in any calculations under this section.

(b) After conducting a public hearing, the Legislature may, by act, increase the rate above the reduced rate required in subsection (a) of this section if an increase is determined to be necessary.

(c) Beginning with the 2020 fiscal year and the 2019 tax year, §11-8-6f(a) and (b) of this code shall expire and the regular levy rates for the county boards of education shall be the following: (1) For Class I property, 19.4 cents per \$100; (2) for Class II property, 38.8 cents per \$100; and (3) for Class III and Class IV property,

77.6 cents per \$100: *Provided*, That county boards of education may increase their regular levy rates through a majority vote of their members up to the sum of the levy rates set forth in subdivisions (1), (2), and (3), section six-c of this article for each class of property, which are: (1) For Class I property, 22.95 cents per \$100; (2) for Class II property, 45.9 cents per \$100; and (3) for Class III and Class IV property, 91.8 cents per \$100: *Provided, however*, That prior to any regular levy rate increase, such increase must be approved by a majority vote of the voters of the county.

(e) (d) The State Tax Commissioner shall report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability by March 1 of each year on the progress of assessors in each county in assessing properties at the Constitutionally required 60 percent of market value and the effects of increasing the limit on the increase in total property tax revenues set forth in this section to two percent.

~~(d)~~ (e) *Growth County School Facilities Act. — Legislative findings.* —

The Legislature finds and declares that there has been, overall, a statewide decline in enrollment in the public schools of this state; due to this decline, most public schools have ample space for students, teachers, and administrators; however, some counties of this state have experienced significant increases in enrollment due to significant growth in those counties; that those counties experiencing significant increases do not have adequate facilities to accommodate students, teachers, and administrators. Therefore, the Legislature finds that county boards of education in those high-growth counties should have the authority to designate revenues generated from the application of the regular school board levy due to new construction or improvements placed in a Growth County School Facilities Act Fund be used for school facilities in those counties to promote the best interests of this state's students.

(1) For the purposes of this subsection, 'growth county' means any county that has experienced an increase in second month net enrollment of 50 or more during any three of the last five years, as determined by the state Department of Education.

(2) The provisions of this subsection shall only apply to any growth county, as defined in subdivision (1) of this subsection, that, by resolution of its county board of education, chooses to use the provisions of this subsection.

(3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this subsection, assessed values resulting from additional appraisal or valuation due to new construction or improvements to existing real property shall be designated as new property values and identified by the county assessor. The statewide regular school board levy rate as established by the Legislature shall be applied to the assessed value designated as new property values and the resulting property tax revenues collected from application of the regular school board levy rate shall be placed in a separate account designated as the Growth County School Facilities Act Fund. Revenues deposited in the Growth County School Facilities Act Fund shall be appropriated by the county board of education for construction, maintenance or repair of school facilities. Revenues in the fund may be carried over for an indefinite length of time and may be used as matching funds for the purpose of obtaining funds from the School Building Authority or for the payment of bonded indebtedness incurred for school facilities. For any growth county choosing to use the provisions of this subsection, estimated school board revenues generated from application of the regular school board levy rate to new property values are not to be considered as local funds for purposes of the computation of local share under the provisions of §18-9A-11 of this code.

~~(e)~~ (f) This section, as amended during the legislative session in the year 2004, shall be effective as to any regular levy rate imposed for the county boards of education for taxes due and payable on or after July 1, 2004. If any provision of this section is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or its application and to this end the provisions of this section are declared to be severable.



**ARTICLE 21. PERSONAL INCOME TAX.****§11-21-25. Education expenses tax credits.**

(a) Credit allowed. — For those tax years beginning on or after January 1, 2019, there is allowed a nonrefundable credit for expenses incurred for the purchase of supplementary education materials or professional development costs incurred by a classroom teacher, classroom aide, autism mentor, braille specialist, early childhood classroom assistant, paraprofessional, sign language assistant teacher, educational sign language interpreter, or sign support specialist employed by a public or private school.

(b) Amount of credit. — A person eligible for the credit pursuant to subsection (a) of this section may claim a tax credit not to exceed \$250.

(c) Qualifying educational expenses. — Qualifying expenses include costs relating to computer equipment including education-related software and services, textbooks, workbooks, curricula and other written or supplementary materials used for curricular, cocurricular, or extra-curricular instruction and expenses for curricular or cocurricular activities.

(d) Unused credit. — If any credit remains after application of §11-21-25(c) of this code, that amount is forfeited. A carryback to a prior taxable year is not allowed for the amount of any unused portion of any annual credit allowance.

**CHAPTER 18. EDUCATION.****ARTICLE 5. COUNTY BOARD OF EDUCATION.****§18-5-16. Student transfers; definitions; ~~legislative findings~~; appeals; calculating net enrollment; fees for transfer.**

(a) County districts and school attendance. — ~~Establishment of attendance zones within counties.~~ — The county board ~~may divide~~ shall establish attendance zones within the county ~~into such districts as are necessary to determine~~ to designate the schools ~~the~~

~~that its resident~~ students ~~of its county~~ shall attend. Upon the written request of any parent or guardian, or person legally responsible for any student, or for reasons affecting the best interests of the schools, the superintendent may transfer students from one school to another within the county. Any aggrieved person may appeal the decision of the county superintendent to the county board, and the decision of the county board ~~shall be~~ is final.

~~(b) Transfers between counties; legislative findings—~~

~~(1) Transfers of students from one county to another may be made by the county board of the county in which the student desiring to be transferred resides. The transfer shall be subject to the approval of both the board of the county in which the student resides and the board to which the student wishes to be transferred.~~

~~(2) Legislative findings.— Over the past several years, counties have been forced to close a number of schools because of declining student enrollment. School officials predict that an additional eighteen percent loss in enrollment may occur between 2002 and 2012. This continued decrease in the number of students enrolled in the public schools of the state may result in more instances of consolidation which will increase the problem of long bus rides for students if they remain in a school in their county of residence.~~

Therefore the Legislature makes the following findings:

~~(A) County lines may impede the effective and efficient delivery of education services;~~

~~(B) Students often must endure long bus rides to a school within their county of residence when a school in an adjacent county is a fraction of the distance away;~~

~~(C) The wishes of parents or guardians to have their children transferred to a county other than their county of residence should be considered by the county boards; and~~

~~(D) Where counties cannot agree, it is necessary to establish a process to determine when transfers are appropriate.~~

~~(3) The state board shall establish a process whereby a parent or guardian of a student may appeal the refusal of a county board to enter into an agreement to transfer or accept the transfer of the student.~~

~~(A) The process shall designate the state superintendent to hear the appeal. In determining whether to overturn a decision of a county board, the state superintendent shall consider such factors as the following:~~

~~(i) Travel time for the student;~~

~~(ii) Impact on levies or bonds;~~

~~(iii) Other financial impact on the county of residence; and~~

~~(iv) Such other factors as the state superintendent may determine.~~

~~(B) If, during the appeal process, the state superintendent discovers that the education and the welfare of students in the transferring county could be enhanced, the state superintendent may direct that students may be permitted to attend a school in another county.~~

~~(C) If multiple appeals are received from the same geographical area of a county, the state superintendent may impose on the receiving county restrictions including, but not limited to, requiring the receiving county to accept all students in that geographical area of the sending county who wish to transfer to the receiving county.~~

~~(D) If a student is transferred on either a full time or a part time basis without the agreement of both boards by official action as reflected in the minutes of their respective meetings and if the student's parent or guardian fails to appeal or loses the appeal under the process established in subdivision (3) of this subsection, the student shall be counted only in the net enrollment of the county in which the student resides.~~

~~(4) If, after two county boards have agreed to a transfer arrangement for a student, that student chooses to return to a school in his or her county of residence after the second month of any school year, the following shall apply:~~

~~(A) The county of residence may issue an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county of residence otherwise would have received under the state basic foundation program established in article nine a [ §§ 18-9A-1 et seq. ] of this chapter; and~~

~~(B) The county from which the student transferred shall reimburse the county of residence for the amount of the invoice.~~

*(c) Transfers between high schools.*— In any county where a high school is maintained, but topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of any students to such high school, the board may transfer them to a high school in an adjoining county. In any such case, the county boards may enter into an agreement providing for the payment of the cost of transportation, if any, of the students.

(b) Definitions. – For the purposes of this section, unless a different meaning clearly appears from the context:

‘Nonresident student’ means a student who resides in this state and who is enrolled in or is seeking enrollment in a county school district other than the county school district in which the student resides.

‘Open enrollment’ means a policy adopted and implemented by a county board to allow nonresident students to enroll in any school within the district. Open enrollment is distinct from a mutual agreement of two county boards regarding mass transfer of students, as contemplated in §18-5-13(f)(1)(C) of this code.

(c) Enrollment policies. – County boards may establish and implement an open enrollment policy without charging tuition and without obtaining approval from the board of the county in which a student resides and transfers. These policies shall clearly articulate any admission criteria, application procedures,

transportation provisions, timelines for open enrollment periods, and restrictions on transfers due to building capacity constraints. Enrollment policies are subject to the following:

(1) A county board may give enrollment preference to:

(A) Siblings of students already enrolled through the open enrollment policy;

(B) Secondary students who have completed tenth grade and, due to family relocation, become nonresident students, but express the desire to remain in a specific school to complete their education;

(C) Students who are children, grandchildren, or legal wards of employees;

(D) Students whose legal residences, though geographically within another county, are more proximate to a school within the receiving county, whether calculated by miles or transportation time; and

(E) Students who reside in a portion of a county where topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of the student to a school within the county, and a school within a contiguous county is more easily accessible.

(2) A county must comply with all enrollment requirements for children who are in foster care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento Homeless Assistance Act (42 U.S.C. §11434a(6)).

(3) The county board for the county educating the nonresident student may provide an adequate means of transportation to nonresident students when students have complied with the procedure for obtaining authorization to attend school outside their county of residence, subject to the following:

(A) County boards of education are not required to uniformly provide nonresident student transportation, and may consider

whether a nonresident student meets the eligibility criteria for free or reduced price lunches and milk established within the Richard B. Russell National School Lunch Act (42 U.S.C. §1758); and

(B) The county board for the county educating the nonresident student shall provide transportation to and from the school of attendance, or to and from an agreed pickup point on a regular transportation route, or for the total miles traveled each day for the nonresident student to reach the school of enrollment if the nonresident student with disabilities has an individualized education program that specifies that transportation is necessary for fulfillment of the program.

(d) Appeal. – The state board of education shall establish a process whereby a parent or guardian of a student may appeal the refusal of a county board to accept the transfer of the student. If during the appeal process, the State Superintendent discovers that the education and the welfare of the student could be enhanced, the State Superintendent may direct that the student may be permitted to attend a school in the receiving county.

(e) Net enrollment. – For purposes of net enrollment as defined in §18-9A-2 of this code, whenever a student is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the student is transferred shall include the student in its net enrollment: *Provided*, That if, after transferring to another county, a student chooses to return to a school in his or her county of residence after the second month of any school year, the following applies:

(1) The county of residence may issue an invoice to the county from which the student transferred for the amount, determined on a pro rata basis, that the county of residence otherwise would have received under the state basic foundation program established in §18-9A-1 *et seq.* of this code; and

(2) The county from which the student transferred shall reimburse the county of residence for the amount of the invoice.

~~(e)~~ (f) *Transfers between high schools.* — In any county where a high school is maintained, but topography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of any students to such high school, the board may transfer them to a high school in an adjoining county. In any such case, the county boards may enter into an agreement providing for the payment of the cost of transportation, if any, of the students.

~~(d)~~ (f) *Transfers between states.* — Transfer of students from this state to another state shall be upon such terms, including payment of tuition, as shall be mutually agreed upon by the board of the ~~transferring~~ receiving county and the authorities of the school ~~to~~ or district from which the transfer is made.

~~(e)~~ (g) No parent, guardian, or person acting as parent or guardian shall be is required to pay for the transfer of a student or for the tuition of the student after the transfer when ~~such~~ the transfer is carried out under the terms of this section.

(h) Nothing in this section supersedes the eligibility requirements for participation in extra-curricular activities established by the Secondary Schools Activities Commission.

(i) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

**§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.**

(a) The provisions of this section expire effective July 1, 2019: Provided, That any agreements made pursuant to this section prior to July 1, 2019, shall remain in effect.

(b) Whenever, in the opinion of the board of Education of any county, the education and welfare of a pupil will be enhanced, the board of Education of such county shall have the authority to

transfer any such pupil or pupils on a part-time or full-time basis from one school district to another school district within the state: *Provided*, That the boards of education of both the transferor and the transferee districts agree to the same by official action of both boards as reflected in the minutes of their respective meetings.

(c) Any pupil attending a school in a district of this state adjacent to the district of residence during the school year one thousand nine hundred eighty-four—eighty-five, is authorized to continue such attendance in the adjacent district, and, upon written request therefor by the parent or guardian, any person who is entitled to attend the public schools of this state and who resides in the same household and is a member of the immediate family of such pupil is authorized to enroll in such adjacent district. The transferor and transferee school districts shall effectuate any transfer herein authorized in accordance with the provisions of this section.

(d) Whenever a pupil is transferred from one school district to another district on a full-time or part-time basis, the board of Education of the school district in which the pupil is a bona fide resident shall pay to the board of Education of the school district to which the pupil is transferred a tuition that is agreed upon by both such boards. Tuition for each full-time pupil shall not exceed the difference between the state aid per pupil received by the county to which the pupil is transferred and the county cost per pupil in the county to which said pupil is transferred.

(e) For purposes of net enrollment as defined in section two, article nine-a of this chapter: (1) Whenever a pupil is transferred on a full-time basis from one school district to another district pursuant to the provisions of this section, the county to which the pupil is transferred shall include such pupil in its net enrollment; and (2) whenever a pupil is transferred on a part-time basis from one school district to another school district pursuant to the provisions of this section, the county in which the student is a bona fide resident shall count the pupil in its net enrollment.

### **§18-5-18b. School counselors in public schools.**

(a) A school counselor means a professional educator who holds a valid school counselor's certificate in accordance with §18-3-1 *et seq.* of this code.



(b) Each county board shall provide counseling services for each pupil enrolled in the public schools of the county.

(c) The school counselor shall work with individual pupils and groups of pupils in providing developmental, preventive and remedial guidance and counseling programs to meet academic, social, emotional, and physical needs; including programs to identify and address the problem of potential school dropouts. The school counselor also may provide consultant services for parents, teachers, and administrators and may use outside referral services, when appropriate, if no additional cost is incurred by the county board.

(d) The state board may adopt rules consistent with the provisions of this section that define the role of a school counselor based on the 'National Standards for School Counseling Programs' of the American school counselor association. A school counselor is authorized to perform such services as are not inconsistent with the provisions of the rule as adopted by the state board. To the extent that any funds are made available for this purpose, county boards shall provide training for counselors and administrators to implement the rule as adopted by the state board.

(e) Each county board shall develop a comprehensive drop-out prevention program utilizing the expertise of school counselors and any other appropriate resources available.

(f) School counselors shall be full-time professional personnel shall spend at least ~~seventy five~~ eighty percent of work time in a direct counseling relationship with pupils, and shall devote no more than ~~one fourth~~ twenty percent of the work day to administrative activities: *Provided*, That such activities are counselor related.

(g) Nothing in this section prohibits a county board from exceeding the provisions of this section, or requires any specific level of funding by the Legislature.

**§18-5-45a. Further expressions of legislative intent with respect to school calendar; applicability to time lost due to work stoppage or strike; prohibiting extracurricular activities on canceled instructional days.**

(a) Section 18-5-45 of this code is designed to define the school term both for employees and for instruction. The employment term consists of at least 200 days as provided in that section and, within the employment term, an instructional term for students must consist of at least 180 separate instructional days. Section 18-5-45 of this code also defines the minimum length of an instructional day, requires county boards to develop a policy for additional minutes of instruction to recover time lost due to late arrivals and early dismissals, and also allows schools with an instructional day in excess of certain minimums to apply this equivalent instructional time to cancel time lost due to necessary closures and other purposes designed to improve instruction. The use of equivalent time gained to cancel days lost and the use of alternative methods to deliver instruction on canceled days as defined in §18-5-45 of this code constitute instructional days for the purposes of meeting both the 200-day minimum employment term and the 180-day minimum separate instructional day requirements. The Legislature intended with the enactment of these provisions regarding equivalent instructional time and alternative instructional delivery to help improve instruction and lessen the disruption to the planned school calendar if rescheduling and adding instructional days became necessary to make up lost days due to closures pursuant to §18-4-10(5) of this code when conditions are detrimental to the health, safety, or welfare of pupils. The Legislature did not intend with the enactment of these provisions to permit a reduction of the instructional term for students or of the employment term for personnel when the conditions causing the closure of the school are a concerted work stoppage or strike by the employees. The provisions of §18-5-45 of this code permitting accrued or equivalent instructional time to cancel days lost, and the delivery of instruction through alternative methods, do not apply to and may not be used to cancel days lost due to a concerted work stoppage or strike.

(b) If an originally scheduled instructional day is canceled for any reason, the school for which the day was canceled may not participate in any extracurricular activities during any part of that same day.

**§18-5-46. Requiring teacher to change grade prohibited; teacher recommendation relating to promotion.**

(a) No teacher may be required by a principal or any other person to change a student's grade on either an individual assignment or a report card unless there is clear and convincing evidence that there was a mathematical error in calculating the student's grade.

(b) The teacher's recommendation relating to whether or not a student should be promoted to the next grade level shall be a primary consideration when making such a determination.

**§18-5-48. Safety and security measures for school facilities.**

(a) Each county board of education and multi-county vocational center shall annually assess the safety and security of each of the school facilities within its boundaries. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board's ability, the safety of the students within each facility. Each county board of education shall report annually the safety and security measures it has put in place, including upgrades thereto, to the state department of education. Annually, the state department of education shall compile the information from the county boards of education, and report the information to the legislative oversight commission on education accountability.

(b) As used in this section, 'safety and security measures' means action taken by a county board of education or multi-county vocational center that improves the security of a school facility and the safety of the students within such facility, including but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows, etc.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the 'Safe Schools Fund'. The fund shall consist of all moneys received from legislative appropriations and other sources to further the purpose of this section: *Provided*, That annually, the West Virginia Department of Education shall request an appropriation based on the requests of the county boards of education. Subject to legislative appropriation, the funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education and multi-county vocational centers, with the funding amount per school determined by dividing the total annual appropriation by the total number of public schools throughout the state. All monies distributed from this fund shall be used to support the purpose and intent of this section. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's consolidated investment fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

## **ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

### **§18-5G-1. Legislative purpose and intent.**

The West Virginia Legislature hereby authorizes the establishment of public charter schools to benefit students, parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system under the general supervision of the state board and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:

(a) Improve student learning by creating more diverse public schools with high standards for student performance;

(b) Provide innovative educational methods and practices through programs that engage students in the learning process, thus resulting in higher student achievement;

(c) Enable schools to establish a distinctive school curriculum, a specialized academic theme, or method of instruction; and

(d) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of results-driven accountability.

### **§18-5G-2. Definitions.**

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) ‘Applicant’ means any group or entity with 501(c)(3) tax-exempt status or that has submitted an application for 501(c)(3) tax-exempt status that develops and submits an application for a public charter school to an authorizer;

(2) ‘Authorizer’ means the entity authorized under this article to review and approve or deny charter applications, enter into charter contracts with applicants, oversee public charter schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers include:

(A) A county school board in the county in which a public charter school is proposed to be located;

(B) Two or more county school boards representing the several counties which a public charter school is proposed to serve;

(C) ~~Any accredited West Virginia public institution of higher education; or~~

(D) The West Virginia Public Charter School Commission established pursuant to §18-5G-9 of this code: *Provided*, That the commission may authorize public charter schools only upon the request by a county board that the Commission assume the role of authorizer or in school districts that do not meet academic standards as determined pursuant to state board rule;

(3) ‘Charter application’ means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) ‘Charter contract’ or ‘contract’ means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) ‘Commission’ means the West Virginia Public Charter School Commission established pursuant to §18-5G-9 of this code;

(6) ‘Conversion public charter school’ means a public charter school that existed as a noncharter public school before becoming a public charter school;

(7) ‘County board’ means a county board of education;

(8) ‘Education service provider’ means an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(9) ‘Governing board’ means the independent board of directors for a public charter school that is a party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the charter application;

(10) ‘Noncharter public school’ means a public school other than a public charter school established pursuant to this article;

(11) ‘Parent’ means a parent, guardian, or other person or entity having legal custody over a child;

(12) ‘Public charter school’ means a public school established pursuant to this article that;

(A) Is a public corporate body, exercising public power through its governing board, including the power in name to contract and be contracted with, sue and be sued, and adopt bylaws not inconsistent with this article;

(B) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum, and instruction consistent with this article and its charter contract;

(C) Is considered part of the county school district in which the public charter school is located;

(D) Is established and operating under the terms of a charter contract between the public charter school's governing board and its authorizer;

(E) Is a public school to which parents choose to send their children;

(F) Is a public school that admits students on the basis of a random and open lottery if more students apply for admission than can be accommodated, pursuant to and subject to §18-5G-4 of this code;

(G) Offers a comprehensive instructional program that meets or exceeds the student performance standards adopted pursuant to §18-2E-5 of this code;

(H) Operates under the oversight of its authorizer in accordance with its charter contract; and

(I) Meets all requirements for being eligible for federal funds as a charter school.

(13) 'State board' means the West Virginia Board of Education; and

(14) 'Student' means any person that is eligible for attendance in a public school in West Virginia.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

(a) A public charter school shall be part of the state's system of public education but shall be exempt from all statutes and administrative regulations applicable to the state board, a county board, or a school unless expressly stated otherwise in this article such as the requirement in this article for charter school participation in the state summative assessment, subject to the following:

(1) Public charter schools shall adhere to the same immunization, civil rights, and disability rights requirements applicable to noncharter public schools; and

(2) Nothing in this article prohibits a public charter school from complying with any statute, state board policy, or county board policy applicable to noncharter public schools.

(b) A public charter school shall not have entrance requirements or charge tuition or fees: *Provided*, That a public charter school may require the payment of fees on the same basis and to the same extent as noncharter public schools.

(c) A public charter school shall not have the power to levy taxes.

(d) A public charter school shall:

(1) Be governed by a governing board;

(2) Provide instructional time that is at least equal to the number of days or their equivalent required by §18-5-45 of this code;

(3) Require criminal background checks for staff and volunteers, including members of its governing board, as required of all noncharter public school employees and volunteers;

(4) Prohibit contractors and service providers or their employees from making direct, unaccompanied contact with students or accessing school grounds unaccompanied when students are present if it cannot be verified that the contractors, service providers, or their employees have not been previously



convicted of a qualifying offense pursuant to §18-5-15c of this code;

(5) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(6) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(7) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools;

(8) Comply with the Freedom of Information Act as set forth in §29B-1-1 *et seq.* of this code;

(9) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use;

(10) Operate under the oversight of its authorizer in accordance with its charter contract;

(11) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes;

(B) Secure appropriate insurance and enter into contracts and leases;

(C) Contract with an education service provider, so long as the governing board retains final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit;

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources;

(12) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(13) Require any education service provider contracted with the governing board to provide a monthly detailed budget to the board;

(14) Serve one or more of grades pre-K through 12 and limit admission to students within the grade levels served; and

(15) Provide programs and services to a student with a disability in accordance with the student's individualized education program and all federal and state laws, rules, and regulations. A public charter school shall deliver the services directly or contract with another provider to deliver the services.

(e) A public charter school may:

(1) Negotiate and contract with its authorizer or any third party for the use, operation, and maintenance of a building and grounds, liability insurance, and the provision of any service, activity, or undertaking that the public charter school is required to perform in order to carry out the educational program described in its charter contract. Any services for which a public charter school contracts with a school district shall be provided by the district at cost and shall be negotiated as a separate agreement after final charter contract negotiations;

(2) Sue and be sued in its own name;

(3) Own, rent, or lease its space;

(4) Participate in cocurricular activities to the same extent as noncharter public schools; and

(5) Participate in extracurricular activities to the same extent as noncharter public schools.

(f) *Public charter school governing board.* —

(1) To ensure compliance with this article, a public charter school shall be administered by a governing board accountable to the authorizer as set forth in the charter contract. A public charter school governing board shall consist of no fewer than five members.

(2) The governing board shall consist of at least:

(A) Two parents of students attending the public charter school operating under the governing board; and

(B) One member of the county board over the school district in which the public charter school is located if the county board elects to appoint a member: *Provided*, That refusal by any county board members to sit on the governing board shall not preclude the establishment of a charter school.

(3) Members of the governing board shall:

(A) Not be an employee of the public charter school administered by the governing board;

(B) Not be an employee of an education service provider that provides services to the public charter school; and

(C) File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, the management organization of the school, or any other public charter school.

(4) Members of the governing board shall collectively possess expertise in leadership, curriculum and instruction, law, and finance.

(5) A member of the public charter school governing board shall be considered an officer of a school district under the provisions of §6-6-7 of this code, and shall be removed from office under the provisions of that section.

(6) The governing board shall be responsible for the operation of its public charter school, including, but not limited to, preparation of an annual budget, contracting for services, school curriculum, personnel matters, and achieving the objectives and goals of the public charter school's program.

(7) The governing board shall comply with open governmental proceedings requirements set forth in §6-9A-1 et seq. of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

(a) A public charter school may enroll any student residing in the state.

(b) If capacity is insufficient to enroll all students who wish to attend any specific grade level at a public charter school, the school shall select students through a randomized and transparent lottery: *Provided*, That the state board shall promulgate a rule to guide student application and lottery procedures for public charter schools.

(c) Enrollment preference for public charter schools shall be given to students enrolled in the public charter school the previous year and to siblings of students already enrolled in the school. An enrollment preference for returning students shall exclude those students from entering into a lottery, as identified in §18-5G-4(c) of this code.

(d) A public charter school may allow an enrollment preference for students who meet federal eligibility requirements for free or reduced-price meals and at-risk students.

(e) A public charter school may give enrollment preference to children of a public charter school's governing board members and full-time employees, as long as they constitute no more than 10 percent of the school's total student population.

(f) Every charter school shall submit a recruitment and retention plan annually to its authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll,

and retain a student population that includes students who are, to the extent applicable:

(1) Limited English proficient;

(2) Special education;

(3) Low income;

(4) Below proficiency on the comprehensive statewide student assessment;

(5) At risk of dropping out of school;

(6) Have dropped out of school; or

(7) Any others who should be targeted to eliminate achievement gaps.

(g) A noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy giving enrollment preference to students who reside within the former attendance area of that public school.

#### **§18-5G-5. Application to establish public charter school.**

(a) To establish a new public charter school or to convert an existing noncharter public school to a public charter school, an applicant shall submit a charter application to an authorizer, subject to the following:

(1) No more than seven charter schools may be authorized statewide, and no more than two charter schools may be newly authorized statewide per year. Charter authorizers shall accept and document the date and time of receipt of all charter applications. The state board shall promulgate rules pursuant to §29A-3B-1 et seq. of this code to implement processes for notifying potential applicants and authorizers regarding the number of charter schools authorized and the number of applicants seeking authorization;

(2) At least one of the seven public charter schools shall primarily serve an at-risk student population; and

(3) Only a county board may authorize the conversion of an existing noncharter public school to a public charter school except that the West Virginia Public Charter School Commission may authorize the conversion of public charter schools in school districts that do not meet academic standards as determined pursuant to state board rule.

(b) The application shall contain, at a minimum, the following information:

(1) A mission statement and a vision statement for the public charter school, including specialized academic focus, if any, to be promoted and advanced through the establishment of the public charter school;

(2) A detailed description of the public charter school's proposed program;

(3) The student achievement goals for the public charter school's program and the chosen methods of evaluating whether students have attained the skills and knowledge specified for those goals;

(4) The school's plan for using data derived from student evaluations and assessments, including the statewide summative assessment, to drive instruction and promote continued school improvement;

(5) An explanation of how the school's proposed program is likely to improve the achievement of traditionally underperforming students in the local school district;

(6) The proposed governance structure of the school, including a list of members of the initial governing board, a draft of bylaws that include the description of the qualifications, terms, and methods of appointment or election of governing board members, and the organizational structure of the school that clearly presents lines of authority and reporting between the governing board, school administrators, staff, any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(7) Plans and timelines for student enrollment, including policies and procedures for conducting transparent and random admission lotteries that are open to the public, and that are consistent with this article;

(8) A proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions;

(9) Proposed fiscal and internal control policies for the public charter school;

(10) Acknowledgement that the public charter school will participate in the state's accountability system;

(11) A proposed handbook that outlines the personnel policies of the public charter school, including the criteria to be used in the hiring of qualified teachers, school administrators, and other school employees, a description of staff responsibilities, and the school's plan to evaluate personnel on an annual basis;

(12) An explanation of proposed student discipline procedures, including disciplinary procedures for students with disabilities, which shall be consistent with the requirements of due process and with state and federal laws and regulations governing the placement of students with disabilities;

(13) A description of the facilities to be used by the public charter school, including the location of the school and how the facility supports the implementation of the school's program. The school shall obtain all required occupation and operation certificates and licenses prior to the first instructional day for students;

(14) The proposed ages and grade levels to be served by the public charter school, including the planned minimum and maximum enrollment per grade per year;

(15) The school calendar and school day schedule, which shall meet the requirements of §18-5-45 of this code;

(16) Types and amounts of insurance coverage to be obtained by the public charter school, which:

(A) Shall include adequate insurance for liability, property loss, and the personal injury of students comparable to noncharter public schools within the local school district operated by the county board; and

(B) May include coverage from the Board of Risk and Insurance Management pursuant to §29-12-5a of this code;

(17) A description of the food services to be provided to students attending the school;

(18) Process and procedures to be followed in the case of the closure or dissolution of the public charter school, including provisions for the transfer of students and student records to the appropriate local school district and an assurance and agreement to payment of net assets or equity, after payment of debts as specified in §18-5G-8 of this code;

(19) A code of ethics for the school setting forth the standards of conduct expected of its governing board, officers, and employees;

(20) The public charter school's plan for successfully serving students with disabilities, students who are English language learners, bilingual students, and students who are academically behind and gifted, including, but not limited to, the school's plan for compliance with all applicable federal and state laws and regulations;

(21) A description of cocurricular and extracurricular programs to be offered by the public charter school and how they will be funded and delivered;

(22) The process by which the school will resolve any disputes with the authorizer;

(23) A detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan; and



(24) The public charter school's plan for parental involvement.

(c) If the applicant intends to contract with an education service provider for educational program implementation or comprehensive management, the application shall additionally require the applicant to provide the following information with respect to the educational service provider:

(1) Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions, if applicable;

(2) Student performance data and financial audit reports for all current and past public charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service provider;

(6) The roles and responsibilities of the governing board, the school staff, and the education service provider;

(7) The scope of services and resources to be provided by the education service provider;

(8) Performance evaluation measures and timelines;

(9) Methods of contract oversight and enforcement;

(10) Investment disclosure;

(11) Conditions for renewal and termination of the contract;  
and

(12) Disclosure and explanation any existing or potential conflicts of interest between the governing board and the proposed education service provider or any affiliated business entities.

**§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally sound manner, and are likely to improve student achievement through the program detailed in the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5 of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(5) Monitor the performance and compliance of public charter schools according to the terms of the charter contract;

(6) Determine whether each charter contract it authorizes merits renewal or revocation; and

(7) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation;  
and

(D) Charter approval, renewal, and revocation decision-making.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

(3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;

(4) Provide a detailed analysis of the application to the applicant or applicants;

(5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and

(6) Approve or deny a charter application based on established objective criteria or request additional information.

(c) In deciding to approve a charter application, the authorizer shall:

(1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-5 of this code;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.

(d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.

(e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.

(f) No public charter school may begin operations prior to July 1, 2019.

(g) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(h) To cover authorizer costs for overseeing public charter schools in accordance with this Act, each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school under §18-5G-11 of this code, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board shall establish a statewide formula for authorizer funding, which shall apply uniformly to every authorizer in the state. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of this code;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The specific commitments of the authorizer relating to its obligations to oversee, monitor the progress of, and supervise the public charter school;

(7) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(8) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(9) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(10) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school that set forth the academic and operational performance indicators, measures, and metrics to

be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

(6) Student withdrawals;

(7) Recurrent enrollment from year to year;

(8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

(9) Additional valid and reliable indicators requested by the public charter school.

(d) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.

(e) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, the president of the public institution of higher education, or the chair of the West Virginia Public Charter School Commission, as applicable. A copy of the charter contract shall be provided to the State Superintendent of Schools.

(f) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, the institutional board of governors

of a public institution of higher education, or the West Virginia Public Charter School Commission. For any public institution of higher education that does not have an institutional board of governors, the charter contract instead shall be approved by the level of authority immediately above the president of the institution.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts; rulemaking.**

(a) A charter contract may be renewed by the authorizer for a term of no more than five years. Authorizers may grant renewal with specific conditions for necessary improvements in the public charter school: *Provided*, That any specific condition imposed does not contradict the terms of this article.

(b) The State Board of Education shall promulgate a rule establishing the process for renewing or not renewing a charter contract. At a minimum, this rule shall include:

(1) A timeline for a governing board to submit an application for renewal to an authorizer;

(2) The information that must be included in an application for renewal;

(3) If the authorizer initially determines to deny a renewal application:

(A) Notification requirements to the governing board about the prospect of nonrenewal and the reasons for possible closure of the public charter school;

(B) An opportunity and timeframe for the governing board to provide a response to the notice of the nonrenewal;

(C) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed; and

(D) An opportunity for a recorded public hearing, at the request of the governing board;

(4) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the nonrenewal of the charter contract;

(5) The information that must be included in the authorizer's final decision if it determines to deny a renewal application;

(6) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(7) Approval of the authorizer's decision shall be adopted by the county board, county boards, institutional board of governors, or West Virginia Public Charter School Commission, as applicable, during an open meeting, subject to the following:

(A) If the authorizer is a public institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(8) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

(c) A charter contract shall not be renewed if the authorizer determines that the public charter school has:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures required under this article or the charter contract, and has persistently failed to correct the violation after fair and specific notice from the authorizer;



(2) Failed to meet or make significant progress toward the program performance expectations identified in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management, and has failed to correct the violation after fair and specific notice from the authorizer; or

(4) Substantially violated any material provision of law from which the public charter school was not exempted and has failed to correct the violation after fair and specific notice from the authorizer.

(d) A charter contract shall include provisions for revoking the charter contract. At a minimum, these provisions shall include:

(1) The information that must be included in the authorizer's initial decision to revoke the charter contract;

(2) Notification requirements to the governing board about the authorizer's initial decision to revoke a charter contract and the reasons for the revocation;

(3) An opportunity and timeframe for the governing board to provide a response to the authorizer's initial decision to revoke the charter contract;

(4) An opportunity for the governing board to submit documentation and provide testimony as to why the charter contract should not be revoked;

(5) An opportunity for a recorded public hearing, at the request of the governing board;

(6) That the authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the revocation of the charter contract;

(7) The information that must be included in the authorizer's final decision if it determines to revoke the charter contract;

(8) A timeline for an authorizer to render a final decision on whether or not to revoke a charter contract;

(9) Approval of the authorizer's decision shall be adopted during an open meeting, subject to the following:

(A) If the authorizer is a public institution of higher education that has no institutional board of governors, the decision shall be adopted during an open meeting of the institution's level of authority immediately above the president or other chief administrator of the institution; and

(B) If the level of authority immediately above the president or other chief administrator is an individual, the open meeting requirement of this subdivision does not apply; and

(10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed.

(e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall take immediate action to revoke a charter contract if the health and safety of students attending the public charter school is threatened.

(f) An authorizer shall develop a public charter school closure protocol or protocol for transitioning a charter school to noncharter public school status. The protocol shall ensure timely notification to parents, orderly transition of students and student records to new schools when applicable, and proper disposition of school funds, property, and assets. The protocol shall specify tasks, timelines, and responsible parties, including delineating the respective duties of the public charter school and the authorizer. If a public charter school closes or transitions to noncharter public school status for any reason, the authorizer shall oversee and work with the closing or transitioning school to ensure a smooth and orderly closure or transition and transition for students and parents, as guided by the closure or school transition protocol. If a public charter school is subject to closure or transition, an authorizer may remove at will at any time any or all of the members of the board of directors of the

public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

**§18-5G-9. West Virginia Public Charter School Commission; members; appointments; meetings.**

(a) There is hereby created the West Virginia Public Charter School Commission which shall report directly to and be responsible to the state board, separate from the Department of Education, for carrying out its duties in accordance with this article. The mission of the commission is to authorize high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. The commission and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of this code. Consistent with the provisions of this article, the commission has authority to authorize public charter schools only upon the request by a county board that the Commission assume the role of authorizer or in school districts that do not meet academic standards as determined pursuant to state board policy. Except as otherwise authorized in this article, no other governmental agency or entity may assume any charter authorizing function or duty in any form.

(b) The commission shall consist of seven voting members, as follows:

(1) The State Superintendent of Schools, or designee;

(2) The Chancellor of the Higher Education Policy Commission, or designee;

(3) The Chancellor for Community and Technical College Education, or designee; and

(4) Four members appointed by the Governor, with the advice and consent of the Senate.

(c) The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting ex officio members of the commission.

(d) Each appointed member shall represent the public interest and must satisfy the following requirements:

(1) Be a citizen of the state;

(2) Possess experience and expertise in public or nonprofit governance, management and finance, public school leadership, assessment, curriculum or instruction, or public education law; and

(3) Have demonstrated an understanding of, and commitment to, charter schooling as a strategy for strengthening public education.

(e) No more than three of the appointed members of the commission may be of the same political party. No more than two of the appointed members may be residents of the same congressional district. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions, or who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the commission or any charter school governing board. No person may be appointed who is engaged in, or employed by a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards.

(f) The initial appointments made pursuant to this section shall be for staggered one- and two-year terms. Thereafter, all appointments shall be for a term of two years. The initial appointments shall be made before February 1, 2020. The

commission shall meet as soon as practical after February 1, 2020, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(g) An appointed member of the commission may be removed from office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also be removed if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the commission as determined and specified by the commission in its bylaws. Whenever an appointed member vacancy on the commission exists, the Governor shall appoint, with the advice and consent of the Senate, a qualified person for the remainder of the vacated term.

(h) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the commission and members of the commission in their official capacity are immune from civil liability with respect to all activities related to a public charter school approved by the commission. The official actions of the members of the commission who are serving in an ex officio capacity by virtue of their designation or employment in another position are commission member actions only, and may not be construed as official actions or positions of such member's employing entity.

(i) The commission may appoint an executive director and may employ such additional staff as may be necessary. The executive director shall serve at the will and pleasure of the commission. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law.

(j) The commission shall meet as needed, but at least bi-annually. From funds appropriated or otherwise made available for such purpose, its members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties upon submission of an itemized statement in a manner

consistent with guidelines of the Travel Management Office of the Department of Administration.

**§18-5G-10. Prohibitions.**

Notwithstanding any provision in this article that may be interpreted to the contrary, a public charter school shall not:

(1) Be home-school based; and

(2) Discriminate on any basis for which the noncharter public schools of this state may not discriminate: *Provided*, That nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk students, students with disabilities, and students who pose such severe disciplinary problems that they warrant a specific education program.

**§18-5G-11. State board rule relating to funding for charter school enrollment and other necessary provisions.**

(a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional state aid funding to county boards of education related to the operation of public charter schools;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article. The rule also shall include a provision prohibiting a county board from discrimination against any district employee involved directly or indirectly with an application to establish a public charter school under this article.

(c) The state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. If an authorizer fails to close a charter school that does not meet the standards, the authorizer shall appear before the State Board to justify its decision. The State Board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize charter schools.

(d) Notwithstanding any other provision of this article to the contrary, the state board may promulgate a rule in accordance with §29A-3B-1 et seq. of this code which allows the schools for the deaf and blind to apply to the state board for authorization to become a public charter school.

#### **§18-5G-12. Access to public facilities.**

(a) A public charter school may request usage of public facilities from a local county board where the charter school is located. A local county board or other public entity shall make facilities available to the charter school that are either not used in whole or in part for classroom instruction at the time the charter school seeks to use or lease the public facility.

(b) If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under current market value.

(c) During the term of the lease, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs and remodeling. The county school board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

### **§18-5G-13. Reports.**

(a) An authorizer that has authorized a public charter school that is currently in operation shall submit to the state superintendent for presentation to the state board and the West Virginia Public Charter School Commission an annual report within 60 days of the end of each school fiscal year summarizing:

(1) The performance of the public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

(2) The authorizing duties and functions provided by the authorizer during the previous academic year.

(b) One year after public charter schools have been in operation, and each year thereafter, the State Superintendent shall issue to the Governor, the Legislature, and the general public, a report on the state's public charter school program, drawing from the annual reports submitted by authorizers pursuant to this section, as well as any additional relevant data compiled by the State Superintendent up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges, and areas for improvement in meeting the purposes of this chapter as well as any suggested changes in state law or policy necessary to strengthen the public charter school program.

## **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

### **§18-7A-3. Definitions.**

As used in this article, unless the context clearly requires a different meaning:



(1) 'Accumulated contributions' means all deposits and all deductions from the gross salary of a contributor plus regular interest.

(2) 'Accumulated net benefit' means the aggregate amount of all benefits paid to or on behalf of a retired member.

(3) 'Actuarially equivalent' or 'of equal actuarial value' means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, 'actuarially equivalent' shall be computed using the mortality tables and interest rates required to comply with those requirements.

(4) 'Annuities' means the annual retirement payments for life granted beneficiaries in accordance with this article.

(5) 'Average final salary' means the average of the five highest fiscal year salaries earned as a member within the last 15 fiscal years of total service credit, including military service as provided in this article, or if total service is less than 15 years, the average annual salary for the period on which contributions were made: *Provided*, That salaries for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(6) 'Beneficiary' means the recipient of annuity payments made under the retirement system.

(7) 'Contributor' means a member of the retirement system who has an account in the teachers accumulation fund.

(8) 'Deposit' means a voluntary payment to his or her account by a member.

(9) 'Employer' means the agency of and within the state which has employed or employs a member.

(10) ‘Employer error’ means an omission, misrepresentation, or violation of relevant provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Regulations by the participating public employer that has resulted in an underpayment or overpayment of contributions required. A deliberate act contrary to the provisions of this section by a participating public employer does not constitute employer error.

(11) ‘Employment term’ means employment for at least 10 months, a month being defined as 20 employment days.

(12) ‘Gross salary’ means the fixed annual or periodic cash wages paid by a participating public employer to a member for performing duties for the participating public employer for which the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the work was done. Gross salary also includes retroactive payments made to a member to correct a clerical error, or made pursuant to a court order or final order of an administrative agency charged with enforcing federal or state law pertaining to the member’s rights to employment or wages, with all retroactive salary payments to be allocated to and considered paid in the periods in which the work was or would have been done. Gross salary does not include lump sum payments for bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind including, but not limited to, transportation allowances, automobiles or automobile allowances, or lump sum payments for unused, accrued leave of any type or character.

(13) ‘Internal Revenue Code’ means the Internal Revenue Code of 1986, as it has been amended.

(14) ‘Member’ means any person who has accumulated contributions standing to his or her credit in the state Teachers Retirement System. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of membership pursuant to §18-7A-13 of this code.

(15) 'Members of the administrative staff of the public schools' means deans of instruction, deans of men, deans of women, and financial and administrative secretaries.

(16) 'Members of the extension staff of the public schools' means every agricultural agent, boys' and girls' club agent and every member of the agricultural extension staff whose work is not primarily stenographic, clerical, or secretarial.

(17) 'New entrant' means a teacher who is not a present teacher.

(18) 'Nonteaching member' means any person, except a teacher member, who is regularly employed for full-time service by: (A) Any county board of education; (B) the State Board of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for Community and Technical College Education; ~~or~~ (E) a governing board, as defined in §18B-1-2 of this code; or (F) a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the retirement systems under this article and §18-7B-1 et seq. of this code, subject to §18-7B-7a: Provided, That any person whose employment with the Higher Education Policy Commission, the West Virginia Council for Community and Technical College Education or a governing board commences on or after July 1, 1991, is not considered a nonteaching member.

(19) 'Plan year' means the 12-month period commencing on July 1 and ending the following June 30 of any designated year.

(20) 'Present member' means a present teacher or nonteacher who is a member of the retirement system.

(21) 'Present teacher' means any person who was a teacher within the 35 years beginning July 1, 1934, and whose membership in the retirement system is currently active.

(22) 'Prior service' means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher, and did not contribute to a retirement

account because he or she was legally ineligible for membership during the service.

(23) ‘Public schools’ means all publicly supported schools, including colleges and universities in this state.

(24) ‘Refund beneficiary’ means the estate of a deceased contributor or a person he or she has nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(25) ‘Regular interest’ means interest at four percent compounded annually, or a higher earnable rate if set forth in the formula established in legislative rules, series seven of the Consolidated Public Retirement Board, 162 CSR 7.

(26) ‘Regularly employed for full-time service’ means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay.

(27) ‘Required beginning date’ means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar year in which the member retires or ceases covered employment under the system after having attained the age of 70 and one-half years.

(28) ‘Retirant’ means any member who commences an annuity payable by the retirement system.

(29) ‘Retirement board’ means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(30) ‘Retirement system’ means the state Teachers Retirement System established by this article.

(31) ‘Teacher member’ means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any

county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads, and assistant heads of the divisions under his or her supervision, or any other employee under the State Superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education, the State Department of Education or the State Teachers Retirement Board, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and Rehabilitation, the Division of Health or the Division of Human Services; (K) an employee of the State Board of School Finance, if that person was formerly employed as a teacher in the public schools; ~~and~~ (L) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 *et seq.* of this code who elects to remain a member of the State Teachers Retirement System provided in this article; and (M) any person employed by a public charter school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its approved charter application a determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of this code.

(32) 'Total service' means all service as a teacher or nonteacher while a member of the retirement system since last becoming a member and, in addition thereto, credit for prior service, if any.

Age in excess of 70 years shall be considered to be 70 years.

## **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

### **§18-7B-2. Definitions.**

As used in this article, unless the context clearly requires a different meaning:

(1) ‘Annual addition’ means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member’s account for any limitation year of: (A) Employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts or contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan shall not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

(2) ‘Annuity account’ or ‘annuity’ means an account established for each member to record the deposit of member contributions and employer contributions and interest, dividends or other accumulations credited on behalf of the member;

(3) ‘Compensation’ means the full compensation actually received by members for service whether or not a part of the compensation is received from other funds, federal or otherwise, than those provided by the state or its subdivisions: *Provided*, That annual compensation for determining contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, ‘compensation’ has the meaning given it in §18-7B-13(d) of this code;

(4) ‘Consolidated board’ or ‘board’ means the Consolidated Public Retirement Board created and established pursuant to §5-10D-1 *et seq.* of this code;

(5) ‘Defined contribution system’ or ‘system’ means the Teachers’ Defined Contribution Retirement System created and established by this article;

(6) ‘Employer’ means the agency of and within the State of West Virginia which has employed or employs a member;

(7) 'Employer contribution' means an amount deposited into the member's individual annuity account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds;

(8) 'Employment term' means employment for at least 10 months in any plan year with a month being defined as 20 employment days;

(9) 'Existing employer' means any employer who employed or employs a member of the system;

(10) 'Existing retirement system' means the State Teachers Retirement System established in §18B-7A-1 *et seq.* of this code;

(11) 'Internal Revenue Code' means the Internal Revenue Code of 1986, as it has been amended;

(12) 'Member' or 'employee' means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools

including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; ~~and~~ (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution Retirement System established by this article; and (N) any person employed by a public charter school established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved charter application a determination to participate in the retirement systems under this article, subject to §18-7B-7a, and §18-7A-1 et seq. of this code;

(13) 'Member contribution' means an amount reduced from the employee's regular pay periods, and deposited into the member's individual annuity account within the Teachers' Defined Contribution Retirement System;

(14) 'Permanent, total disability' means a mental or physical incapacity requiring absence from employment service for at least six months: *Provided*, That the incapacity is shown by an examination by a physician or physicians selected by the board: *Provided, however*, That for employees hired on or after July 1, 2005, 'permanent, total disability' means an inability to engage in substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death, or has lasted or can be expected to last for a continuous period of not less than 12 months and the incapacity is so severe that the member is likely to be permanently unable to perform the duties of the position the member occupied immediately prior to his or her disabling injury or illness;

(15) 'Plan year' means the 12 month period commencing on July 1 of any designated year and ending on the following June 30;

(16) 'Public schools' means all publicly supported schools, including normal schools, colleges and universities in this state;

(17) 'Regularly employed for full-time service' means employment in a regular position or job throughout the employment term regardless of the number of hours worked or the method of pay;



(18) 'Required beginning date' means April 1 of the calendar year following the later of: (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar year in which the member retires or otherwise ceases employment with a participating employer after having attained the age of 70 and one-half years;

(19) 'Retirement' means a member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to retirement;

(20) 'Year of employment service' means employment for at least 10 months, with a month being defined as 20 employment days: *Provided*, That no more than one year of service may be accumulated in any 12 month period.

## **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

### **§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.**

(a) The county attendance director and the assistants shall diligently promote regular school attendance. The director and assistants shall:

(1) Ascertain reasons for unexcused absences from school of students of compulsory school age and students who remain enrolled beyond the compulsory school age as defined under section one-a of this article;

(2) Take such steps as are, in their discretion, best calculated to encourage the attendance of students and to impart upon the parents and guardians the importance of attendance and the seriousness of failing to do so; and

(3) For the purposes of this article, the following definitions shall apply:

(A) 'Excused absence' shall be defined to include:

(i) Personal illness or injury of the student or in the family;

(ii) Personal illness or injury of the student's parent, guardian, custodian, or family member: *Provided*, That the excuse must provide reasonable explanation for why the student's absence was necessary and caused by the illness or injury in the family;

~~(iii)~~ Medical or dental appointment with written excuse from physician or dentist;

(iv) Chronic medical condition or disability that impacts attendance;

(v) Participation in home or hospital instruction due to an illness or injury or other extraordinary circumstance that warrants home or hospital confinement;

(vi) Calamity, such as a fire or flood;

(vii) Death in the family;

(viii) School-approved or county-approved curricular or extra-curricular activities;

~~(ix)~~ Judicial obligation or court appearance involving the student;

(x) Military requirement for students enlisted or enlisting in the military;

(xi) Personal or academic circumstances approved by the principal; and

(xii) Such other situations as may be further determined by the county board: *Provided*, That absences of students with disabilities shall be in accordance with the Individuals with Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in compliance therewith.

(B) 'Unexcused absence' shall be any absence not specifically included in the definition of 'excused absence'.

(b) In the case of three total unexcused absences of a student during a school year, the attendance director, or assistant, or

~~principal shall serve written notice to the parent, guardian or custodian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal or other designated representative will be required.~~ make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending and not incurring any additional unexcused absences.

(c) In the case of five total unexcused absences, the attendance director or assistant ~~or principal shall serve written notice to the parent, guardian or custodian of the student that within five days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other designated representative of the school in order to discuss and correct the circumstances causing the unexcused absences of the student, including the adjustment of unexcused absences based upon such meeting.~~ again make meaningful contact with the parent, guardian, or custodian of the student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending school and not incurring any additional unexcused absences.

(d) In the case of 10 total unexcused absences of a student during a school year, the attendance director or assistant shall make a complaint against the parent, guardian, or custodian before a magistrate of the county. If it appears from the complaint that there is probable cause to believe that an offense has been committed and that the accused has committed it, a summons or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the summons or to arrest persons charged with offenses against the state. More than one parent, guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant issued pursuant to the provisions of this section shall be attempted within 10 calendar days of receipt of the summons or warrant and subsequent attempts at service shall continue until the summons or

warrant is executed or until the end of the school term during which the complaint is made, whichever is later.

(e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the accused at least 10 days' advance notice of the date, time, and place of the hearing.

(f) When any doubt exists as to the age of a student absent from school, the attendance director and assistants have authority to require a properly attested birth certificate or an affidavit from the parent, guardian, or custodian of the student, stating age of the student. In the performance of his or her duties, the county attendance director and assistants have authority to take without warrant any student absent from school in violation of the provisions of this article and to place the student in the school in which he or she is or should be enrolled.

(g) The county attendance director and assistants shall devote such time as is required by section three of this article to the duties of attendance director in accordance with this section during the instructional term and at such other times as the duties of an attendance director are required. All attendance directors and assistants hired for more than 200 days may be assigned other duties determined by the superintendent during the period in excess of 200 days. The county attendance director is responsible under direction of the county superintendent for efficiently administering school attendance in the county.

(h) In addition to those duties directly relating to the administration of attendance, the county attendance director and assistant directors also shall perform the following duties:

(1) Assist in directing the taking of the school census to see that it is taken at the time and in the manner provided by law;

(2) Confer with principals and teachers on the comparison of school census and enrollment for the detection of possible nonenrollees;

(3) Cooperate with existing state and federal agencies charged with enforcing child labor laws;

(4) Prepare a report for submission by the county superintendent to the State Superintendent of Schools on school attendance, at such times and in such detail as may be required. The state board shall promulgate a legislative rule pursuant to §29A-3B-1 *et seq.* of this code that sets forth student absences that are excluded for accountability purposes. The absences that are excluded by the rule include, but are not limited to, excused student absences, students not in attendance due to disciplinary measures, and absent students for whom the attendance director has pursued judicial remedies to compel attendance to the extent of his or her authority. The attendance director shall file with the county superintendent and county board at the close of each month a report showing activities of the school attendance office and the status of attendance in the county at the time;

(5) Promote attendance in the county by compiling data for schools and by furnishing suggestions and recommendations for publication through school bulletins and the press, or in such manner as the county superintendent may direct;

(6) Participate in school teachers' conferences with parents and students;

(7) Assist in such other ways as the county superintendent may direct for improving school attendance;

(8) Make home visits of students who have excessive unexcused absences, as provided above, or if requested by the chief administrator, principal, or assistant principal; and

(9) Serve as the liaison for homeless children and youth.

**ARTICLE 9A. PUBLIC SCHOOL SUPPORT.****§18-9A-2. Definitions.**

For the purpose of this article:

(a) ‘State board’ means the West Virginia Board of Education.

(b) ‘County board’ or ‘board’ means a county board of education.

(c) ‘Professional salaries’ means the state legally mandated salaries of the professional educators as provided in §18-4-1 *et seq.* of this code.

(d) ‘Professional educator’ shall be synonymous with and shall have the same meaning as ‘teacher’ as defined in §18-1-1 of this code, and includes technology integration specialists.

(e) ‘Professional instructional personnel’ means a professional educator whose regular duty is as that of a classroom teacher, librarian, attendance director, or school psychologist. A professional educator having both instructional and administrative or other duties shall be included as professional instructional personnel for that ratio of the school day for which he or she is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance, or psychologist duties.

(f) ‘Professional student support personnel’ means a ‘teacher’ as defined in §18-1-1 of this code who is assigned and serves on a regular full-time basis as a counselor or as a school nurse with a bachelor’s degree and who is licensed by the West Virginia Board of Examiners for Registered Professional Nurses. Professional student support personnel shall also include professional personnel providing direct social and emotional support services to students, including but not limited to, social workers and psychologists. For all purposes except for the determination of the allowance for professional educators pursuant to section four of this article, professional student support personnel are professional educators.

(g) 'Service personnel salaries' means the state legally mandated salaries for service personnel as provided in §18A-4-8a of this code.

(h) 'Service personnel' means all personnel as provided in §18A-4-8 of this code. For the purpose of computations under this article of ratios of service personnel to net enrollment, a service employee shall be counted as that number found by dividing his or her number of employment days in a fiscal year by 200: *Provided*, That the computation for any service person employed for three and one-half hours or less per day as provided in §18A-4-8a of this code shall be calculated as one half an employment day.

(i) 'Net enrollment' means the number of pupils enrolled in special education programs, kindergarten programs, and grades one to twelve, inclusive, of the public schools of the county. Net enrollment further shall include:

(1) Adults enrolled in regular secondary vocational programs existing as of the effective date of this section, subject to the following:

(A) Net enrollment includes no more than ~~4,000~~ 2,500 of those adults counted on the basis of full-time equivalency and apportioned annually to each county to support Advanced Career Education programs, as provided in §18-2E-11 of this code, in proportion to the adults participating in regular secondary vocational programs in the prior year counted on the basis of full-time equivalency: *Provided*, That beginning with the 2021 fiscal year and every year thereafter, a career technical education center may only receive the funding for enrollment as authorized by this paragraph if the center has satisfied the requirements of §18-2E-11 of this code; and

(B) Net enrollment does not include any adult charged tuition or special fees beyond that required of the regular secondary vocational student;

(2) Students enrolled in early childhood education programs as provided in §18-5-44 of this code, counted on the basis of full-time equivalency;

(3) ~~No pupil shall~~ A pupil may not be counted more than once by reason of transfer within the county or from another county within the state, and no pupil shall be counted who attends school in this state from another state;

(4) The enrollment shall be modified to the equivalent of the instructional term and in accordance with the eligibility requirements and rules established by the state board; and

(5) ~~For the purposes of determining the county's basic foundation program only~~ For any county whose net enrollment as determined under all other provisions of this definition is less than 1,400, the net enrollment of the county shall be ~~increased by an amount to be determined in accordance with the following~~ considered to be 1,400 for the purposes of determining the county's basic foundation program only. ~~During the 2019-2020 interim period and every three interim periods thereafter, the Legislative Oversight Commission on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and sparse population density.~~

~~(A) Divide the state's lowest county student population density by the county's actual student population density;~~

~~(B) Multiply the amount derived from the calculation in paragraph (A) of this subdivision by the difference between one thousand four hundred and the county's actual net enrollment;~~

~~(C) If the increase in net enrollment as determined under this subdivision plus the county's net enrollment as determined under all other provisions of this subsection is greater than one thousand four hundred, the increase in net enrollment shall be reduced so that the total does not exceed one thousand four hundred; and~~

~~(D) During the 2008-2009 interim period and every three interim periods thereafter, the Legislative Oversight Commission~~



~~on Education Accountability shall review this subdivision to determine whether or not these provisions properly address the needs of counties with low enrollment and a sparse population density.~~

(j) 'Sparse-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of 'net enrollment', to the square miles of the county is less than five.

(k) 'Low-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of 'net enrollment', to the square miles of the county is equal to or greater than five but less than 10.

(l) 'Medium-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of 'net enrollment', to the square miles of the county is equal to or greater than 10 but less than 20.

(m) 'High-density county' means a county whose ratio of net enrollment, excluding any increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this section, of the definition of 'net enrollment', to the square miles of the county is equal to or greater than 20.

(n) 'Levies for general current expense purposes' means 90 percent of the levy rate for county boards of education ~~calculated or set by the Legislature as determined pursuant to §11-8-6f of this code.~~ The levy rate shall be assumed to be the rate established in that section and not an increased rate established by a county board.

(o) 'Technology integration specialist' means a professional educator who has expertise in the technology field and is assigned as a resource teacher to provide information and guidance to classroom teachers on the integration of technology into the curriculum.

(p) ‘State aid eligible personnel’ means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this article and whose salaries are not funded by a specific funding source such as a federal or state grant, donation, contribution or other specific funding source not listed.

(q) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

**§18-9A-8. Foundation allowance for professional student support services.**

(a) The basic foundation allowance to the county for professional student support personnel shall be the amount of money determined in accordance with the following:

(1) The sum of the state minimum salaries, as determined in accordance with the provisions of §18-4-1 *et seq.* of this code, for all state aid eligible school nurse and counselor positions in the county during the 2008 fiscal year which number shall be reduced in the same proportion as the number of professional educators allowed to be funded under §18-9A-4 of this code to the total number of professional educators employed that are state aid eligible. In performing this calculation, the numerator shall be the number of professional educators actually funded under section four of this article and the denominator shall be the total number of professional educators employed that are eligible to be funded under §18-9A-4 of this code;

(2) The amount derived from the calculation in §18-9A-8(a)(1) of this code is increased by one half percent;

(3) The amount derived from the calculation in §18-9A-8(a)(2) of this code is the basic foundation allowance to the county for professional student support personnel for the 2009 fiscal year;

(4) For fiscal years 2010, 2011, 2012 and 2013, the basic foundation allowance to the county for professional student support personnel increases by one-half percent per year over the allowance for the previous year; and

(5) For all fiscal years thereafter until fiscal year 2020, the basic foundation allowance to the county for professional student support personnel remains the same amount as in the 2013 fiscal year, plus any additional amount of funding necessary to cover the increases in the State Minimum Salary Schedule set forth in §18A-4-2 of this code effective for the fiscal year beginning July 1, 2018, and thereafter.

(b) The additional positions for counselors that may be created as a result of the one percent increase provided pursuant to this section shall be assigned to schools where the counselor can:

(1) Enhance student achievement;

(2) Provide early intervention for students in grades prekindergarten through five; and

(3) Enhance student development and career readiness.

(c) Effective for the 2019-20 fiscal year and thereafter, the basic foundation allowance to the county for professional student support personnel is the amount of money required to pay the state minimum salaries, in accordance with provisions of §18A-4-1 et seq. of this code, subject to the following:

(1) In making this computation, each county shall receive an allowance for four and seventy hundredths state aid eligible professional student support personnel positions to each 1,000 students in net enrollment;

(2) For any professional student support personnel positions, or fraction thereof, determined for a county pursuant to §18-9A-8(c)(1) of this code that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of professional student support personnel for the county;

(3) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(4) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional student support personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(5) For the 2019-20 fiscal year only, the number of positions funded for each county by subdivision (1) cannot be less than the number of positions that would have been funded in accordance with the previous methodology for determining the number of professional student support personnel positions funded for each county.

**§18-9A-9. Foundation allowance for other current expense and substitute employees and faculty senates.**

The total allowance for other current expense and substitute employees is the sum of the following:

(1) For current expense:

(A) The non-salary related expenditures for operations and maintenance, exclusive of expenditures reported in special revenue funds, for the latest available school year, in each county, divided by the total square footage of school buildings in each county is used to calculate a state average expenditure per square foot for operations and maintenance;

(B) The total square footage of school buildings in each county divided by each county's net enrollment for school aid purposes is used to calculate a state average square footage per student;

(C) Each county's net enrollment for school aid purposes multiplied by the state average expenditure per square foot for operations and maintenance as calculated in paragraph (A) of this subdivision and multiplied by the state average square footage per student as calculated in paragraph (B) of this subdivision is that

county's state average costs per square footage per student for operations and maintenance;

(D) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the allowance for current expense may be prorated among the participating counties by adjusting the net enrollment for school aid purposes utilized in the calculation by the number of students enrolled therein for each county; and

(E) Each county's allowance for current expense is 70.25% of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (C) of this subdivision: Provided, That effective July 1, 2019, each county's allowance for current expense is 71.25 percent of the county's state average costs per square footage per student for operations and maintenance amount as calculated in paragraph (c) of this subdivision; plus

(2) For professional educator substitutes or current expense, two and five-tenths percent of the computed state allocation for professional educators and professional student support personnel as determined in sections four and eight of this article. Distribution to the counties is made proportional to the number of professional educators and professional student support personnel authorized for the county in compliance with sections four and eight of this article; plus

(3) For service personnel substitutes or current expense, two and five-tenths percent of the computed state allocation for service personnel as determined in section five of this article. Distribution to the counties is made proportional to the number of service personnel authorized for the county in compliance with section five of this article; plus

(4) For academic materials, supplies, and equipment for use in instructional programs, \$200 multiplied by the number of professional instructional personnel and professional student support personnel employed in the schools of the county. Distribution is made to each county for allocation to the faculty

senate of each school in the county on the basis of \$200 per professional instructional personnel employed at the school. 'Faculty Senate' means a faculty senate created pursuant to §18-5A-5 of this code. Decisions for the expenditure of such funds are made at the school level by the faculty senate in accordance with the provisions of ~~said~~ §18-5A-5 of this code and may not be used to supplant the current expense expenditures of the county. Beginning on September 1, 1994, and every September thereafter, county boards shall forward to each school for the use by faculty senates the appropriation specified in this section. Each school shall be responsible for keeping accurate records of expenditures.

**§18-9A-10a. Allowance for education savings accounts.**

(a) Subject to subsection (b) of this section, an amount equivalent to 75 percent of the prior year's statewide average net state aid allotted per pupil based on net enrollment for state aid purposes multiplied by 1,000 shall be paid annually by the Department of Education to the West Virginia State Treasurer's Office solely for the purposes of the education savings account program set forth in §18-31-1 et seq. of this code.

(b) For any fiscal year in which funds paid to the Treasurer's Office pursuant to subsection (a) of this section accumulate due to the existence of fewer than 1,000 education savings accounts, the amount paid by the Department of Education to the Treasurer's Office shall be reduced to the amount required to ensure there is sufficient funding available to pay into 1,000 education service accounts for the fiscal year.

(c) The Treasurer's Office shall report to the Department of Education at the end of each fiscal year on the balance of funds paid to the Treasurer's Office pursuant to this section that have not been deposited into an education savings account.

(d) The state board may, by rule, determine how the fund transfer to the treasurer shall be accomplished.

**§18-9A-12. County basic foundation; total basic state aid allowance.**

(a) The basic foundation program for each county for the fiscal year shall be the sum of the amounts computed in accordance with the provisions of sections four, five, six, seven, eight, nine, and ten of this article. On the first working day of July in each year, the State Board shall determine the basic foundation program for each county for that fiscal year. Data used in the computations relating to net and adjusted enrollment, and the number of professional educators, shall be for the second month of the prior school term. Transportation expenditures used in these computations shall be for the most recent year in which data are available. The allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's local share as determined in §18-9A-11 of this code except as provided in subsection (b) of this section: Provided, That for all years after 2018, in calculating the allocated state aid share of the county's basic foundation program, when subtracting the amount of the county's local share, if the county's local share as determined in §18-9A-11 of this code is greater than the county's local share was determined to be for fiscal year 2015-2016, then the allocated state aid share of the county's basic foundation program shall be the difference between the cost of its basic foundation program and the county's 2015-2016 determined local share.

(b) The allocated state aid share shall be adjusted in the following circumstances in the following manner: *Provided*, That prior to such adjustment, the State Tax Commissioner shall provide the State Board, by January 15 of each year, a certified listing of those counties in which such adjustment shall be made pursuant to this subsection, together with the amount of revenue which will not be available to each county board in the ensuing fiscal year as a result of the circumstance:

(1) In those instances where the local share as computed under §18-9A-11 of this code is not reflective of local funds available because the county is under a final court order, or a final decision of a board of assessment appeals under §11-3-24b of this code, to

refund or credit property taxes paid in prior years, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under §18-9A-11 of this code, plus the amount of property tax the county is unable to collect or must refund due to the final court order or final decision of a board of assessment appeals: *Provided*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund, or funds only in part, the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(2) In those instances where the local share as computed under §18-9A-11 of this code is not reflective of local funds available because the county is collecting tax based upon an assessed value which is less than that determined by the tax commissioner in the most recent published survey of property valuations in the state due to an error in the published survey, which error is certified to by the tax commissioner, the allocated state aid share shall be the county's basic foundation program, minus the local share as computed under §18-9A-11 of this code, plus the amount of property tax the county is unable to collect based on differences in the assessed valuation between those in the most recent published survey of valuation and the corrected assessed value actually levied upon by the county: *Provided*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided, however*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(3) In instances where a county is unable to collect property taxes from a taxpayer during the pendency of any court proceeding, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under §18-9A-11 of this code, plus the amount the county is unable to collect as a result of the pending court proceedings as certified by the tax



commissioner: *Provided*, That the county is required to reimburse the amount of allocated state aid share attributable to the amount of property tax it later receives upon completion of court proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however*, That said adjustment shall not be made or shall only be made proportionately when the Legislature fails to fund or funds only in part the public school basic foundation support plan state share at a level sufficient to cover the reduction in state share: *Provided further*, That nothing herein provided shall be construed to require or mandate any level of funding by the Legislature.

(c) The allocated state aid share shall be adjusted in any county receiving payments or contributions in lieu of property taxes. In instances where a county receives payments or contributions in lieu of property taxes, the allocated state aid share shall be the county's basic foundation program minus the local share as computed under §18-9A-11 of this code, plus any amounts added pursuant to subsection (b) of this section minus the payments or contributions in lieu of property taxes which are distributed by the sheriff to the county board of education. In determining the amount of such contribution or payment in lieu of taxes, each county commission shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such payments or contributions paid to the county and the proportion of the total amount that has been or will be distributed to the county board of education. The State Tax Commissioner then shall provide the State Board, by January 15 of each year, a certified listing of those counties in which an adjustment pursuant to this section shall be made, together with the amount of revenue which will be available to each county board in the ensuing fiscal year as a result of contribution or payment in lieu of taxes.

(d) Total basic state aid to the county shall be the computed state share of basic foundation support. After such computation is completed, the State Board shall immediately certify to each county board the amount of state aid allocated to the county for that fiscal year, subject to any qualifying provisions of this article.

**ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.****§18-20-5. Powers and duties of state superintendent.**

(a) The State Superintendent of Schools shall organize, promote, administer, and be responsible for:

(1) Stimulating and assisting county boards of ~~education~~ in establishing, organizing, and maintaining special schools, classes, regular class programs, home-teaching, and visiting-teacher services for exceptional children.

(2) Cooperating with all other public and private agencies engaged in relieving, caring for, curing, educating, and rehabilitating exceptional children, and in helping coordinate the services of such agencies.

(3) (A) Preparing the necessary rules, policies, ~~formula~~ and formulas for distribution of available appropriated funds, reporting forms, and procedures necessary to define minimum standards in providing suitable facilities for education of exceptional children and ensuring the employment, certification, and approval of qualified teachers and therapists subject to approval by the State Board of Education: *Provided*, That no state rule, policy, or standard under this article or any county board rule, policy, or standard governing special education may exceed the requirements of federal law or regulation.

(B) ~~An~~ A separate appropriation shall be made to the Department of Education to be ~~distributed~~ disbursed to county boards and public charter schools authorized pursuant to §18-5G-1 et seq. of this code to support children ~~assist them with serving exceptional children with high cost/high acuity~~ special needs that exceed the capacity of county to provide with funds available. Each county board and public charter school shall apply to the state superintendent ~~for receipt of~~ to receive this funding in a manner set forth by the state superintendent that assesses and takes into account varying acuity levels of the exceptional students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried

over to the next fiscal year. When possible, federal funds shall be ~~distributed~~ disbursed to county boards and public charter schools for this purpose before any of the state appropriation is ~~distributed~~ disbursed. The state board shall promulgate a rule in accordance with the provisions of §29A-3B-1 *et seq.* of this code that implements the provisions of this subdivision relating to ~~distributing~~ disbursing the funds to the county boards and public charter schools. The rule at least shall include a definition for 'children with high acuity needs'.

(4) Receiving from county boards ~~of education and public charter schools~~, their applications, annual reports, and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing such claims, and preparing vouchers to reimburse said counties the amounts reimbursable to them.

(5) Assuring that all exceptional children in the state, including children in mental health facilities, residential institutions, private schools and correctional facilities as provided in §18-2-13f of this code receive an education in accordance with state and federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional facilities and regional jails receive an education to the extent funds are provided therefor.

(6) Performing other duties and assuming other responsibilities in connection with this program as needed.

~~(7) Receive the county plan for integrated classroom submitted by the county boards of education and submit a state plan, approved by the State Board of Education, to the Legislative Oversight Commission on Education Accountability no later than December 1, 1995~~

(b) Nothing contained in this section shall be construed to prevent any county board ~~of education~~ from establishing and maintaining special schools, classes, regular class programs, home-teaching, or visiting-teacher services for exceptional children out of funds available from local revenue.

**ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.****§18-31-1. Short title.**

This article shall be known as the ‘Education Savings Account Act’ or ‘ESA Act’. The program created by the ESA Act shall be known as the ‘Education Savings Account Program’ or ‘ESA Program’.

**§18-31-2. Definitions.**

The following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) ‘Account’ or ‘ESA’ means an education savings account, awarded pursuant to this article, to which funds are allocated by the treasurer to the parent or parents of an ESA student in order to pay qualifying education expenses to educate the student pursuant to the requirements and conditions of this article;

(2) ‘Curriculum’ means a complete course of study for a particular content area or grade level, including any supplemental materials required by the curriculum;

(3) ‘Education service provider’ means a person or organization that receives payments from education savings accounts to provide educational goods and services to ESA students;

(4) ‘Eligible student’ means an elementary or secondary student who has attended a West Virginia public school in the prior school year, is not attending a public school outside of West Virginia, and:

(i) Possesses and Individualized Education Plan (IEP) written in accordance with rules established by the State Board;

(ii) Was determined IDEA eligible by a multidisciplinary evaluation team;

(iii) possesses a 504 plan;

(iv) Is medically diagnosed by a licensed physician in one of the IDEA disability categories under 20 USC 1401(3)(A); or

(v) Was the victim of a prohibited incident of harassment, intimidation or bullying pursuant to §18-2C-1, et seq., of this code;

(5) ‘ESA student’ means a student who receives an account pursuant to this article;

(6) ‘Parent’ means a biological parent, legal guardian, custodian, or other person with legal authority to act on behalf of an eligible student or ESA student;

(7) ‘Participating school’ means any private school that provides education to elementary and/or secondary students and has notified the treasurer of its intention to participate in the program and comply with the program’s requirements;

(8) ‘Resident school district’ means the county school district in which the student resides; and

(9) ‘Treasurer’ means the West Virginia State Treasurer’s Office or an organization that the Treasurer has contracted with to carry out any or all portions of this article.

### **§18-31-3. Basic elements of the Education Savings Account Program.**

(a) The amount of funds deposited in an account pursuant to this article shall be an amount equivalent to 75 percent of the prior year’s statewide average net state aid allotted per pupil based on net enrollment adjusted for state aid purposes. The funds deposited shall be derived from the amount paid by the Department of Education to the treasurer pursuant to §18-9A-10a of this code.

(b) Parents of an ESA student shall agree to use the funds deposited in their student’s ESA only for the following qualifying expenses to educate the ESA student:

(1) Tuition and/or fees at a private school;

(2) Tutoring services provided by an individual or a tutoring facility; and

(3) Fees for nationally standardized assessments, advanced placement examinations, any examinations related to college or university admission, and tuition and/or fees for preparatory courses for the aforementioned exams.

(c) The funds in an ESA may only be used for educational purposes in accordance with §18-31-3(d) of this code.

(d) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in any manner. Any refund or rebate for goods or services purchased with ESA funds shall be credited directly to the student's ESA.

(e) Parents are allowed to make payments for the costs of educational goods and services not covered by the funds in their student's ESA. However, personal deposits into an ESA is not permitted.

(f) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA student.

(g) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed because of a substantial misuse of funds. However, if an ESA student has not enrolled in a postsecondary institution within four years after graduating from high school, or if an ESA student turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds revert to the treasurer and be allocated to fund other ESAs.

(h) Nothing in this article requires that an ESA student must be enrolled, full or part-time, in either a private school or nonpublic online school.

#### **§18-31-4. Application for an Education Savings Account.**

(a) A parent may apply to the treasurer to establish an ESA for an eligible student at any point on or after July 1, 2019. The household income of an eligible student shall be less than \$150,000

per year to qualify for the education savings account program. For purposes of this article, the household income shall be the adjusted gross income claimed for federal income tax purposes by the biological parent or parents, legal guardian or guardians, custodian or custodians, or person or persons with legal authority to act on behalf of an eligible student plus any income of the eligible student. The treasurer shall develop a process for verifying the income of any applicant for the education savings account.

(b) The treasurer shall accept and approve applications year-round and shall establish procedures for approving applications in an expeditious manner: *Provided*, That the number of education savings accounts may not exceed 1,000 total at any one time.

(c) The treasurer shall create a standard form that parents can submit to establish their student's eligibility for the ESA Program and shall ensure that the application is readily available and may be submitted through various sources, including the Internet.

(d) The treasurer shall approve an application for an ESA if:

(1) The parent submits an application for an ESA in accordance with any application procedures established by the treasurer;

(2) The student on whose behalf the parent is applying is an eligible student;

(3) Funds are available for the ESA; and

(4) The parent signs an agreement with the treasurer, promising:

(A) To provide an education for the eligible student in at least the subjects of reading, language, mathematics, science, and social studies;

(B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education School, the West Virginia Virtual School, or a West Virginia School for the Deaf and Blind;

(C) To use the funds in the ESA only for qualifying expenses to educate the eligible student as established by the ESA Program; and

(D) To comply with the rules and requirements of the ESA Program.

(E) To afford the ESA student opportunities for educational enrichment such as organized athletics, art, music, or literature.

(e) The signed agreement between the parent and the treasurer shall be consistent with the compulsory school attendance exemption requirements of §18-8-1 *et seq.* of this code and the treasurer shall verify with the Department of Education within 30 days that the student has withdrawn from public school under one of those exemptions.

(f) The treasurer shall annually renew a student's ESA after verifying with the Department of Education that:

(1) For an ESA student who chooses to attend a private school, the school board will communicate their continued attendance; or

(2) For an ESA student who chooses an individualized instructional program, he or she must annually take a nationally normed standardized test of academic achievement and received a score within or above the fourth stanine or if below the fourth stanine, shows improvement from the previous year's results, or a certified teacher conducts a review of the student's academic work and determines that the student is making academic progress commensurate with their age and ability and reports the results to the county board in which the student resides no later than July 30.

A student who has failed to maintain good standing under this subsection may re-establish eligibility for an ESA after complying with another exemption for compulsory school attendance for a period of one school year.

(g) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA funding and enroll full-time in a public school.



(h) Enrolling as a full-time student in a public school shall result in the immediate suspension of payment of additional funds into the student's ESA; however, the ESA shall remain open and active for the parent to make qualifying expenditures to educate the student from funds remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24, the treasurer may close the ESA.

(i) If an eligible student decides to return to the ESA Program, they must reapply.

(j) The treasurer may adopt rules and policies to provide the least disruptive process for ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### **§18-31-5. Responsibilities of the Treasurer.**

In addition to the treasurer's duties, obligations, and authority stated in other parts of this article, the treasurer has the following duties, obligations, and authority:

(1) The treasurer shall maintain an updated list of participating schools and shall ensure that the list is publicly available through various sources, including the Internet.

(2) The treasurer shall provide parents with a written explanation of the allowable uses of ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private financial management firms or other private organizations that the treasurer may contract with to administer the ESA Program or any aspect of the ESA Program.

(3) The treasurer shall ensure that parents of students with a disability receive notice that participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that parentally placed students possess under (IDEA) and any applicable state laws and regulations.

(4) The treasurer shall contract with private organizations to administer the ESA Program. This includes, but is not limited to, private financial management firms to manage ESAs.

(5) The treasurer may deduct an amount from education savings accounts to cover the costs of administering the ESA Program, up to a maximum of five percent annually in the first two years of the ESA Program and up to a maximum of three percent annually thereafter.

(6) The treasurer shall implement or contract with a private organization to implement a commercially viable, cost effective, and parent-friendly system for payment for services from ESAs to education service providers by electronic or online funds transfer and by debit card. The treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating direct payments to education service providers as well as requests for preapproval of and reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this code.

(7) The treasurer shall also seek to implement a commercially viable, cost-effective, and parent-friendly system for publicly rating, reviewing, and sharing information about education service providers, ideally as part of the same system that facilitates the electronic or online funds transfers so as to create a one-stop-shop for parents and ESA students.

(8) If an education service provider requires partial payment of tuition or fees prior to the start of the academic year to reserve space for an ESA student admitted to the education service provider, such partial payment may be paid by the treasurer prior to the start of the school year in which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits to ensure adequate funds remain available throughout the school year; but if an ESA student decides not to use the education service provider, the partial reservation payment must be returned to the treasurer by such education service provider and credited to the student's ESA.

(9) The treasurer shall continue making deposits into a student's ESA until:

(A) The treasurer determines that the ESA student is no longer an eligible student;

(B) The treasurer determines that there was substantial misuse of the funds in the ESA;

(C) The parent or ESA student withdraws from the ESA Program;

(D) The ESA student enrolls full-time in a public school; or

(E) The ESA student graduates from high school.

(10) The treasurer shall have the authority to conduct or contract for the auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual basis.

(11) The treasurer shall have the authority to make any parent or ESA student ineligible for the ESA Program in the event of intentional and substantial misuse of ESA funds.

(A) The treasurer shall create procedures to ensure that a fair process exists to determine whether an intentional and substantial misuse of ESA funds has occurred.

(B) The treasurer shall have the authority to refer suspected cases of intentional and substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent use of ESA funds is obtained.

(C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA student ineligible for the ESA Program.

(12) The treasurer may bar an education service provider from accepting payments from ESAs if the treasurer determines that the education service provider has:

(A) Intentionally and substantially misrepresented information or failed to refund any overpayments in a timely manner; or

(B) Routinely failed to provide students with promised educational goods or services.

(13) The treasurer shall create procedures to ensure that a fair process exists to determine whether an education service provider may be barred from receiving payment from ESAs.

(A) If the treasurer bars an education service provider from receiving payments from ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

(B) Education service providers may appeal the treasurer's decision to bar them from receiving payments from ESAs.

(14) The treasurer may accept gifts and grants from any source to cover administrative costs, to inform the public about the ESA Program, or to fund additional ESAs.

(15) The treasurer may adopt rules and policies that are not inconsistent with this article and that are necessary for the administration of this article, including:

(A) Establishing or contracting for the establishment of an online anonymous fraud reporting service;

(B) Establishing an anonymous telephone hotline for fraud reporting;

(C) Policies that require a surety bond for education service providers receiving more than \$100,000 in ESA funds;

(D) Procedures for refunding payments from education service providers back to ESAs; and

(E) Procedures for entering into reciprocal agreements with other state ESA agencies or entities, whether public or private, to recognize and allow education service providers approved in other states to receive payments from ESAs under this article.

(16) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy and overly prescriptive mandates and instead focus on easing parental involvement and encouraging education service providers to provide parents and ESA students with a broad array of educational options.

**§18-31-6. Parent Review Committee.**

(a) There is created the Parent Review Committee to assist the treasurer in determining whether questionable expenditures meet the requirements to be considered qualifying expenses to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations to the treasurer about how to implement, administer, and improve the ESA Program.

(b) (1) The Parent Review Committee:

(A) Consists of seven members who are parents of ESA students and represent no fewer than four counties in the state; and

(B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure for one calendar year and may be reappointed; and

(2) The State Treasurer, or the director's designee, serves as the nonvoting chair of the committee.

(c) The treasurer may request the committee to meet, in person or virtually, to determine whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable expenditures by a majority vote.

(d) The treasurer may also request the committee to meet, in person or virtually, to review appeals of education service provider denials pursuant to §18-31-7 of this code, and to provide a recommendation to the treasurer as to whether an education service provider should be allowed to receive, or continue receiving, payments from ESAs.

**§18-31-7. Requirements for and rights of education service providers.**

(a) To be eligible to accept payments from an ESA, an education service provider shall:

(1) Submit notice to the treasurer that they wish to participate in the ESA Program;

(2) Provide parents with a receipt for all qualifying educational expenses;

(3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any manner, except that funds may be remitted or refunded to an ESA in accordance with procedures established by the treasurer;

(4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

(5) Agree to submit any employee who will have contact with ESA students to a criminal background check.

(b) This article does not limit the independence or autonomy of an education service provider or makes the actions of an education service provider the actions of the state government.

(c) Education service providers shall be given maximum freedom to provide for the educational needs of ESA students without governmental control.

(d) This article does not expand the regulatory authority of the state, its officers, or any school district to impose any additional regulation of education service providers beyond those necessary to enforce the requirements of the program.

**§18-31-8. Responsibilities of resident school districts.**

The resident school district shall provide an education service provider that has enrolled an ESA student with a complete copy of the student's school records, while complying with the Family

Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

**§18-31-9. Legal proceedings.**

(a) In any legal proceeding challenging the application of this chapter to a participating entity, the state bears the burden of establishing that the challenged action, rule, or requirement is necessary and does not impose any undue burden on education service providers.

(b) No liability arises on the part of the treasurer or the state or of any county school district based on the award or use of an ESA awarded pursuant to this article.

(c) If any part of this article is challenged in a state court as violating either the state or federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.

**CHAPTER 18A. SCHOOL PERSONNEL.**

**ARTICLE 2. SCHOOL PERSONNEL.**

**§18A-2-8. Suspension and dismissal of school personnel by board; appeal.**

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code, the conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to section twelve of this article. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 et seq. of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted.

(e) It shall be the duty of any county superintendent to report any employee suspended or dismissed in accordance with this section, including the rationale for the suspension or dismissal, to the state superintendent. The state superintendent shall maintain a database of all individuals suspended or dismissed for jeopardizing the health, safety, and welfare of students, or for impacting the learning environment of other students. The database shall also include the rationale for the suspension or dismissal. The database shall be confidential and shall only be accessible to county human resource directors, county superintendents, and the state superintendent.



### ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

#### §18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

(a) The state superintendent may, after ten days' notice and upon proper evidence, revoke the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 et seq of this code; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a teacher may not be revoked for any matter for which the teacher was disciplined, less than dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or has met an improvement plan determined by the county board, unless it can be proven by clear and convincing evidence that the teacher has committed one of the offenses listed in this subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The state superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the state superintendent: *Provided further*, That a teacher convicted under §61-8D-5 or a finding of abuse by the Department of Health and Human Resources under §49-1-1 et seq. of this code shall have his or her certificate or license automatically revoked.

(b) It shall be the duty of any county superintendent who knows of any acts on the part of any teacher for which a certificate may be revoked in accordance with this section to report the same, together with all the facts and evidence, to the state superintendent

for such action as in the state superintendent’s judgment may be proper.

(c) If a certificate has been granted through an error, oversight, or misinformation, the state superintendent has authority to recall the certificate and make such corrections as will conform to the requirements of law and the state board.

**ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

**§18A-4-2. State minimum salaries for teachers.**

(a) It is the goal of the Legislature to increase the state minimum salary for teachers with zero years of experience and an A. B. degree, including the equity supplement, to at least \$43,000 by fiscal year 2019.

(b) For school year 2018–2019, ~~and continuing thereafter~~, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule I as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year: Provided, That for the school year 2019-2020, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule II as set forth in this section; specific additional amounts prescribed in this section or article; and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

**STATE MINIMUM SALARY SCHEDULE I**

Years Exp.	4th Class	3rd Class	2nd Class	A.B. A.B.	A.B. +15	M.A. M.A.	M.A. +15	M.A. +30	M.A. +45	Doc-torate
0	29,937	30,626	30,892	32,335	33,096	34,863	35,624	36,385	37,146	38,181
1	30,265	30,954	31,220	32,853	33,614	35,382	36,143	36,903	37,664	38,699
2	30,594	31,282	31,548	33,372	34,133	35,900	36,661	37,422	38,183	39,218
3	30,922	31,610	31,876	33,891	34,651	36,419	37,180	37,940	38,701	39,736

4	31,494	32,182	32,448	34,653	35,414	37,182	37,943	38,703	39,464	40,499
5	31,822	32,510	32,776	35,172	35,933	37,700	38,461	39,222	39,983	41,018
6	32,150	32,838	33,104	35,690	36,451	38,219	38,980	39,740	40,501	41,536
7	32,478	33,167	33,432	36,209	36,970	38,737	39,498	40,259	41,020	42,055
8	32,806	33,495	33,761	36,727	37,488	39,256	40,017	40,777	41,538	42,573
9	33,134	33,823	34,089	37,246	38,007	39,774	40,535	41,296	42,057	43,092
10	33,463	34,151	34,417	37,766	38,526	40,294	41,055	41,816	42,576	43,611
11	33,791	34,479	34,745	38,284	39,045	40,813	41,573	42,334	43,095	44,130
12	34,119	34,807	35,073	38,803	39,563	41,331	42,092	42,853	43,613	44,648
13	34,447	35,135	35,401	39,321	40,082	41,850	42,610	43,371	44,132	45,167
14	34,775	35,463	35,729	39,840	40,600	42,368	43,129	43,890	44,650	45,685
15	35,103	35,791	36,057	40,358	41,119	42,887	43,647	44,408	45,169	46,204
16	35,431	36,119	36,385	40,877	41,637	43,405	44,166	44,927	45,687	46,722
17	35,759	36,448	36,713	41,395	42,156	43,924	44,685	45,445	46,206	47,241
18	36,087	36,776	37,042	41,914	42,675	44,442	45,203	45,964	46,725	47,760
19	36,415	37,104	37,370	42,432	43,193	44,961	45,722	46,482	47,243	48,278
20	36,743	37,432	37,698	42,951	43,712	45,479	46,240	47,001	47,762	48,797
21	37,072	37,760	38,026	43,469	44,230	45,998	46,759	47,519	48,280	49,315
22	37,400	38,088	38,354	43,988	44,749	46,516	47,277	48,038	48,799	49,834
23	37,728	38,416	38,682	44,507	45,267	47,035	47,796	48,556	49,317	50,352
24	38,056	38,744	39,010	45,025	45,786	47,554	48,314	49,075	49,836	50,871
25	38,384	39,072	39,338	45,544	46,304	48,072	48,833	49,594	50,354	51,389
26	38,712	39,400	39,666	46,062	46,823	48,591	49,351	50,112	50,873	51,908
27	39,040	39,728	39,994	46,581	47,341	49,109	49,870	50,631	51,391	52,426
28	39,368	40,057	40,322	47,099	47,860	49,628	50,388	51,149	51,910	52,945
29	39,696	40,385	40,651	47,618	48,378	50,146	50,907	51,668	52,428	53,463
30	40,024	40,713	40,979	48,136	48,897	50,665	51,425	52,186	52,947	53,982

31	40,353	41,041	41,307	48,655	49,416	51,183	51,944	52,705	53,465	54,500
32	40,681	41,369	41,635	49,173	49,934	51,702	52,463	53,223	53,984	55,019
33	41,009	41,697	41,963	49,692	50,453	52,220	52,981	53,742	54,503	55,538
34	41,337	42,025	42,291	50,210	50,971	52,739	53,500	54,260	55,021	56,056
35	41,665	42,353	42,619	50,729	51,490	53,257	54,018	54,779	55,540	56,575

### STATE MINIMUM SALARY SCHEDULE II

<u>Years</u> <u>Exp.</u>	<u>4th</u> <u>Class</u>	<u>3rd</u> <u>Class</u>	<u>2nd</u> <u>Class</u>	<u>A.B.</u>	<u>A.B.</u> <u>+15</u>	<u>M.A.</u>	<u>M.A.</u> <u>+15</u>	<u>M.A.</u> <u>+30</u>	<u>M.A.</u> <u>+45</u>	<u>Doc-</u> <u>torate</u>
0	<u>32,057</u>	<u>32,746</u>	<u>33,012</u>	<u>34,455</u>	<u>35,216</u>	<u>36,983</u>	<u>37,744</u>	<u>38,505</u>	<u>39,266</u>	<u>40,301</u>
1	<u>32,385</u>	<u>33,074</u>	<u>33,340</u>	<u>34,973</u>	<u>35,734</u>	<u>37,502</u>	<u>38,263</u>	<u>39,023</u>	<u>39,784</u>	<u>40,819</u>
2	<u>32,714</u>	<u>33,402</u>	<u>33,668</u>	<u>35,492</u>	<u>36,253</u>	<u>38,020</u>	<u>38,781</u>	<u>39,542</u>	<u>40,303</u>	<u>41,338</u>
3	<u>33,042</u>	<u>33,730</u>	<u>33,996</u>	<u>36,011</u>	<u>36,771</u>	<u>38,539</u>	<u>39,300</u>	<u>40,060</u>	<u>40,821</u>	<u>41,856</u>
4	<u>33,614</u>	<u>34,302</u>	<u>34,568</u>	<u>36,773</u>	<u>37,534</u>	<u>39,302</u>	<u>40,063</u>	<u>40,823</u>	<u>41,584</u>	<u>42,619</u>
5	<u>33,942</u>	<u>34,630</u>	<u>34,896</u>	<u>37,292</u>	<u>38,053</u>	<u>39,820</u>	<u>40,581</u>	<u>41,342</u>	<u>42,103</u>	<u>43,138</u>
6	<u>34,270</u>	<u>34,958</u>	<u>35,224</u>	<u>37,810</u>	<u>38,571</u>	<u>40,339</u>	<u>41,100</u>	<u>41,860</u>	<u>42,621</u>	<u>43,656</u>
7	<u>34,598</u>	<u>35,287</u>	<u>35,552</u>	<u>38,329</u>	<u>39,090</u>	<u>40,857</u>	<u>41,618</u>	<u>42,379</u>	<u>43,140</u>	<u>44,175</u>
8	<u>34,926</u>	<u>35,615</u>	<u>35,881</u>	<u>38,847</u>	<u>39,608</u>	<u>41,376</u>	<u>42,137</u>	<u>42,897</u>	<u>43,658</u>	<u>44,693</u>
9	<u>35,254</u>	<u>35,943</u>	<u>36,209</u>	<u>39,366</u>	<u>40,127</u>	<u>41,894</u>	<u>42,655</u>	<u>43,416</u>	<u>44,177</u>	<u>45,212</u>
10	<u>35,583</u>	<u>36,271</u>	<u>36,537</u>	<u>39,886</u>	<u>40,646</u>	<u>42,414</u>	<u>43,175</u>	<u>43,936</u>	<u>44,696</u>	<u>45,731</u>
11	<u>35,911</u>	<u>36,599</u>	<u>36,865</u>	<u>40,404</u>	<u>41,165</u>	<u>42,933</u>	<u>43,693</u>	<u>44,454</u>	<u>45,215</u>	<u>46,250</u>
12	<u>36,239</u>	<u>36,927</u>	<u>37,193</u>	<u>40,923</u>	<u>41,683</u>	<u>43,451</u>	<u>44,212</u>	<u>44,973</u>	<u>45,733</u>	<u>46,768</u>
13	<u>36,567</u>	<u>37,255</u>	<u>37,521</u>	<u>41,441</u>	<u>42,202</u>	<u>43,970</u>	<u>44,730</u>	<u>45,491</u>	<u>46,252</u>	<u>47,287</u>
14	<u>36,895</u>	<u>37,583</u>	<u>37,849</u>	<u>41,960</u>	<u>42,720</u>	<u>44,488</u>	<u>45,249</u>	<u>46,010</u>	<u>46,770</u>	<u>47,805</u>
15	<u>37,223</u>	<u>37,911</u>	<u>38,177</u>	<u>42,478</u>	<u>43,239</u>	<u>45,007</u>	<u>45,767</u>	<u>46,528</u>	<u>47,289</u>	<u>48,324</u>
16	<u>37,551</u>	<u>38,239</u>	<u>38,505</u>	<u>42,997</u>	<u>43,757</u>	<u>45,525</u>	<u>46,286</u>	<u>47,047</u>	<u>47,807</u>	<u>48,842</u>
17	<u>37,879</u>	<u>38,568</u>	<u>38,833</u>	<u>43,515</u>	<u>44,276</u>	<u>46,044</u>	<u>46,805</u>	<u>47,565</u>	<u>48,326</u>	<u>49,361</u>

18	<u>38,207</u>	<u>38,896</u>	<u>39,162</u>	<u>44,034</u>	<u>44,795</u>	<u>46,562</u>	<u>47,323</u>	<u>48,084</u>	<u>48,845</u>	<u>49,880</u>
19	<u>38,535</u>	<u>39,224</u>	<u>39,490</u>	<u>44,552</u>	<u>45,313</u>	<u>47,081</u>	<u>47,842</u>	<u>48,602</u>	<u>49,363</u>	<u>50,398</u>
20	<u>38,863</u>	<u>39,552</u>	<u>39,818</u>	<u>45,071</u>	<u>45,832</u>	<u>47,599</u>	<u>48,360</u>	<u>49,121</u>	<u>49,882</u>	<u>50,917</u>
21	<u>39,192</u>	<u>39,880</u>	<u>40,146</u>	<u>45,589</u>	<u>46,350</u>	<u>48,118</u>	<u>48,879</u>	<u>49,639</u>	<u>50,400</u>	<u>51,435</u>
22	<u>39,520</u>	<u>40,208</u>	<u>40,474</u>	<u>46,108</u>	<u>46,869</u>	<u>48,636</u>	<u>49,397</u>	<u>50,158</u>	<u>50,919</u>	<u>51,954</u>
23	<u>39,848</u>	<u>40,536</u>	<u>40,802</u>	<u>46,627</u>	<u>47,387</u>	<u>49,155</u>	<u>49,916</u>	<u>50,676</u>	<u>51,437</u>	<u>52,472</u>
24	<u>40,176</u>	<u>40,864</u>	<u>41,130</u>	<u>47,145</u>	<u>47,906</u>	<u>49,674</u>	<u>50,434</u>	<u>51,195</u>	<u>51,956</u>	<u>52,991</u>
25	<u>40,504</u>	<u>41,192</u>	<u>41,458</u>	<u>47,664</u>	<u>48,424</u>	<u>50,192</u>	<u>50,953</u>	<u>51,714</u>	<u>52,474</u>	<u>53,509</u>
26	<u>40,832</u>	<u>41,520</u>	<u>41,786</u>	<u>48,182</u>	<u>48,943</u>	<u>50,711</u>	<u>51,471</u>	<u>52,232</u>	<u>52,993</u>	<u>54,028</u>
27	<u>41,160</u>	<u>41,848</u>	<u>42,114</u>	<u>48,701</u>	<u>49,461</u>	<u>51,229</u>	<u>51,990</u>	<u>52,751</u>	<u>53,511</u>	<u>54,546</u>
28	<u>41,488</u>	<u>42,177</u>	<u>42,442</u>	<u>49,219</u>	<u>49,980</u>	<u>51,748</u>	<u>52,508</u>	<u>53,269</u>	<u>54,030</u>	<u>55,065</u>
29	<u>41,816</u>	<u>42,505</u>	<u>42,771</u>	<u>49,738</u>	<u>50,498</u>	<u>52,266</u>	<u>53,027</u>	<u>53,788</u>	<u>54,548</u>	<u>55,583</u>
30	<u>42,144</u>	<u>42,833</u>	<u>43,099</u>	<u>50,256</u>	<u>51,017</u>	<u>52,785</u>	<u>53,545</u>	<u>54,306</u>	<u>55,067</u>	<u>56,102</u>
31	<u>42,473</u>	<u>43,161</u>	<u>43,427</u>	<u>50,775</u>	<u>51,536</u>	<u>53,303</u>	<u>54,064</u>	<u>54,825</u>	<u>55,585</u>	<u>56,620</u>
32	<u>42,801</u>	<u>43,489</u>	<u>43,755</u>	<u>51,293</u>	<u>52,054</u>	<u>53,822</u>	<u>54,583</u>	<u>55,343</u>	<u>56,104</u>	<u>57,139</u>
33	<u>43,129</u>	<u>43,817</u>	<u>44,083</u>	<u>51,812</u>	<u>52,573</u>	<u>54,340</u>	<u>55,101</u>	<u>55,862</u>	<u>56,623</u>	<u>57,658</u>
34	<u>43,457</u>	<u>44,145</u>	<u>44,411</u>	<u>52,330</u>	<u>53,091</u>	<u>54,859</u>	<u>55,620</u>	<u>56,380</u>	<u>57,141</u>	<u>58,176</u>
35	<u>43,785</u>	<u>44,473</u>	<u>44,739</u>	<u>52,849</u>	<u>53,610</u>	<u>55,377</u>	<u>56,138</u>	<u>56,899</u>	<u>57,660</u>	<u>58,695</u>

(c) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(d) Effective July 1, 2020, each classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in §18A-4-2(b) of this code.

~~(d) (e) To meet the objective of salary equity among the counties as set forth in §18A-4-5 of this code, In accordance with §18A-4-5 of this code, each teacher shall be paid an equity the supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:~~

(1) For '4th Class' at zero years of experience, \$1,781. An additional \$38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For '3rd Class' at zero years of experience, \$1,796. An additional \$67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For '2nd Class' at zero years of experience, \$1,877. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For 'A. B.' at zero years of experience, \$2,360. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For 'A. B. + 15' at zero years of experience, \$2,452. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For 'M. A.' at zero years of experience, \$2,644. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For 'M. A. + 15' at zero years of experience, \$2,740. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For 'M. A. + 30' at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For 'M. A. + 45' at zero years of experience, \$2,836. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For 'Doctorate' at zero years of experience, \$2,927. An additional \$69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

**§18A-4-2d. Mathematics teacher incentive.**

(a) The Legislature recognizes that receiving quality math instruction is vital to a student's post-secondary success and that there is a shortage of certified math teachers to provide such instruction.

(b) To ensure that students are receiving the appropriate level of math instruction that will enable post-secondary success, the Department of Education shall develop or approve specialized mathematics courses and make the courses available to classroom teachers.

(c) Effective July 1, 2019, a classroom teacher who completes a specialized mathematics course established or approved pursuant to this section by May 1 of the fiscal year shall receive a one-time payment of \$2,000 from the Mathematics Incentive Program line item established for the Department of Education for this purpose, subject to appropriation by the Legislature. If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to compensate all applicable teachers, each applicable teacher shall receive their proportionate share of the funding available for the year. This one-time payment may not be counted as part of the teacher's average final salary for the purpose of

calculating retirement and no retirement contribution will be withheld from the payment.

(d) A classroom teacher who completes the mathematics enrichment course established or approved by the Department of Education after May 1 of the fiscal year shall receive the one-time salary supplement described in subsection (a) of this section during the subsequent fiscal year, subject to appropriation by the Legislature.

(e) The one-time payment provided for in this section may only be paid to a classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students.

#### **§18A-4-5. Salary equity among the counties; state salary supplement.**

~~(a) For the purposes of this section, salary equity among the counties means that the salary potential of school employees employed by the various districts throughout the state does not differ by greater than ten percent between those offering the highest salaries and those offering the lowest salaries. In the case of professional educators, the difference shall be calculated using the average of the professional educator salary schedules, degree classifications B. A. through doctorate and the years of experience provided in the most recent state minimum salary schedule for teachers, in effect in the ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty five counties. In the case of school service personnel, the difference shall be calculated utilizing the average of the school service personnel salary schedules, pay grades A through H and the years of experience provided in the most recent state minimum pay scale pay grade for service personnel, in effect in the ten counties offering the highest salary schedules compared to the lowest salary schedule in effect among the fifty five counties.~~

(a) The Legislature recognizes its constitutional responsibility to provide for a thorough and efficient system of education. To carry out this responsibility the Legislature enacted, and continues



to update, as necessary, the public school support program as set forth in §18-9A-1, et seq. The public school support program is a non-discriminatory funding mechanism for financing the educational system in this state as it takes into account each county's specific characteristics, and ensures that all counties are provided equitable funding.

(b) The Legislature further finds that the purpose of the public school support program is not to deter counties from growing economically or from using county resources in a manner that best meets their specific educational needs and the desires of their citizens. To that end, counties must have the discretion and flexibility to use local county funds, not otherwise factored into the public school support program, to provide the best education possible to their students, including, but not limited to, providing salary supplements to teachers.

~~(b) (c) To meet the objective of salary equity among the counties, as defined in subsection (a) of this section, on and after July 1, 1984, subject to available state appropriations and the conditions set forth herein, each teacher and school service personnel shall receive an equity supplement amount as specified in sections two and eight-a, respectively, of this article in addition to the amount from the State Minimum Salary Schedules provided in those sections. State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with §18-9A-1 et seq. of this code. The amount allocated for this supplement shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under §18-9A-4, §18-9A-5, and §18-9A-8 of this code.~~

~~(c) State funds for this purpose shall be paid within the West Virginia public school support plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for salary equity shall be apportioned between teachers and school service personnel in direct proportion to that amount necessary to support the professional salaries and service personnel salaries statewide under sections four, five and eight, article nine-a, chapter eighteen of this code. In the event the Department of Education determines~~

~~that the objective of salary equity among the counties has not been met, it shall include in its budget request for the public school support plan for the next school year a request for funding sufficient to meet the objective of salary equity through an across-the-board increase in the equity supplement amount of the affected class of employees.~~

(d) Pursuant to this section, each teacher and service person shall receive from state funds the equity supplement amount indicated in ~~subsection (c), section two and subsection (f), section eight a of this article~~ §18A-4-2 and §18A-4-8a of this code, as applicable, reduced by any amount provided by the county as a salary supplement for teachers and school service personnel on January 1, 1984.

(e) The amount received pursuant to this section shall not be decreased as a result of any county supplement increase instituted after January 1, 1984: *Provided*, That any amount received pursuant to this section may be reduced proportionately based upon the amount of funds appropriated for this purpose. No county may reduce any salary supplement that was in effect on January 1, 1984, except as permitted by sections five-a and five-b of this article.

#### **§18A-4-5a. County salary supplements for teachers.**

(a) County boards of education in fixing the salaries of teachers shall use at least the state minimum salaries established under the provisions of this article. The board may establish salary schedules which shall be in excess of the state minimums fixed by this article, such county schedules to be uniform ~~throughout the county~~ as to the classification of training, experience, responsibility and other requirements subject to the following:

(1) Counties may fix higher salaries for teachers placed in special instructional assignments, for those assigned to or employed for duties other than regular instructional duties, and for teachers of one-teacher schools; ~~and they~~

(2) Counties may provide additional compensation for any teacher assigned duties in addition to the teacher's regular

instructional duties wherein such noninstructional duties are not a part of the scheduled hours of the regular school day; ~~Uniformity also shall apply to such additional salary increments or compensation for all persons performing like assignments and duties within the county: *Provided, That*~~

(3) Counties may provide additional compensation for teachers who are assigned and fully certified to teach in a subject area in which the county board finds it has a critical need and shortage of fully certified teachers;

(4) Counties may provide additional compensation or other financial assistance to teachers who teach in schools that are in remote geographical locations or have experienced high rates of turnover in experienced teachers; and

(5) Counties may provide additional compensation to teachers who, in addition to regularly assigned teaching duties, are assigned as a master teacher, mentor, academic coach, or other title whose duties include providing strong school-based support and supervision to assist licensure candidates in a clinical internship, beginning teachers, and other teachers at the school to improve their professional practice as set forth in the county's comprehensive system of support for teacher and leader induction and professional growth provided for in section §18A-3C-3 of this code.

(b) In establishing ~~such~~ local salary schedules authorized in subsection (a) of this section, ~~no county shall~~ a county may not reduce local funds allocated for salaries in effect on January 1, 1990, and used in supplementing the state minimum salaries as provided for in this article, unless forced to do so by defeat of a special levy, or a loss in assessed values or events over which it has no control and for which the county board has received approval from the state board prior to making such reduction.

(c) Counties may provide, in a uniform manner, benefits for teachers which require an appropriation from local funds including, but not limited to, dental, optical, health and income protection insurance, vacation time and retirement plans excluding the state

Teachers Retirement System. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits in effect on January 1, 1984, by any county board of education.

**§18A-4-7a. Employment, promotion, and transfer of professional personnel; Seniority qualifications.**

(a) A county board of education shall make decisions affecting the filling of vacancies in professional positions of employment on the basis of the applicant with the highest qualifications: *Provided*, That the county superintendent shall be hired under separate criteria pursuant to §18-4-2 of this code.

(b) In judging qualifications for the filling of vacancies of professional positions of employment, consideration shall be given to each of the following:

(1) Appropriate certification, licensure, or both;

(2) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

(3) The amount of course work, degree level, or both in the relevant field and degree level generally;

(4) Academic achievement;

(5) In the case of a principal or classroom teaching position, certification by the National Board for Professional Teaching Standards;

(6) Specialized training relevant to performing the duties of the job;

(7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties.

(c) When filling of a vacancy pursuant to this section, a county board is entitled to determine the appropriate weight to apply to each of the criterion when assessing an applicant's qualifications: *Provided*, That if one or more permanently employed instructional personnel apply for a classroom teaching position and meet the standards set forth in the job posting, each criterion under subsection (b) of this section shall be given equal weight except that the criterion in subdivisions (10) and (11) of said subsection shall each be double weighted.

(d) For a classroom teaching position, if the principal and faculty senate recommend the same applicant pursuant to subdivisions (10) and (11), subsection (b) of this section, and the superintendent concurs with those recommendations, then the other provisions of subsections (b) and (c) of this section do not apply and the county board shall appoint that applicant notwithstanding any other provision of this code to the contrary.

(e) The state board shall promulgate a rule, including an emergency rule if necessary, in accordance with ~~the provisions of~~ §29A-3B-1 *et seq.* article three-b, chapter twenty-nine-a of this code to implement and interpret ~~the provisions of~~ this section. The rule may provide for a classroom teacher who directly participates in making recommendations pursuant to this section to be compensated at the appropriate daily rate during periods of participation beyond his or her individual contract.

(f) The recommendations of the principal and faculty senate made pursuant to subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to which applicant is the most highly qualified for the position: *Provided*, That nothing in this subsection may require principals or faculty senates to assign any amount of weight to any factor in making a recommendation.

(g) With the exception of guidance counselors, the seniority of classroom teachers, as defined in section one, article one of this chapter, shall be determined on the basis of the length of time the employee has been employed as a regular full-time certified and/or licensed professional educator by the county board of education and shall be granted in all areas that the employee is certified, licensed or both.

(h) Upon completion of 133 days of employment in any one school year, substitute teachers, except retired teachers and other retired professional educators employed as substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a permanent, full-time professional employee. One hundred thirty-three days or more of said employment shall be prorated and shall vest as a fraction of the school year worked by the permanent, full-time teacher.

(i) Guidance counselors and all other professional employees, as defined in section one, article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching area of professional employment on the basis of the length of time the employee has been employed by the county board of education in that area: *Provided*, That if an employee is certified as a classroom teacher, the employee accrues classroom teaching seniority for the time that employee is employed in another professional area. For the purposes of accruing seniority under this subsection, employment as principal, supervisor or central office administrator, as defined in §18A-1-1 of this code, shall be considered one area of employment.

(j) Employment for a full employment term equals one year of seniority, but an employee may not accrue more than one year of

seniority during any given fiscal year. Employment for less than the full employment term shall be prorated. ~~A random selection system established by the employees and approved by the county board shall be used to determine the priority if two or more employees accumulate identical seniority: *Provided*, That when two or more principals have accumulated identical seniority. All decisions on reductions in force shall be based on qualifications as set forth in a county board policy. Furthermore, for the purposes of this subsection and subsections (k) through (s), inclusive, of this section, the word 'qualifications' means the qualifications set forth in county board policy and only means qualifications set forth in subsection (b) of this section to the extent those qualifications are set forth in county board policy: *Provided*, That in defining the word 'qualifications' in its policy, the county board:~~

(1) Shall consider including the following criteria:

(A) Seniority;

(B) Appropriate certification, licensure, or both;

(C) Amount of experience relevant to the position or, in the case of a classroom teaching position, the amount of teaching experience in the required certification area;

(D) The amount of course work, degree level, or both in the relevant field and degree level generally;

(E) Academic achievement;

(F) In the case of a principal or classroom teaching position, certification by the National Board for Professional Teaching Standards;

(G) Specialized training relevant to performing the duties of the job;

(H) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this code or, in the case of a classroom teacher, past evaluations of the applicant's performance in the teaching profession;

(I) Other measures or indicators upon which the relative qualifications of the applicant may fairly be judged;

(J) In the case of a classroom teaching position, the recommendation of the principal of the school at which the applicant will be performing a majority of his or her duties; and

(K) In the case of a classroom teaching position, the recommendation, if any, resulting from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty senate of the school at which the employee will be performing a majority of his or her duties;

(2) Shall consider other criteria set forth in subdivision (1) of this subsection to the extent they are included in the county board policy only after considering personnel whose last performance evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code, as applicable, is less than satisfactory; and

(3) May not include salary as one of the criteria in the definition.

(k) Whenever a county board is required to reduce the number of professional personnel in its employment, the employee ~~with the least amount of seniority~~ who is least qualified, as set forth in county board policy, shall be properly notified and released from employment pursuant to ~~the provisions of~~ §18A-2-2 of this code. ~~The provisions of this~~ This subsection ~~are~~ is subject to the following:

(1) All persons employed in a certification area to be reduced who are employed under a temporary permit shall be properly notified and released before a fully certified employee in such a position is subject to release;

(2) Notwithstanding any provision of this code to the contrary, for any vacancy in an established, existing or newly created position that, on or before March 1, is known to exist for the ensuing school year, upon recommendation of the superintendent, the board shall appoint the successful applicant from among all qualified applicants. All employees subject to release shall be



considered applicants for the positions for which they are qualified and shall be considered before posting such vacancies for application by nonemployees;

(3) An employee subject to release shall be employed in any other professional position where the employee is certified and was previously employed or to any lateral area for which the employee is certified, licensed or both: ~~if the employee's seniority is greater than the seniority of any other employee in that area of certification, licensure or both~~ Provided, That the employee is the most qualified person for that position;

(4) If an employee subject to release holds certification, licensure or both in more than one lateral area and if the employee's ~~seniority is~~ qualifications are greater than the ~~seniority~~ qualifications of any other employee in one or more of those areas of certification, licensure, or both, the employee subject to release shall be employed in the professional position held by the employee ~~with the least seniority~~ who is least qualified in any of those areas of certification, licensure, or both; and

(5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any particular reduction in force no longer exists as determined by the county board in its sole and exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the released employee in writing of his or her right to be restored to his or her position of employment. Within five days of being so notified, the released employee shall notify the board, in writing, of his or her intent to resume his or her position of employment or the right to be restored shall terminate. Notwithstanding any other provision of this subdivision, if there is another employee on the preferred recall list with proper certification and ~~higher seniority~~ has greater qualifications, that person shall be placed in the position restored as a result of the reduction in force being rescinded.

(1) For the purpose of this article, all positions which meet the definition of 'classroom teacher' as defined in section one, article one of this chapter shall be lateral positions. For all other professional positions, the county board of education shall adopt a

policy by October 31, 1993, and may modify the policy thereafter as necessary, which defines which positions shall be lateral positions. In adopting the policy, the board ~~shall~~ may give consideration to the rank of each position in terms of title; nature of responsibilities; salary level; and certification, licensure or both, ~~and along with the~~ days in the period of employment.

(m) All professional personnel whose ~~seniority~~ lesser qualifications, as determined by county board policy, with the county board is insufficient to allow their retention by the county board during a reduction in workforce shall be placed upon a preferred recall list. As to any professional position opening within the area where they had previously been employed or to any lateral area for which they have certification, licensure or both, the employee shall be recalled on the basis of ~~seniority~~ qualifications if no regular, full-time professional personnel, or those returning from leaves of absence with greater ~~seniority~~ are qualified qualifications, apply for and accept the position.

(n) ~~Before position openings that are known or expected to extend for twenty consecutive employment days or longer for professional personnel may be filled by the board, the board shall be required to notify all qualified professional personnel on the preferred list and give them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right to recall. The notice shall be sent by certified mail to the last known address of the employee and it shall be the duty of each professional personnel to notify the board of continued availability annually, of any change in address or of any change in certification, licensure or both~~ The board shall annually notify professional personnel on the preferred list of the job application procedures and any websites used to advertise vacancies. The notice shall be sent by certified mail via the U.S. Postal Service to the last known address of the employee, and it shall be the duty of each professional person to notify the board of continued availability annually of any change in address, or of any change in certification, licensure or both.

(o) Openings in established, existing, or newly created positions shall be processed as follows:

(1) Boards shall be required to post and date notices of each opening at least once. At their discretion, boards may post an opening for a position other than classroom teacher more than once in order to attract more qualified applicants. At their discretion, boards may ~~post~~ repost an opening for a classroom teacher ~~one additional time~~ after the first posting in order to attract more qualified applicants ~~only if fewer than three individuals apply during the first posting~~ subject to the following:

(A) Each notice shall be posted in conspicuous working places for all professional personnel to observe for at least five working days which may include any website maintained by the county board;

(B) At least one notice shall be posted within 20 working days of the position openings and shall include the job description;

(C) Any special criteria or skills that are required by the position shall be specifically stated in the job description and directly related to the performance of the job;

(D) Postings for vacancies made pursuant to this section shall be written so as to ensure that the largest possible pool of qualified applicants may apply; and

(E) Job postings may not require criteria which are not necessary for the successful performance of the job and may not be written with the intent to favor a specific applicant;

(2) No vacancy may be filled until after the five-day minimum posting period of the most recent posted notice of the vacancy;

(3) If one or more applicants under all the postings for a vacancy meets the qualifications listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board within 30 working days of the end of the first posting period;

(4) A position held by a teacher who is certified, licensed, or both, who has been issued a permit for full-time employment and is working toward certification in the permit area shall not be subject to posting if the certificate is awarded within five years; and

(5) Nothing provided herein may prevent the county board of education from eliminating a position due to lack of need.

(p) Notwithstanding any other provision of the code to the contrary, where the total number of classroom teaching positions in an elementary school does not increase from one school year to the next, but there exists in that school a need to realign the number of teachers in one or more grade levels, kindergarten through six, teachers at the school may be reassigned to grade levels for which they are certified without that position being posted: *Provided*, That the employee and the county board mutually agree to the reassignment.

(q) Reductions in classroom teaching positions in elementary schools shall be determined pursuant to the considerations set forth in county board policy and processed as follows:

(1) When the total number of classroom teaching positions in an elementary school needs to be reduced, the reduction shall be made on the basis of seniority qualifications with the least senior qualified classroom teacher being recommended for transfer; and

(2) When a specified grade level needs to be reduced and the least senior qualified employee in the school is not in that grade level, the senior least qualified classroom teacher in the grade level that needs to be reduced shall be reassigned to the position made vacant by the transfer of the senior least qualified classroom teacher in the school without that position being posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

(r) Any board failing to comply with ~~the provisions of~~ this article may be compelled to do so by mandamus and shall be liable to any party prevailing against the board for court costs and reasonable attorney fees as determined and established by the court. Further, employees denied promotion or employment in violation of this section shall be awarded the job, pay and any applicable benefits retroactive to the date of the violation and payable entirely from local funds. Further, the board shall be liable

to any party prevailing against the board for any court reporter costs including copies of transcripts.

~~(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.~~

(†) (s) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher position at the school without the position being posted.

(t) All personnel in a public charter school shall continue to accrue seniority in the same manner that they would accrue seniority if employed in a noncharter public school in the county for the purpose of employment in noncharter public schools.

(u) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

#### **§18A-4-8a. Service personnel minimum monthly salaries.**

(a) The minimum monthly pay for each service employee shall be as follows:

(1) For school year 2018–2019, ~~and continuing thereafter,~~ the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule I and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision: Provided, That for school year 2019-

2020, and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule II and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE I

Years

Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,770	1,791	1,833	1,886	1,939	2,002	2,034	2,107
1	1,802	1,824	1,865	1,918	1,972	2,035	2,066	2,140
2	1,835	1,856	1,898	1,951	2,004	2,067	2,099	2,172
3	1,867	1,889	1,931	1,984	2,037	2,100	2,132	2,205
4	1,900	1,922	1,963	2,016	2,069	2,133	2,164	2,239
5	1,933	1,954	1,996	2,049	2,102	2,165	2,197	2,271
6	1,965	1,987	2,030	2,082	2,135	2,198	2,230	2,304
7	1,999	2,019	2,062	2,114	2,167	2,231	2,262	2,337
8	2,032	2,052	2,095	2,147	2,200	2,263	2,295	2,369
9	2,064	2,085	2,128	2,181	2,233	2,296	2,327	2,402
10	2,097	2,118	2,160	2,213	2,265	2,330	2,361	2,435
11	2,130	2,151	2,193	2,246	2,298	2,362	2,394	2,467
12	2,162	2,184	2,225	2,279	2,332	2,395	2,426	2,500

2019]

HOUSE OF DELEGATES

1633

13	2,195	2,216	2,258	2,311	2,364	2,427	2,459	2,533
14	2,228	2,249	2,291	2,344	2,397	2,460	2,492	2,565
15	2,260	2,282	2,323	2,376	2,429	2,493	2,524	2,598
16	2,293	2,314	2,356	2,409	2,462	2,525	2,557	2,631
17	2,325	2,347	2,390	2,442	2,495	2,558	2,590	2,664
18	2,358	2,380	2,422	2,474	2,527	2,591	2,622	2,697
19	2,392	2,412	2,455	2,507	2,560	2,623	2,655	2,729
20	2,424	2,445	2,488	2,541	2,593	2,656	2,688	2,763
21	2,457	2,477	2,520	2,573	2,625	2,689	2,720	2,797
22	2,490	2,511	2,553	2,606	2,658	2,722	2,754	2,829
23	2,522	2,544	2,586	2,639	2,692	2,756	2,788	2,863
24	2,555	2,576	2,618	2,671	2,724	2,790	2,821	2,897
25	2,588	2,609	2,651	2,704	2,758	2,822	2,855	2,929
26	2,620	2,642	2,683	2,738	2,792	2,856	2,887	2,963
27	2,653	2,674	2,716	2,770	2,824	2,888	2,921	2,996
28	2,686	2,707	2,750	2,804	2,858	2,922	2,955	3,030
29	2,718	2,741	2,783	2,836	2,891	2,956	2,987	3,064
30	2,752	2,773	2,817	2,870	2,924	2,988	3,021	3,097
31	2,785	2,807	2,851	2,904	2,958	3,022	3,055	3,130
32	2,819	2,840	2,883	2,937	2,990	3,056	3,087	3,164
33	2,853	2,873	2,917	2,971	3,024	3,088	3,121	3,197
34	2,885	2,907	2,951	3,005	3,058	3,122	3,155	3,230

35	2,919	2,941	2,983	3,037	3,090	3,156	3,188	3,264
36	2,953	2,974	3,017	3,071	3,125	3,189	3,222	3,296
37	2,985	3,008	3,051	3,105	3,159	3,223	3,255	3,330
38	3,019	3,040	3,083	3,137	3,191	3,256	3,288	3,364
39	3,053	3,074	3,117	3,171	3,225	3,289	3,322	3,396
40	3,085	3,108	3,150	3,204	3,259	3,323	3,355	3,430

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE II

Years

<u>Exp.</u>	<u>PAY GRADE</u>							
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
<u>0</u>	<u>1,885</u>	<u>1,906</u>	<u>1,948</u>	<u>2,001</u>	<u>2,054</u>	<u>2,117</u>	<u>2,149</u>	<u>2,222</u>
<u>1</u>	<u>1,917</u>	<u>1,939</u>	<u>1,980</u>	<u>2,033</u>	<u>2,087</u>	<u>2,150</u>	<u>2,181</u>	<u>2,255</u>
<u>2</u>	<u>1,950</u>	<u>1,971</u>	<u>2,013</u>	<u>2,066</u>	<u>2,119</u>	<u>2,182</u>	<u>2,214</u>	<u>2,287</u>
<u>3</u>	<u>1,982</u>	<u>2,004</u>	<u>2,046</u>	<u>2,099</u>	<u>2,152</u>	<u>2,215</u>	<u>2,247</u>	<u>2,320</u>
<u>4</u>	<u>2,015</u>	<u>2,037</u>	<u>2,078</u>	<u>2,131</u>	<u>2,184</u>	<u>2,248</u>	<u>2,279</u>	<u>2,354</u>
<u>5</u>	<u>2,048</u>	<u>2,069</u>	<u>2,111</u>	<u>2,164</u>	<u>2,217</u>	<u>2,280</u>	<u>2,312</u>	<u>2,386</u>
<u>6</u>	<u>2,080</u>	<u>2,102</u>	<u>2,145</u>	<u>2,197</u>	<u>2,250</u>	<u>2,313</u>	<u>2,345</u>	<u>2,419</u>
<u>7</u>	<u>2,114</u>	<u>2,134</u>	<u>2,177</u>	<u>2,229</u>	<u>2,282</u>	<u>2,346</u>	<u>2,377</u>	<u>2,452</u>
<u>8</u>	<u>2,147</u>	<u>2,167</u>	<u>2,210</u>	<u>2,262</u>	<u>2,315</u>	<u>2,378</u>	<u>2,410</u>	<u>2,484</u>
<u>9</u>	<u>2,179</u>	<u>2,200</u>	<u>2,243</u>	<u>2,296</u>	<u>2,348</u>	<u>2,411</u>	<u>2,442</u>	<u>2,517</u>
<u>10</u>	<u>2,212</u>	<u>2,233</u>	<u>2,275</u>	<u>2,328</u>	<u>2,380</u>	<u>2,445</u>	<u>2,476</u>	<u>2,550</u>



<u>11</u>	<u>2,245</u>	<u>2,266</u>	<u>2,308</u>	<u>2,361</u>	<u>2,413</u>	<u>2,477</u>	<u>2,509</u>	<u>2,582</u>
<u>12</u>	<u>2,277</u>	<u>2,299</u>	<u>2,340</u>	<u>2,394</u>	<u>2,447</u>	<u>2,510</u>	<u>2,541</u>	<u>2,615</u>
<u>13</u>	<u>2,310</u>	<u>2,331</u>	<u>2,373</u>	<u>2,426</u>	<u>2,479</u>	<u>2,542</u>	<u>2,574</u>	<u>2,648</u>
<u>14</u>	<u>2,343</u>	<u>2,364</u>	<u>2,406</u>	<u>2,459</u>	<u>2,512</u>	<u>2,575</u>	<u>2,607</u>	<u>2,680</u>
<u>15</u>	<u>2,375</u>	<u>2,397</u>	<u>2,438</u>	<u>2,491</u>	<u>2,544</u>	<u>2,608</u>	<u>2,639</u>	<u>2,713</u>
<u>16</u>	<u>2,408</u>	<u>2,429</u>	<u>2,471</u>	<u>2,524</u>	<u>2,577</u>	<u>2,640</u>	<u>2,672</u>	<u>2,746</u>
<u>17</u>	<u>2,440</u>	<u>2,462</u>	<u>2,505</u>	<u>2,557</u>	<u>2,610</u>	<u>2,673</u>	<u>2,705</u>	<u>2,779</u>
<u>18</u>	<u>2,473</u>	<u>2,495</u>	<u>2,537</u>	<u>2,589</u>	<u>2,642</u>	<u>2,706</u>	<u>2,737</u>	<u>2,812</u>
<u>19</u>	<u>2,507</u>	<u>2,527</u>	<u>2,570</u>	<u>2,622</u>	<u>2,675</u>	<u>2,738</u>	<u>2,770</u>	<u>2,844</u>
<u>20</u>	<u>2,539</u>	<u>2,560</u>	<u>2,603</u>	<u>2,656</u>	<u>2,708</u>	<u>2,771</u>	<u>2,803</u>	<u>2,878</u>
<u>21</u>	<u>2,572</u>	<u>2,592</u>	<u>2,635</u>	<u>2,688</u>	<u>2,740</u>	<u>2,804</u>	<u>2,835</u>	<u>2,912</u>
<u>22</u>	<u>2,605</u>	<u>2,626</u>	<u>2,668</u>	<u>2,721</u>	<u>2,773</u>	<u>2,837</u>	<u>2,869</u>	<u>2,944</u>
<u>23</u>	<u>2,637</u>	<u>2,659</u>	<u>2,701</u>	<u>2,754</u>	<u>2,807</u>	<u>2,871</u>	<u>2,903</u>	<u>2,978</u>
<u>24</u>	<u>2,670</u>	<u>2,691</u>	<u>2,733</u>	<u>2,786</u>	<u>2,839</u>	<u>2,905</u>	<u>2,936</u>	<u>3,012</u>
<u>25</u>	<u>2,703</u>	<u>2,724</u>	<u>2,766</u>	<u>2,819</u>	<u>2,873</u>	<u>2,937</u>	<u>2,970</u>	<u>3,044</u>
<u>26</u>	<u>2,735</u>	<u>2,757</u>	<u>2,798</u>	<u>2,853</u>	<u>2,907</u>	<u>2,971</u>	<u>3,002</u>	<u>3,078</u>
<u>27</u>	<u>2,768</u>	<u>2,789</u>	<u>2,831</u>	<u>2,885</u>	<u>2,939</u>	<u>3,003</u>	<u>3,036</u>	<u>3,111</u>
<u>28</u>	<u>2,801</u>	<u>2,822</u>	<u>2,865</u>	<u>2,919</u>	<u>2,973</u>	<u>3,037</u>	<u>3,070</u>	<u>3,145</u>
<u>29</u>	<u>2,833</u>	<u>2,856</u>	<u>2,898</u>	<u>2,951</u>	<u>3,006</u>	<u>3,071</u>	<u>3,102</u>	<u>3,179</u>
<u>30</u>	<u>2,867</u>	<u>2,888</u>	<u>2,932</u>	<u>2,985</u>	<u>3,039</u>	<u>3,103</u>	<u>3,136</u>	<u>3,212</u>
<u>31</u>	<u>2,900</u>	<u>2,922</u>	<u>2,966</u>	<u>3,019</u>	<u>3,073</u>	<u>3,137</u>	<u>3,170</u>	<u>3,245</u>
<u>32</u>	<u>2,934</u>	<u>2,955</u>	<u>2,998</u>	<u>3,052</u>	<u>3,105</u>	<u>3,171</u>	<u>3,202</u>	<u>3,279</u>

<u>33</u>	<u>2,968</u>	<u>2,988</u>	<u>3,032</u>	<u>3,086</u>	<u>3,139</u>	<u>3,203</u>	<u>3,236</u>	<u>3,312</u>
<u>34</u>	<u>3,000</u>	<u>3,022</u>	<u>3,066</u>	<u>3,120</u>	<u>3,173</u>	<u>3,237</u>	<u>3,270</u>	<u>3,345</u>
<u>35</u>	<u>3,034</u>	<u>3,056</u>	<u>3,098</u>	<u>3,152</u>	<u>3,205</u>	<u>3,271</u>	<u>3,303</u>	<u>3,379</u>
<u>36</u>	<u>3,068</u>	<u>3,089</u>	<u>3,132</u>	<u>3,186</u>	<u>3,240</u>	<u>3,304</u>	<u>3,337</u>	<u>3,411</u>
<u>37</u>	<u>3,100</u>	<u>3,123</u>	<u>3,166</u>	<u>3,220</u>	<u>3,274</u>	<u>3,338</u>	<u>3,370</u>	<u>3,445</u>
<u>38</u>	<u>3,134</u>	<u>3,155</u>	<u>3,198</u>	<u>3,252</u>	<u>3,306</u>	<u>3,371</u>	<u>3,403</u>	<u>3,479</u>
<u>39</u>	<u>3,168</u>	<u>3,189</u>	<u>3,232</u>	<u>3,286</u>	<u>3,340</u>	<u>3,404</u>	<u>3,437</u>	<u>3,511</u>
<u>40</u>	<u>3,200</u>	<u>3,223</u>	<u>3,265</u>	<u>3,319</u>	<u>3,374</u>	<u>3,438</u>	<u>3,470</u>	<u>3,545</u>

(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE

PAY GRADE

Accountant I .....	D
Accountant II .....	E
Accountant III .....	F
Accounts Payable Supervisor .....	G
Aide I .....	A
Aide II .....	B
Aide III .....	C
Aide IV .....	D
Audiovisual Technician .....	C
Auditor .....	G

Autism Mentor .....	F
Braille Specialist .....	E
Bus Operator .....	D
Buyer .....	F
Cabinetmaker .....	G
Cafeteria Manager .....	D
Carpenter I .....	E
Carpenter II .....	F
Chief Mechanic .....	G
Clerk I .....	B
Clerk II .....	C
Computer Operator .....	E
Cook I .....	A
Cook II .....	B
Cook III .....	C
Crew Leader .....	F
Custodian I .....	A
Custodian II .....	B
Custodian III .....	C
Custodian IV .....	D
Director or Coordinator of Services .....	H
Draftsman .....	D

Early Childhood Classroom Assistant Teacher I .....	E
Early Childhood Classroom Assistant Teacher II .....	E
Early Childhood Classroom Assistant Teacher III .....	F
Educational Sign Language Interpreter I .....	F
Educational Sign Language Interpreter II .....	G
Electrician I .....	F
Electrician II .....	G
Electronic Technician I .....	F
Electronic Technician II .....	G
Executive Secretary .....	G
Food Services Supervisor .....	G
Foreman .....	G
General Maintenance .....	C
Glazier .....	D
Graphic Artist .....	D
Groundsman .....	B
Handyman .....	B
Heating and Air Conditioning Mechanic I .....	E
Heating and Air Conditioning Mechanic II .....	G
Heavy Equipment Operator .....	E
Inventory Supervisor .....	D
Key Punch Operator .....	B

Licensed Practical Nurse .....	F
Locksmith .....	G
Lubrication Man .....	C
Machinist .....	F
Mail Clerk .....	D
Maintenance Clerk .....	C
Mason .....	G
Mechanic .....	F
Mechanic Assistant .....	E
Office Equipment Repairman I .....	F
Office Equipment Repairman II .....	G
Painter .....	E
Paraprofessional .....	F
Payroll Supervisor .....	G
Plumber I .....	E
Plumber II .....	G
Printing Operator .....	B
Printing Supervisor .....	D
Programmer .....	H
Roofing/Sheet Metal Mechanic .....	F
Sanitation Plant Operator .....	G
School Bus Supervisor .....	E

Secretary I .....D

Secretary II ..... E

Secretary III ..... F

Sign Support Specialist ..... E

Supervisor of Maintenance .....H

Supervisor of Transportation .....H

Switchboard Operator-Receptionist .....D

Truck Driver .....D

Warehouse Clerk ..... C

Watchman .....B

Welder ..... F

WVEIS Data Entry and Administrative Clerk .....B

(b) An additional \$12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional \$11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional \$40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;

(4) A service person who holds a doctorate degree.

(e) An additional \$11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus 15 college hours;

(2) A service person who holds a master's degree plus 15 college hours;

(3) A service person who holds a master's degree plus 30 college hours;

(4) A service person who holds a master's degree plus 45 college hours; and

(5) A service person who holds a master's degree plus 60 college hours.

(f) ~~To meet the objective of salary equity among the counties,~~ each service person is paid ~~an equity~~ a supplement, as set forth in §18A-4-5 of this code, of \$164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article, and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of 6:00 p.m. and 5:00 a.m. the following day, the employee is paid no less than an additional \$10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.



(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one-seventh of the person's daily total salary for each hour the person is involved in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: *Provided, however*, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional \$3 per hour or no less than \$5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment, and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional

\$30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, 'under the direct supervision of a certified professional person' means that certified professional person is present, with and accompanying the aide.

**§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.**

(a) *Personal Leave.*

(1) ~~At the beginning of the employment term, any~~ Any full-time employee of a county board is entitled ~~annually to accrue to~~ at least one and one-half days personal leave for each employment month or major fraction thereof in the employee's employment term. Personal leave is accrued at the end of each pay period based on a ten month pay calendar or on the last workday for separating employees. Unused leave shall be accumulative without limitation and is transferable within the state. A change in job assignment during the school year does not affect the employee's rights or benefits.

(2) A regular full-time employee who is absent from assigned duties due to accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents or child,

or other cause authorized or approved by the board, shall be paid the full salary from his or her regular budgeted salary appropriation during the period which the employee is absent, but not to exceed the total amount of leave ~~to which the employee is entitled~~ has accrued.

(3) Each employee is permitted to use ~~three~~ four days of leave annually without regard to the cause for the absence. Personal leave without cause may not be used on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor, as appropriate. The employee shall give notice of leave without cause to the principal or immediate supervisor at least 24 hours in advance, except that in the case of sudden and unexpected circumstances, notice shall be given as soon as reasonably practicable. The principal or immediate supervisor may deny use of the day if, at the time notice is given, either 15 percent of the employees or three employees, whichever is greater, under the supervision of the principal or immediate supervisor, have previously given notice of their intention to use that day for leave. Personal leave may not be used in connection with a concerted work stoppage or strike. Where the cause for leave originated prior to the beginning of the employment term, the employee shall be paid for time lost after the start of the employment term, but not to exceed the total amount of leave the employee has accrued. ~~If an employee uses personal leave which the employee has not yet accumulated on a monthly basis and subsequently leaves the employment, the employee is required to reimburse the board for the salary or wages paid for the unaccumulated leave.~~

(4) The State Board shall maintain a rule to restrict the payment of personal leave benefits and the charging of personal leave time used to an employee receiving a workers' compensation benefit from a claim filed against and billed to the county board by which the person is employed. If an employee is awarded this benefit, the employee shall receive personal leave compensation only to the extent the compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid the employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the

workers' compensation benefit, the amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

(5) The county board may establish reasonable rules for reporting and verification of absences for cause. If any error in reporting absences occurs, the county board may make necessary salary adjustments:

(A) In the next pay after the employee has returned to duty; or

(B) In the final pay if the absence occurs during the last month of the employment term.

(b) *Leave Banks.*

(1) Each county board shall establish a personal leave bank that is available to all school personnel. The board may establish joint or separate banks for professional personnel and school service personnel. Each employee may contribute up to two days of personal leave per school year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days accumulated personal leave who is absent from work due to accident or illness of the employee; and

(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to §5-16-13 of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was transferred. Any transferred days remaining when the catastrophic medical emergency ends revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of the cause for the absence.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of substitutes for meeting the provisions of this section, the remainder shall be paid on or before August 31 from the budget of the next fiscal year.

(5) A county board may supplement the leave provisions in any manner it considers advisable in accordance with applicable rules of the state Board and the provisions of this chapter and chapter eighteen of this code.

(c) (1) A classroom teacher who has not utilized more than four than four personal days during the 200-day employment term shall receive a bonus of \$500 at the end of the school year.

(2) If the appropriations to the Department of Education for this purpose are insufficient to compensate all applicable classroom teachers, the Department of Education shall request a supplemental appropriation in an amount sufficient to compensate all classroom teachers. This payment may not be counted as part of the final average salary for the purpose of calculating retirement.

(d) The amendments to this section during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this section existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

## **ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

### **§18A-5-2. Holidays; closing of schools; time lost because of such; special Saturday classes.**

(a) Schools shall be closed on Saturdays and on the following days which are designated as legal school holidays: Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Day, New Year's Day, Martin Luther King's birthday, Memorial Day and West Virginia Day. Schools also shall be closed on any day on which a primary election, general election or special election is held throughout the state or school district and on any day appointed and set apart by the president or the Governor as a holiday of special observance by the people of the state.

(b) When any of the above designated holidays, except a special election, falls on Saturday, the schools shall be closed on the preceding Friday. When any designated holiday falls on Sunday, the schools shall be closed on the following Monday.

(c) Special classes may be conducted on Saturdays for pupils and by teachers and service personnel. Saturday classes shall be

conducted on a voluntary basis and teachers and service personnel shall be remunerated in ratio to the regularly contracted pay.

(d) Any school or schools may be closed by proper authorities on account of the prevalence of contagious disease, conditions of weather or any other calamitous cause over which the board has no control.

(1) Under any or all of the above provisions, the time lost by the school closings may not be counted as days of employment and may not be counted as meeting a part of the requirements of the minimum term of one hundred eighty days of instruction. Except as otherwise provided by §18-5-45a, a school employee's pay per pay period may not change as a result of a school closing not being counted as a day of employment, and the employee shall be paid the same amount during any pay period in which a school closing occurs that the employee would have been paid during the pay period if a school closing had not occurred.

(2) On the day or days when a school or schools are closed, county boards may provide appropriate alternate work schedules for professional and service personnel affected by the closing of any school or schools under any or all of the provisions of this subsection. Professional and service personnel shall receive pay the same as if school were in session.

(3) Insofar as funds are available or can be made available during the school year, the board may extend the employment term for the purpose of making up time that might affect the instructional term.

(e) In addition to any other provisions of this chapter, the board further is authorized to provide in its annual budget for meetings, workshops, vacation time or other holidays through extended employment of personnel at the same rate of pay.

## **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

### **ARTICLE 4. UNDERWOOD-SMITH ~~TEACHER~~ TEACHING SCHOLARSHIP SCHOLARS PROGRAM.**

**§18C-4-1. Scholarship and loan assistance fund Underwood-Smith Teaching Scholars Program Fund created; purposes; funding.**

(a) It is the purpose of this article ~~and article four a of this chapter~~ to improve the quality of education in the public schools of West Virginia by encouraging and enabling individuals who have demonstrated outstanding academic abilities to pursue teaching careers in the public schools in this state in mathematics, science, or special education at the ~~preschool~~ elementary, middle, or secondary levels. ~~in the public schools of this state. In addition, of those individuals who have demonstrated outstanding academic abilities to pursue teaching careers, for scholarships initially awarded for the fall semester, 2014, and thereafter~~ Particular efforts shall be made in the scholarship selection criteria and procedures to reflect the state's present and projected ~~subject and geographic areas of critical need:~~ Provided, That nothing in this article shall prohibit any individual who has demonstrated outstanding academic abilities from eligibility for an award from the Underwood-Smith Teacher Scholarship and Loan Assistance Fund under the provisions of this article as they existed prior to reenactment of this article during the 2019 Regular Session of the Legislature to pursue a teaching career in the field of music education.

(b) In consultation with the State Board of Education and the State Superintendent of Schools the commission shall propose legislative rules in accordance with the provisions of ~~article three a, chapter twenty nine a of this code~~ §29A-3A-1, *et seq.* The rules shall provide for the administration of the Underwood-Smith Teacher Scholarship and Loan Assistance programs Teaching Scholars Program by the vice chancellor for administration in furtherance of the purposes of this article, ~~and article four a of this chapter~~ including, but not limited to, the following:

(1) Establishing scholarship selection criteria and procedures;

(2) Establishing criteria and procedures for identifying ~~subject areas~~ public schools or geographic areas in critical need of teachers;



(3) Requiring scholarship recipients to teach in a public school in this state in mathematics, science, or special education at the elementary, middle, or secondary level in a geographic area of critical need pursuant to the provisions of §18C-4-3 of this code;

~~Awarding loan assistance, including establishing conditions under which partial awards may be granted for less than a full year of teaching in an area of critical need;~~

(4) ~~Determining eligibility for loan assistance renewal;~~

(5) ~~Establishing procedures ensuring that loan assistance funds are paid directly to the proper lending entity; and~~

(6) (4) ~~Establishing criteria for determining participant compliance or noncompliance with terms of the agreement and establishing procedures to address noncompliance including, but not limited to, repayment, deferral and excusal; and~~

(7) (5) ~~Developing model agreements.~~

(c) The commission and State Board of Education jointly shall ensure that Underwood-Smith Teaching Scholars recipients receive additional academic support and training from mathematics, science, or special education mentors beginning with the freshman year and continuing through degree completion and the teaching obligation.

(d) ~~There is created in the State Treasury a special revolving fund in the State Treasury to be known as The Underwood-Smith Teacher Scholarship and Loan Assistance Fund is continued in the State Treasury as a special revolving fund and is hereafter to be known as the Underwood-Smith Teaching Scholars Program Fund. The fund shall~~ ~~to~~ be administered by the vice chancellor for administration solely for granting scholarships ~~and loan assistance~~ to teachers and prospective teachers in accordance with this article. ~~and article four a of this chapter.~~ Any moneys which may be appropriated by the Legislature, or received by the vice chancellor for administration from other sources, for the purposes of this article ~~and article four a of this chapter~~ shall be deposited in the fund. Any moneys remaining in the fund at the close of a fiscal year

shall be carried forward for use in the next fiscal year. Any moneys repaid to the vice chancellor for administration by reason of default of a scholarship ~~or loan assistance~~ agreement under this article ~~or article four a of this chapter~~ also shall be deposited in the fund. Fund balances shall be invested with the state's consolidated investment fund, and any and all interest earnings on these investments shall be used solely for the purposes for which moneys invested were appropriated or otherwise received.

~~(d)~~ (e) The vice chancellor for administration may accept and expend any gift, grant, contribution, bequest, endowment, or other money for the purposes of this article ~~and article four a of this chapter~~ and shall make a reasonable effort to encourage external support for the scholarship ~~and loan assistance programs~~ program.

~~(e)~~ (f) For the purpose of encouraging support for the scholarship ~~and loan assistance programs~~ program from private sources, the vice chancellor for administration may set aside no more than half of the funds appropriated by the Legislature for Underwood-Smith ~~Teacher Scholarships and Loan Assistance Teaching Scholar~~ awards to be used to match two state dollars to each private dollar from a nonstate source contributed on behalf of a specific institution of higher education in this state.

(g) In recognition of the high academic achievement necessary to receive an award under this article, each recipient shall be distinguished as an 'Underwood-Smith Teaching Scholar' in a manner befitting the distinction as determined by the commission.

(h) Notwithstanding the provisions of subsection (d) of this section, and §18C-4A-3 and 18C-4A-4 of this code:

(1) Moneys in the Underwood-Smith Teaching Scholars Program Fund may be used to satisfy the loan assistance agreement pursuant to §18C-4A-3 of this code for any student who is fulfilling the requirements of an agreement on the effective date of this section;

(2) Moneys in the Underwood-Smith Teaching Scholars Program Fund may be used to fund Underwood-Smith teacher

scholarships, and any renewals for which a recipient would be eligible pursuant to the prior enactment of this article, for those students receiving such scholarship on the effective date of this section; and

(3) The terms, conditions, requirements, and agreements applicable to an Underwood-Smith teacher scholarship or loan assistance recipient prior to the effective date of this section shall continue in effect and are not altered by the reenactment of this section during the 2019 regular session of the Legislature.

### **§18C-4-2. Selection criteria and procedures for awarding scholarships.**

(a) ~~The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter~~ §18C-1-5 of this code to shall select the recipients of Underwood-Smith teacher scholarships Teaching Scholars who meet the eligibility criteria set forth in subsection (b) of this section.

(b) Eligibility for an Underwood-Smith ~~Teacher Scholarship~~ Teaching Scholars award shall be limited to students who meet the following criteria:

(1) ~~Have graduated or are graduating from high school and rank in the top ten percent of their graduating class or the top ten percent statewide of those West Virginia students taking the ACT test with a cumulative grade point average of at least 3.25 on a 4.0 scale, and;~~

(A) For mathematics and science majors, met the college algebra ready assessment standards and college readiness English, reading, and writing standards as established by the commission; or

(B) For special education majors, met the college statistics readiness standards and college readiness English, reading, and writing standards as established by the commission;

(2) Agree to teach in the subject area of mathematics, science or special education in a public school in the state in a geographic

area of critical need pursuant to the provisions of §18C-4-3 of this code; and

(3) In the case of a student pursuing a certificate in special education, have a cumulative grade point average of at least 3.25 on a 4.0 scale possible scale of four after successfully completing two years of course work at an approved institution of higher education in West Virginia; are public school aides or paraprofessionals as defined in section eight, article four, chapter eighteen a of this code and who have a cumulative grade point average of at least 3.25 on a possible scale of four after successfully completing two years of course work at an approved institution of higher education in West Virginia; or

(4) Are graduate students at the master's degree level; who have graduated or are graduating in the top ten percent of their college graduating class.

(c) To be eligible for an award, a non-citizen of the United States shall hold a valid Employment Authorization Document (EAD), or work permit, issued by the United States Citizenship and Immigration Services (USCIS).

(d) In accordance with the rules of the commission, the vice chancellor for administration shall develop criteria and procedures for the selection of scholarship recipients. The selection criteria shall reflect the purposes of this article and shall specify the areas in which particular efforts will be made in the selection of scholars as set forth in section one of this article §18C-4-1 of this code. Selection procedures and criteria also may include, but are not limited to, the grade point average of the applicant, involvement in extracurricular activities, financial need, current academic standing and an expression of interest in teaching as demonstrated by an essay written by the applicant. These criteria and procedures further may require the applicant to furnish letters of recommendation from teachers and others. It is the intent of the Legislature that academic abilities be the primary criteria for selecting scholarship recipients. However, the qualified applicants with the highest academic abilities who intend to pursue teaching

~~careers in areas of critical need and shortage pursuant to section one of this article shall be given priority.~~

~~(d)~~ (e) In developing the selection criteria and procedures to be used by the Higher Education Student Financial Aid Advisory Board, the vice chancellor for administration shall solicit the views of public and private education agencies and institutions and other interested parties. Input from interested parties shall be solicited by means of written and published selection criteria and procedures in final form for implementation and may be solicited by means of public hearings on the present and projected teacher needs of the state or any other methods the vice chancellor for administration may determine to be appropriate to gather the information.

~~(e)~~ (f) The vice chancellor for administration shall make application forms for Underwood-Smith ~~Teacher Scholarships~~ Teaching Scholars available to public and private high schools in the state and in other locations convenient to applicants, parents and others, and shall make an effort to attract students from low-income backgrounds, ethnic or racial minority students, students with disabilities, and women or minority students who show interest in pursuing teaching careers in mathematics, ~~and science~~ and special education and who are under-represented in those fields.

### **§18C-4-3. Scholarship agreement.**

(a) Each recipient of an Underwood-Smith ~~teacher scholarship~~ Teaching Scholars award shall enter into an agreement with the vice chancellor for administration under which the recipient shall meet the following conditions:

(1) Provide the commission with evidence of compliance with subsection (a), section four of this article;

(2) Beginning within a ~~ten-year period~~ one year after completing the teacher education program for which the scholarship was awarded, ~~(A)~~ teach full-time in the subject area of mathematics, science, or special education at the elementary, middle, or secondary level, or special education at the elementary,

middle or secondary level, in a geographic area of critical need, under contract with a county board of education in a public education program in the state, for a period of not fewer than ~~two~~ five consecutive years for ~~each year~~ the four academic years for which a scholarship was received. ~~or~~

~~(B) Teach full time under contract for not less than one year for each year for which a scholarship was received with a county board of education in this state in a teacher shortage area pursuant to section one of this article, in an exceptional children program in this state, in a school having less than average academic results or in a school in an economically disadvantaged area of this state; or~~

~~(C) Within the ten year period, while seeking and unable to secure a full time teaching position under contract with a county board of education which satisfies the conditions of paragraph (A) of this subdivision:~~

~~(i) Teach full time in a private school, parochial or other school approved for the instruction of students of compulsory school age pursuant to section one, article eight, chapter eighteen of this code; or~~

~~(ii) Teach in an institution of higher education in this state as defined in section two, article one, chapter eighteen b of this code or in a post secondary vocational education program in this state for a period of not fewer than two years for each year for which a scholarship was received; or~~

~~(iii) Perform alternative service or employment in this state pursuant to rules promulgated by the commission, in federal, state, county or local supported programs with an educational component, including mental or physical health care, or with bona fide tax exempt charitable organizations dedicated to the above, for a period of not fewer than two years for each year for which a scholarship was received. Any teaching time accrued during the required five-year period as a substitute teacher for a county board of education under paragraph (A) or (B) of this subdivision in the subject area of mathematics, science, or special education at the elementary, middle, or secondary level, or special education at the~~

elementary, middle or secondary level, shall be credited pro rata in accordance with rules promulgated by the commission; or

(3) Repay all or part of an Underwood-Smith ~~teacher scholarship~~ Teaching Scholars award received under this article plus interest and, if applicable, reasonable collection fees in accordance with ~~subsection (c), section four of this article, except as provided in subsection (d) of section four of this article~~ §18C-4-4 of this code.

(b) Scholarship agreements shall disclose fully the terms and conditions under which assistance under this article is provided and under which repayment may be required. The agreements shall include the following:

(1) A description of the conditions and procedures to be established under ~~section four of this article~~ §18C-4-4 of this code; and

(2) A description of the appeals procedure required to be established under ~~section four of this article~~ §18C-4-4 of this code.

(c) ~~Individuals who were~~ The scholarship terms, conditions, requirements, and agreements applicable to awarded an Underwood-Smith teacher scholarship recipient prior to the effective date of this section may apply the provisions of paragraph (A), (B) or (C), subdivision (2), subsection (a) of this section to teaching or other service performed by them after July 1, 1997 shall continue in effect and are not altered by the reenactment of this section during the 2019 regular session of the Legislature.

#### **§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.**

(a) The recipient of an Underwood-Smith ~~Teacher Scholarship~~ Teaching Scholars award is eligible for scholarship renewal only during those periods when the recipient meets the following conditions:

(1) Is enrolled as a full-time student in an accredited institution of higher education in this state;

(2) Is pursuing a ~~course~~ program of study leading to teacher certification in mathematics, science, or special education at the ~~preschool~~ elementary, middle or secondary level; ~~in this state~~

(3) Is maintaining satisfactory progress as determined by the institution of higher education the recipient is attending; ~~and~~

(4) Is maintaining a cumulative grade point average of at least 3.25 on a 4.0 scale; and

(5) Is complying with such other standards as the commission may establish by rule.

(b) Recipients found to be in noncompliance with the agreement entered into under ~~section three of this article~~ §18C-4-3 of this code shall be required to repay the amount of the scholarship awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule and at a rate of interest prescribed in the program guidelines. Guidelines also shall provide for proration of the amount to be repaid by a recipient who teaches for part of the period required under subsection (a), ~~section three of this article~~ §18C-4-3 of this code and for appeal procedures under which a recipient may appeal any determination of noncompliance.

(c) A recipient is not in violation of the agreement entered into under ~~section three of this article~~ §18C-4-3 of this code during any period in which the recipient is meeting any of the following conditions:

(1) Pursuing a full-time course of study at an accredited institution of higher education;

(2) Serving, not in excess of four years, as a member of the armed services of the United States;

(3) ~~Seeking and unable to find full time employment in accordance with paragraph (A), subdivision (2), subsection (a), section three of this article and is fulfilling any of the alternatives specified in paragraph (B) or (C) of that subdivision;~~



(4) Satisfying the provisions of ~~additional~~ any repayment exemptions that may be prescribed by the commission by rule; or

~~(5)~~ (4) Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician.

(d) The rules adopted by the commission may provide guidelines under which the vice chancellor for administration may extend the time period for beginning or fulfilling the teaching obligation to ~~fifteen years~~ if extenuating circumstances exist.

**§18C-4-5. Amount and duration of scholarship; relation to other assistance.**

(a) ~~Subject to subsection (b) of this section, each recipient of An Underwood-Smith teacher scholarship is eligible to receive assistance of up to \$5,000 for each academic year of higher education~~ Teaching Scholars award shall be used in preparation for becoming a ~~pre-school~~ an elementary, middle or secondary mathematics, science, or special education teacher in the public schools of this state. Each award shall be in an amount equal to the lower of the average annual undergraduate tuition and mandatory fee rates charged to state resident students among all baccalaureate state institutions of higher education, or the actual tuition and mandatory fee rates charged to all students at that institution. An institution that accepts any moneys from the Underwood-Smith Teaching Scholars Fund may not charge an Underwood-Smith Teaching Scholar any tuition or fees in excess of the amount of the scholarship award. No individual may receive scholarship assistance for more than

(b) An Underwood-Smith Teaching Scholars award is available for a maximum of four academic years for the completion of a bachelor's degree and two additional academic years for completion of a master's degree certification in special education that meets the requirements set by the State Board of Education.

~~(b) No individual shall~~

(c) An individual may not receive a scholarship award under this article which exceeds the cost of attendance at the institution the individual is attending. The cost of attendance shall be based upon the actual cost of tuition and fees, and reasonable allowances for books, educational supplies, room and board and other expenses necessitated by individual circumstances, in accordance with the program guidelines. For the purposes of establishing an award amount, the ~~senior administrator~~ vice chancellor for administration shall take into account the amount of financial aid assistance the recipient has or will receive from all other sources. If the amount of the Underwood-Smith ~~teacher scholarship assistance~~ Teaching Scholars award and the amount of assistance awards which the recipient has received from all other sources exceed the cost of attendance, the institution's financial aid officer, in consultation with the scholar, will determine what aid is to be reduced and shall do so in a manner to the best advantage of the scholar.

(d) The amendments to this article during the 2019 regular session of the Legislature shall be effective for school years beginning on or after July 1, 2019, and the provisions of this article existing immediately prior to the 2019 regular session of the Legislature remain in effect for school years beginning prior to July 1, 2019.

#### **ARTICLE 4A. UNDERWOOD-SMITH TEACHER LOAN ASSISTANCE PROGRAM.**

##### **§18C-4A-1. Selection criteria and procedures for loan assistance.**

(a) The Governor shall designate the Higher Education Student Financial Aid Advisory Board created by section five, article one of this chapter to select recipients to receive Underwood-Smith Teacher Loan Assistance Awards.

(b) To be eligible for a loan award, a teacher shall agree to teach, or shall currently be teaching, a subject area of critical need or in a school or geographic area of the state identified as an area

of critical need. The advisory board shall make decisions regarding loan assistance pursuant to section one, article four of this chapter.

(c) In accordance with the rule promulgated pursuant to section one, article four of this chapter, the Vice Chancellor for Administration shall develop additional eligibility criteria and procedures for the administration of the loan program.

(d) The Vice Chancellor for Administration shall make available program application forms to public and private schools in the state via the website of the commission and the State Department of Education and in other locations convenient to potential applicants.

(e) The provisions of this section expire effective July 1, 2019.

#### **§18C-4A-2. Loan assistance agreement.**

(a) Before receiving an award, each eligible teacher shall enter into an agreement with the Vice Chancellor for Administration and shall meet the following criteria:

(1) Provide the commission with evidence of compliance with subsection (b), section four, article four of this chapter;

(2) Teach in a subject area of critical need or in a school or geographic area of critical need full time under contract with a county board for a period of two school years for each year for which loan assistance is received pursuant to this article. The Vice Chancellor for Administration may grant a partial award to an eligible recipient whose contract term is for less than a full school year pursuant to criteria established by commission rule.

(3) Acknowledge that an award is to be paid to the recipient's student loan institution, not directly to the recipient, and only after the commission determines that the recipient has complied with all terms of the agreement; and

(4) Repay all or part of an award received pursuant to this article if the award is not paid to the student loan institution or if

the recipient does not comply with the other terms of the agreement.

(b) Each loan agreement shall disclose fully the terms and conditions under which an award may be granted pursuant to this article and under which repayment may be required. The agreement also is subject to and shall include the terms and conditions established by section five, article four of this chapter.

(c) The provisions of this section expire effective July 1, 2019.

**§18C-4A-3. Amount and duration of loan assistance; limits.**

(a) Each award recipient is eligible to receive loan assistance of up to \$3,000 annually, subject to limits set forth in subsection (b) of this section:

(1) If the recipient has taught for a full school year under contract with a county board in a subject area of critical need or in a school or geographic area of critical need; and

(2) If the recipient otherwise has complied with the terms of the agreement and with applicable provisions of this article and article four of this chapter, and any rules promulgated pursuant thereto.

(b) The recipient is eligible for renewal of loan assistance only during periods when the recipient is under contract with a county board to teach in a subject area of critical need or in a school or geographic area of critical need and complies with other criteria and conditions established by rule, except that a teacher who is teaching under a contract in a position that no longer meets the definition of critical need under rules established in accordance with section one, article four of this chapter is eligible for renewal of loan assistance until the teacher leaves his or her current position.

(c) A recipient may not receive loan assistance pursuant to this article which accumulates in excess of \$15,000.

(d) The provisions of this section expire effective July 1, 2019.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.****ARTICLE 12. STATE INSURANCE.****§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, public charter schools electing to obtain coverage, and for employees and officers of the state ~~Department of Corrections; written notice of coverage to insureds.~~**

(a) In accordance with the provisions of this article, the state Board of Risk and Insurance Management shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members and for all employees and officers of the state ~~Department of Corrections~~ Division of Corrections and Rehabilitation. *Provided*, That the Board of Risk and Insurance Management is not required to provide insurance for every property, activity, or responsibility of county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members, and for all employees and officers of the state ~~Department of Corrections~~ Division of Corrections and Rehabilitation.

(b) Insurance provided by the Board of Risk and Insurance Management pursuant to the provisions of §29-12-5a(a) of this code shall cover claims, demands, actions, suits, or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the ~~Department of Corrections~~ Division of Corrections and Rehabilitation was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the county board of education, or Commissioner of Corrections, or in an official capacity as a

county superintendent or as a school board member or as Commissioner of Corrections.

(c) Insurance coverage provided by the Board of Risk and Insurance Management pursuant to §29-12-5a(a) of this code shall be in an amount to be determined by the state Board of Risk and Insurance Management, but in no event less than ~~\$1 million~~ for each occurrence. In addition, each county board of education shall purchase, through the Board of Risk and Insurance Management, excess coverage of at least \$5 million for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the Board of Risk and Insurance Management pursuant to §29-12-5a(a) of this code shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage, as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit, or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

(e) The county superintendent and other school personnel shall be defended by the county board or an insurer in the case of suit, unless the act or omission shall not have been within the course or scope of employment or official responsibility or was motivated by malicious or criminal intent.

(f) At least annually, beginning with the 2019-2020 school year, the county board shall provide written notice of insurance coverage to each of its insureds, including teachers, supervisors, administrators, service personnel employees, county superintendent, and school board members. The notice shall identify the coverages, monetary limits of insurance, and duty to defend for each occurrence as provided to insureds by the Board of Risk and Insurance Management under this section. The written notice may be sent via email, or via first-class mail to the insured's last mailing address known to the county board. The written notice

shall also include contact information for the Board of Risk and Insurance Management.

(g) The provisions of this section apply to public charter schools that have been authorized pursuant to §18-5G-1 et seq. of this code and have included in their approved charter application a determination to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to this section. If a public charter school elects to obtain coverage pursuant to this section:

(1) Any provision in this section applicable to a county board also applies to a charter school governing board;

(2) Any provision in this section applicable to a school board member also applies to a member of a charter school governing board; and

(3) Any provision of this section applicable to teachers, supervisory and administrative staff members, and service personnel employed by a county board also applies to teachers, supervisory or administrative staff members, and service personnel employed by a public charter school.”

And,

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

**Com. Sub. for S. B. 451** - “A Bill to amend and reenact §5-16-2 and §5-16-22 of the Code of the West Virginia, 1931, as amended; to amend and reenact §11-8-6f of said code; to amend said code by adding thereto a new section, designated §11-21-25; to amend and reenact §18-5-16, §18-5-16a, §18-5-18b, and §18-5-46 of said code; to amend said code by adding thereto a new section, designated §18-5-45a; to amend said code by adding thereto a new section, designated §18-5-48; to amend said code by adding thereto a new article, designated §18-5G-1, §18-5G-2, §18-5G-3, §18-5G-4, §18-5G-5, §18-5G-6, §18-5G-7, §18-5G-8, §18-5G-9, §18-5G-10, §18-5G-11, §18-5G-12, and §18-5G-13; to amend and reenact §18-7A-3 of said code; to amend and reenact §18-7B-2 of said code; to amend and reenact §18-8-4 of said code; to amend and reenact §18-9A-2, §18-9A-8, §18-9A-9, and §18-9A-

12 of said code; to amend said code by adding thereto a new section, designated §18-9A-10a; to amend and reenact §18-20-5 of said code; to amend said code by adding thereto a new article, designated §18-31-1, §18-31-2, §18-31-3, §18-31-4, §18-31-5, §18-31-6, §18-31-7, §18-31-8, and §18-31-9; to amend and reenact §18A-2-8 of said code; to amend and reenact §18A-3-6 of said code; to amend and reenact §18A-4-2, §18A-4-5, §18A-4-5a, §18A-4-7a, §18A-4-8a, and §18A-4-10 of said code; to amend said code by adding thereto a new section, designated §18A-4-2d; to amend and reenact §18A-5-2 of said code; to amend and reenact §18C-4-1, §18C-4-2, §18C-4-3, §18C-4-4, and §18C-4-5 of said code; to amend and reenact §18C-4A-1, §18C-4A-2, and §18C-4A-3 of said code; and to amend and reenact §29-12-5a of said code, all relating generally to comprehensive education reform; allowing public charter schools to participate in the Public Employees Insurance program; allowing county boards of education to increase their regular levy rates subject to voter approval; creating personal income tax credits for educational expenses incurred by certain school employees for the purchase of supplementary educational materials or professional development costs; requiring county boards to establish attendance zones; addressing the transfer and enrollment policies for students in public schools; modifying minimum percentage of work time school counselors are required to spend in a direct counseling relationship with pupils; prohibiting accrued or equivalent instructional time to cancel days lost and the delivery of instruction through alternative methods from being used to cancel days lost due to concerted work stoppage or strike; prohibiting participation in any extracurricular activity during any instructional day canceled; requiring teacher recommendation be primary consideration when considering student promotion; requiring safety and security measures of each school facility be upgraded when necessary to ensure the safety of students; creating a ‘Safe Schools Fund’; authorizing the establishment of charter schools; providing legislative purpose and intent; defining terms; establishing requirements and powers for public charter schools; providing for the creation of governing boards; setting requirements for enrollment in public charter schools; creating process and requirements for application to establish public charter



schools; providing duties and responsibilities for authorizers; limiting liability of authorizer, county boards of education, and the State; requiring an oversight fee be paid to authorizer; establishing requirements for charter school contracts and the process for renewal, nonrenewal, and revocation of contracts, including required rules by the State Board of Education; creating the West Virginia Charter Public School Commission; establishing membership of the commission; providing for appointment of members; setting meeting requirements; setting forth prohibitions for public charter schools; requiring or authorizing State Board of Education rules relating to public charter school funding, to clarify certain requirements, to address certain unforeseen issues, for ensuring accountability for meeting certain standards of student performance, and to allow the schools for the deaf and blind to apply for authorization to become a public charter school; allowing charter schools access to public facilities; establishing reporting requirements; allowing charter schools to elect to participate in the State Teachers Retirement System and the Teachers' Defined Contribution Retirement System; modifying the contact requirements for a student's guardians upon accrual of unexcused absences; including professional personnel providing direct social and emotional support services to students within the definition of 'professional student support personnel'; modifying definition of 'net enrollment' to promote establishment of Advanced Career Education programs and establish a minimum net enrollment level of 1,400 for purpose of determining basic foundation program; clarifying definition of 'levies for general current expense purposes'; modifying allowance for professional student support personnel; increasing the county allowance for current expense to 71.25 percent of the county's state average costs per square footage per student for operations and maintenance amount; creating an allowance for education savings accounts; setting local share maximum at 2015-2016 level; including public charter schools in provisions pertaining to an appropriation to serve certain exceptional children; enacting an Educational Savings Account Program for certain eligible students; providing a short title and definitions; providing basic elements of an Educational Savings Account (ESA) which includes depositing funds into an ESA to pay qualifying education expenses; establishing ESA application

requirements; setting forth responsibilities of the Treasurer; establishing a Parent Review Committee; providing eligibility requirements applicable to education service providers; providing for the responsibilities of resident school districts; addressing legal proceedings; adding to reasons for which a county board of education may suspend or dismiss an employee; requiring the state superintendent to maintain a database of all individuals suspended or dismissed for certain causes; adding to grounds for revocation of a teaching certificate and automatic revocation; increasing salaries for teachers; increasing salaries for certain classroom teachers providing math instruction; requiring that certain classroom teachers providing math instruction and who complete a specialized mathematics course be paid a one-time salary supplement; removing definition of salary equity among the counties; removing requirement that Department of Education include in its budget request a request for funding sufficient to meet the objective of salary equity; allowing counties to provide additional compensation to certain teachers; permitting a county board of education to base its reductions in force determinations on an individual's qualifications as defined in county board policy; modifying provisions pertaining to the preferred recall list and posting of position openings; increasing salaries for service personnel; providing for accrual of personal leave at the end of each pay period; increasing leave without cause days from three to four; requiring a bonus for classroom teachers who have not been absent for more than four days during the employment term; renaming the Underwood-Smith Teacher Scholarship and Loan Assistance programs as the Underwood-Smith Teaching Scholars Program; modifying program purpose to target certain academic disciplines in a geographic area of critical need; preserving eligibility under prior enactment for individual pursuing a teaching career in music education; requiring recipients receive additional academic support and training from certain mentors; requiring each recipient to be distinguished as an 'Underwood-Smith Teaching Scholar'; modifying award eligibility, service agreement, and renewal criteria to reflect modified program purpose; preserving eligibility and service agreement criteria for current award recipients; modifying the amount of an award and limiting tuition and fee charges for program recipients; abolishing the Underwood-

Smith Teacher Loan Assistance Program; requiring at least annual written notice of Board of Risk and Insurance Management insurance coverages by county boards to employee insureds; and allowing public charter schools to obtain insurance coverage from the Board of Risk and Insurance Management.”

Delegate Caputo moved that the bill be postponed indefinitely.

Delegate Summers then moved that further consideration of the bill be postponed until 4:00 p.m. and be made a special order of business at that time.

During the debate on this motion, the Speaker admonished Delegates Bibby, McGeehan and Rowe to confine their remarks to the question before the House.

The question being the motion by Delegate Summers, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 200**), and there were—yeas 45, nays 53, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, Jennings, J. Kelly, Kessinger, Malcolm, Mandt, C. Martin, P. Martin, Nelson, Pack, Phillips, Porterfield, Queen, Rowan, Shott, Steele, Summers, Sypolt, Waxman, Westfall, Wilson and Hanshaw (Mr. Speaker).

Absent and Not Voting: Capito and Kump.

So, a majority of the members present and voting not having voted in the affirmative, the motion was rejected.

The House then returned to consideration of the motion to postpone the bill indefinitely.

During debate on this motion, Delegate Shott arose to a point of order regarding the content of the remarks by Delegate Miller.

The Speaker replied that debate on a motion to postpone indefinitely may extend to the merits of the bill.

On the motion to postpone indefinitely, Delegate Caputo demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 201**), and there were—yeas 53, nays 45, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, J. Kelly, Kessinger, Malcolm, Mandt, P. Martin, Nelson, Pack, Phillips, Porterfield, Queen, Rowan, Shott, Storch, Summers, Sypolt, Waxman, Westfall, Wilson and Hanshaw (Mr. Speaker).

Absent and Not Voting: Capito and Kump.

So, a majority of the members present and voting having voted in the affirmative, the bill was postponed indefinitely.

A message from the Senate, by

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

**Com. Sub. for S. B. 489** - “A Bill to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-51-3, §33-51-4, §33-51-7, §33-51-8, and §33-51-9 of said code; and to amend said code by adding thereto a new section, designated §33-51-10, all relating generally to the Pharmacy Audit Integrity Act and the regulation of pharmacy benefit managers; defining terms; requiring pharmacy benefit managers to obtain a license from the Insurance Commissioner before doing business in the state; setting forth terms and fees for licensure of pharmacy benefit managers; authorizing the Insurance Commissioner to promulgate rules for legislative approval relating to licensing, fees, application, financial standards, and reporting requirements of

pharmacy benefit managers; requiring pharmacy benefit managers shall not provide a network comprised only of mail-order benefits; requiring the Insurance Commissioner to enforce the licensure provisions relating to pharmacy benefit managers; providing for the applicability of provisions to pharmacy benefit managers; clarifying that requirements do not apply to certain prescription drug plans; clarifying that an auditing entity may not seek a fee, charge-back, recoupment, or other adjustment from a pharmacy or pharmacist except in certain circumstances; prohibiting a pharmacy benefit manager or third-party entity from reimbursing an entity participating in the federal 340B drug discount program for pharmacy-dispensed drugs at a rate lower than that paid for the same drug to pharmacies similar in prescription volume that are not 340B entities and shall not assess any fee, chargeback, or other adjustment upon the 340B entity on the basis that the 340B entity participates in the 340B program; and requiring the reporting of certain data relating to the payment of pharmacy claims”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 502** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-15-9q, relating to exemptions for the sales of investment metal bullion and investment coins”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 545** - “A Bill to amend and reenact §16-3C-2 of the Code of West Virginia, 1931, as amended, relating to HIV testing; and

eliminating outdated testing protocols”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

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

**S. B. 550** - “A Bill recognizing and declaring certain claims against agencies of the state to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**Com. Sub. for S. C. R. 25** - “Requesting the Division of Highways name bridge number 31-857-3.30 (31A322), locally known as Deckers Creek Box Beam Bridge, carrying County Route 857 over Deckers Creek in Monongalia County, the ‘U. S. Army PFC Andrew “Bo” Martin Harper Memorial Bridge’.”

Whereas, Andrew “Bo” Martin Harper was born August 17, 1951, in Charleston, South Carolina, the son of Steven M. Harper of Madsville, West Virginia, and Deanna Jeannette Anderson Harper Wells of Middleburg, Florida; and

Whereas, Andrew “Bo” Martin Harper was a 2009 graduate of University High School in Monongalia County where he participated in football, wrestling, and track. He was a member of Young Life of Morgantown and attended Chestnut Ridge Church; and

Whereas, Andrew “Bo” Martin Harper enlisted in the United States Army and obtained the rank of PFC/E3. He was assigned to Iron Troop, 3<sup>rd</sup> Squadron, 2<sup>nd</sup> Stryker Cavalry Regiment, Vilseck, Germany; and

Whereas, On March 11, 2011, PFC Andrew “Bo” Martin Harper tragically lost his life conducting combat operations near Kandahar, Afghanistan; and

Whereas, It is fitting that an enduring memorial be established to commemorate U. S. Army PFC Andrew “Bo” Martin Harper and his sacrifice to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name bridge number 31-857-3.30 (31A322), locally known as Deckers Creek Box Beam Bridge, carrying County Route 857 over Deckers Creek in Monongalia County, the “U. S. Army PFC Andrew ‘Bo’ Martin Harper Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the “U. S. Army PFC Andrew ‘Bo’ Martin Harper 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.

### **Conference Committee Report**

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

**H. B. 2351**, Relating to regulating prior authorizations,

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the Senate and the House of Delegates to Eng. House Bill No. 2351 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That the House and Senate recede from their positions, and agree to the same as follows:

**“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 16. WEST VIRGINIA PUBLIC EMPLOYEES  
INSURANCE ACT.**

**§5-16-7f. Prior authorization.**

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

‘Episode of Care’ means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at, the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

‘National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard’ means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

‘Prior Authorization’ means obtaining advance approval from the Public Employees Insurance Agency about the coverage of a service or medication.

(b) The Public Employees Insurance Agency is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the Public Employees Insurance Agency’s webpage. The forms shall:



(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the Public Employees Insurance Agency requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the Public Employees Insurance Agency requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the Public Employees Insurance Agency and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The Public Employees Insurance Agency shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The Public Employees Insurance Agency is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the Public Employees Insurance Agency is currently accepting electronic prior authorization requests, the Public Employees Insurance Agency shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the Public Employees Insurance Agency shall respond

to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the Public Employees Insurance Agency shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the Public Employees Insurance Agency shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the Public Employees Insurance Agency wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by the Public Employees Insurance Agency is carried over to all other managed care organizations and health insurers for three months, if the services are provided within the state.

(h) The Public Employees Insurance Agency shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the Public Employees Insurance Agency and the health care practitioner who submitted

the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The Public Employees Insurance Agency's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the health care practitioner shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 *et seq.*

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the Public Employees Insurance Agency shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the Public Employees Insurance Agency and may be rescinded if the Public Employees Insurance Agency determines the health care practitioner is not performing the procedure in conformity with the Public Employees Insurance Agency's benefit plan based upon the results of the Public Employees Insurance Agency's internal audit.

(l) The Public Employees Insurance Agency must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the Public Employees Insurance Agency is currently accepting electronic prior

authorization requests, it shall have until January 1, 2020, to implement this provision. The Public Employees Insurance Agency shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

## CHAPTER 33. INSURANCE.

### ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

#### **§33-15-4s. Prior authorization.**

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

‘Episode of Care’ means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

‘National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard’ means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;

‘Prior Authorization’ means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols, as set forth in this chapter. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior

authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months, if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 *et seq.*

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer's benefit plan based upon the results of the health insurer's internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by

July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

## **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

### **§33-16-3dd. Prior authorization.**

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

‘Episode of Care’ means a specific medical problem, condition, or specific illness being managed including tests, procedures, and rehabilitation initially requested by the health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

‘National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard’ means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward compatible with the current version approved by the United States Department of Health and Human Services;



‘Prior Authorization’ means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment, and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior

authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the time the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a managed care organization is carried over to health insurers, the public employees insurance agency and all other managed care organizations for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 et seq.

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing by the health insurer at any time and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer's benefit plan based upon the results of the health insurer's internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by

July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS,  
MEDICAL SERVICE CORPORATIONS, DENTAL  
SERVICE CORPORATIONS, AND HEALTH SERVICE  
CORPORATIONS.**

**§33-24-7s. Prior authorization.**

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

‘Episode of Care’ means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

‘National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard’ means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward

compatible with the current version approved by the United States Department of Health and Human Services;

‘Prior Authorization’ means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not

require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and

the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 *et seq.*

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer's benefit plan based upon the results of the health insurer's internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

## **ARTICLE 25. HEALTH CARE CORPORATIONS.**

### **§33-25-8p. Prior authorization.**

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

‘Episode of Care’ means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

‘National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard’ means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward



compatible with the current version approved by the United States Department of Health and Human Services;

‘Prior Authorization’ means obtaining advance approval from a health insurer about the coverage of a service or medication.

(b)The health insurer is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health insurer’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health insurer requires a prior authorization. This list shall delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health insurer requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health insurer and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health insurer shall accept electronic prior authorization requests and respond to the request through electronic means by July 1, 2020. The health insurer is required to accept an electronically submitted prior authorization and may not

require more than one prior authorization form for an episode of care. If the health insurer is currently accepting electronic prior authorization requests, the health insurer shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health insurer shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health insurer shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health insurer shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health insurer wishes to audit the prior authorization or if the information regarding step therapy is incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health insurer is carried over to all other managed care organizations, health insurers and

the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health insurer shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health insurer and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health insurer's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 *et seq.*

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health insurer shall not require the health care practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health insurer and may be rescinded if the health insurer determines the health care practitioner is not performing the procedure in conformity with the health insurer's benefit plan based upon the results of the health insurer's internal audit.

(l) The health insurer must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health insurer is currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health insurer shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.

## **ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

### **§33-25A-8s. Prior authorization.**

(a) As used in this section, the following words and phrases have the meanings given to them in this section unless the context clearly indicates otherwise:

‘Episode of Care’ means a specific medical problem, condition, or specific illness being managed including tests, procedures and rehabilitation initially requested by health care practitioner, to be performed at the site of service, excluding out of network care: *Provided*, That any additional testing or procedures related or unrelated to the specific medical problem, condition, or specific illness being managed may require a separate prior authorization.

‘National Council for Prescription Drug Programs (NCPDP) SCRIPT Standard’ means the NCPDP SCRIPT Standard Version 201310 or the most recent standard adopted by the United States Department of Health and Human Services. Subsequently released versions may be used provided that the new version is backward

compatible with the current version approved by the United States Department of Health and Human Services;

‘Prior Authorization’ means obtaining advance approval from a health maintenance organization about the coverage of a service or medication.

(b)The health maintenance organization is required to develop prior authorization forms and portals and shall accept one prior authorization for an episode of care. These forms are required to be placed in an easily identifiable and accessible place on the health maintenance organization’s webpage. The forms shall:

(1) Include instructions for the submission of clinical documentation;

(2) Provide an electronic notification confirming receipt of the prior authorization request if forms are submitted electronically;

(3) Contain a comprehensive list of all procedures, services, drugs, devices, treatment, durable medical equipment and anything else for which the health maintenance organization requires a prior authorization. This list shall also delineate those items which are bundled together as part of the episode of care. The standard for including any matter on this list shall be science-based using a nationally recognized standard. This list is required to be updated at least quarterly to ensure that the list remains current;

(4) Inform the patient if the health maintenance organization requires a plan member to use step therapy protocols. This must be conspicuous on the prior authorization form. If the patient has completed step therapy as required by the health maintenance organization and the step therapy has been unsuccessful, this shall be clearly indicated on the form, including information regarding medication or therapies which were attempted and were unsuccessful; and

(5) Be prepared by October 1, 2019.

(c) The health maintenance organization shall accept electronic prior authorization requests and respond to the request through

electronic means by July 1, 2020. The health maintenance organization is required to accept an electronically submitted prior authorization and may not require more than one prior authorization form for an episode of care. If the health maintenance organization is currently accepting electronic prior authorization requests, the health maintenance organization shall have until January 1, 2020, to implement the provisions of this section.

(d) If the health care practitioner submits the request for prior authorization electronically, and all of the information as required is provided, the health maintenance organization shall respond to the prior authorization request within seven days from the day on the electronic receipt of the prior authorization request, except that the health maintenance organization shall respond to the prior authorization request within two days if the request is for medical care or other service for a condition where application of the time frame for making routine or non-life-threatening care determinations is either of the following:

(1) Could seriously jeopardize the life, health, or safety of the patient or others due to the patient's psychological state; or

(2) In the opinion of a health care practitioner with knowledge of the patient's medical condition, would subject the patient to adverse health consequences without the care or treatment that is the subject of the request.

(e) If the information submitted is considered incomplete, the health maintenance organization shall identify all deficiencies and within two business days from the day on the electronic receipt of the prior authorization request return the prior authorization to the health care practitioner. The health care practitioner shall provide the additional information requested within three business days from the day the return request is received by the health care practitioner or the prior authorization is deemed denied and a new request must be submitted.

(f) If the health maintenance organization wishes to audit the prior authorization or if the information regarding step therapy is

incomplete, the prior authorization may be transferred to the peer review process.

(g) A prior authorization approved by a health maintenance organization is carried over to all other managed care organizations, health insurers and the Public Employees Insurance Agency for three months if the services are provided within the state.

(h) The health maintenance organization shall use national best practice guidelines to evaluate a prior authorization.

(i) If a prior authorization is rejected by the health maintenance organization and the health care practitioner who submitted the prior authorization requests an appeal by peer review of the decision to reject, the peer review shall be with a health care practitioner similar in specialty, education, and background. The health maintenance organization's medical director has the ultimate decision regarding the appeal determination and the health care practitioner has the option to consult with the medical director after the peer-to-peer consultation. Time frames regarding this appeal process shall take no longer than 30 days.

(j) (1) Any prescription written for an inpatient at the time of discharge requiring a prior authorization shall not be subject to prior authorization requirements and shall be immediately approved for not less than three days: *Provided*, That the cost of the medication does not exceed \$5,000 per day and the physician shall note on the prescription or notify the pharmacy that the prescription is being provided at discharge. After the three-day time frame, a prior authorization must be obtained.

(2) If the approval of a prior authorization requires a medication substitution, the substituted medication shall be as required under §30-5-1 *et seq.*

(k) In the event a health care practitioner has performed an average of 30 procedures per year and in a six-month time period has received a 100 percent prior approval rating, the health maintenance organization shall not require the health care

practitioner to submit a prior authorization for that procedure for the next six months. At the end of the six-month time frame, the exemption shall be reviewed prior to renewal. This exemption is subject to internal auditing, at any time, by the health maintenance organization and may be rescinded if the health maintenance organization determines the health care practitioner is not performing the procedure in conformity with the health maintenance organization's benefit plan based upon the results of the health maintenance organization's internal audit.

(l) The health maintenance organization must accept and respond to electronically submitted prior authorization requests for pharmacy benefits by July 1, 2020, or if the health maintenance organization are currently accepting electronic prior authorization requests, it shall have until January 1, 2020, to implement this provision. The health maintenance organizations shall accept and respond to prior authorizations through a secure electronic transmission using the NCPDP SCRIPT Standard ePA transactions.

(m) This section is effective for policy, contract, plans, or agreements beginning on or after January 1, 2020. This section applies to all policies, contracts, plans, or agreements, subject to this article, that are delivered, executed, issued, amended, adjusted, or renewed in this state on or after the effective date of this section.

(n) The timeframes in this section are not applicable to prior authorization requests submitted through telephone, mail, or fax.”

And by amending the title by inserting a new title to read as follows:

**H. B. 2351** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-7f; to amend said code by adding thereto a new section, designated §33-15-4s; to amend said code by adding thereto a new section, designated §33-16-3dd; to amend said code by adding thereto a new section, designated §33-24-7s; to amend said code by adding thereto a new section, designated §33-25-8p; and to amend said code by adding thereto a new section, designated §33-25A-8s, all



relating to prior authorizations; requiring health insurers to develop prior authorization forms; requiring health insurers to develop prior authorization portals; defining terms; providing for electronically transmitted prior authorization forms; establishing procedures for submission and acceptance of forms; establishing form requirements; establishing deadlines for approval of prior authorizations; providing for a process of an incomplete prior authorization submission; providing for an audit; setting forth peer review procedures; requiring health insurers to accept a prior authorization from other health insurers for a period of time; requiring health insurers to use certain standards when reviewing a prior authorization; providing an exemption for medication provide upon discharge; requiring an exemption for health care practitioners meeting specified criteria; requiring certain information to be included on the health insurer's web page; establishing deadlines for pharmacy benefit prior authorization; establishing submission format for pharmacy benefits; setting forth an effective date; providing for implementation applicability; and setting deadlines.”

Respectfully submitted,

Joe Ellington, *Chair*  
Ray Hollen,  
Margaret Stagers,

*Conferees on the part of the  
House of Delegates.*

Mike Maroney, *Chair*  
Tom Takubo,  
Ron Stollings,

*Conferees on the part of the  
Senate.*

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

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 202**), and there were—yeas 88, nays 1, absent and not voting 11, with the nays and absent and not voting being as follows:

Nays: Porterfield.

Absent and Not Voting: Angelucci, S. Brown, Capito, Dean, Harshbarger, Kump, Longstreth, Robinson, Rodighiero, C. Thompson and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2351) passed.

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

On this question, the yeas and nays were taken (**Roll No. 203**), and there were—yeas 91, nays none, absent and not voting 9, with the absent and not voting being as follows:

Absent and Not Voting: S. Brown, Capito, Dean, Harshbarger, Kump, Longstreth, Rodighiero, Tomblin and Williams.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2351) takes effect from its passage.

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

## Special Calendar

### Third Reading

**S. B. 377**, Relating to minimum wage and maximum hour standards; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 204**), and there were—yeas 63, nays 32, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, N. Brown, Byrd, Canestraro, Caputo, Diserio, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hicks, Hornbuckle, Lavender-Bowe, Lovejoy, Miley,

Paynter, Pethtel, Pushkin, Robinson, Rowe, Skaff, Sponaugle, Staggers, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: S. Brown, Capito, Kump, Longstreth and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 377) passed.

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

**Com. Sub. for H. B. 2439**, Relating to fire service equipment and training funds for volunteer and part-volunteer fire companies; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 205**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Capito and Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2439) passed.

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

**Com. Sub. for H. B. 2542**, Permitting directors of county emergency phone systems to obtain mobile-phone emergency lines; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 206**), and there were—yeas 98, nays none,

absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Capito and Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2542) passed.

Delegate Summers moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 207**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Capito and Kump.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2542) takes effect July 1, 2019.

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

**Com. Sub. for H. B. 2947**, Relating generally to telemedicine prescription practice requirements and exceptions; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 208**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Capito and Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2947) passed.

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

**H. B. 2958**, Authorizing the State Auditor to conduct regular financial examinations or audits of all volunteer fire companies; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 209**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Capito and Kump.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2958) passed.

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

#### Second Reading

**Com. Sub. for H. B. 2486**, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Shott, the bill was amended on page two, section twenty-two, beginning on line eight, by striking out subsection (b) and inserting in lieu thereof:

“(b) Because the term ‘moral turpitude’ is vague and subject to inconsistent applications, boards or licensing authorities referred to in this chapter when making licensure, certification or registration determination may not rely upon the description of a crime as one of ‘moral turpitude’ unless the underlying crime bears a rational nexus to the occupation requiring licensure.”

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2975**, Relating to imposition of sexual acts on persons incarcerated; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**First Reading**

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for S. B. 270**, Streamlining process for utilities access to DOH rights-of-way,

**Com. Sub. for S. B. 356**, Requiring MAPS provide state and federal prosecutors information,

**S. B. 358**, Exempting Purchasing Division purchases for equipment to maintain security at state facilities,

**Com. Sub. for S. B. 387**, Relating generally to extradition,

**S. B. 452**, Supplemental appropriation to Second Chance Driver's License Program,

**H. B. 2515**, Exempting the sale and installation of mobility enhancing equipment from the sales and use tax,

**Com. Sub. for H. B. 2532**, Allowing certain donations by persons renewing their driver's license or vehicle registration,

**H. B. 2667**, Supplemental appropriation to the Department of Military Affairs and Public Safety, Division of Corrections,

**Com. Sub. for H. B. 2854**, Exempting sales from the consumers sales and service tax and use tax by not for profit volunteer school support groups raising funds for schools,

**Com. Sub. for H. B. 2855**, Allowing rebate moneys to be used for the operation and maintenance of accounting and transparency systems of the State Auditor,

**H. B. 2856**, Relating to the administration of the operating fund of the securities division of the Auditor's office,

**H. B. 2872**, Authorizing law-enforcement officers to assist the State Fire Marshal,

**Com. Sub. for H. B. 2886**, Establishing requirements for a Division Motor Vehicles office or Division of Motor Vehicles Now kiosk to be present in a county,

**Com. Sub. for H. B. 2907**, Requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation,

**H. B. 2924**, Permitting the West Virginia Tourism Office to decide to contract with the Division of Highways to sell advertising space on the WV511 website,

**Com. Sub. for H. B. 2929**, Authorizing the West Virginia Tourism Office to enter into an agreement with the Division of Highways to provide staff at the welcome centers,

**H. B. 2932**, Transferring regulation and licensing of charitable bingo, charitable raffles, and charitable raffle boards,

**Com. Sub. for H. B. 2933**, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury,

**H. B. 2954**, Defining certain terms used in insurance,

**Com. Sub. for H. B. 2980**, Mine Trespass Act,

**Com. Sub. for H. B. 2982**, Amending and updating the laws relating to auctioneers,

**Com. Sub. for H. B. 3007**, Authorizing the Commissioner of Agriculture to require background checks,

**H. B. 3039**, Relating to a court's consideration of the expression of a preference by a child in certain child custody matters,

**H. B. 3083**, Adding temporary work during the legislative session as exclusion to the term employment for purposes of unemployment compensation,

And,

**H. B. 3093**, Relating to standards for factory-built homes.

At 12:55 p.m., on motion of Delegate Summers, the House of Delegates recessed until 6:00 p.m.

\* \* \* \* \*

### Evening Session

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### Committee Reports

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2968**, Adding remote service unit to the definition of customer bank communications terminals,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:



**H. B. 2837**, Relating to the licensing of advance deposit wagering,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2837) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for H. B. 2540**, Prohibiting the waste of game animals, game birds or game fish,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2540** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5i, relating to prohibiting the waste of game animals, game birds or game fish and creating a misdemeanor with criminal penalties for the violations,"

With the recommendation that the committee substitute do pass.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2803**, Increasing the number of days a retired teacher may accept employment,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2803) was referred to the Committee on Finance.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2541**, Requiring certain safety measures be taken at public schools,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2541** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9F-10, relating to requiring certain safety measures be taken at public schools,”

With the recommendation that the committee substitute do pass.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 19<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for H. B. 2191**, Relating generally to limited video lottery.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 19<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for H. B. 2446**, Blue Alert Plan.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 19<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for S. B. 18**, Relating to crimes committed on State Capitol Complex,

And,

**Com. Sub. for S. B. 323**, Establishing revenue fund and source to support Department of Agriculture's improvement to facilities.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2452**, Creating the West Virginia Cybersecurity Office,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2452** - "A Bill to repeal §5A-6-4a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §5A-6B-1, §5A-6B-2, §5A-6B-3, §5A-6B-4, §5A-6B-5 and §5A-6B-6, all relating to cybersecurity of state government; removing the requirements of the Chief Technology Officer to oversee security of government information; creating the Cybersecurity Office; defining terms; providing that the Chief Information Security Officer to oversee the Cybersecurity Office; authorizing the Chief Information Security Officer to create a cybersecurity framework, to assist and provide guidance to agencies in cyber risk strategy and setting forth other duties; providing rule-making authority; requiring agencies

to undergo cyber risk assessments; establishing scope of authority; exempting certain state entities; designating reporting requirements; requiring agencies to address any cybersecurity deficiencies; exempting information related to cyber risk from public disclosure; and requiring annual reports to the Joint Committee on Government and Finance and to the Governor on the status of the cybersecurity program, including any recommended statutory changes,”

With the recommendation that the committee substitute do pass.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2829**, Relating to the termination of severance taxes on limestone and sandstone,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2807**, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2807** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-12j; and to amend and reenact §11-21-17a of said code, all relating to creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations or members of a limited liability company engaged in

business as a financial organization in this state, similar to the modification that presently exists in the code for financial organizations organized as C corporations,”

And,

**H. B. 2901**, Allowing for the establishment of a secondary location for racetrack video lottery terminals,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2901** - “A Bill to amend and reenact §19-23-12a of the Code of West Virginia, 1931, as amended; to amend and reenact §29-22A-12 of said code and to amend and reenact §29-22C-3 and §29-22C-8 of said code, all relating to allowing for the establishment of a secondary location for pari-mutual wagering on simulcast races, racetrack video lottery terminals, and racetrack table games of licensed racetracks at an alternative location within the current county of the licensed racetrack,”

With the recommendation that the committee substitutes each do pass.

On motion for leave, a bill was introduced (Originating in the Committee on the Judiciary and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Shott, Hollen and Canestraro:**

**H. B. 3134** - “A Bill to amend and reenact §17C-5-3 of the Code of West Virginia, 1931, as amended, relating to establishing criminal penalties for negligent homicide, and increasing criminal penalties for reckless driving resulting in serious bodily injury.”

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2934**, Permitting interactive wagering authorized as West Virginia Lottery interactive wagering activities,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2934) was referred to the Committee on Finance.

### **Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2481**, Permitting retail sale of alcoholic beverages on Sundays after 1 p.m.

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

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

#### **“ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

##### **§60-3A-18. Days and hours retail licensees may sell liquor.**

Retail licensees may not sell liquor on ~~Sundays and~~ Easter Sunday, Christmas day, or before 1 p.m. on other Sundays, except a Sunday on which Christmas falls, or between the hours of 12:00 a.m. and 8:00 a.m., except that wine and fortified wines may be sold on those days and at such times as authorized in §60-8-34 of this code.

##### **§60-3A-25. Certain acts of retail licensees prohibited; criminal penalties.**

(a) It is unlawful for any retail licensee, or agent or employee thereof, on such retail licensee's premises to:

(1) Sell or offer for sale any liquor other than from the original package or container;

(2) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person under 21 years of age;

(3) Sell, give away, or permit the sale of, gift of, or the procurement of, any liquor, for or to any person visibly intoxicated;

(4) Sell or offer for sale any liquor ~~on any Sunday or~~ other than during the hours permitted for the sale of liquor by retail licensees as provided under this article;

(5) Permit the consumption by any person of any liquor;

(6) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any liquor;

(7) Permit any person under 18 years of age to sell, furnish, or give liquor to any other person;

(8) Purchase or otherwise obtain liquor in any manner or from any source other than that specifically authorized in this article; or

(9) Permit any person to break the seal on any package or bottle of liquor.

(b) Any person who violates any provision of this article, except section 24 of this article, including, but not limited to, any provision of this section, or any rule promulgated by the board or the commissioner, or who makes any false statement concerning any material fact, or who omits any material fact with intent to deceive, in submitting an application for a retail license or for a renewal of a retail license or in any hearing concerning the suspension or revocation thereof, or who commits any of the acts declared in this article to be unlawful, is guilty of a misdemeanor and, shall, upon conviction thereof, for each offense be fined not less than \$100 or more than \$5,000, or imprisoned in the county jail for not less than 30 days nor more than one year, or both fined and imprisoned. Magistrates have concurrent jurisdiction with the circuit courts for offenses under this article.

(c) Nothing in this article, or any rule of the board or commissioner, prevents or prohibits any retail licensee from employing any person who is at least 18 years of age to serve in any retail licensee's lawful employment at any retail outlet operated by such retail licensee, or from having such person sell or deliver liquor under the provisions of this article. With the prior approval of the commissioner, a retail licensee may employ persons at any retail outlet operated by such retail licensee who are less than 18 years of age but at least 16 years of age, but such persons' duties shall not include the sale or delivery of liquor: *Provided*, That the authorization to employ such persons under the age of 18 years shall be clearly indicated on the retail license issued to any such retail licensee."

And,

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

**Com. Sub. for H. B. 2481-** "A Bill to amend and reenact §60-3A-18 and §60-3A-25 of the Code of West Virginia, 1931, as amended, all relating to allowing retail liquor licensees to sell liquor on Sundays, other than Easter Sunday and those Sundays on which Christmas falls, beginning no earlier than 1 p.m.; and removing the criminal offense of selling liquor on Sundays."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 210**), and there were—yeas 86, nays 12, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Butler, Cooper, Fast, Hanna, Hollen, D. Jeffries, Jennings, P. Martin, Pack, Porterfield, Toney and Worrell.

Absent and Not Voting: Kump and C. Martin.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2481) passed.



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

On this question, the yeas and nays were taken (**Roll No. 211**), and there were—yeas 86, nays 12, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Butler, Cooper, Fast, Hanna, Hollen, D. Jeffries, Jennings, P. Martin, Pack, Porterfield, Toney and Worrell.

Absent and Not Voting: Kump and C. Martin.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2481) takes effect from its passage.

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

A message from the Senate, by

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

**H. B. 2492**, Relating to mandatory reporting procedures of abuse and neglect of adults and children.

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

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

**“CHAPTER 9. HUMAN SERVICES.**

**ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

**§9-6-11. Reporting procedures.**

(a) A report of neglect or abuse of an incapacitated adult or facility resident or of an emergency situation involving such an adult shall be made immediately ~~by telephone~~ to the department's ~~local~~ adult protective services agency by a method established by

the department: *Provided*, That if the method for reporting is web-based, the Department of Health and Human Resources shall maintain a system for addressing emergency situations that require immediate attention and shall be followed by a written report by the complainant or the receiving agency within 48 hours. The department shall, upon receiving any such report, take such action as may be appropriate and shall maintain a record thereof. The department shall receive ~~such~~ telephonic reports on its 24-hour, seven-day-a-week, toll-free number established to receive calls reporting cases of suspected or known adult abuse or neglect.

(b) A copy of any report of abuse, neglect, or emergency situation shall be immediately filed with the following agencies:

(1) The Department of Health and Human Resources;

(2) The appropriate law-enforcement agency and the prosecuting attorney, if necessary; or

(3) In case of a death, to the appropriate medical examiner or coroner's office.

(c) If the person who is alleged to be abused or neglected is a resident of a nursing home or other residential facility, a copy of the report shall also be filed with the state or regional ombudsman and the administrator of the nursing home or facility.

(d) The department shall omit from such report in the first instance, the name of the person making a report, when requested by such person.

(e) Reports of known or suspected institutional abuse or neglect of an incapacitated adult or facility resident or the existence of an emergency situation in an institution, nursing home, or other residential facility shall be made, received, and investigated in the same manner as other reports provided for in this article. In the case of a report regarding an institution, nursing home, or residential facility, the department shall immediately cause an investigation to be conducted.

(f) Upon receipt of a written complaint, the department shall coordinate an investigation pursuant to §9-6-3 of this code and applicable state or federal laws, rules, or regulations.

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

#### §49-2-809. Reporting procedures.

(a) Reports of child abuse and neglect pursuant to this article shall be made immediately ~~by telephone~~ to the ~~local~~ department of child protective services by a method established by the department, *Provided, That if the method for reporting is web-based, the Department of Health and Human Resources shall maintain a system for addressing emergency situations that require immediate attention* and shall be followed by a written report within 48 hours if so requested by the receiving agency. The state department shall establish and maintain a 24-hour, seven-day-a-week telephone number to receive ~~those~~ calls reporting suspected or known child abuse or neglect.

(b) A copy of any report of serious physical abuse, sexual abuse, or assault shall be forwarded by the department to the appropriate law-enforcement agency, the prosecuting attorney, or the coroner or medical examiner's office. All reports under this article are confidential. Reports of known or suspected institutional child abuse or neglect shall be made and received as all other reports made pursuant to this article."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 212**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Kump and C. Martin.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2492) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 29** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-28-1, §11-28-2, and §11-28-3, all relating to creating five-year tax credits for businesses locating on post-coal mine sites; defining terms; setting eligibility requirements for tax credit; establishing amount of tax credit allowed; establishing how the credit may be applied; and providing rule-making authority”; which was referred to the Committee on Small Business, Entrepreneurship and Economic Development then Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 61**, Adding certain crimes for which prosecutor may apply for wiretap.

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

**Com. Sub. for S. B. 61** - “A Bill to amend and reenact §62-1D-8 of the Code of West Virginia, 1931, as amended, relating to including the crime of extortion to the list of crimes for which a prosecutor may apply for a court order authorizing interception of communications; permitting for the lawful disclosure of intercepted communications in federal court; and permitting the use of derivative crime evidence to obtain an arrest warrant or indictment.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 213**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: McGeehan, Phillips and Pushkin.

Absent and Not Voting: Kump and C. Martin.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 61) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 117** - “A Bill to amend and reenact §7-11B-3, §7-11B-4, and §7-11B-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §7A-2-4 of said code; and to amend said code by adding thereto a new section, designated §7A-2-5, all relating to incentives for consolidating local governments; amending the definitions of certain terms to include municipalities that successfully consolidated; granting additional powers to governing bodies of municipalities that successfully consolidated; authorizing municipalities that successfully consolidate additional powers related to creation of a development or redevelopment district; allowing consolidation of local governments to include public school districts, library districts, and fire districts; creating certain incentives for municipalities that consolidate; creating certain incentives for counties that consolidate; and creating certain incentives for municipalities and counties that form metro governments by consolidation”; which was referred to the Committee on Government Organization then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 147** - “A Bill to amend and reenact §7-5-22 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-16-4 of said code, all relating to shifting funding from the Landfill Closure Assistance Fund to local solid waste authorities”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 333** - “A Bill to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting from personal property taxation private passenger automobiles that are 25 years old or older”; which was referred to the Committee on Technology and Infrastructure then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 617** - “A Bill to amend and reenact §8-22-19 of the Code of West Virginia, 1931, as amended, relating to method of payment of municipal contributions to the Municipal Pensions Security Fund”; which was referred to the Committee on Pensions and Retirement then Finance.

### Leaves of Absence

At the request of Delegate Summers, and by unanimous consent, leave of absence for the day was granted Delegate Kump.

In the absence of objection, the House of Delegates returned to further consideration of the committee reports for H. B. 2934 and H. B. 2837 and reference of the bills to the Committee on Finance was abrogated.

**Miscellaneous Business**

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be added as a cosponsor of the following:

- Delegates Bates, Hill, Lavendar-Bowe and C. Thompson for H. B. 2079

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be removed as a cosponsor of the following:

- Delegate Canestraro for H. B. 2519

At 6:23 p.m., the House of Delegates adjourned until 11:00 a.m., Wednesday, February 20, 2019.





---

Wednesday, February 20, 2019

**FORTY-THIRD DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Tuesday, February 19, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Committee Reports**

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2617**, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2617** - “A Bill to amend and reenact §33-6-31d of the Code of West Virginia, 1931, as amended, relating to the form for making offer of optional uninsured and underinsured coverage by insurers; requiring Insurance Commissioner to provide for the use of electronic means of delivery and electronic signing of form; and requiring an insurer when offering to place an insured with an affiliate of the insurer, to make available a new uninsured and underinsured motorist coverage offer form,”

And,

**H. B. 2770**, Fairness in Cost-Sharing Calculation Act,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2770** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-52-1, §33-52-2, §33-52-3, and §33-52-4, all relating to establishing the Fairness in Cost-Sharing Calculation Act; providing for definitions; establishing health plan cost sharing calculations; establishing pharmacy benefits cost sharing calculations; and providing for rule-making authority,"

With the recommendation that the committee substitutes each do pass.

**Reordering of the Calendar**

Delegate Summers announced that the Committee on Rules had transferred Com. Sub. for H. B. 2532, H. B. 2872, H. B. 2932 and Com. Sub. for H. B. 2980, on Second Reading, Special Calendar, to the House Calendar; and Com. Sub. for H. B. 2452, on First Reading, Special Calendar, to the House Calendar.

**Committee Reports**

-continued-

Delegate Anderson, Chair of the Committee on Energy, submitted the following report, which was received:

Your Committee on Energy has had under consideration:

**Com. Sub. for S. B. 163**, Authorizing DEP promulgate legislative rules,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 163) was referred to the Committee on the Judiciary.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**H. B. 3132**, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment,

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

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**Com. Sub. for S. B. 175**, Authorizing DHHR promulgate legislative rules,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 175) was referred to the Committee on the Judiciary.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2828**, Relating to promoting investment in a Qualified Opportunity Zone,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2830**, Establishing Next Generation 911 services in this state,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2830** - “A Bill to amend and reenact §24-6-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section designated §24-6-15, all relating to establishing Next Generation 911 services in this state; providing for expanded definitions; establishing a commission to study Next Generation 911 services; providing for commission membership; providing for travel expense reimbursement under certain conditions; establishing the commission’s duties; requiring a preliminary report to the Joint Committee on Government and Finance; requiring a final report to the Joint Committee on Government and Finance and to the Governor; and establishing an effective date and termination date of the commission,”

With the recommendation that the committee substitute do pass.

### **Messages from the Executive**

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on February 19, 2019, he approved **Com. Sub. for S. B. 240, S. B. 267, S. B. 324, S. B. 354, Com. Sub. for H. B. 2307 and H. B. 2462.**

### **Messages from the Senate**

A message from the Senate, by

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

**H. B. 2459**, Exercising authority to exempt individuals domiciled within the state from certain restrictions contained in federal law.

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

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

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

**§9-2-3a. Authorized exemption from federal law; exceptions.**

Pursuant to the authority and option granted by 21 U.S.C. §862a(d)(1)(A) to the states, West Virginia exempts all individuals domiciled within the state from the application of 21 U.S.C. §862a(a)(2) unless the offense of conviction has as an element thereof misuse of supplemental nutrition assistance program benefits, loss of life, or the causing of physical injury.”

And,

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

**H. B. 2459** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-2-3a, relating to exercising authority to exempt individuals domiciled within the state from certain restrictions contained in federal law and exempting persons convicted of certain offenses from the prohibition against receiving supplemental nutrition assistance program benefits.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 214**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, Malcolm and C. Thompson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2459) passed.

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

### **Resolutions Introduced**

Delegate Boggs offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 76** - "Requesting the Division of Highways name bridge Number :04-1-4.02 (04A001), locally known as Orlando Bridge, carrying County Route 1 over Oil Creek in Braxton County, the 'Reverend Lonnie Ramsey Memorial Bridge'."

Whereas, Reverend Lonnie Ramsey, 73, of the Fall Run Community of Ireland, West Virginia, died Sunday, February 26, 2017, after a year-long struggle with cancer. He was born in Widen, West Virginia, on January 28, 1944, a son of the late Delbert "Deb" Ramsey and Mame Bragg Ramsey. He attended Burnsville High School. After graduation, he entered the U. S. Army where he served two years. He was a veteran of the United States Army, having served during the Vietnam Era. He married his high school sweetheart, Judy Mealey, on May 12, 1968. They lived 48 beautiful years together and raised two sons: Jeffrey and Jonathan Ramsey. He was always ready for a ballgame, some time spent fishing, or a great Papaw story. Lonnie was an electrician by trade and a pastor by heart. He was a member of the International Brotherhood of Electricians for 35 years and pastored three churches in his and Judy's 40 years of ministry. He is the former pastor of the Mt. Zion Baptist Church at Right Hand Fork of Freeman's Creek, and the Poplar Ridge Community Church outside of Sutton, and was the pastor of the Orlando Baptist Church over 25 years. He held this position until his passing. Lonnie never knew a stranger and always finished his visit with "God Bless You"; and

Whereas, Lonnie Ramsey was instrumental in getting the road in Orlando repaired and a new bridge constructed. He should be remembered for his years of community service by having the new bridge in Orlando, named after him; and

Whereas, It is fitting that an enduring memorial be established to commemorate Lonnie Ramsey's contributions to our 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 :04-1-4.02 (04A001), locally known as Orlando Bridge, carrying County Route 1 over Oil Creek in Braxton County, the "Reverend Lonnie Ramsey Memorial Bridge"; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the "Reverend Lonnie Ramsey Memorial Bridge"; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

## Special Calendar

### Third Reading

**Com. Sub. for H. B. 2486**, Using records of criminal conviction to disqualify a person from receiving a license for a profession or occupation; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 215**), and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Cowles, Fast and C. Martin.

Absent and Not Voting: Boggs, Malcolm and C. Thompson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2486) passed.

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

**Com. Sub. for H. B. 2975**, Relating to imposition of sexual acts on persons incarcerated; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 216**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, Malcolm and C. Thompson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2975) passed.

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

#### Second Reading

**Com. Sub. for S. B. 270**, Streamlining process for utilities access to DOH rights-of-way; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 356**, Requiring MAPS provide state and federal prosecutors information; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 358**, Exempting Purchasing Division purchases for equipment to maintain security at state facilities; on second



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

**Com. Sub. for S. B. 387**, Relating generally to extradition; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 452**, Supplemental appropriation to Second Chance Driver's License Program; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**H. B. 2515**, Exempting the sale and installation of mobility enhancing equipment from the sales and use tax; on second reading, coming up in regular order, was read a second time.

Delegates S. Brown, Walker, Fleischauer, Zukoff, C. Thompson and Estep-Burton moved to amend the bill on page four, line eight-five, following the period, by inserting a new section, to read as follows:

**“§11-15-9q. Exempting certain hygiene products from sales tax.**

(a) Notwithstanding any other provision of this article, hygiene products are exempt from the tax imposed under this article.

(b) For the purposes of this section:

(1) ‘Feminine hygiene product’ includes sanitary napkins, tampons, menstrual cups, pads, and other similar feminine hygiene products;

(2) ‘Diapers’ means an absorbent incontinence product that is washable or disposable and worn by a person, regardless of age or sex, who cannot control bladder or bowel movements; and

(3) ‘Hygiene product’ means diapers and feminine hygiene products as defined by this subsection.”

The Speaker stated that the subject of the amendment was beyond the scope of the bill and therefore was not in order.

The bill was ordered to engrossment and third reading.

**H. B. 2667**, Supplemental appropriation to the Department of Military Affairs and Public Safety, Division of Corrections; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2854**, Exempting sales from the consumers sales and service tax and use tax by not for profit volunteer school support groups raising funds for schools; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2855**, Allowing rebate moneys to be used for the operation and maintenance of accounting and transparency systems of the State Auditor; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2856**, Relating to the administration of the operating fund of the securities division of the Auditor's office; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2886**, Establishing requirements for a Division Motor Vehicles office or Division of Motor Vehicles Now kiosk to be present in a county; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2907**, Requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2924**, Permitting the West Virginia Tourism Office to decide to contract with the Division of Highways to sell advertising space on the WV511 website; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2929**, Authorizing the West Virginia Tourism Office to enter into an agreement with the Division of Highways to provide staff at the welcome centers; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2933**, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Shott, the bill was amended on page one, after the article heading, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“§61-8D-3. Child abuse resulting in injury; child abuse creating risk of injury; criminal penalties.**

(a) If ~~any~~ a parent, guardian or custodian ~~shall abuse~~ abuses a child and by ~~such~~ the abuse ~~cause~~ causes the child bodily injury as ~~such~~ the term is defined in §61-8B-1 of this code, then ~~such~~ the parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state correctional facility for not less than ~~one~~ two nor more than ~~five~~ 10 years, or in the discretion of the court, be confined in jail for not more than one year.

(b) If ~~any~~ a parent, guardian or custodian ~~shall abuse~~ abuses a child and by ~~such~~ the abuse ~~cause~~ causes the child serious bodily injury as ~~such~~ the term is defined in §61-8B-1 of this code, then ~~such~~ the parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed to the custody of the Division of Corrections and Rehabilitation not less than ~~two~~ five nor more than ~~ten~~ 15 years.

(c) ~~Any~~ A parent, guardian or custodian who abuses a child and by the abuse creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of this code,

to the child is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than ~~one~~ two nor more than ~~five~~ ten years, or both.

~~(d)(1) If a parent, guardian or custodian who has not previously been convicted under this section, section four of this article or a law of another state or the federal government with the same essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as bodily injury is defined in section one, article eight b of this chapter, to the child is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both.~~

~~(2) For a second offense under this subsection or for a person with one prior conviction under this section, section four of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than thirty days nor more than one year, or both.~~

~~(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section, section four of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both~~

(d) A person convicted of any offense under this section with any prior conviction under this section, §61-8D-4 of this code or a law of another state or the federal government with the same essential elements is subject to the following increased penalties:

(1) A person with one prior conviction shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than three nor more than 15 years, or both. *Provided, however,* That

a person convicted of a crime under subsection (b) is subject to the higher penalty therein.

(2) A person with two or more prior convictions is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than five years nor more than 15 years, or both.

~~(e)~~ (d) Any person convicted of a ~~misdemeanor~~ an offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Health and Human Resources, Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) ~~Shall not be~~ Is not required to register pursuant to §15-13-1 *et seq.* of this code; and

(3) ~~Shall~~ May not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.

~~(f)~~ (c) ~~Nothing in~~ This section ~~shall~~ does not preclude a parent, guardian or custodian from providing reasonable discipline to a child.

**§61-8D-4. Child neglect resulting in injury; child neglect creating risk of injury; criminal penalties.**

(a) If a parent, guardian or custodian neglects a child and by such neglect causes the child bodily injury, as bodily injury is defined in section one, article eight-b of this chapter, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not less than one nor more than three years, or in the discretion of the court, be confined in jail for not more than one year, or both.

(b) If a parent, guardian or custodian neglects a child and by such neglect cause the child serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this chapter, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not less than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than ten years, or both.

(c) If a parent, guardian or custodian ~~grossly~~ neglects a child and by that ~~gross~~ neglect creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this chapter, of the child then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, ~~shall be fined not less than \$1,000 nor more than \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five years, or both.~~ shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than two years, or both.

~~(d)(1) If a parent, guardian or custodian who has not been previously convicted under this section, section three of this article or a law of another state or the federal government with the same essential elements neglects a child and by that neglect creates a substantial risk of bodily injury, as defined in section one, article eight b of this chapter, to the child, then the parent, guardian or custodian, is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months, or both fined and confined.~~

~~(2) For a second offense under this subsection or for a person with one prior conviction under this section, section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than thirty days nor more than one year, or both.~~

~~(3) For a third or subsequent offense under this subsection or for a person with two or more prior convictions under this section,~~

~~section three of this article or a law of another state or the federal government with the same essential elements, the parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned in a state correctional facility not less than one year nor more than three years, or both fined and imprisoned.~~

(d) A person convicted of any offense under this section with any prior conviction is subject to the following increased penalties. A prior conviction includes any offense under this section, §61-8D-3 of this code or a law of another state or the federal government with the same essential elements:

(1) A person with one prior conviction shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than three nor more than 15 years, or both.

(2) A person with two or more prior convictions is guilty of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less than five years nor more than 15 years, or both.

(e) The provisions of this section shall not apply if the neglect by the parent, guardian or custodian is due primarily to a lack of financial means on the part of such parent, guardian or custodian.

(f) Any person convicted of a misdemeanor offense under this section:

(1) May be required to complete parenting classes, substance abuse counseling, anger management counseling, or other appropriate services, or any combination thereof, as determined by Department of Health and Human Resources, Bureau for Children and Families through its services assessment evaluation, which shall be submitted to the court of conviction upon written request;

(2) Shall not be required to register pursuant to the requirements of article thirteen, chapter fifteen of this code; and

(3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental rights automatically restricted.”

The bill was then ordered to engrossment and third reading.

**H. B. 2954**, Defining certain terms used in insurance; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2982**, Amending and updating the laws relating to auctioneers; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 3007**, Authorizing the Commissioner of Agriculture to require background checks; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3039**, Relating to a court's consideration of the expression of a preference by a child in certain child custody matters; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3083**, Adding temporary work during the legislative session as exclusion to the term employment for purposes of unemployment compensation; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3093**, Relating to standards for factory-built homes; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

#### First Reading

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for S. B. 13**, Relating to distributions from State Excess Lottery Fund,

**S. B. 442**, Supplementing, amending, and decreasing appropriation to Insurance Commission,



**S. B. 443**, Supplemental appropriation of federal moneys to DHHR divisions,

**S. B. 444**, Supplemental appropriation to DHHR divisions,

**Com. Sub. for H. B. 2540**, Prohibiting the waste of game animals, game birds or game fish,

**Com. Sub. for H. B. 2541**, Requiring certain safety measures be taken at public schools,

**Com. Sub. for H. B. 2807**, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking,

**H. B. 2829**, Relating to the termination of severance taxes on limestone and sandstone,

**H. B. 2837**, Relating to the licensing of advance deposit wagering,

**Com. Sub. for H. B. 2901**, Allowing for the establishment of a secondary location for racetrack video lottery terminals,

**H. B. 2934**, Permitting interactive wagering authorized as West Virginia Lottery interactive wagering activities,

**H. B. 2968**, Adding remote service unit to the definition of customer bank communications terminals,

And,

**H. B. 3134**, Establishing criminal penalties for negligent homicide, and increasing criminal penalties for reckless driving.

At 11:39 a.m., on motion of Delegate Summers, the House of Delegates recessed until 6:00 p.m.

\* \* \* \* \*

### Evening Session

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### Committee Reports

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2229**, Adding violations of law upon which a public servant's retirement plan may be forfeited,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2229** - "A Bill to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended, relating generally to disqualification for public service retirement plan benefits, modifying the definition of less than honorable service, removing the exception of a misdemeanor from that aspect of less than honorable service involving impeachment and conviction; removing the requirement that the participant or former participant plead guilty or nolo contendere to felony criminal conduct to constitute less than honorable service; and providing that conviction of specified misdemeanor conduct related to the participant's term in office or participant's term of employment in public service constitutes less than honorable service,"

And,

**H. B. 3133**, Relating to requiring a parolee or probationer found to have suffered with addiction to participate in a support service,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 3133** - “A Bill to amend and reenact §62-12-6 and §62-12-9 of the Code of West Virginia, 1931, as amended, relating to requiring a probationer found to have suffered with addiction to participate in a support service upon release for a certain period of time,”

With the recommendation that the committee substitutes each do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2603**, Relating to the amount permitted to remain in the West Virginia Alcohol Beverage Control Administration’s operating fund,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2603) was referred to the Committee on Finance.

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Criss, Cowles, Ellington, Espinosa, Hardy, Rowan, Barrett, Hartman, Longstreth, Rowe and Williams:**

**H. B. 3135** - “A Bill expiring funds to the balance of the Department of Commerce, Development Office – Entrepreneurship and Innovation Investment Fund, fund 3006,

fiscal year 2019, organization 0307, in the amount of \$500,000, from the Auditor's Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2019, organization 1200, by supplementing and amending chapter 12, Acts of the Legislature, 2018, known as the Budget Bill.”

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 3045**, Exempting certain complimentary hotel rooms from hotel occupancy tax,

And,

**Com. Sub. for S. B. 26**, Permitting certain employees of educational service cooperatives participate in state's teacher retirement systems,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2991**, Relating to the Ryan Brown Addiction Prevention and Recovery Fund,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2991** - “A Bill to amend and reenact §16-53-1 and §16-53-2 of the Code of West Virginia, 1931, as amended, relating to the Ryan Brown Addiction Prevention and Recovery Fund; requiring an assessment; requiring a presentation of that assessment; and requiring future settlements to be directed to the fund,”

And,

**H. B. 2550**, Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2550** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-8-1, §5B-8-2, §5B-8-3, §5B-8-4, and §5B-8-5, all relating to creating a matching program for the Small Business Innovation Research Program and the Small Business Technology Transfer Program; providing that matching funds are to be paid from the Entrepreneurship and Innovation Investment Fund; defining terms; defining eligibility; providing terms of the grant; defining the application process; and providing for legislative rule-making,”

With the recommendation that the committee substitutes each do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2694**, Relating to the state’s ability to regulate hemp,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2694** - “A Bill to amend and reenact §19-12E-3, §19-12E-4, §19-12E-5, §19-12E-6, §19-12E-7, §19-12E-8, and §19-12E-9 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto two new sections, designated §19-12E-10 and §19-12E-11, all relating generally to the Industrial Hemp Development Act; adding and modifying definitions; updating code to reflect changes in federal law; clarifying that no person may grow, cultivate, possess, or process industrial hemp without a license from the Department of

Agriculture; requiring certain documentation requested by the commissioner to be submitted by licensees; authorizing commissioner to submit plan for state regulation of industrial hemp to United States Department of Agriculture; requiring plan to comply with federal law; providing for continued legality of hemp production in absence of submitted plan; providing for handling negligent violations; addressing handling of non-negligent violations; requiring notification of attorney general and law enforcement under certain circumstances; and making technical corrections,”

With the recommendation that the committee substitute do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 3024**, West Virginia Business Ready Sites Program,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 3024** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-1n, relating to creating a pilot program to encourage utility infrastructure development to certain lands; declaring certain legislative findings; defining certain terms; requiring the West Virginia Development Office to consider certain applications; requiring the Public Service Commission consider certain plans; providing the Public Service Commission with the authority to allow certain public utility infrastructure projects to recover certain costs via ratemaking; providing for the expiration of certain statutory provisions; and providing for an effective date of the provisions of this section,”

With the recommendation that the committee substitute do pass.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2598**, Relating to submitting a certifying statement attesting to status as a charitable or public service organization,

**H. B. 2816**, Removing the terms “hearing impaired”, “hearing impairment” and “deaf mute” from the West Virginia Code and substituting terms,

**H. B. 2827**, Removing the residency requirements for hiring deputy assessors,

And,

**H. B. 2926**, Requiring the Secretary of the Department of Veterans’ Affairs to study the housing needs of veterans,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2718**, Requiring purchasers of roundwood to collect and maintain certain information,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2718** - “A Bill to amend the Code of West Virginia, 1931, as amended; by adding thereto a new section, designated §61-3-52a, relating to requiring commercial purchasers of roundwood to collect and maintain certain information; and establishing criminal and administrative penalties for failure to comply,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2690**, Relating to guaranty associations,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2690** - "A Bill to amend and reenact §33-26A-19 of the West Virginia Code, 1931, as amended, relating to guaranty associations; and making revisions consistent with the National Association of Insurance Commissioners Life and Health Insurance Guaranty Association Model Act,"

And,

**H. B. 2802**, Uniform Partition of Heirs Property Act,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2802** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §37-16-1, §37-16-2, §37-16-3, §37-16-4, §37-16-5, §37-16-6, §37-16-7, §37-16-8, §37-16-9, §37-16-10, §37-16-11, §37-16-12, and §37-16-13, all relating to enacting the Uniform Partition of Heirs Property Act; defining terms; providing for applicability; providing for conflicts with other laws; providing for a court hearing to determine if the partition action concerns heirs' property; providing for notice by publication in a partition action; providing for requirements for commissioners; providing procedures for a court to follow in determining the value of the property and factors for a court to consider for certain types of partitions; providing procedures for cotenant buyout; providing for alternatives to a partition action; providing for certain factors for the court to consider in determining whether partition in kind is



appropriate; providing for open-market sales, sealed bids, or auctions; providing reporting requirements for an open-market sale; providing for uniformity of application and construction; and modifying, limiting, and superseding the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 *et seq.*”

With the recommendation that the committee substitutes each do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2519**, The Campus Self Defense Act,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

Delegate Summers asked unanimous consent that second reference of the bill to the Committee on Finance recommended by the Committee on the Judiciary be dispensed with, which consent was not granted, objection being heard.

Delegate Summers then so moved.

On the question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 217**), and there were—yeas 51, nays 47, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Angelucci, Bates, S. Brown, Byrd, Campbell, Canestraro, Capito, Caputo, Cowles, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hollen, Hornbuckle, Householder, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Shott, Skaff, Sponaugle, Stagers, C.

Thompson, R. Thompson, Tomblin, Toney, Walker, Westfall, Williams and Zukoff.

Absent and Not Voting: Boggs and Cadle.

So, a majority of the members present and voting having voted in the affirmative, second reference of the bill (H. B. 2519) to the Committee on Finance was abrogated.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2730**, Increasing the compensation of the membership of the State Police and the salaries for public school teachers and school service personnel,

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

At the respective requests of Delegate Summers, and by unanimous consent, the bill (H. B. 2730) was taken up for immediate consideration, read a first time and ordered to second reading.

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the adoption of the report of the Committee of Conference on, and the passage, as amended by said report, to take effect from passage, of

**H. B. 2351**, Relating to regulating prior authorizations.

A message from the Senate, by

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

**Com. Sub. for H. B. 2607**, Relating to the licensure of nursing homes.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 310** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-39, relating to defining certain key terms; prohibiting insurers from requiring dentists to provide a discount on noncovered services; prohibiting dentists from charging covered persons more for noncovered services than his or her customary or usual rate for the services; providing that insurers may not provide for a nominal reimbursement for a service in order to claim that the service or material is covered; and providing for an effective date”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 360** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-6O-1, §46A-6O-2, §46A-6O-3, §46A-6O-4, §46A-6O-5, §46A-6O-6, §46A-6O-7, §46A-6O-8, and §46A-6O-9, all relating to third-party litigation financing; providing that a litigation financier shall register as a litigation financier in this state; providing registration requirements for business entities, partnerships, and individuals; providing that litigation financiers shall secure a bond or an irrevocable letter of credit; providing to whom the bond is payable; requiring that the litigation financiers amend their registration if their information changes or becomes inaccurate; providing that the Secretary of State may promulgate rules; providing that the terms of the litigation financing transaction shall be set forth in a completed, written contract; providing that the litigation financing contract shall contain a right of rescission; providing that a litigation financing contract shall contain certain written acknowledgements and disclosures; providing that a litigation financier shall not pay, or offer to pay,

commissions, referral fees, or other consideration to any attorney, law firm, medical provider, chiropractor, or physical therapist or any of their employees for referring a consumer to the litigation financier; providing that a litigation financier shall not accept commissions, referral fees, or other consideration; providing that a litigation financier shall not advertise false or misleading information; providing that a litigation financier shall not refer a consumer to a specific attorney, law firm, medical provider, chiropractor, or physical therapist; providing an exception; providing that a litigation financier shall supply copies of the contract to the consumer or consumer's attorney; providing that a litigation financier shall not attempt to waive any of a consumer's remedies; providing that a litigation financier shall not attempt to effect arbitration or otherwise effect waiver of a consumer's right to a jury trial; providing that a litigation financier shall not offer legal advice; providing that a litigation financier shall not assign the litigation financing contract; providing that a litigation financing contract shall contain certain disclosures and terms; providing form disclosures; providing that a violation shall render the contract unenforceable; providing that a court may award costs and attorneys' fees against defendant; clarifying authority of the Attorney General; providing that a contingent right to receive an amount under a legal claim may be assigned by a consumer; providing a priority of liens; providing exceptions for certain liens and claims; providing a maximum annual fee; providing maximum frequency annual fee charges; providing that fees may compound semiannually but not based on any lesser time period; providing means for calculating annual percentage fee or rate of return; providing maximum terms for fees; and restricting incorporation of prior obligations"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 377**, Relating to minimum wage and maximum hour standards.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 512** - “A Bill to amend and reenact §47-26-1, §47-26-2, and §47-26-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §47-26-2a, all relating to the regulation of pawnbrokers; removing an exception for certain transactions from the report required of all pawnbrokers; requiring all pawnbrokers to be equipped with certain surveillance equipment and signage effective January 1, 2021; prohibiting pawnbrokers from doing business with certain persons; prohibiting pawnbrokers from purchasing certain items or transacting with certain items from anyone; creating misdemeanor offenses for certain violations; and increasing the penalties for existing criminal offenses related to pawnbrokers”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 553** - “A Bill to amend and reenact §18-10-3 of the Code of West Virginia, 1931, as amended, relating to federal funds for land-grant institutions”; which was referred to the Committee on Education then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 587** - “A Bill to amend and reenact §5-16-8a of the Code of West Virginia, 1931, as amended, relating to the West Virginia Public Employees Insurance Agency’s reimbursement of air-ambulance providers who provide emergency transportation to

individuals covered by the plan”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 601** - “A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-4-17a, relating to mandatory supervision of adult inmates generally; authorizing the Commissioner of the Division of Corrections and Rehabilitation to develop mandatory supervised release plans; authorizing the early release of inmates subject to the conditions of a mandatory supervised release plan; providing for return of inmates to a correctional facility for violations of the conditions of mandatory supervised release plans; providing that inmates on mandatory supervised release are considered to be on parole; clarifying that mandatory supervised release plan is not a commutation of sentence or any other form of clemency; and providing that mandatory supervised release concludes upon completion of the minimum expiration of sentence”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 636** - “A Bill to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing legislative rules regarding higher education; authorizing legislative rules for the Higher Education Policy Commission regarding Acceptance of Advanced Placement Credit, Human Resources Administration, Guidelines for Governing Boards in Employing and Evaluating Presidents, and PROMISE Scholarship Program; and authorizing legislative rules for the

Council for Community and Technical College Education regarding Tuition and Fees, Acceptance of Advanced Placement Credit, Initial Authorization of Degree-Granting Institutions, Workforce Development: Learn and Earn, Technical Program Development, and West Virginia Advance Rapid Response Grants, and Human Resource Administration”; which was referred to the Committee on Education.

### **Leaves of Absence**

At the request of Delegate Summers, and by unanimous consent, leave of absence for the day was granted Delegate Boggs.

At 6:34 p.m., the House of Delegates recessed for thirty minutes.

### **Miscellaneous Business**

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Campbell during Remarks by Members
- Delegate Evans during Remarks by Members

Pursuant to House Rule 94b, Members filed forms with the Clerk’s Office to be added as a cosponsor of the following:

- Delegate Hardy for H. B. 2519
- Delegate Porterfield for H. B. 2097, H. B. 2663, H. B. 2714, H. B. 2718, H. B. 2770 and H. B. 3045
- Delegates Atkinson and Nelson for H. B. 3024
- Delegates Pushkin and Robinson for H. B. 3133

Pursuant to House Rule 94b, a form was filed with the Clerk’s Office to be removed as a cosponsor of the following:

- Delegate Nelson for H. B. 3092

At 7:05 p.m., the House of Delegates adjourned until 11:00 a.m., Thursday, February 21, 2019.



---

Thursday, February 21, 2019

## **FORTY-FOURTH DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Wednesday, February 20, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

### **Reordering of the Calendar**

Delegate Summers announced that the Committee on Rules had transferred Com. Sub. for H. B. 2532 and H. B. 2872, on Second Reading, House Calendar, to the Special Calendar; and Com. Sub. for H. B. 2452, on First Reading, House Calendar, to the Special Calendar.

### **Committee Reports**

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Householder, Hardy, Butler, Espinosa and Criss:**

**H. B. 3136** - "A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-8-2a, relating to requiring all able-bodied adults receiving Medicaid benefits to be employed or participating and complying with the requirements of a work, education, or volunteer program for at least 20 hours per week upon the issuance to the state of a waiver from the Centers for Medicare and Medicaid Services, United States Department of Health and Human Services,

for a demonstration project under section 1115(a) of the Social Security Act to implement the requirements of this law, generally.”

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Householder, Graves, Hardy, Ellington, Maynard, Hill, Linville and Espinosa:**

**H. B. 3137** - “A Bill to amend and reenact §11-21-4e of the Code of West Virginia, 1931, as amended; and to amend said code by adding a new section thereto, §11B-2-33, all relating to reducing personal income tax rates when personal income tax reduction fund is funded at an amount equal to or exceeding \$200 million; establishing personal income tax reduction fund and providing for deposits into personal income tax reduction fund; specifying rate reductions; providing for deposits from personal income tax reduction fund into general revenue fund; imposing duties on the Secretary of Revenue and State Lottery Commission.”

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2441**, Removing certain requirements related to wages for construction of public improvements,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2441** - “A Bill to amend and reenact §21-1C-5 of the Code of West Virginia, 1931, as amended, relating to removing certain requirements related to wages for construction of public improvements,”

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2864**, Increasing salaries of magistrates, supreme court justices, circuit court judges, and family court judges,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (H. B. 2864) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2497**, Relating to the whistle-blower law,

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

### **Motions**

Delegate Shott filed a written motion that pursuant to the Rules of the House (Rules 50, 51 and 53), H. B. 2519 be committed to the Committee on Finance.

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

The bill was committed to the Committee on Finance.

### **Special Calendar**

#### **Third Reading**

**Com. Sub. for S. B. 270**, Streamlining process for utilities access to DOH rights-of-way; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 218**), and there were—yeas 99, nays none,

absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 270) passed.

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

On this question, the yeas and nays were taken (**Roll No. 219**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 270) takes effect from its passage.

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

**Com. Sub. for S. B. 356**, Requiring MAPS provide state and federal prosecutors information; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 220**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 356) passed.

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

**S. B. 358**, Exempting Purchasing Division purchases for equipment to maintain security at state facilities; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 221**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 358) passed.

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

**Com. Sub. for S. B. 387**, Relating generally to extradition; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 222**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Porterfield.

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 387) passed.

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

**S. B. 452**, Supplemental appropriation to Second Chance Driver's License Program; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 223**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: C. Martin.

Absent and Not Voting: Boggs.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 452) passed.

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

On this question, the yeas and nays were taken (**Roll No. 224**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: C. Martin.

Absent and Not Voting: Boggs.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 452) takes effect from its passage.

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

**H. B. 2515**, Exempting the sale and installation of mobility enhancing equipment from the sales and use tax; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 225**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2515) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**H. B. 2515** - “A Bill to amend and reenact §11-15-9i of the Code of West Virginia, 1931, as amended relating to exempting from state sales and use tax the sale and installation of mobility enhancing equipment installed in a new or used motor vehicle for the use of a person with physical disabilities and the sale and installation for the repair or replacement parts of mobility enhancing equipment; and establishing a definition for mobility enhancing equipment.”

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

**H. B. 2667**, Supplemental appropriation to the Department of Military Affairs and Public Safety, Division of Corrections; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 226**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2667) passed.

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

On this question, the yeas and nays were taken (**Roll No. 227**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2667) takes effect from its passage.

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

**Com. Sub. for H. B. 2854**, Exempting sales from the consumers sales and service tax and use tax by not for profit volunteer school support groups raising funds for schools; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 228**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2854) passed.

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

**Com. Sub. for H. B. 2855**, Allowing rebate moneys to be used for the operation and maintenance of accounting and transparency systems of the State Auditor; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 229**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2855) passed.



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

**H. B. 2856**, Relating to the administration of the operating fund of the securities division of the Auditor's office; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 230**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2856) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**H. B. 2856** - "A Bill to amend and reenact §32-4-406 of the Code of West Virginia, 1931, as amended, relating to the administration of the operating fund of the securities division of the Auditor's office; and providing for certain funds to be transferred to the General Revenue Fund."

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

**Com. Sub. for H. B. 2886**, Establishing requirements for a Division Motor Vehicles office or Division of Motor Vehicles Now kiosk to be present in a county; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 231**), and there were—yeas 98, nays none,

absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Boggs and Doyle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2886) passed.

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

**Com. Sub. for H. B. 2907**, Requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 232**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2907) passed.

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

**Com. Sub. for H. B. 2907** - “A Bill to amend and reenact §62-7-10 of the Code of West Virginia, 1931, as amended; and to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §62-7-10a, all relating to the requiring a form of a certified commitment order to the Division of Corrections and Rehabilitation; requiring a form for commitments to prisons; requiring a form for commitments from magistrate or circuit courts to jails; requiring that orders sent to prisons must be signed by the circuit judge with jurisdiction over the matter;

requiring that orders sent to jails must be signed by the circuit court judge or magistrate with jurisdiction over the matter; requiring the costs of incarceration in jail pending transfer shall be paid by the Commissioner from the calendar date following the date of the conviction forward; and clarifying the method of transmittal of commitment orders.”

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

**H. B. 2924**, Permitting the West Virginia Tourism Office to decide to contract with the Division of Highways to sell advertising space on the WV511 website; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 233**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2924) passed.

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

**Com. Sub. for H. B. 2929**, Authorizing the West Virginia Tourism Office to enter into an agreement with the Division of Highways to provide staff at the welcome centers; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 234**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2929) passed.

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

**Com. Sub. for H. B. 2933**, Modifying the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 235**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2933) passed.

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

**H. B. 2954**, Defining certain terms used in insurance; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 236**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2954) passed.

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

**Com. Sub. for H. B. 2982**, Amending and updating the laws relating to auctioneers; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 237**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Steele.

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2982) passed.

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

**Com. Sub. for H. B. 3007**, Authorizing the Commissioner of Agriculture to require background checks; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 238**), and there were, including pairs—yeas 95, nays 4, absent and not voting 1, with the paired, nays and absent and not voting being as follows:

Nays: Estep-Burton, Pushkin, Rowe and Walker.

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3007) passed.

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

**H. B. 3039**, Relating to a court's consideration of the expression of a preference by a child in certain child custody matters; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 239**), and there were, including pairs—yeas 55, nays 44, absent and not voting 1, with the paired, nays and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Queen

Nay: Byrd

Nays: Angelucci, Barrett, Bates, N. Brown, S. Brown, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, C. Martin, P. Martin, Miley, Miller, Pethel, Porterfield, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaule, Staggers, Storch, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams, Worrell and Zukoff.

Absent and Not Voting: Boggs.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3039) passed.

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

**H. B. 3083**, Adding temporary work during the legislative session as exclusion to the term employment for purposes of unemployment compensation; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 240**), and there were—yeas 68, nays 29, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, S. Brown, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Pethtel, Robinson, Rowe, Sponaugle, Steele, Swartzmiller, C. Thompson, R. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Bates, Boggs and Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3083) passed.

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

**H. B. 3093**, Relating to standards for factory-built homes; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 241**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Robinson.

Absent and Not Voting: Boggs and Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3093) passed.

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

#### Second Reading

**Com. Sub. for S. B. 13**, Relating to distributions from State Excess Lottery Fund; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page nine, section eighteen-a, line two hundred eighteen, following the language “(c), (d)” and the comma, by striking out the words “and (i)” and inserting in lieu thereof the words “~~and~~ (i), and (m)”.

And,

On page ten, section eighteen-a, line two hundred forty, following the citation “§11-21-21”, by striking out the words “*et seq.*” and the comma.

Delegate P. Martin moved to amend the bill on page eleven, section eighteen-a, line two hundred seventy-nine, after the words “to be”, by striking out the remainder of the paragraph and inserting in lieu thereof “divided equally amongst each of the 55 counties, to which each individual county board of education shall have the authority to use the money as they see fit for their county.”

On the adoption of the amendment, Delegate P. Martin, demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 242**), and there were—yeas 19, nays 78, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Azinger, N. Brown, Butler, Cadle, Dean, Estep-Burton, Hollen, D. Jeffries, Kessinger, Kump, Linville, C. Martin, P. Martin, Paynter, Porterfield, Robinson, C. Thompson, R. Thompson and Toney.

Absent and Not Voting: Boggs, Byrd and Rodighiero.



So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to third reading.

**S. B. 442**, Supplementing, amending, and decreasing appropriation to Insurance Commission; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 443**, Supplemental appropriation of federal moneys to DHHR divisions; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 444**, Supplemental appropriation to DHHR divisions; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page two, line twenty-six, by striking out “885,554” and inserting in lieu thereof “1,138,304”.

The bill was then ordered to third reading.

**Com. Sub. for H. B. 2532**, Allowing certain donations by persons renewing their driver’s license or vehicle registration; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2540**, Prohibiting the waste of game animals, game birds or game fish; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2541**, Requiring certain safety measures be taken at public schools; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2730**, Increasing the compensation of the membership of the State Police and the salaries for public school teachers and school

service personnel; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2807**, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2829**, Relating to the termination of severance taxes on limestone and sandstone; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2837**, Relating to the licensing of advance deposit waging; on second reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**H. B. 2872**, Authorizing law-enforcement officers to assist the State Fire Marshal; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2901**, Allowing for the establishment of a secondary location for racetrack video lottery terminals; on second reading, coming up in regular order, was read a second time.

Delegate Cowles moved to amend the bill on page three, section twelve-a, line forty-four, following the word “racetrack”, by striking the word “may” and inserting in lieu thereof “located on an island in the Ohio River, may, for a period of five years” and a comma.

On page four, section twelve, line thirty-four, following the word “racetrack”, by striking out the word “may” and inserting in lieu thereof “located on an island in the Ohio River, may, for a period of five years” and a comma.

And,

On page fifteen, section eight, line one hundred twenty-one, following the word “racetrack”, by striking out the word “may” and

inserting in lieu thereof “located on an island in the Ohio River, may, for a period of five years” and a comma.

Delegates McGeehan and Swartzmiller moved to amend the amendment on line three, by striking out the words “an island in” and inserting in lieu thereof “property adjoining”.

On line seven, by striking out the words “an island in” and inserting in lieu thereof “property adjoining”.

And,

On line eleven, by striking out the words “an island in” and inserting in lieu thereof “property adjoining”.

On the adoption of the amendment to the amendment, Delegate McGeehan demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 243**), and there were—yeas 28, nays 68, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Azinger, Bates, Campbell, Canestraro, Dean, Diserio, Fleischauer, Fluharty, Hansen, Hartman, Hornbuckle, Howell, J. Jeffries, Lavender-Bowe, Lovejoy, Maynard, McGeehan, Miller, Paynter, Phillips, Pyles, Robinson, Sponaule, Storch, Swartzmiller, R. Thompson, Tomblin and Toney.

Absent and Not Voting: Boggs, Byrd, Queen and Rodighiero.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

The amendment offered by Delegate Cowles was then rejected.

The bill was then ordered to engrossment and third reading.

**H. B. 2934**, Permitting interactive wagering authorized as West Virginia Lottery interactive wagering activities; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page two, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 22E. WEST VIRGINIA LOTTERY INTERACTIVE WAGERING ACT.**

**§29-22E-1. Short title.**

This article shall be known and may be cited as the West Virginia Lottery Interactive Wagering Act.

**§29-22E-2. State authorization of interactive wagering at licensed racetrack facilities and historic resort hotel; legislative findings and declarations.**

(a) Operation of West Virginia Lottery interactive wagering. — Notwithstanding any provision of law to the contrary, the operation of interactive wagering and ancillary activities are only lawful when conducted in accordance with the provisions of this article and rules of the commission.

(b) Legislative findings. —

(1) The Legislature finds that the operation of the four racetracks and the historic resort hotel in this state play a critical role in the economy of this state, and such constitutional lotteries are rightfully authorized as state enterprises consistent with the rights and powers granted to the states under the Tenth Amendment of the United States Constitution. The federal government is a government of limited and enumerated powers, and powers not delegated to the United States by the Constitution nor prohibited by it to the states are reserved for the states and its respective citizens.

(2) The Legislature finds that section 36, article VI of the Constitution of the State of West Virginia grants the state the exclusive right to lawfully own and operate a lottery in this state. Authorization of wagering on any constitutional lottery within

West Virginia is within the state's sovereign rights as a state to act in the best interest of its citizens.

(3) The Legislature finds that it is in the best interests of the State of West Virginia for the state to operate a lottery in the form of interactive wagering and that it is the intent of the Legislature to authorize interactive wagering within the state and through compacts with other approved jurisdictions.

(4) The Legislature finds that illegal interactive wagering channels operating throughout the United States pose a critical threat to the safety and welfare of the citizens of West Virginia and that creating civil and criminal penalties to prosecute illegal operators, while transferring this black market demand into a secure and highly regulated environment, will protect the public and positively benefit state revenues and the state's economy.

(5) The Legislature finds that in order to protect residents of this state who wager on illegal interactive channels and to capture revenues and create jobs generated from interactive wagering, it is in the best interests of this state and its citizens to regulate this activity by authorizing and establishing a secure, responsible, fair, and legal system of interactive wagering immediately, when the federal ban on interactive wagering is lifted.

(6) The Legislature finds that the most effective and efficient manner in which the state can operate and regulate the forms of lottery authorized by the provisions of this article is to limit the number of authorized operators to those who are licensed, pursuant to the provisions of §29-22A-1 *et seq.* of this code, and to facilities licensed to operate video lottery terminals, pursuant to the provisions of §29-25-1 *et seq.* of this code.

(7) The Legislature finds that the granting of licenses pursuant to the provisions of this article, while maintaining all ownership rights and exercising control through strict regulation of all West Virginia Lottery interactive wagering authorized by the provisions of this article, constitutes an appropriate exercise by the Legislature of the power granted it by the provisions of section 36, article VI of the Constitution of the State of West Virginia.

(8) The Legislature finds that the operation of West Virginia Lottery interactive wagering at racetracks, licensed pursuant to the provisions of §29-22A-1 *et seq.* of this code, and at a historic resort hotel, licensed pursuant to the provisions of §29-25-1 *et seq.* of this code, serves to protect, preserve, promote, and enhance the tourism industry of the state as well as the general fiscal wellbeing of the state and its subdivisions.

### **§29-22E-3. Definitions.**

For the purposes of this article, the following terms have the meanings ascribed to them in this section:

(1) ‘Adjusted gross interactive wagering receipts’ means an operator’s gross interactive wagering receipts from West Virginia Lottery interactive wagering, less winnings paid to wagerers in such games.

(2) ‘Commission’ or ‘State Lottery Commission’ means the West Virginia Lottery Commission, created by §29-22-1 *et seq.* of this code.

(3) ‘Director’ means the Director of the West Virginia State Lottery Commission, appointed pursuant to §29-22-6 of this code.

(4) ‘Gaming’ or ‘interactive gaming’ means wagering on any authorized interactive game. Authorized interactive games are computerized or virtual versions of any game of chance or digital simulation thereof, including, but not limited to, casino themed slot simulations, table games, and other games approved by the commission.

(5) ‘Gaming facility’ means a designated area on the premises of an existing historic resort hotel, licensed under §29-25-1 *et seq.* of this code, to operate video lottery and table games or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 *et seq.* of this code.

(6) ‘Government’ means any governmental unit of a national, state, or local body exercising governmental functions, other than the United States Government.

(7) ‘Gross interactive wagering receipts’ means the total gross receipts received by a licensed gaming facility from interactive wagering.

(8) ‘Interactive gaming operator’ means a licensed gaming facility which has elected to operate authorized West Virginia Lottery interactive wagering activities or an interactive gaming system on behalf or in cooperation with an interactive gaming licensee.

(9) ‘Interactive gaming provider’ or ‘management services provider’ means an interactive gaming licensee or an interactive gaming operator with a valid permit acting on behalf of or in partnership with an interactive gaming licensee.

(10) ‘Interactive wagering account’ means a financial record established by a licensed gaming facility for an individual patron in which the patron may deposit and withdraw funds for interactive wagering and other authorized purchases, and to which the licensed gaming facility may credit winnings or other amounts due to that patron or authorized by that patron.

(11) ‘Interactive wagering agreement’ means a written agreement between the commission and one or more other governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive wagering conducted by one or more operators licensed by the signatory governments.

(12) ‘Interactive wagering fund’ means the special fund in the State Treasury, created in §29-22E-17 of this code.

(13) ‘License’ means any license, applied for or issued by the commission under this article, including, but not limited to:

(A) A license to act as agent of the commission in operating West Virginia Lottery interactive wagering at a licensed gaming facility (operator license or West Virginia Lottery interactive wagering license);

(B) A license to supply a gaming facility, licensed under this article, to operate interactive wagering with interactive wagering equipment or services necessary for the operation of interactive wagering (supplier license); or

(C) A license to be employed at a racetrack or gaming facility, licensed under this article, to operate West Virginia Lottery interactive wagering when the employee works in a designated gaming area that has interactive wagering or performs duties in furtherance of or associated with the operation of interactive wagering at the licensed gaming facility (occupational license).

(14) ‘Licensed gaming facility’ means a designated area on the premises of an existing historic resort hotel, pursuant to §29-25-1 et seq. of this code, or the facility of an entity authorized to operate racetrack video lottery machines, pursuant to §29-22A-1 et seq. of this code, licensed under this article, to conduct West Virginia Lottery interactive wagering.

(15) ‘Lottery’ means the public gaming systems or games regulated, controlled, owned, and operated by the State Lottery Commission in the manner provided by general law, as provided in this article, §29-22-1 et seq., §29-22A-1 et seq., §29-22B-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code.

(16) ‘National criminal history background check system’ means the criminal history record system maintained by the Federal Bureau of Investigation, based on fingerprint identification or any other method of positive identification.

(17) ‘Wager’ means a sum of money or thing of value risked on an uncertain occurrence.

(18) ‘West Virginia Lottery interactive wagering’ or ‘interactive wagering’ or ‘interactive gaming’ means the placing of wagers remotely and in real time on any authorized interactive game with any interactive gaming provider, using any communications technology, by means of any electronic or mobile



device or other interface capable of providing a means of input and output. The term does not include:

(A) Pari-mutuel betting on the outcome of horse or dog races, authorized by §19-23-12a and §19-23-12d of this code;

(B) Lottery games of the West Virginia State Lottery, authorized by §29-22-1 *et seq.* of this code;

(C) Racetrack video lottery, authorized by §29-22A-1 *et seq.* of this code;

(D) Limited video lottery, authorized by §29-22B-1 *et seq.* of this code;

(E) Racetrack table games, authorized by §29-22C-1 *et seq.* of this code;

(F) Video lottery and table games, authorized by §29-25-1 *et seq.* of this code;

(G) Sports wagering, authorized by §29-22D-1 *et seq.*; and

(H) Daily Fantasy Sports (DFS).

(19) ‘West Virginia Lottery interactive wagering license’ means authorization granted under this article by the commission to a gaming facility that is already licensed under §29-22A-1 *et seq.* or §29-25-1 *et seq.* of this code, which permits the gaming facility as an agent of the commission to operate West Virginia Lottery interactive wagering on the grounds where video lottery is conducted by the licensee or through any other authorized interactive platform developed by the gaming facility. This term is synonymous with ‘operator’s license’.

#### **§29-22E-4. Commission duties and powers.**

(a) In addition to the duties set forth elsewhere in this article, §29-22-1 *et seq.*, §29-22A-1 *et seq.*, §29-22B-1 *et seq.*, §29-22C-1 *et seq.*, §29-22D-1 *et seq.*, and §29-25-1 *et seq.* of this code, the commission shall have the authority to regulate interactive wagering and the conduct of interactive gaming under this article.

(b) The commission shall examine the regulations implemented in other states where interactive wagering is conducted and shall, as far as practicable, adopt a similar regulatory framework through promulgation of rules.

(c) The commission has the authority, pursuant to §29A-1-1, et seq. and §29A-3-1, et seq. of this code, to promulgate or otherwise enact any legislative, interpretive, and procedural rules the commission considers necessary for the successful implementation, administration, and enforcement of this article. Rules proposed by the commission before December 1, 2019, may be promulgated as emergency rules pursuant to §29A-3-15 of this code.

(1) Rules promulgated by the commission may include, but are not limited to, those governing the acceptance of wagers on interactive games; maximum wagers which may be accepted by an operator from any one patron on any one interactive game; method of accounting to be used by operators; types of records which shall be kept; use of credit and checks by patrons; type of system for wagering; protections for patrons placing wagers; and promotion of social responsibility, responsible gaming, and inclusion of the statement, 'If you or someone you know has a gambling problem and wants help, call 1-800 GAMBLER', in every designated area approved for interactive wagering and on any mobile application or other digital platform used to place wagers.

(2) The commission shall establish minimum internal control standards (MICS) and approve minimum internal control standards proposed by licensed operators for administration of interactive wagering operations, wagering equipment and systems, or other items used to conduct interactive wagering, as well as maintenance of financial records and other required records.

(d) The commission shall determine the eligibility of a person to hold or continue to hold a license, shall issue all licenses, and shall maintain a record of all licenses issued under this article. The commission may accept applications, evaluate qualifications of applicants, and undertake initial review of licenses prior to

promulgation of emergency rules upon the effective date of this article.

(e) The commission shall levy and collect all fees, surcharges, civil penalties, and weekly tax on adjusted gross interactive wagering receipts imposed by this article, and deposit all moneys into the interactive wagering fund, except as otherwise provided under this article.

(f) The commission may sue to enforce any provision of this article or any rule of the commission by civil action or petition for injunctive relief.

(g) The commission may hold hearings, administer oaths, and issue subpoenas or subpoenas duces tecum: *Provided*, That all hearings shall be conducted pursuant to the provisions of the State Administrative Procedures Act, §29A-2-1, *et seq.* of this code and the Lottery Administrative Appeal Procedures, W.Va. CSR §179-2-1, *et seq.*

(h) The commission may exercise any other powers necessary to effectuate the provisions of this article and the rules of the commission.

#### **§29-22E-5. Licenses required.**

(a) No person may engage in any activity in connection with West Virginia Lottery interactive wagering in this state unless all necessary licenses have been obtained in accordance with this article and rules of the commission.

(b) The commission may not grant a license until it determines that each person who has control of the applicant meets all qualifications for licensure. The following persons are considered to have control of an applicant:

(1) Each person associated with a corporate applicant, including any corporate holding company, parent company, or subsidiary company of the applicant who has the ability to control the activities of the corporate applicant or elect a majority of the board of directors of that corporation; this does not include any

bank or other licensed lending institution which holds a mortgage or other lien acquired in the ordinary course of business;

(2) Each person associated with a noncorporate applicant who directly or indirectly holds a beneficial or proprietary interest in the applicant's business operation, or who the commission otherwise determines has the ability to control the applicant; and

(3) Key personnel of an applicant, including any executive, employee, or agent, having the power to exercise significant influence over decisions concerning any part of the applicant's business operation.

(c) License application requirements. — All applicants for any license issued under this article shall submit an application to the commission in the form the commission requires and submit fingerprints for a national criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be furnished by all persons required to be named in the application and shall be accompanied by a signed authorization for the release of information by the Criminal Investigation Bureau and the Federal Bureau of Investigation. The commission may require additional background checks on licensees when they apply for annual license renewal, and any applicant convicted of any disqualifying offense shall not be licensed.

(d) Each interactive wagering licensee, licensed supplier, or a licensed management services provider shall display the license conspicuously in its place of business or have the license available for inspection by any agent of the commission or any law-enforcement agency.

(e) Each holder of an occupational license shall carry the license and have some indicia of licensure prominently displayed on his or her person when present in a licensed gaming facility at all times, in accordance with the rules of the commission.

(f) Each person licensed under this article shall give the commission written notice within 30 days of any change to any

information provided in the licensee's application for a license or renewal.

(g) No commission employee may be an applicant for any license issued under this article nor may any employee of any such licensee directly or indirectly hold an ownership or a financial interest in any West Virginia Lottery interactive wagering license.

**§29-22E-6. Operator license; West Virginia interactive wagering operators.**

(a) In addition to the casino games permitted pursuant to the provisions of §29-22A-1 et seq., §29-22C-1 et seq., and §29-25-1 et seq. of this code, a licensed gaming facility may operate West Virginia Lottery interactive wagering upon the approval of the commission, and the commission shall have the general responsibility for the implementation of this article and all other duties specified in §29-22-1 et seq., §29-22A-1 et seq., §29-22C-1 et seq., §29-22D-1 et seq., and §29-25-1 et seq. of this code, the provisions of this article, and applicable rules.

(b) All interactive wagering authorized by this article shall be West Virginia Lottery games owned by the State of West Virginia. An operator license granted by the commission pursuant to this article grants licensees lawful authority to conduct West Virginia Lottery interactive wagering within the terms and conditions of the license and any rules promulgated under this article.

(c) Interactive wagering licenses. — The commission may issue up to five licenses to operate West Virginia Lottery interactive wagering in accordance with the provisions of this article. No more than five licenses to operate a gaming facility with West Virginia Lottery interactive wagering shall be permitted in this state.

(d) Grant of license. — Upon application by a gaming facility and payment of a \$250,000 application fee, the commission shall immediately grant a West Virginia Lottery interactive wagering license to an operator that provides for the right to conduct West Virginia Lottery interactive wagering: *Provided*, That the applicant

must hold a valid racetrack video lottery license issued by the commission, pursuant to §29-22A-1 et seq. of this code, or a valid license to operate a gaming facility, issued by the commission pursuant to §29-25-1 et seq. of this code, and otherwise meet the requirements for licensure under the provisions of this article and the rules of the commission. This license shall be issued for a five-year period, and may be renewed for five-year periods upon payment of a \$100,000 renewal fee, as long as an operator continues to meet all qualification requirements.

(e) Location. — A West Virginia Lottery interactive wagering license authorizes the operation of West Virginia Lottery interactive wagering at locations and through any mobile application or other digital platforms approved by the commission.

(f) Management service contracts. —

(1) Approval. — A West Virginia Lottery interactive wagering licensee may not enter into any management services contract that would permit any person other than the licensee to act as the commission's agent in operating West Virginia Lottery interactive wagering unless the management service contract: (A) Is with a person licensed under this article to provide management services; (B) is in writing; and (C) has been approved by the commission.

(2) Material change. — The West Virginia Lottery interactive wagering licensee shall submit any material change in a management services contract, previously approved by the commission, to the commission for its approval or rejection before the material change may take effect.

(3) Other commission approvals and licenses. — The duties and responsibilities of a management services provider under a management services contract may not be assigned, delegated, subcontracted, or transferred to a third party without the prior approval of the commission. Third parties must be licensed as a management services provider under this article before providing services.

(g) Expiration date and renewal. —

(1) A licensed operator shall submit to the commission such documentation or information as the commission may require demonstrating to the satisfaction of the director that the licensee continues to meet the requirements of the law and rules. Required documentation or information shall be submitted no later than five years after issuance of an operator license and every five years thereafter, or within lesser periods based on circumstances specified by the commission.

(2) If the licensee fails to apply to renew its license issued pursuant to §29-22A-1 et seq. or §29-25-1 et seq. of this code prior to expiration, the commission shall renew its license under this article at the time the expired license is renewed as long as the licensee was operating in compliance with applicable requirements in the preceding license year.

(h) Surety bond. — A West Virginia Lottery interactive wagering licensee shall execute a surety bond in an amount and in the form approved by the commission, to be given to the state, to guarantee the licensee faithfully makes all payments in accordance with the provisions of this article and rules promulgated by the commission.

(i) Audits. — Upon application for a license and annually thereafter, a West Virginia Lottery interactive wagering licensee shall submit to the commission an annual audit of the financial transactions and condition of the licensee's total operations prepared by a certified public accountant in accordance with generally accepted accounting principles and applicable federal and state laws.

(j) Commission office space. — A West Virginia Lottery interactive wagering licensee shall provide suitable office space at the interactive wagering facility, at no cost, for the commission to perform the duties required of it by this article and the rules of the commission.

(k) Facility qualifications. — A West Virginia Lottery interactive wagering licensee shall demonstrate that its gaming facility with West Virginia Lottery interactive wagering will: (1) Be accessible to

disabled individuals, in accordance with applicable federal and state laws; (2) be licensed in accordance with this article, and all other applicable federal, state, and local laws; and (3) meet any other qualifications specified in rules adopted by the commission. Notwithstanding any provision of this code or any rules promulgated by the Alcohol Beverage Control Commissioner to the contrary, vacation of the premises after service of beverages ceases is not required for any licensed gaming facility.

**§29-22E-7. Management services providers; license requirements.**

(a) *License.* — The holder of a license to operate West Virginia Lottery interactive wagering may contract with an entity to conduct that operation in accordance with the rules of the commission to be an interactive gaming provider. That entity shall obtain a license as a management services provider prior to the execution of any such contract, and such license shall be issued pursuant to the provisions of this article and any rules promulgated by the commission.

(b) *License qualifications and fee.* — Each applicant for a management services provider license shall meet all requirements for licensure and pay a nonrefundable license and application fee of \$100,000. The commission may adopt rules establishing additional requirements for an authorized management services provider. The commission may accept licensing by another jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the applicant meets authorized management services provider licensing requirements.

(c) *Renewal.* — Management services provider licenses shall be renewed annually to any licensee who continues to be in compliance with all requirements and who pays the annual renewal fee of \$100,000.

(d) Any entity or individual who shares in revenue, including any affiliate operating under a revenue share agreement, shall be licensed under this section.

**§29-22E-8. Suppliers; license requirements.**

(a) *Supplier license.* —



(1) The commission may issue a supplier license to a person to sell or lease interactive wagering equipment, systems, or other gaming items necessary to conduct interactive wagering, and offer services related to such equipment or other gaming items to a West Virginia Lottery interactive wagering licensee while the license is active. The commission may establish the conditions under which the commission may issue provisional licenses, pending completion of final action on an application.

(2) The commission may adopt rules establishing additional requirements for a West Virginia Lottery interactive wagering supplier and any system or other equipment utilized for wagering. The commission may accept licensing by another jurisdiction, that it specifically determines to have similar licensing requirements, as evidence the applicant meets West Virginia Lottery interactive wagering supplier licensing requirements.

(b) *Supplier specifications.* — An applicant for a supplier license shall demonstrate that the equipment, system, or services that the applicant plans to offer to the interactive wagering licensee conform to standards established by the commission and applicable state law. The commission may accept approval by another jurisdiction, that it specifically determines have similar equipment standards, as evidence the applicant meets the standards established by the commission and applicable state law.

(c) *License application and renewal fees.* — Applicants shall pay to the commission a nonrefundable license and application fee in the amount of \$10,000. After the initial one-year term, the commission shall renew supplier licenses annually thereafter. Renewal of a supplier license will be granted to any renewal applicant who has continued to comply with all applicable statutory and regulatory requirements, upon submission of the commission issued renewal form and payment of a \$10,000 renewal fee.

(d) *Inventory.* — A licensed interactive wagering supplier shall submit to the commission a list of all interactive wagering equipment and services sold, delivered to, or offered to a West Virginia Lottery interactive wagering licensee in this state, as required by the commission, all of which must be tested and

approved by an independent testing laboratory approved by the commission. A interactive wagering licensee may continue to use supplies acquired from a licensed interactive wagering supplier, even if a supplier's license expires or is otherwise cancelled, unless the commission finds a defect in the supplies.

**§29-22E-9. Occupational licenses.**

(a) All persons employed to be engaged directly in interactive wagering-related activities, or otherwise conducting or operating interactive wagering, shall be licensed by the commission and maintain a valid occupational license at all times and the commission shall issue such license to be employed in the operation of interactive wagering to a person who meets the requirements of this section.

(b) An occupational license to be employed by a gaming facility with West Virginia Lottery interactive wagering permits the licensee to be employed in the capacity designated by the commission while the license is still active. The commission may establish, by rule, job classifications with different requirements to recognize the extent to which a particular job has the ability to impact the proper operation of West Virginia Lottery interactive wagering.

(c) *Application and fee.* — Applicants shall submit any required application forms established by the commission and pay a nonrefundable application fee of \$100. The fee may be paid on behalf of an applicant by the employer.

(d) *Renewal fee and form.* — Each licensed employee shall pay to the commission an annual license fee of \$100 by June 30 of each year. The fee may be paid on behalf of the licensed employee by the employer. In addition to a renewal fee, each licensed employee shall annually submit a renewal application on the form required by the commission.

**§29-22E-10. License prohibitions.**

(a) The commission may not grant any license, pursuant to the provisions of this article, if evidence satisfactory to the commission exists that the applicant:

(1) Has knowingly made a false statement of a material fact to the commission;

(2) Has been suspended from operating a gambling game, gaming device, or gaming operation, or had a license revoked by any governmental authority responsible for regulation of gaming activities;

(3) Has been convicted of a gambling-related offense, a theft or fraud offense, or has otherwise demonstrated, either by a police record or other satisfactory evidence, a lack of respect for law and order; or

(4) Is a company or individual who has been directly employed by any illegal or offshore book that serviced the United States, or otherwise accepted black market wagers from individuals located in the United States.

(b) The commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license:

(1) If the applicant or licensee has not demonstrated to the satisfaction of the commission financial responsibility sufficient to adequately meet the requirements of the proposed enterprise;

(2) If the applicant or licensee is not the true owner of the business or is not the sole owner and has not disclosed the existence or identity of other persons who have an ownership interest in the business; or

(3) If the applicant or licensee is a corporation which sells more than five percent of a licensee's voting stock, or more than five percent of the voting stock of a corporation which controls the licensee, or sells a licensee's assets, other than those bought and sold in the ordinary course of business, or any interest in the assets, to any person not already determined by the commission to have met the qualifications of a licensee under this article.

(c) In the case of an applicant for a interactive wagering license, the commission may deny a license to any applicant, reprimand any licensee, or suspend or revoke a license if an applicant has not met

the requirements of this section or any other provision of this article.

**§29-22E-11. Interactive wagering house rules; posting of rules.**

(a) Each operator shall adopt comprehensive house rules for game play governing interactive wagering transactions with its patrons. These comprehensive rules will be published as part of the minimum internal control standards. The rules shall specify the amounts to be paid on winning wagers and the effect of schedule changes. House rules shall be approved by the commission prior to implementation.

(b) The house rules, together with any other information the commission deems appropriate, shall be conspicuously displayed and included in the terms and conditions of the interactive wagering system. Copies shall be made readily available to patrons.

(c) The commission shall license and require the display of West Virginia Lottery game logos on interactive wagering platforms and any locations the commission considers appropriate.

**§29-22E-12. Operator duties; interactive wagering operations at a licensed gaming facility.**

(a) General. — All operators licensed under this article to conduct West Virginia Lottery interactive wagering shall:

(1) Employ a interactive gaming system and interactive gaming platform which manages, conducts, and records interactive games and the wagers associated with interactive games, as well as any interactive gaming skins authorized by the commission. System requirements and specifications shall be developed according to industry standards and implemented by the commission as part of the minimum internal control standards;

(2) Promptly report to the commission any facts or circumstances related to the operation of a West Virginia Lottery interactive wagering licensee which constitute a violation of state or federal law and immediately report any suspicious betting over

a threshold set by the operator that has been approved by the commission to the appropriate state or federal authorities;

(3) Conduct all interactive wagering activities and functions in a manner which does not pose a threat to the public health, safety, or welfare of the citizens of this state and does not adversely affect the security or integrity of the West Virginia Lottery;

(4) Hold the commission and this state harmless from and defend and pay for the defense of any and all claims which may be asserted against a licensee, the commission, the state, or employees thereof, arising from the licensee's actions or omission while acting as an agent of the commission operating West Virginia Lottery interactive wagering pursuant to this article;

(5) Assist the commission in maximizing interactive wagering revenues; and

(6) Keep current in all payments and obligations to the commission.

(b) Duties. — All West Virginia Lottery interactive wagering licensees shall:

(1) Acquire West Virginia Lottery interactive wagering gaming equipment by purchase, lease, or other assignment and provide a secure location for the placement, operation, and play of interactive wagering gaming equipment;

(2) Prevent any person from tampering with or interfering with the operation of any West Virginia Lottery interactive wagering;

(3) Ensure that West Virginia Lottery interactive wagering conducted at a gaming facility is within the sight and control of designated employees of the licensee and such wagering at the facility or otherwise available by the licensee is conducted under continuous observation by security equipment in conformity with specifications and requirements of the commission;

(4) Ensure that West Virginia Lottery interactive wagering occurs only in the specific locations within designated gaming

areas approved by the commission or using a commission approved mobile application or other digital platform that utilizes communications technology to accept wagers originating within this state, or on a interactive wagering device. West Virginia Lottery interactive wagering shall only be relocated or offered in additional authorized manners in accordance with the rules of the commission;

(5) Maintain sufficient cash and other supplies to conduct interactive wagering at all times; and

(6) Maintain daily records showing the gross interactive wagering receipts and adjusted gross interactive wagering receipts of the licensee from West Virginia Lottery interactive wagering and shall timely file with the commission any additional reports required by rule or by other provisions of this code.

#### **§29-22E-13. Posting of betting limits.**

A interactive wagering licensee shall conspicuously post a sign at each West Virginia Lottery interactive wagering location and on all interactive gaming platforms indicating the minimum and maximum wagers permitted at that location and shall comply with the same.

#### **§29-22E-14. Interactive wagering agreements with other governments.**

(a) On behalf of the State of West Virginia, the commission is authorized to:

(1) Enter into interactive wagering agreements with other governments whereby persons who are physically located in a signatory jurisdiction may participate in interactive wagering conducted by one or more operators licensed by the signatory governments; and

(2) Take all necessary actions to ensure that any interactive wagering agreement entered into, pursuant to this section, becomes effective.

(b) The rules adopted by the commission pursuant to this section may include provisions prescribing:

(1) The form, length, and terms of an agreement entered into by the commission and another government, including, but not limited to, provisions relating to how: Taxes are to be treated by this state and another government; revenues are to be shared and distributed; and disputes with patrons are to be resolved;

(2) The information to be furnished to the commission by a government that proposes to enter into an agreement with this state pursuant to this section;

(3) The information to be furnished to the commission to enable the commission and director to carry out the purposes of this section;

(4) The manner and procedure for hearings conducted by the commission pursuant to this section, including any special rules or notices; and

(5) The information required to be furnished to the commission to support any recommendations made to the commission, pursuant to this section.

(c) The commission may not enter into any interactive wagering agreement, pursuant to this section, unless the agreement includes provisions that:

(1) Account for the sharing of revenues by this state and another government;

(2) Permit the effective regulation of interactive wagering by this state, including provisions relating to licensing of persons, technical standards, resolution of disputes by patrons, requirements for bankrolls, enforcement, accounting, and maintenance of records;

(3) Require each government that is a signatory to the agreement to prohibit operators of interactive wagering, management or other service providers, or suppliers,

manufacturers or distributors of interactive wagering systems from engaging in any activity permitted by the interactive wagering agreement unless they are licensed in this state or in a signatory jurisdiction with similar requirements approved by the commission;

(4) No variation from the requirements of the interactive wagering agreement is permitted for any signatory government without a lack of opposition by this state and all signatory governments;

(5) Prohibit any subordinate or side agreements among any subset of governments that are signatories to the agreement unless it relates exclusively to the sharing of revenues; and

(6) Require the government to establish and maintain regulatory requirements governing interactive wagering that are consistent with the requirements of this state in all material respects if the interactive wagering agreement allows persons physically located in this state to participate in interactive wagering conducted by another government or an operator licensed by another government.

**§29-22E-15. Authorization of interactive wagering in this state; requirements.**

(a) An operator shall accept wagers on interactive games authorized under this article from persons physically present in a licensed gaming facility where authorized interactive wagering occurs, or from persons not physically present who wager by means of electronic devices. A person placing a wager shall be at least 21 years of age.

(b) An operator may accept wagers from an individual physically located within this state using a mobile or other digital platform or a interactive wagering device, approved by the commission, through the patron's interactive wagering account.

(c) An operator may accept wagers from an individual physically located in a state or jurisdiction with which the commission has entered into a interactive wagering agreement



using a mobile or other digital platform or a interactive wagering device through the patron's interactive wagering account, so long as the device or platform is approved by the commission and all other requirements of the agreement are satisfied.

(d) The commission or operator may ban any person from entering a gaming area of a gaming facility conducting interactive wagering or the grounds of a gaming facility licensed under this article or from participating in the play or operation of any West Virginia Lottery interactive wagering. A log of all excluded players shall be kept by the commission and each licensee, and no player on the commission's exclusion list or the licensed operator's exclusion list shall wager on any West Virginia Lottery interactive wagering under this article.

(e) The commission shall promulgate rules implementing the provisions of §29-22E-15(a) of this code by interpretive rule and minimum internal control standards.

(f) The commission shall conduct all interactive wagering pursuant to the provisions of this article, and such gaming activities shall be deemed to occur at the licensed gaming facilities authorized to conduct interactive wagering.

(g) No licensed gaming facility employee may place a wager on any interactive wagering at the employer's facility or through any other mobile application or digital platform of their employer.

(h) No commission employee may knowingly wager or be paid any prize from any wager placed at any licensed gaming facility with West Virginia Lottery interactive wagering within this state or at any facility outside this jurisdiction that is directly or indirectly owned or operated by a interactive wagering licensee.

**§29-22E-16. Interactive wagering revenues; accounting for the state's share of revenue imposed for the privilege of offering West Virginia Lottery interactive wagering; limitation of other taxes; recoupment for improvements.**

(a) *Imposition and rate of assessment.* — For the privilege of holding a license to operate interactive wagering under this article,

the state shall impose and collect fifteen percent of the licensee's adjusted gross interactive wagering receipts from the operation of West Virginia Lottery interactive wagering (hereinafter 'privilege tax' or 'tax'). The accrual method of accounting shall be used for purposes of calculating the amount of the tax owed by the licensee.

*(b) Operator revenue reports and payment of privilege tax. —*

(1) The tax levied and collected pursuant to §29-22E-16(a) of this code is due and payable to the commission in weekly installments on or before the Wednesday following the calendar week in which the adjusted gross interactive wagering receipts were received and the tax obligation was accrued.

(2) The licensed operator shall complete and submit the return for the preceding week by electronic communication to the commission, on or before Wednesday of each week, in the form prescribed by the commission that provides:

(A) The total gross interactive wagering receipts and adjusted gross interactive wagering receipts from operation of West Virginia Lottery interactive wagering during that week;

(B) The tax amount for which the interactive wagering licensee is liable; and

(C) Any additional information necessary in the computation and collection of the tax on adjusted gross interactive wagering receipts required by the commission.

(3) The tax amount shown to be due shall be remitted by electronic funds transfer simultaneously with the filing of the return. All moneys received by the commission pursuant to this section shall be deposited in the interactive wagering fund in accordance with the provisions of this article.

*(c) Privilege tax obligation imposed by this section is in lieu of other taxes. — With the exception of the ad valorem property tax collected under chapter eleven-a of this code, the privilege tax on adjusted gross interactive wagering receipts imposed by this section is in lieu of all other state and local taxes and fees imposed*

on the operation of, or the proceeds from operation of West Virginia Lottery interactive wagering, except as otherwise provided in this section. The consumers sales and services tax imposed pursuant to §11-15-1 et seq. of this code, the use tax imposed by §11-15A-1 et seq. of this code and any similar local tax imposed at the municipal or county level, shall not apply to the licensee's gross receipts from any West Virginia Lottery interactive wagering or to the licensee's purchase of interactive wagering equipment, supplies, or services directly used in operation of the interactive wagering authorized by this article.

(d) Acquisition of any system or wagering equipment and other items related to the operation of West Virginia interactive wagering shall be considered 'facility modernization improvements' eligible for recoupment as defined in §29-22A-10(b)(2) and §29-25-22(c) of this code.

(e) Prohibition on credits. — Notwithstanding any other provision of this code to the contrary, no credit may be allowed against the privilege tax obligation imposed by this section or against any other tax imposed by any other provision of this code for any investment in gaming equipment or for any investment in or improvement to real property that is used in the operation of West Virginia Lottery interactive wagering.

**§29-22E-17. West Virginia Lottery Interactive wagering Fund; distribution of funds.**

(a) The special fund in the State Treasury known as the West Virginia Lottery Interactive Wagering Fund is hereby created and all moneys collected under this article by the commission shall be deposited with the State Treasurer to the West Virginia Lottery Interactive Wagering Fund. The fund shall be an interest-bearing account with all interest or other return earned on the money of the fund credited to and deposited in the fund. All expenses of the commission incurred in the administration and enforcement of this article shall be paid from the interactive wagering fund pursuant to §29-22E-17(b) of this code.

(b) The commission shall deduct an amount sufficient to reimburse its actual costs and expenses incurred in administering interactive wagering at licensed gaming facilities from the gross deposits into the interactive wagering fund. The amount remaining after the deduction for administrative expenses is the net profit.

(1) *Administrative allowance.* — The commission shall retain up to 15 percent of gross deposits for the fund operation and its administrative expenses: *Provided*, That in the event that the percentage allotted for operations and administration generates a surplus, the surplus shall be allowed to accumulate but may not exceed \$250,000. On a monthly basis, the director shall report any surplus in excess of \$250,000 to the Joint Committee on Government and Finance and remit the entire amount of those surplus funds in excess of \$250,000 to the State Treasurer which shall be allocated as net profit.

(2) *Distribution of net profit.* — In each fiscal year, net profit shall be deposited into the State Lottery Fund created by §29-22-18 of this code unless otherwise required by this code.

#### **§29-22E-18. Law enforcement.**

Notwithstanding any provision of this code to the contrary, the commission shall, by contract or cooperative agreement with the West Virginia State Police, arrange for those law-enforcement services uniquely related to gaming, as such occurs at facilities of the type authorized by this article, that are necessary to enforce the provisions of this article that are not subject to federal jurisdiction: *Provided*, That the State Police shall only have exclusive jurisdiction over offenses committed on the grounds of a licensed gaming facility that are offenses relating to gaming.

#### **§29-22E-19. Civil penalties.**

(a) The commission may impose, on any person who violates the provisions of this article, a civil penalty not to exceed \$50,000 for each violation. Such penalty shall be imposed on all individuals and is not limited to individuals licensed under this article. This provision shall not be construed as applicable to office pools.

(b) The provisions of §29A-5-1 et seq. of this code apply to any civil penalty imposed pursuant to the provisions of this section.

**§29-22E-20. Crimes and penalties related to unauthorized interactive wagering operations.**

(a) Any person, other than a licensee under this article, who engages in accepting, facilitating, or operating a interactive wagering operation is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000 or confined in jail for not more than 90 days, or both fined and confined.

(b) Notwithstanding the penalty provisions §29-22E-20(a) of this code, any person convicted of a second violation of §29-22E-20(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$50,000, or confined in jail for not more than six months, or both fined and confined.

(c) Notwithstanding the penalty provisions of §29-22E-20(a) or §29-22E-20(b) of this code, any person convicted of a third or subsequent violation of said §29-22E-20(a) of this code is guilty of a felony, and upon conviction thereof, shall be fined not less than \$25,000 nor more than \$100,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and confined.

**§29-22E-21. Crimes and penalties related to authorized interactive wagering operation.**

(a) A interactive wagering licensee is guilty of unlawful operation and is guilty of a misdemeanor when:

(1) The licensee operates West Virginia Lottery interactive wagering without authority of the commission to do so;

(2) The licensee operates West Virginia Lottery interactive wagering in any location or by any manner that is not approved by the commission;

(3) The licensee knowingly conducts, carries on, operates, or allows any interactive wagering to occur on premises or through any other device if equipment or material has been tampered with, or exposed to conditions in which it will be operated in a manner designed to deceive the public;

(4) The licensee employs an individual who does not hold a valid occupational license in a position for which a license is required or otherwise allows an individual to perform duties for which such license is required or continues to employ an individual after the employee's occupational license is no longer valid;

(5) The licensee acts or employs another person to act as if he or she is not an agent or employee of the licensee in order to encourage participation in West Virginia Lottery interactive wagering at the licensed gaming facility;

(6) The licensee knowingly permits an individual under the age of 21 to enter or remain in a designated gaming area or to engage in interactive wagering at a licensed gaming facility; or

(7) The licensee exchanges tokens, chips, electronic media, or other forms of credit used for wagering for anything of value except money or credits applied to a interactive wagering account at a gaming facility authorized under this article.

(b) A person is guilty of a felony when:

(1) A person changes or alters the normal outcome of any game played on a mobile or other digital platform, including any interactive gaming system used to monitor the same or the way in which the outcome is reported to any participant in the game;

(3) The person manufactures, sells, or distributes any device that is intended by that person to be used to violate any provision of this article or the interactive wagering laws of any other state;

(5) The person claims, collects, or takes anything of value from a gaming facility with West Virginia Lottery interactive wagering with intent to defraud or attempts such action without having made

a wager in which such amount or value is legitimately won or owed;

(6) The person knowingly places a wager using counterfeit currency or other counterfeit form of credit for wagering at a gaming facility with West Virginia Lottery interactive wagering; or

(7) The person, not a licensed gaming facility under this article or an employee or agent of a gaming facility licensed under this article acting in furtherance of the licensee's interest, has in his or her possession on grounds owned by the gaming facility licensed under this article or on grounds contiguous to the licensed gaming facility, any device intended to be used to violate a provision of this article or any rule of the commission.

(c) Any person who violates any provision of §29-22E-21(a) of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail for not more than six months, or both fined and confined, except any violation that is not committed by a natural person may result in a fine of not more than \$25,000.

(d) Any person who violates any provision of §29-22E-21(b) of this code is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or confined in a state correctional facility for not less than one year nor more than five years, or both fined and confined.

(e) With regard to §29-22E-21(b) of this code, each West Virginia interactive wagering licensee shall post notice of the prohibitions and penalties of this section in a manner determined by the rules of the commission.

### **§29-22E-22. Preemption.**

No local law or rule providing any penalty, disability, restriction, regulation, or prohibition for operating a gaming facility with West Virginia Lottery interactive wagering or

supplying a licensed gaming facility may be enacted, and the provisions of this article preempt all regulations, rules, ordinances, and laws of any county or municipality in conflict with this article.

**§29-22E-23. Exemption from federal law.**

Pursuant to Section 2 of Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1172, approved January 2, 1951, the State of West Virginia, acting by and through duly elected and qualified members of the Legislature, does declare and proclaim that the state is exempt from Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178.

**§29-22E-24. Shipment of gambling devices.**

All shipments of gambling devices including any interactive wagering devices or related materials to licensed gaming facilities in this state are legal shipments of gambling devices into the State of West Virginia, as long as the registering, recording, and labeling of which have been completed by the supplier thereof in accordance with Chapter 1194, 64 Stat. 1134, 15 U.S.C. §1171 to §1178.”

The bill was then ordered to engrossment and third reading.

**H. B. 2968**, Adding remote service unit to the definition of customer bank communications terminals; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3134**, Establishing criminal penalties for negligent homicide, and increasing criminal penalties for reckless driving; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**First Reading**

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:



**Com. Sub. for S. B. 26**, Permitting certain employees of educational service cooperatives participate in state's teacher retirement systems,

**Com. Sub. for H. B. 2229**, Adding violations of law upon which a public servant's retirement plan may be forfeited,

**Com. Sub. for H. B. 2452**, Creating the West Virginia Cybersecurity Office,

**Com. Sub. for H. B. 2550**, Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program,

**H. B. 2598**, Relating to submitting a certifying statement attesting to status as a charitable or public service organization,

**Com. Sub. for H. B. 2617**, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers,

**Com. Sub. for H. B. 2690**, Relating to guaranty associations,

**Com. Sub. for H. B. 2694**, Relating to the state's ability to regulate hemp,

**Com. Sub. for H. B. 2718**, Requiring purchasers of roundwood to collect and maintain certain information,

**Com. Sub. for H. B. 2770**, Fairness in Cost-Sharing Calculation Act,

**Com. Sub. for H. B. 2802**, Uniform Partition of Heirs Property Act,

**H. B. 2816**, Removing the terms "hearing impaired", "hearing impairment", and "deaf mute" from the West Virginia Code and substituting terms,

**H. B. 2827**, Removing the residency requirements for hiring deputy assessors,

**H. B. 2828**, Relating to Qualified Opportunity Zones,

**Com. Sub. for H. B. 2830**, Establishing Next Generation 911 services in this state,

**H. B. 2926**, Requiring the Secretary of the Department of Veterans' Affairs to study the housing needs of veterans,

**Com. Sub. for H. B. 2991**, Relating to the Ryan Brown Addiction Prevention and Recovery Fund,

**Com. Sub. for H. B. 3024**, West Virginia Business Ready Sites Program,

**H. B. 3045**, Exempting certain complimentary hotel rooms from hotel occupancy tax,

**H. B. 3132**, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment,

**Com. Sub. for H. B. 3133**, Relating to requiring a parolee or probationer found to have suffered with addiction to participate in a support service,

And,

**H. B. 3135**, Expiring the funds to the balance of the Department of Commerce, Development Office.

At 1:39 p.m., on motion of Delegate Summers, the House of Delegates recessed until 5:30 p.m.

\* \* \* \* \*

### **Evening Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### **Committee Reports**

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

Your Committee on Rules has had under consideration:

**H. C. R. 13**, Chief Robert Edward Dorsey Memorial Highway,

**Com. Sub. for H. C. R. 32**, Requesting the Secretary of the Department of Transportation to authorize raising highway speed limits, where appropriate, to 75 miles per hour on Interstate highways in West Virginia and to 70 miles per hour on West Virginia's Appalachian Corridor highways,

**H. C. R. 48**, Urging the Commissioner of the Bureau for Public Health to designate Alzheimer's disease and other dementias as a public health issue,

And,

**H. R. 5**, Honoring U. S. Army SPC4 Carmel Harvey Jr., Medal of Honor recipient,

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

Delegate Capito, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 21<sup>st</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**S. B. 27**, Removing restrictions on where certain traditional lottery games may be played,

**S. B. 268**, Updating meaning of federal taxable income in WV Corporation Net Income Tax Act,

And,

**S. B. 269**, Updating terms used in WV Personal Income Tax Act.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**H. B. 2079**, Removing certain limitations on medical cannabis grower, processor and dispensary licenses,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2079** - "A Bill to amend and reenact §16A-4-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §16A-6-13 of said code; and to amend and reenact §16A-16-1 of said code, all relating to medical cannabis; adding requirements for practitioners to issue a certification; adding a requirement that practitioners provide an attestation; increasing the number of permits that the bureau may issue for growers, processors and dispensaries of medical cannabis; permitting a grower to be a processor and a processor to be a grower; allowing growers and processors to be dispensaries; permitting dispensaries to be growers and processors and authorizing the bureau to implement a process for pre-registration,"

With the recommendation that the committee substitute do pass, and with the recommendation that second reference to the Committee on the Judiciary be dispensed with.

Delegate Summers asked unanimous consent that second reference of the bill to the Committee on the Judiciary be dispensed with, which consent was not granted, objection being heard.

Delegate Summers then so moved.

On the question of dispensing with the second reference recommended by the Committee on the Judiciary, the yeas and nays were demanded, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 244**), and there were—yeas 79, nays 15, absent and not voting 6, with the nays and absent and not voting being as follows:

Nays: Atkinson, Butler, Cadle, Cowles, Fast, Hardy, Hollen, D. Jeffries, J. Kelly, Kessinger, Malcolm, P. Martin, Rohrbach, Rowan and Toney.

Absent and Not Voting: Azinger, Boggs, Byrd, Jennings, Porterfield and Staggers.

So, two thirds of the members present and voting having voted in the affirmative, reference of the bill (Com. Sub. for H. B. 2079) to the Committee on the Judiciary was abrogated.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**Com. Sub. for S. B. 489**, Relating to Pharmacy Audit Integrity Act,

**Com. Sub. for S. B. 518**, Restricting sale and trade of dextromethorphan,

And,

**S. B. 545**, Relating to HIV testing,

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

At the respective requests of Delegate Summers, and by unanimous consent, Com. Sub. for S. B. 489 was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**H. B. 2953**, Permitting a critical access hospital to become a community outpatient medical center,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 3095**, Establishing a minimum monthly retirement annuity for certain retirants,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2595**, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2595** - "A Bill to amend and reenact §5-10-17 of the Code of West Virginia, 1931, as amended; to amend

and reenact §5-10D-1 of said code; to amend and reenact §7-14D-5 of said code; to amend and reenact §8-22A-6 of said code; to amend and reenact §16-5V-6 of said code; to amend and reenact §20-2B-10 of said code; and to amend said code by adding thereto a new article, designated §20-17-1, §20-17-2, §20-17-3, §20-17-4, §20-17-5, §20-17-6, §20-17-7, §20-17-8, §20-17-9, §20-17-10, §20-17-11, §20-17-12, §20-17-13, §20-17-14, §20-17-15, §20-17-16, §20-17-17, §20-17-18, §20-17-19, §20-17-20, §20-17-21, §20-17-22, §20-17-23, §20-17-24, §20-17-25, §20-17-26, §20-17-27, §20-17-28, §20-17-29, §20-17-30, §20-17-31, §20-17-32, §20-17-33, §20-17-34, §20-17-35 and §20-17-36, all relating to establishing the West Virginia Division of Natural Resources Police Officer Retirement System; increasing certain stamp fees to contribute to the new retirement system; providing for additional members of the Consolidated Public Retirement Board; and providing for criminal offense of defrauding the system and penalties therefor,”

**H. B. 2945**, Relating to vendors paying a single annual fee for a permit issued by a local health department,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2945** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-2-17, relating to temporary food service permits issued by a local or county health departments for selling non-potentially hazardous foods; providing that permits and fees shall be valid for one year; providing a definition of non-potentially hazardous foods; providing that permits and fees shall be valid beyond the boundaries of the county issuing the permit; providing limitations upon an issued permit to assure compliance; providing that vendors must provide notice to local health departments more than 14 days prior to an event; providing that permits must be visibly posted at the event; and requiring the Secretary to review and modernize legislative rules regarding local boards of health fees,”

**H. B. 2976**, Economic Diversification Act of 2019,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2976** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-1-9, relating to creating the Economic Diversification Act of 2019 for the purpose of income tax relief, by state, county, and municipal government, to new or existing businesses whose product or service offered is not currently offered in the state; requiring the Secretary of Commerce to appoint a commission to determine eligibility; providing that commission to be composed of government officials and private citizens; limiting the tax relief to a maximum period of eight years; and providing for rule making authority,”

And,

**H. B. 3021**, Relating to the disposition of permit fees, registration fees and civil penalties imposed against thoroughbred horse racing licensees,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 3021** - “A Bill to amend and reenact §19-23-14 of the Code of West Virginia, 1931, as amended, requiring the payment of all civil penalties imposed against thoroughbred horse racing licensees or permit holders to be paid into a fund for expenses associated with the post-mortem examination of all thoroughbreds that suffer breakdowns and are euthanized on a racetrack or that otherwise expire on a racetrack; requiring that any funds in excess of \$10,000 in such fund at the end of a fiscal year, less outstanding obligations, may be expended by the racing commission to aid in the rescue, retraining, rehabilitation and aftercare of thoroughbred racehorses that are no longer able to compete on the racetracks in this state, and may be expended to aid in the payment of hospitalization, medical care and funeral expenses occasioned by injuries or death sustained by a thoroughbred racing permit holder at a licensed thoroughbred racetrack in this state; authorizing the racing commission to



promulgate rules to govern such expenditures; and requiring the payment of all civil penalties imposed against greyhound racing licensees or permit holders to be paid into a fund to be expended for greyhound adoption programs involving West Virginia whelped dogs owned by residents of this state pursuant to rules promulgated by the racing commission,”

With the recommendation that the committee substitutes each do pass.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2433**, Modifying the school calendar to begin not earlier than Labor Day and end prior to Memorial Day,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2433** - “A Bill to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, all relating to modifying the school calendar; reducing length of instructional term; establishing limits for the beginning and ending date of the instructional term; and adding purposes for which for which non-instructional employment days may be used,”

With the recommendation that the committee substitute do pass.

On motion for leave, a bill was introduced (Originating in the Committee on the Judiciary and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegate Capito:**

**H. B. 3138** - “A Bill to amend and reenact §6-7-2 of the Code of West Virginia, 1931, as amended, relating to increasing the salaries of the attorney general, the auditor, the secretary of state, the commissioner of agriculture and the state treasurer.”

Pursuant to House Rule 80, the Speaker then referred the bill (H. B. 3138) to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2179**, Allowing nonmembers of a political party to request that party's partisan ballot at a primary election,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2179** - "A Bill to amend and reenact §3-1-9 and §3-1-35 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §3-5-14a, all relating to procedures permitting voters who have not registered an affiliation with a particular political party to vote in the primary election for that party under certain circumstances; requiring a determination by political parties and notice to the Secretary of State; specifying which ballots may be provided to voters in primary elections; requiring the posting of notices; specifying the form and preparation of lists of eligible parties; providing for assistance to impaired voters; and prohibiting improper influence by poll workers,"

With the recommendation that the committee substitute do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2670**, Relating to damages for medical monitoring,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2670** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-32, relating to damages for medical monitoring,"

With the recommendation that the committee substitute do pass.

### **Messages from the Executive**

The Speaker laid before the House of Delegates a communication from His Excellency, the Governor, setting forth his disapproval of a bill heretofore passed by both houses, as follows:

STATE OF WEST VIRGINIA  
OFFICE OF THE GOVERNOR  
CHARLESTON

February 11, 2019

#### **Veto Message**

The Honorable Roger Hanshaw  
Speaker, West Virginia House of Delegates  
Room 228M, Building 1  
State Capitol  
Charleston, West Virginia 25305

Re: Enrolled Senate Bill 272

Dear Speaker Hanshaw:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Senate Bill 272. This bill purports to update the composition, powers and procedures of the Commission on Special Investigations. In addition, the bill purports to create misdemeanor offenses for the impersonation and obstruction of Commissions members or staff.

Many state agencies have confidential data that is required to be protected from disclosure, including the WV Department of Health and Human Resources, Workforce WV, and the Office of the West Virginia Tax Commissioner. With regard to West Virginia tax information, West Virginia Code §11-10-5d prohibits

the unauthorized disclosure of tax information, by the tax department, under the penalty of misdemeanor. The Tax Commissioner and/or his staff would be in the untenable position of choosing which offense to violate in misdemeanor; either violate WV tax code by disclosing confidential tax information or violate the Commission on Special Investigations state code that makes obstruction of their request for information a misdemeanor.

The Tax Commissioner and his staff, as well as other state agencies, would be forced to have to litigate over the manner and disclosure of the information in each instance, creating a pointless waste of state resources. I ask that you work with Executive branch agencies to rectify these issues so that state agencies may be able to comply with West Virginia Code to ensure transparency, while protecting the privacy and confidentiality of protected information.

As a result of these issues, I disapprove and return Enrolled Senate Bill 272.

Sincerely,

Jim Justice,  
*Governor.*

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that, upon reconsideration the Senate had amended and again passed, in an effort to meet the objections of the Governor, and requested the concurrence of the House of Delegates in the same, as to

**S. B. 272**, Updating code relating to Commission on Special Investigations.

The House of Delegates proceeded to reconsider the bill and, on motion of Delegate Summers, concurred in the following amendment of the bill by the Senate, in an effort to meet the objections of the Governor:

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

**“ARTICLE 5. COMMISSION ON SPECIAL INVESTIGATIONS.**

**§4-5-1. ~~Commission continued~~ as Commission on Special Investigations continued; composition; appointment and terms of members.**

The ~~purchasing practices and procedures commission, heretofore created, shall continue in existence but on and after the effective date of this section shall be named and designated the~~ Commission on Special Investigations is continued. The commission shall continue to be composed of ~~five~~ the President of the Senate and four members of the Senate, to be appointed by the ~~president thereof~~ President of the Senate, no more than ~~three~~ two of whom shall be from the same political party; and ~~five~~ the Speaker of the House of Delegates and four members of the House of Delegates, to be appointed by the ~~speaker thereof~~ Speaker of the House of Delegates, no more than ~~three~~ two of whom shall be appointed from the same political party: *Provided*, That in the event the membership of a political party is less than 15 percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than 15 percent membership may be one from that house. The commission shall be headed chaired by ~~two co-chairmen, one to be selected by and from the members appointed from the Senate, and one to be selected by and from the members appointed from the House of Delegates~~ the President of the Senate and the Speaker of the House of Delegates. All members of the commission shall appointed to the commission by the commission chairs serve until their successors ~~shall have been~~ are appointed as ~~heretofore provided~~ in this section.

**§4-5-2. Powers and duties generally.**

(a) The Commission on Special Investigations ~~shall have the power, duty and responsibility~~ may, upon a by majority vote: ~~of the members appointed, to~~

(1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;

(2) Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;

(3) Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;

(4) Investigate or examine any matter involving conflicts of interest, bribery of state officials, malfeasance, misfeasance, or nonfeasance in office by any employee or officer of the state;

(5) Conduct comprehensive and detailed investigations to determine if any criminal or civil statutes have been violated at any level of state government;

(6) Determine whether to recommend criminal prosecution or civil action for any violation, either criminal or civil, at any level of state government and, if it is determined that action is necessary, to make appropriate recommendation to the Attorney General, prosecuting attorney, or other authority empowered to act on ~~such~~ the recommendation; and

(7) Make ~~such~~ written reports deemed advisable by the commission to the members of the Legislature between its sessions. ~~thereof as the commission may deem advisable and on~~ On the first day of each regular session of the Legislature, the commission shall make an annual report on its activities to the Legislature containing ~~the commission's findings and recommendations including in such report drafts of~~ for any proposed legislation which it ~~deems~~ considers necessary to carry ~~such~~ the recommendations into effect.

(b) The commission ~~is also expressly empowered and authorized to~~ may also:

(1) Sit during any recess of the Senate and House of Delegates;

(2) Recommend to the judge of any circuit court that a grand jury be convened pursuant to the provisions of §52-2-14 of this code to consider any matter which the commission ~~may deem~~ considers in the public interest and, in support thereof, make available to ~~such the~~ the court and ~~such the~~ the grand jury the contents of any reports, files, transcripts of hearings, or other evidence pertinent ~~thereto~~ to the matter;

(3) Employ ~~such~~ necessary legal, technical, investigative, clerical, stenographic, advisory, and other personnel ~~as it deems needed~~ and, within the appropriation ~~herein~~ specified in §4-5-4 of this code, fix reasonable compensation of ~~such any~~ any persons and firms ~~as may be~~ that are employed. The commission's investigative staff may consist of a director, deputy director, senior investigators, and investigators as approved by the cochairs; Provided, That such personnel as the commission may determine shall have the authority authorize certain employees of the commission to administer oaths and take affidavits and depositions anywhere in the state;

(4) Consult and confer with all public and private persons and agencies organizations, public (whether federal, state or local) and private any entity of federal or state government or of any political subdivision of the state, that have information and data pertinent to an investigation; and all state ~~and local governmental personnel~~ and agencies and state political subdivisions shall cooperate to the fullest extent with the commission;

(5) Call upon any ~~department or agency of state or local government or entity of state government or of any political subdivision of the state~~ for such any services, information, and assistance as it may deem the commission considers advisable; and

(6) Refer ~~such appropriate~~ such appropriate matters ~~as are appropriate~~ to the office of the United States ~~attorney~~ Attorney, or other appropriate state or federal law-enforcement entity, and cooperate with such office in the disposition of matters so referred; and

(7) Interview witnesses and require production from any entity of state government, or of any political subdivision of the state, of

books, records, documents, papers, computers, laptops, computer hard drives, electronic records including, but not limited to, emails, electronic files, electronic documents and metadata, or any other thing, in any form in which it may exist, as the commission believes should be examined to make a complete investigation, except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts: *Provided*, That a request for production pursuant to this subdivision may be in the form of a written letter from the director of the commission in lieu of a subpoena.

(c) Notwithstanding any provision of this code to the contrary, specific personnel may be designated by the commission to carry a firearm in the course of performing his or her official duties: *Provided*, That as a precondition of being authorized to carry a concealed weapon in the course of their official duties, any such designated personnel ~~must have~~ shall first successfully ~~completed~~ complete a firearms training and certification program which is equivalent to that which is required of members of the State Police. ~~The designated persons must~~ A person so designated shall also possess a license to carry a concealed deadly weapon in the manner prescribed in §61-7-1 *et seq.* of this code.

#### **§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.**

~~The commission shall have the power and authority to hold executive sessions~~ may conduct proceedings in a confidential executive session for the purpose of establishing business, establishing policy, ~~an agenda and the interrogation of~~ reviewing investigations, and interrogating a witness or witnesses: *Provided*, That if a witness desires a public or open hearing ~~he shall have the right to demand the same~~ the witness may demand an open hearing and shall not be heard otherwise: *Provided, however*, That if a witness desires a hearing in an executive session, ~~he shall have the right to demand the same~~ the witness may so request and shall not be heard otherwise. However, members of the staff of the commission may be permitted to attend executive sessions ~~with permission of the commission.~~



~~The commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a complete investigation. All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission or its staff may administer oaths or affirmations to such witnesses. To compel the attendance of witnesses at such hearings to attend a hearing or the production of produce any books, records, documents, or papers, or any other tangible thing except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts, the commission is hereby empowered and authorized to~~ may issue subpoenas, signed by one of the ~~co-chairmen in accordance with section five, article one, chapter four of this code~~ cochairs: Provided, That the commission may specifically authorize, or delegate the power to its director to sign subpoenas on its behalf. Such The subpoenas shall be served by any person authorized by law to serve and execute legal process, and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers, or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance: Provided, That prior to seeking circuit court relief, the commission may, in its discretion, first demand the head of the public agency in which an employee has failed to appear or which has failed to produce requested or subpoenaed material to appear before the commission and address the basis for the failure to comply and whether compliance will be forthcoming.

**§4-5-4. Compensation and expenses of members; other expenses; how paid. ~~joint committee approval~~**

The members of the commission shall receive travel, interim, and out-of-state expenses, as authorized in §4-2A-6, ~~and §4-2A-8 and §4-2A-9~~ of this code. Such expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory and other personnel, shall be paid from the appropriation ~~under Account No. 103~~ for Joint Expenses. ~~but no expense of any kind whatever shall be incurred unless the approval of the Joint Committee on Government and Finance therefor is first had and obtained by the commission~~

**§4-5-5. Investigations exempt from public disclosure requirements.**

(a) The investigations conducted by the commission and the materials, in any medium, including hard copy and electronic, placed in the files custody of the commission as a result of any such investigation are exempt from public disclosure under the provisions of chapter 29B of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commission may dispose of printed materials placed in its files upon a vote of the commission: *Provided*, That the commission shall save copies of materials filed on or after January 1, 2010, in electronic form prior to their disposal.

(c) When the commission receives information, in any form, from any office, agency, department, or branch of state or local government that is bound by state or federal law to maintain the confidentiality, privacy, or security of the information, that governmental body shall identify to the commission what information and materials are so protected and identify the law or laws governing the confidentiality, privacy, or security of the information. The commission shall protect the confidentiality, privacy, or security of the protected information in like manner and to the same level as is required of the governmental body providing the information to the commission. When the commission has

completed an investigation and no longer has a need to maintain the confidential or protected information or materials, the commission shall notify the entity from whom the information was received and, unless requested to return the information or materials, shall destroy the same in a secure fashion and notify the entity from whom the information was received of this destruction.

**§4-5-7. Impersonation or obstruction of commission member or staff.**

(a) A person is guilty of impersonating a member or employee of the Commission on Special Investigations when he or she does one of the following:

(1) Falsely represents himself or herself to be a member or employee of the commission;

(2) Falsely represents himself or herself to be acting under the order or direction, or to have the authority, of the commission or its staff; or

(3) Falsely presents a badge, credentials, other insignia or likeness thereof, used by the commission for identification as a member of the commission or its staff.

(b) Any person who, by threats, menaces, or acts, or who forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a Commission on Special Investigations member or employee acting in his or her official capacity, is guilty of obstruction: *Provided*, That failure to produce information or records at the request of a member or employee of the commission is not obstruction when such disclosure is prohibited by state or federal law.

(c) Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500, or confined in jail for not more than one year, or both fined and confined.

**§4-5-8. Award of duty weapon upon retirement; disposal of other weapons used by staff.**

(a) Upon the retirement of a member of the commission's investigative staff, the cochairs of the commission shall award to the retiring employee a duty weapon used by the employee when that employee retires honorably after having served:

(1) At least 20 years of actual service on the commission's investigative staff;

(2) At least 20 years in law enforcement and an additional 10 years of service on the commission's investigative staff; or

(3) Any period of service on the commission's investigative staff and retires due to total physical disability resulting from his or her service to the commission.

(b) The award of the duty weapon shall be without charge to the employee or other condition: *Provided*, That the cochairs shall not award a duty weapon to any retiring employee whom the cochairs find to be mentally incapacitated or to be a danger to any person or to the community.

(c) The commission has the sole authority to determine the manner of disposition of duty weapons of members of the commission's investigative staff when replaced due to age or routine wear. The commission may offer these surplus weapons for sale at fair market value to any active or retired member of the commission's investigative staff who has been designated to carry a firearm in the course of duties with the commission, with the proceeds of any sales to be used to offset the cost of new weapons. Surplus duty weapons may also be included as trade-ins toward the purchase of new weapons."

And,

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

**S. B. 272** - "An Act to amend and reenact §4-5-1, §4-5-2, §4-5-3, §4-5-4, and §4-5-5 of the Code of West Virginia, 1931, as

amended; and to amend said code by adding thereto two new sections, designated §4-5-7 and §4-5-8, all relating to the Commission on Special Investigations; continuing the commission; clarifying composition and chairmanship of the commission and terms of members; redefining what constitutes a quorum for voting procedures of the commission; specifying contents of the commission's annual report; authorizing the employment of staff and the creation of certain staff positions; granting power to conduct interviews and request production from agencies of the state and its political subdivisions of books, records, documents, papers, and tangible things, but exempting items deemed confidential under state or federal law; authorizing the issuance of written requests for production in lieu of subpoenas; authorizing the director to issue subpoenas on the commission's behalf; authorizing the commission to require an agency head to appear before the commission to answer for an agency's failure to appear or produce requested or subpoenaed material or other failure to comply with a commission investigation; providing for executive session and confidentiality rights of witnesses; updating exemption of investigative materials from public disclosure; removing requirement for pre-approval of expenses of the commission by the Joint Committee on Government and Finance; requiring that protected information provided to the commission be kept confidential, private, and secure in the same manner required of the government entity from which the information was received; providing procedures and requirements for the commission's retention and disposal of records; establishing new offenses of impersonating a commission member or staff member and of threatening or otherwise obstructing a commission member or staff; establishing criminal penalties; allowing the commission to award duty weapons to certain members on retirement; exempting the commission from the jurisdiction of the agency for surplus property within the Purchasing Division of the Department of Administration with respect to the disposal of the commission's primary and secondary duty weapons; authorizing sale of surplus weapons to active and retired members of the commission's investigative staff; and updating language and terms for clarity throughout."

The question now being, “Shall the bill pass, in an effort to meet the objections of the Governor?”, the yeas and nays were taken (**Roll No. 245**), and there were—yeas 92, nays 2, absent and not voting 6, with the yeas, nays and absent and not voting being as follows:

Yeas: Anderson, Angelucci, Atkinson, Barrett, Bates, Bibby, N. Brown, S. Brown, Butler, Cadle, Campbell, Canestraro, Capito, Caputo, Cooper, Cowles, Criss, Dean, Diserio, Doyle, Ellington, Espinosa, Estep-Burton, Evans, Fast, Fleischauer, Foster, Groves, Hamrick, Hanna, Hansen, Hardy, Harshbarger, Hartman, Hicks, Higginbotham, Hill, Hollen, Hornbuckle, Hott, Householder, Howell, D. Jeffries, J. Jeffries, D. Kelly, J. Kelly, Kessinger, Kump, Lavender-Bowe, Linville, Longstreth, Lovejoy, Malcolm, Mandt, C. Martin, P. Martin, Maynard, Miley, Miller, Nelson, Pack, Paynter, Pethtel, Phillips, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rohrbach, Rowan, Rowe, Shott, Skaff, Sponaule, Steele, Storch, Summers, Swartzmiller, Sypolt, C. Thompson, R. Thompson, Tomblin, Toney, Walker, Waxman, Westsfall, Williams, Wilson, Worrell, Zukoff and Hanshaw (Mr. Speaker)

Nays: Fluharty and McGeehan

Absent and Not Voting: Azinger, Boggs, Byrd, Jennings, Porterfield and Stagers.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 272) passed, as a result of the objections of the Governor.

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

On this question, the yeas and nays were taken (**Roll No. 246**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Byrd, Jennings, Porterfield and Stagers.

So, a two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 272) takes effect from its passage.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2324**, Authorizing the acupuncture board to issue certificates to perform auricular acudetox therapy.

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

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

**“ARTICLE 36. ACUPUNCTURISTS.**

**§30-36-2. Definitions.**

(a) Unless the context in which used clearly requires a different meaning, as used in this article:

(1) ‘Acupuncture’ means a form of health care, based on a theory of energetic physiology, that describes the interrelationship of the body organs or functions with an associated point or combination of points.

(2) ‘Auricular acudetox’ means auricular detoxification therapy, as approved by the board or as stipulated by the National Acupuncture Detoxification Association (NADA) for the treatment of substance abuse, alcoholism, chemical dependency, detoxification, behavioral therapy, or trauma recovery.

~~(2)~~ (3) ‘Board’ means the West Virginia Acupuncture Board.

(4) 'Certificate holder' means an authorization issued by the board to persons trained in auricular acudetox who meet the qualifications, established pursuant to this article and by board rules, to be certified as an auricular detoxification specialist (ADS).

~~(3)~~ (5) 'License' means a license issued by the board to practice acupuncture.

~~(4)~~ (6) 'Moxibustion' means the burning of mugwort on or near the skin to stimulate the acupuncture point.

(7) 'NADA' means the National Acupuncture Detoxification Association.

(8) 'NADA protocol' means the National Acupuncture Detoxification Association protocol for auricular detoxification therapy.

~~(5)~~ (9) 'Practice acupuncture' means the use of oriental medical therapies for the purpose of normalizing energetic physiological functions including pain control, and for the promotion, maintenance, and restoration of health.

(b) (1) 'Practice acupuncture' includes:

(A) Stimulation of points of the body by the insertion of acupuncture needles;

(B) The application of moxibustion; and

(C) Manual, mechanical, thermal, or electrical therapies only when performed in accordance with the principles of oriental acupuncture medical theories.

~~(2) The practice of acupuncture does not include the procedure of auricular acupuncture when used in the context of a chemical dependency treatment program when the person is trained and approved by the National Acupuncture Detoxification Association or an equivalent certifying body.~~



**§30-36-7. Rule-making authority; miscellaneous powers and duties.**

(a) The board may propose for promulgation legislative rules to carry out the provisions of this article in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(b) The board may adopt a code of ethics for licensure.

(c) In addition to the powers set forth elsewhere in this article, the board shall keep:

(1) Records and minutes necessary for the orderly conduct of business; and

(2) A list of each currently licensed acupuncturist.

(d) The board may propose emergency legislative rules upon the effective date of the reenactment of this article during the 2019 regular session of the Legislature to effectuate the provisions necessary to issue certificates to persons trained in auricular acudetox, and to establish fees for certificate holders pursuant to this article.

**§30-36-9. License or certificate required; exemptions.**

(a) Except as otherwise provided in this article, an individual shall be licensed or certified by the board before he or she may practice acupuncture or auricular acudetox in this state.

(b) This section does not apply to:

(1) An individual employed by the federal government as an acupuncturist while practicing within the scope of that employment; or

(2) A student, trainee, or visiting teacher who is designated as a student, trainee, or visiting teacher while participating in a course of study or training under the supervision of a licensed acupuncturist in a program that is approved by the board or the State Board of Education.

**§30-36-10. Qualifications of applicants for licensure; and qualifications for certificate holders.**

(a) To qualify for a license, an applicant shall:

~~(a)~~ (1) Be of good moral character;

~~(b)~~ (2) Be at least 18 years of age;

~~(c)~~ (3) Demonstrate competence in performing acupuncture by meeting one of the following standards for education, training, or demonstrated experience:

~~(1)~~ (A) Graduation from a course of training of at least 1,800 hours, including 300 clinical hours, that is:

~~(A)~~ (i) Approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine; or

~~(B)~~ (ii) Found by the board to be equivalent to a course approved by the national accreditation commission for schools and colleges of acupuncture and oriental medicine;

~~(2)~~ (B) Achievement of a passing score on an examination that is:

~~(A)~~ (i) Given by the national commission for the certification of acupuncturists; or

~~(B)~~ (ii) Determined by the board to be equivalent to the examination given by the national commission for the certification of acupuncturists;

~~(3)~~ (C) Successful completion of an apprenticeship consisting of at least 2,700 hours within a five-year period under the direction of an individual properly approved by that jurisdiction to perform acupuncture; or

(4) (D) Performance of the practice of acupuncture in accordance with the law of another jurisdiction or jurisdictions for a period of at least three years within the five years immediately

prior to application that consisted of at least 500 patient visits per year; and

~~(d)~~ (4) Achievement of any other qualifications that the board establishes in rules.

(b) Notwithstanding any other provisions of this code to the contrary, to qualify for a certificate as an auricular detoxification specialist, an applicant shall:

(1) Be at least 18 years old;

(2) Be authorized in this state to engage in any of the following:

(A) Physician assistant, pursuant to §30-3E-1 *et seq.* of this code;

(B) Dentist, pursuant to §30-4-1 *et seq.* of this code;

(C) Registered professional nurse, pursuant to §30-7-1 *et seq.* of this code;

(D) Practical nurse, pursuant to §30-7A-1 *et seq.* of this code;

(E) Psychologist, pursuant to §30-21-1 *et seq.* of this code;

(F) Occupational therapist, pursuant to §30-28-1 *et seq.* of this code;

(G) Social worker, pursuant to §30-30-1 *et seq.* of this code;

(H) Professional counselor, pursuant to §30-31-1 *et seq.* of this code;

(I) Emergency medical services provider, pursuant to §16-4C-1 *et seq.* of this code; or

(J) Corrections medical providers, pursuant to §15A-1-1 *et seq.* of this code.

(3) Provide evidence of successful completion of a board-approved auricular acudetox program;

(4) Submit a completed application as prescribed by the board; and

(5) Submit the appropriate fees as provided for by legislative rule.

(c) A certificate may be issued to a retired or inactive professional as described in §30-36-10(b) of this code: *Provided*, That the professional meets the qualifications for a certificate holder and the last three years of professional activity were performed in good standing: *Provided, however*, That a person who holds a certificate or its equivalent in another jurisdiction as an auricular detoxification specialist may be approved by the board to practice auricular acudetox during a public health emergency or state of emergency for a duration to be provided for in legislative rules of the board.

**§30-36-14. Term and renewal of licenses and certificates; restrictions; and advertisements.**

(a) Terms of license and certificate:

(1) The board shall provide for the term and renewal of licenses and certificates under this section;

(2) The term of a license or certificate may not be more than three years;

(3) A license or a certificate expires at the end of its term, unless the license or certificate is renewed for a term as provided by the board.

(b) Renewal notice. At least one month before the license or certificate expires, the board shall send to the licensee or certificate holder, by first-class mail to the last known address of the licensee, a renewal notice that states:

(1) The date on which the current license or certificate expires;

(2) The date by which the renewal application must be received by the board for the renewal to be issued and mailed before the license or certificate expires; and

(3) The amount of the renewal fee.

(c) Applications for renewal. Before the license or certificate expires, the licensee or certificate holder periodically may renew it for an additional term, if the licensee or certificate holder:

(1) Otherwise is entitled to be licensed or certified;

(2) Pays to the board a renewal fee set by the board; and

(3) Submits to the board:

(A) A renewal application on the form that the board requires; and

(B) Satisfactory evidence of compliance with any continuing education requirements set under this section for license or certificate renewal.

(d) In addition to any other qualifications and requirements established by the board, the board may establish continuing education requirements as a condition to the renewal of licenses and certificates under this section.

(e) The board shall renew the license of and issue a renewal certificate to each licensee and certificate holder who meets the requirements of this section.

(f) A licensee may advertise only as permitted by rules adopted by the board.

(g) A certificate holder recognized as an auricular detoxification specialist is prohibited from needling any acupuncture body points beyond the scope of auricular acudetox, and may not advertise themselves as an acupuncturist: Provided, That nothing contained in this section prohibits a person from practicing within his or her scope of practice as authorized by law.

**§30-36-17. Surrender of license by licensee or certificate by certificate holder.**

(a) Unless the board agrees to accept the surrender of a license or certificate, a licensee or certificate holder may not surrender the

license or certificate nor may the license or certificate lapse by operation of law while the licensee or certificate holder is under investigation or while charges are pending against the licensee or certificate holder.

(b) The board may set conditions on its agreement with the licensee or certificate holder under investigation or against whom charges are pending to accept surrender of the license or certificate.

**§30-36-18. Reprimands, probations, suspensions and revocations; grounds.**

The board, on the affirmative vote of a majority of its full authorized membership, may reprimand any licensee or certificate holder, place any licensee or certificate holder on probation, or suspend or revoke a license or certificate if the licensee or certificate holder:

(a) (1) Fraudulently or deceptively obtains or attempts to obtain a license or certificate for the applicant or licensee or certificate holder or for another;

(b) (2) Fraudulently or deceptively:

(1) (A) Uses a license or certificate; or

(2) (B) Solicits or advertises.

(c) (3) Is guilty of immoral or unprofessional conduct in the practice of acupuncture or auricular acudetox;

(d) (4) Is professionally, physically, or mentally incompetent;

(e) (5) Provides professional services while:

(1) (A) Under the influence of alcohol; or

(2) (B) Using any narcotic or controlled substance, as defined in §60A-1-101 of this code, or other drug that is in excess of therapeutic amounts or without a valid medical indication;

~~(f)~~ (6) Knowingly violates any provision of this article or any rule of the board adopted under this article;

~~(g)~~ (7) Is convicted of or pleads guilty or nolo contendere to a felony or to a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

~~(h)~~ (8) Practices acupuncture or auricular detoxification therapy with an unauthorized person or assists an unauthorized person in the practice of acupuncture or auricular detoxification therapy;

~~(i)~~ (9) Is disciplined by the licensing or disciplinary authority of this state or any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;

~~(j)~~ (10) Willfully makes or files a false report or record in the practice of acupuncture or auricular detoxification therapy;

~~(k)~~ (11) Willfully fails to file or record any report as required by law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;

~~(l)~~ (12) Submits a false statement to collect a fee; or

~~(m)~~ (13) Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the person is licensed and qualified to render because the individual is HIV positive, in conformity with standards established for treatment by physicians, dentists and other licensed health care professionals in cases of this nature.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 247**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Byrd, Jennings, Porterfield and Stagers.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2324) passed.

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

A message from the Senate, by

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

**H. B. 2666**, Supplemental appropriation to the Department of Veterans' Assistance.

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

On page two, line thirteen, before the word "Veterans", by striking out the "6" and inserting in lieu thereof "7".

And,

On page two, line fourteen, before the word "Veterans" by striking out "9" and inserting in lieu thereof "12".

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 248**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Byrd, Jennings, Porterfield and Stagers.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2666) passed.



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

On this question, the yeas and nays were taken (**Roll No. 249**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Byrd, Jennings, Porterfield and Staggers.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2666) takes effect from its passage.

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

A message from the Senate, by

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

**H. B. 2668**, Supplemental appropriation to the Department of Administration, Public Defender Services.

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

On page one, line thirteen, before the word “Appointed”, by striking out “5” and inserting in lieu thereof “6”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 250**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Byrd, Jennings, Porterfield and Staggers.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2668) passed.

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

On this question, the yeas and nays were taken (**Roll No. 251**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Byrd, Jennings, Porterfield and Stagers.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2668) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 340** - “A Bill to repeal §33-20E-1, §33-20E-2, §33-20E-3, §33-20E-4, §33-20E-5, §33-20E-6, §33-20E-7, §33-20E-8, §33-20E-9, §33-20E-10, §33-20E-11, §33-20E-12, §33-20E-13, §33-20E-14, §33-20E-15, §33-20E-16, §33-20E-17, §33-20E-18, §33-20E-19, §33-20E-20, and §33-20E-21 of the Code of West Virginia, 1931, as amended; and to repeal §33-20F-1, §33-20F-1a, §33-20F-2, §33-20F-3, §33-20F-4, §33-20F-5, §33-20F-7, §33-20F-8, §33-20F-9, §33-20F-10, §33-20F-11, and §33-20F-12 of said code, relating to obsolete provisions for the initial formation and operation of the West Virginia Medical Professional Liability Insurance Joint Underwriting Association and the West Virginia Physicians’ Mutual Insurance Company”; which was referred to the Committee on Banking and Insurance then the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 344** - “A Bill to repeal §19-12A-3, §19-12A-4, and §19-12A-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-12A-1, §19-12A-2, §19-12A-5, §19-12A-6, §19-12A-6a, and §19-12A-8, all relating to the operation of state-owned farms; clarifying that state-owned farms are managed by the Commissioner of the Department of Agriculture; removing reference to Farm Management Commission; defining the term ‘commissioner’; removing language regarding organization and duties of Farm Management Commission; removing language regarding prior transfer of institutional land to the Farm Management Commission; replace outdated language referencing the Department of Health and Human Resources and Division of Corrections and Rehabilitation; providing that state institutions may purchase items from vendors that state-owned farms cannot directly produce; and removing references to farm management director and replacing with commissioner”; which was referred to the Committee on Agriculture and Natural Resources then Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 402** - “A Bill to amend and reenact §19-1A-3b of the Code of West Virginia, 1931, as amended, relating to authorizing the Division of Forestry to investigate and enforce timber theft violations on all lands”; which was referred to the Committee on Agriculture and Natural Resources then Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 510** - “A Bill to amend and reenact §55-7B-6 of the Code of West Virginia, 1931, as amended, relating to medical professional liability; setting out requirements for an expert who signs a certificate of merit; allowing for admissibility of certificate of merit in actions against health care providers; and allowing testimony in a judicial proceeding or by deposition upon issuing a certificate of merit”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 635** - “A Bill to amend and reenact §5B-2A-5, §5B-2A-6, §5B-2A-8, §5B-2A-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-3-14 of said code; to amend and reenact §22-11-10 of said code; to amend and reenact §22-30-3 and §22-30-24 of said code; to amend and reenact §22A-1-21 and §22A-1-35 of said code; to amend and reenact §22A-1A-1 and §22A-1A-2 of said code; to amend and reenact §22A-2-2, §22A-2-12, and §22A-2-13 of said code; to amend said code by adding thereto a new section, designated, §22A-2-80; to amend and reenact §22A-2A-405 of said code; to amend and reenact §22A-8-5 of said code; and to amend said code by adding thereto a new article, designated §22A-13-1, §22A-13-2, §22A-13-3, §22A-13-4, §22A-13-5, and §22A-13-6, all relating generally to coal mining activities; eliminating the requirement for submission of the community impact statement; requiring review of new mining activity for submission to the Office of Coalfield Community Development; eliminating requirements for submission of certain additional information; requiring the submission of certain information related to land and infrastructure needs upon request of the Office of Coalfield Community Development; requiring and authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to mine subsidence protection for dwelling owners; authorizing the Secretary of the Department of Environmental Protection to promulgate rules for permit modification and renewal fees for surface mining operations

pursuant to the Water Pollution Control Act; authorizing the Secretary of the Department of Environmental Protection to promulgate rules relating to exemptions pursuant to the Aboveground Storage Tank Act; requiring a miner who was issued an assessment to either pay the fine or appeal a violation within 30 days; requiring the Office of Miners' Health, Safety, and Training Mine Rescue Team be provided to a coal operation where the operation has no mine rescue team available within one hour's drive; permitting employers to drug test an employee involved in an accident that results in physical injuries or damage to equipment or property; requiring miners testing positive for drug use to undergo a mandatory minimum six-month suspension; eliminating timing requirements for submission of a detailed mine ventilation plan to the Director of the Office of Miners' Health, Safety, and Training; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate emergency rules for establishing a course of instruction for apprentice miners; requiring apprentice miners to work 90 days in a mine within sight and sound of a mine foreman or assistant foreman; permitting the Director of the Office of Miners' Health, Safety, and Training to decertify miners who fail to perform daily examinations; allowing the Director of the Office of Miners' Health, Safety, and Training to use the employer's tracking data of the designated daily examiner; authorizing the Director of the Office of Miners' Health, Safety, and Training to promulgate rules generally; amending standards for controlling and monitoring exhaust gases for diesel-powered underground coal mining equipment; allowing certified competent miners to supervise up to two apprentice miners; and establishing the Mine Trespass Act"; which was referred to the Committee on Energy.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 35** - “Designating days for the display of the Honor and Remember Flag at the West Virginia Veterans Memorial at the West Virginia State Capitol.”

Whereas, The Legislature previously approved HCR 94 in the 2011 Regular Session of the Legislature supporting the Honor and Remember Flag as an official emblem of the service and sacrifice by the brave men and women of the United States armed forces who have given their lives in the line of duty; and

Whereas, The Legislature also approved HCR 91 in the 2015 Regular Session of the Legislature designating days on which the Honor and Remember Flag may be displayed, which are: Armed Forces Day, the third Saturday in May; Memorial Day, the last Monday in May; Flag Day, June 14; Independence Day, July 4; National POW/MIA Recognition Day; and Veterans Day, November 11; and

Whereas, In order to fully recognize the ultimate sacrifice of those service members who the Honor and Remember Flag sets out to honor, the State of West Virginia should additionally adopt that in the case of display at the West Virginia Veterans Memorial at the West Virginia State Capitol, the Honor and Remember Flag should be displayed any day on which the flag of the United States is displayed; therefore, be it

*Resolved by the Legislature of West Virginia:*

That this Legislature designates days for the display of the Honor and Remember Flag at the West Virginia Veterans Memorial at the West Virginia State Capitol; and, be it

*Further Resolved*, That in the case of display at the West Virginia Veterans Memorial at the West Virginia State Capitol, the Honor and Remember Flag should be displayed any day on which the flag of the United States is displayed; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Director of the General Services Division.

### **Leaves of Absence**

At the request of Delegate Summers, and by unanimous consent, leave of absence for the day was granted Delegate Boggs.

### **Miscellaneous Business**

Pursuant to House Rule 132, consent was requested and obtained to print the remarks of Delegate Sypolt regarding the donation to benefit foster children in the Appendix to the Journal.

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be added as a cosponsor of the following:

- Delegates Cowles, Fast, Hardy, Kessinger and Waxman for H. B. 2049
- Delegate Hansen for H. B. 2863
- Delegate Hill for H. B. 2953

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be removed as a cosponsor of the following:

- Delegate Cadle for H. B. 2974

At 6:23 p.m., the House of Delegates adjourned until 11:00 a.m., Friday, February 22, 2019.





---

Friday, February 22, 2019

**FORTY-FIFTH DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Thursday, February 21, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Committee Reports**

Delegate Summers asked and obtained unanimous consent that all bills on committee reports, with the exception of H. B. 2519, be taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, a bill was introduced (Originating in the Committee on the Judiciary and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Shott, Byrd, Fast, D. Kelly and Miller:**

**H. B. 3141** - "A Bill to amend and reenact §4-8-4 of the Code of West Virginia, 1931, as amended, relating to expanding areas of the capitol complex requiring capitol building commission authorization for certain renovations."

In accordance with the consent previously granted, the bill (H. B. 3141) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 408**, Determining indigency for public defender services,

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

In accordance with the consent previously granted, the bill (Com. Sub. for S. B. 408) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2378**, Relating generally to grounds for revocation of a teaching certificate,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2378** - "A Bill to amend and reenact §18A-3-6 of the Code of West Virginia, 1931, as amended, relating generally to grounds for revocation of a teaching certificate; and providing that a teaching certificate or license shall be automatically revoked if a teacher is convicted of certain crimes,"

And,

**H. B. 2866**, Relating to the termination, expiration, or cancellation of oil or natural gas leases,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2866** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-9b, relating to the termination, expiration, or cancellation of oil or natural gas leases; providing a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or canceled oil or natural gas leases; providing for a procedure by

which a lessor may serve notice to a lessee, if a lessee fails to timely provide the release; providing requirements for the content of the notice; requiring a lessee to timely notify the lessor in writing of a dispute regarding the termination, expiration, or cancellation of the oil and natural gas lease; providing for an affidavit of termination, expiration, or cancellation with specified contents; providing that with proper notification by the lessor and in the absence of a dispute by the lessee, an affidavit of termination, expiration, or cancellation may be recorded with the county clerk; providing a requirement that county clerks accept and record said affidavit; and providing that communications between the parties do not affect any claim or defense,”

With the recommendation that the committee substitutes each do pass.

In accordance with the consent previously granted, the bills (Com. Sub. for H. B. 2378 and Com. Sub. for H. B. 2866) were taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2049**, Relating to a prime contractor’s responsibility for wages and benefits,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2049** - “A Bill to amend and reenact §21-5-7 and §38-2-6 of the Code of West Virginia, 1931, as amended, relating to a prime contractor’s responsibility for wages and benefits of employees of a subcontractor,”

**H. B. 2662**, Relating to certificates or employment of school personnel,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2662** – “A Bill to amend and reenact §18A-2-5 and §18A-4-8e of the Code of West Virginia, a1931, as amended, all relating to certificates or employment of school personnel; providing that a service personnel contract of employment is automatically terminated if the employee is convicted of certain crimes; and providing that a bus operator certificate is automatically revoked if the bus driver is convicted of certain crimes.”

And,

**H. B. 2943**, Relating to deliveries by wine specialty shop,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2943** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60-8-6b, relating to allowing a wine specialty shop to deliver wine purchased at the shop without obtaining a direct shippers license under certain circumstances,”

With the recommendation that the committee substitutes each do pass.

In accordance with the consent previously granted, the bills (Com. Sub. for H. B. 2049, Com. Sub. for H. B. 2662 and Com. Sub. for H. B. 2943) were taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 22<sup>nd</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for H. B. 2481**, Permitting retail sale of alcoholic beverages on Sundays after 1 p.m.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 22<sup>nd</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**H. B. 2492**, Relating to mandatory reporting procedures of abuse and neglect of adults and children.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 22<sup>nd</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**H. B. 2459**, Exercising authority to exempt individuals domiciled within the state from certain restrictions contained in federal law.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2831**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2831** - "A Bill finding and declaring certain claims against the state and its agencies to be moral

obligations of the state; and directing the Auditor to issue warrants for the payment thereof,”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2831) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2665**, Supplemental appropriation for PEIA Rainy Day Fee,

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

In accordance with the consent previously granted, the bill (H. B. 2665) was taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Cowles, Hartman, Hardy, Espinosa, Ellington, Rowan, Pethel and Anderson:**

**H. B. 3140** - “A Bill to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended, and to amend and reenact §20-5-4 of said code, all related to the ability of the Director of the Division of Natural Resources to authorize repair, renovation and rehabilitation for existing facilities, buildings, amenities, and infrastructure and exempting these certain Division of Natural Resources contracts from review and approval of the Division of Purchasing; and adding state forests to the definition of recreational facilities.”

In accordance with the consent previously granted, the bill (H. B. 3140) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2396**, West Virginia Fresh Food Act,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2396** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-37-1, relating to requiring all state-funded institutions to purchase a minimum of five percent of fresh produce, meat and poultry products from in-state producers if available at equal or lower cost,"

**H. B. 2519**, The Campus Self Defense Act,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2519** - "A Bill to amend and reenact §18B-1-3 and §18B-1-6 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1B-4 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-2B-6 of said code; and to amend said code by adding thereto a new section, designated §18B-4-5b, all relating to regulation or restriction of the carrying of a concealed pistol or revolver by a person who holds a current license to carry a concealed deadly weapon; authorizing regulation or restriction on the carrying of concealed pistols or revolvers in certain circumstances or areas of an institution of higher education; eliminating authority of the Higher Education Policy Commission, the Council for Community and Technical College Education and the institutional boards of governors to restrict or regulate the carrying of concealed pistols or revolvers in certain circumstances or areas of an institution of

higher education; and designating these amendments as ‘The Campus Self Defense Act’,”

And,

**H. B. 3016**, Relating to the State Aeronautics Commission,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 3016** - “A Bill to repeal §29-2A-9, §29-2A-17, §29-2A-18, §29-2A-19, §29-2A-21, §29-2A-22, §29-2A-23, §29-2A-24, §29-2A-25, §29-2A-26, §29-2A-27 and §29-2A-28 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-2A-1, §29-2A-2, §29-2A-3, §29-2A-4, §29-2A-5, §29-2A-6, §29-2A-7, §29-2A-11, §29-2A-14 and §29-2A-20 of said code, all relating to the State Aeronautics Commission; repealing provisions relating to state airways systems, investigations, inquiries and hearings, disposition of fees, joint hearings, cooperation with and reports to agencies of state the United States, the use of state and municipal facilities and services, commission orders, notices and opportunity for hearings, judicial review of commission actions, criminal penalties and exchange of information for violations of provisions of article, severability, repeal of inconsistent provisions, and short title; removing antiquated and inoperable provisions modifying and deleting definitions; continuing the State Aeronautics Commission; modifying and updating membership requirements, powers, and duties of the commission; setting forth quorum and meeting requirements; providing for the organization and operation of the commission; modifying provisions related to the director of the commission; updating provisions related to funding and federal aid; continuing general powers related to planning, establishing, constructing, maintaining, and operating of airports; removing requirement for delivery of abstract of conviction to commission; and clarifying authority to require presentment of certificate, permit, rating or license and to enforce aeronautics laws,”

With the recommendation that the committee substitutes each do pass.



In accordance with the consent previously granted, the bills (Com. Sub. for H. B. 2396 and Com. Sub. for H. B. 3016) were taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Criss, Ellington, Hartman, Bates and Barrett:**

**H. B. 3139** - “A Bill to amend and reenact §5-16-25 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-16-27; to amend said code by adding thereto a new section, designated §11B-2-15a, all relating generally to funding of Public Employees Health Insurance Program; requiring the finance board to maintain a reserve fund at actuarily recommended amounts of at least 10 percent of plan costs; removing requirement to transfer moneys resulting from plan savings into reserve fund; removing requirement that excess funds be transferred to West Virginia Retiree Health Benefit Trust Fund; establishing PEIA Rainy Day Fee and providing for its assessment and collection in current fiscal year of the state; establishing PEIA Rainy Day Fund as special, nonexpiring, interest-bearing revenue account in the State Treasury to be funded by Rainy Day Fee assessments; authorizing the Secretary of Revenue to assess and collect fee and give special revenue agencies additional time to pay fee when undue hardship exists; providing for the administration of the fund, including investment of funds, transfer of funds, and purposes for which the fund can be used; and authorizing the promulgation of emergency and legislative rules.”

In accordance with the consent previously granted, the bill (H. B. 3139) was taken up for immediate consideration, read a first time and ordered to second reading.

### **Resolutions Introduced**

Delegate Linville offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 77** - "Requesting the Division of Highways to name bridge number 17-79-119.96 (17A318), locally known as Lodgeville I-79 Bridge, carrying IS 79 over CR 50/16, 50/25 and Railroad in Harrison county, the 'U.S.A.F. Lt Col Frederick Donald Belknap Memorial Bridge'."

Whereas, Frederick Donald Belknap was born July 31, 1929, on a farm on Little Termite Creek, two miles west of Wallace, in Harrison County, West Virginia. His parents were Dewey and Thelma Belknap. He graduated from Wallace High School in 1948 and attended West Virginia University from 1948 – 1953, where he worked as a waiter in Terrace Hall, a women's residence hall, to earn his meals; and

Whereas, Upon graduation from West Virginia University with a Bachelor's Degree in Education, Frederick Donald Belknap was commissioned a second lieutenant in the United States Air Force, having participated in reserve officer training while at the University; and

Whereas, Frederick Donald Belknap married Hester "Hedy" Ogden also of Wallace, West Virginia, on September 10, 1951. The couple had four children; and

Whereas, Frederick Donald Belknap enjoyed a nearly 25-year long career in the Air Force, being trained as a navigator, graduating first in his class, later rated Master Navigator, and rising to the rank of Lieutenant Colonel; and

Whereas, During his career Lt Col Belknap flew in missions worldwide in C124 "GlobeMaster" aircraft, participating in troop carrier and cargo missions to Germany and the rest of Europe. In 1957 he was involved in airlifting U. S. Marines to Lebanon on orders of President Dwight D. Eisenhower, and carried out other missions in Greece, Egypt, Jordan, Libya and Morocco. In 1959, Colonel Belknap was trained as a missile launch officer and served as a Nuclear Missile Launch Officer in Germany from 1961 to 1964. Following various assignments stateside, Colonel Belknap was assigned to Saigon, Vietnam, in 1970 where he served as

psychological warfare officer with the Joint United States Public Affairs Office until June, 1974; and

Whereas, Upon returning from Vietnam, Colonel Belknap was assigned to Langley Air Force Base in Hampton, Virginia, from where he flew missions in Southeast Asia. At the time of his retirement in 1977, Colonel Belknap had flown thousands of miles in C124, C119, and C130 aircraft, including combat missions, and had been awarded a Bronze Star; and

Whereas, After his Air Force career, Colonel Belknap and his wife returned to Harrison County where he served as personnel coordinator for District 4 of the West Virginia Department of Highways from 1978 to 1989. He was a member of the West Milford Lions Club and VFW, and served as a leader for his grandson's Boy Scout Troop and was inducted into the Order of the Arrow. He enjoyed hunting, fishing, gardening, camping, gathering with old friends from all over, and attending Mountaineer football games. Colonel Belknap died February 23, 2017, at the age of 87, having lived a life of service to his country, his community and his family; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 17-79-119.96 (17A318), locally known as Lodgeville I-79 Bridge, carrying IS 79 over CR 50/16, 50/25 and Railroad in Harrison county, the "U.S.A.F. Lt Col Frederick Donald Belknap Memorial Bridge"; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the "U.S.A.F. Lt. Col. Frederick Donald Belknap Memorial Bridge"; and, be it

*Further Resolved,* That the Clerk forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates Robinson, Estep-Burton and Rowe offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 78** - “Requesting the Division of Highways name bridge number 20-61/7-0.56 (20A185), locally known as Pratt Pony Truss, carrying County Route 61/7 over Paint Creek in Kanawha County, the ‘U. S. Air Force Amn Kenneth Wayne Hammar Memorial Bridge’.”

Whereas, Kenneth Wayne Hammar was born on July 12, 1967, to John W. Hammar, Jr. and Linda Ramsey Hammar. He spent the beginning of his life living with his mother and paternal grandparents John W Hammar and Mary Ellen Hammar in Pratt, West Virginia while his father worked out-of-state. His family later moved to Handley, West Virginia. He was christened at the Church of the Good Shepard in Hansford, West Virginia, where he later served as an acolyte. As a child, he enjoyed taking long walks with his grandmother across the bridge from Pratt to Hansford to visit family and friends. He attended Pratt Elementary School, East Bank Middle School and East Bank High School, where he was a boxing champion; and

Whereas, Kenneth Wayne Hammar joined the United States Air Force in 1985. He was deployed to Turkey in 1986 and suffered a tragic accident that cost him his life; and

Whereas, It is fitting that an enduring memorial be established to commemorate U. S. Air Force Amn Kenneth Wayne Hammar and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name bridge number 20-61/7-0.56 (20A185), locally known as Pratt Pony Truss, carrying County Route 61/7 over Paint Creek in Kanawha County, the “U. S. Air Force Amn Kenneth Wayne Hammar Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the “U. S. Air

Force Amn Kenneth Wayne Hammar Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk forward a copy of this resolution to the Commissioner of the Division of Highways.

### **Motions**

Delegate McGeehan was recognized and moved, pursuant to House Rule 82, that H. B. 2732 be discharged from the Committee on the Judiciary.

Delegate Summers moved that the motion be tabled.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 252**), and there were—yeas 49, nays 47, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Angelucci, Azinger, Bates, Bibby, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, J. Jeffries, Kump, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rowe, Skaff, Sponaule, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams, Wilson and Zukoff.

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the motion to discharge was laid upon the table.

### **Special Calendar**

#### **Unfinished Business**

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk and adopted:

**H. R. 5**, Honoring U. S. Army SPC4 Carmel Harvey Jr., Medal of Honor recipient,

**H. C. R. 13**, Chief Robert Edward Dorsey Memorial Highway,

**Com. Sub. for H. C. R. 32**, Requesting the Secretary of the Department of Transportation to authorize raising highway speed limits, where appropriate, to 75 miles per hour on Interstate highways in West Virginia and to 70 miles per hour on West Virginia's Appalachian Corridor highways,

And,

**H. C. R. 48**, Urging the Commissioner of the Bureau for Public Health to designate Alzheimer's disease and other dementias as a public health issue.

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

### **Third Reading**

**Com. Sub. for S. B. 13**, Relating to distributions from State Excess Lottery Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 253**), and there were—yeas 86, nays 10, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Butler, Cadle, Kump, C. Martin, P. Martin, Pack, Porterfield, Robinson, Toney and Worrell.

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 13) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**Com. Sub. for S. B. 13** - “A Bill to amend and reenact §29-22-18a of the Code of West Virginia, 1931, as amended, relating to distributions from the State Excess Lottery Revenue Fund to racetrack purse funds.”

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

**S. B. 442**, Supplementing, amending, and decreasing appropriation to Insurance Commission; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 254**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 442) passed.

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

On this question, the yeas and nays were taken (**Roll No. 255**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 442) takes effect from its passage.

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

**S. B. 443**, Supplemental appropriation of federal moneys to DHHR divisions; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 256**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 443) passed.

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

On this question, the yeas and nays were taken (**Roll No. 257**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 443) takes effect from its passage.

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

**S. B. 444**, Supplemental appropriation to DHHR divisions; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 258**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:



Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 444) passed.

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

On this question, the yeas and nays were taken (**Roll No. 259**), and there were—yeas 95, nays 1, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Howell.

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 444) takes effect from its passage.

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

**Com. Sub. for H. B. 2532**, Allowing certain donations by persons renewing their driver's license or vehicle registration; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 260**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2532) passed.

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

**Com. Sub. for H. B. 2540**, Prohibiting the waste of game animals, game birds or game fish; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 261**), and there were—yeas 79, nays 17, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Bibby, S. Brown, Butler, Fast, Fluharty, Hansen, Hicks, Howell, D. Jeffries, J. Jeffries, Jennings, Kump, Lovejoy, P. Martin, McGeehan, Walker and Wilson.

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2540) passed.

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

**Com. Sub. for H. B. 2540** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-5i, relating to prohibiting the waste of any edible portion of big game or game fish; making it unlawful to take any big game and detach or remove the head, hide, antlers, tusks, paws, claws, gallbladder, teeth, beards, or spurs only and leave the carcass to waste; setting forth exceptions; and establishing criminal penalties for violations.”

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

**Com. Sub. for H. B. 2541**, Requiring certain safety measures be taken at public schools; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 262**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2541) passed.

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

**H. B. 2730**, Increasing the compensation of the membership of the State Police and the salaries for public school teachers and school service personnel; on third reading, coming up in regular order, was read a third time.

Delegate Bibby was addressing the House when Delegate Swartzmiller arose to a point of order, regarding the content of the Member's remarks not being directed to the question before the House, to which point the Speaker replied that the point was well taken.

Subsequently,

Delegate Wilson moved the previous question, which demand was sustained.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 263**), and there were—yeas 48, nays 48, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Canestraro, Cowles, Diserio, Estep-Burton, Evans, Fast, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Householder, Lavender-Bowe, Longstreth, Lovejoy, Maynard, McGeehan, Miley, Miller, Nelson, Pack, Paynter, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rohrbach, Rowe, Skaff, Sponaugle, Staggers, Storch, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Waxman, Williams and Zukoff.

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members present and voting not having voted in the affirmative, the motion for the previous question was rejected.

Delegate Waxman was addressing the House when Delegate Robinson arose to a point of order, regarding the content of the Member's remarks not being directed to the question before the House, to which point the Speaker replied that the point was well taken but that some latitude in explaining positions would be allowed.

Delegates Campbell, Azinger, Boggs, Criss, Dean, Espinosa, Evans, Fluharty, Higginbotham, Householder, Linville, Mandt, Miller, Pushkin, Rowan, Summers, C. Thompson, R. Thompson, Tomblin, Toney and Zukoff requested to be excused from voting on the passage of H. B. 2730 under the provisions of House Rule 49. Pursuant to House Rule 49, the Delegates are members of a class of five or more similarly situated persons or entities and were not excused from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 264**), and there were, including pairs—yeas 89, nays 8, absent and not voting 3, with the paired, nays and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Caputo

Nay: Bibby

Nays: Butler, Foster, Householder, Malcolm, McGeehan, Waxman and Wilson.

Absent and Not Voting: Ellington, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2730) passed.

An amendment to the title of the bill, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the title to read as follows:

**H. B. 2730** - “A Bill to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-4-2 and §18A-4-8a of said code, all relating to increasing salaries of members of the West Virginia State Police, public school teachers and school service personnel.”

Delegate Summers moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 265**), and there were, including pairs—yeas 93, nays 4, absent and not voting 3, with the paired, nays and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Caputo

Nay: Bibby

Nays: Malcolm, Waxman and Wilson.

Absent and Not Voting: Ellington, Hollen and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2730) takes effect July 1, 2019.

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

**Com. Sub. for H. B. 2807**, Creating an additional modification to the West Virginia adjusted gross income of shareholders of S corporations engaged in banking; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 266**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Ellington, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2807) passed.

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

**H. B. 2829**, Relating to the termination of severance taxes on limestone and sandstone; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 267**), and there were—yeas 78, nays 16, absent and not voting 6, with the nays and absent and not voting being as follows:

Nays: Canestraro, Doyle, Estep-Burton, Fleischauer, Hansen, Hicks, Lavender-Bowe, Miley, Miller, Pushkin, Pyles, Rowe, C. Thompson, Tomblin, Walker and Zukoff.

Absent and Not Voting: Caputo, Cooper, Ellington, Hollen, Staggers and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2829) passed.

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

**H. B. 2872**, Authorizing law-enforcement officers to assist the State Fire Marshal; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 268**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Cooper, Ellington, Hollen, Staggers and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2872) passed.

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

**Com. Sub. for H. B. 2901**, Allowing for the establishment of a secondary location for racetrack video lottery terminals; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 269**), and there were—yeas 80, nays 15,

absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Azinger, Butler, Cowles, Fast, D. Jeffries, Jennings, Kessinger, Kump, C. Martin, P. Martin, Pack, Porterfield, Robinson, Toney and Worrell.

Absent and Not Voting: Caputo, Cooper, Ellington, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2901) passed.

Delegate Summers moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 270**), and there were—yeas 87, nays 8, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Azinger, Butler, D. Jeffries, Jennings, Kump, Porterfield, Robinson and Worrell.

Absent and Not Voting: Caputo, Cooper, Ellington, Hollen and Westfall.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2901) takes effect July 1, 2019.

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

**H. B. 2934**, West Virginia Lottery Interactive Wagering Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 271**), and there were—yeas 72, nays 22, absent and not voting 6, with the nays and absent and not voting being as follows:



Nays: Azinger, Butler, Cadle, Cowles, Fast, Hott, D. Jeffries, Jennings, J. Kelly, Kessinger, Kump, Linville, P. Martin, Pack, Paynter, Porterfield, Rowan, Summers, Toney, Waxman, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Caputo, Cooper, Ellington, Hicks, Hollen and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2934) passed.

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

**H. B. 2968**, Adding remote service unit to the definition of customer bank communications terminals; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 272**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Caputo, Cooper, Ellington, Hollen, Lavender-Bowe and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2968) passed.

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

**H. B. 2968** - “A Bill to amend and reenact §31A-8-12b of the Code of West Virginia, 1931, as amended, relating to adding remote service units to the definition of customer bank communication terminal; defining remote service unit; and requiring that operators of remote service units maintain a physical location in this state.”

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

**H. B. 3134**, Establishing criminal penalties for negligent homicide, and increasing criminal penalties for reckless driving; on third reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

### Second Reading

**Com. Sub. for S. B. 26**, Permitting certain employees of educational service cooperatives participate in state's teacher retirement systems; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 489**, Relating to Pharmacy Audit Integrity Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page seven, line one hundred forty-four, by striking out subsection (k) and inserting a new subsection (k) to read as follows:

“(k) If the information required herein is not provided, the agency may terminate the contract with the pharmacy benefit manager and the Office of the Insurance Commission shall discipline the pharmacy benefit manager as provided in §33-51-8(e).”

The bill was then ordered to third reading.

**Com. Sub. for H. B. 2229**, Adding violations of law upon which a public servant's retirement plan may be forfeited; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Shott, the bill was amended on page one, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN BENEFITS.**

**§5-10A-2. Definitions.**

As used in this article:

(a) ‘Retirement plan’ or ‘plan’ means the Public Employees Retirement Act pursuant to §5-10-1 *et seq.* of this code; each municipal employees retirement plan pursuant to §8-22-1 *et seq.* of this code; each policemen’s and firemen’s pension and relief fund pursuant to §8-22-1 *et seq.* of this code; the West Virginia Municipal Police Officers and Firefighters Retirement System pursuant to §8-22A-1 *et seq.* of this code; the West Virginia State Police Death, Disability, and Retirement Fund pursuant to §15-2-1 *et seq.* of this code; the West Virginia State Police Retirement System pursuant to §15-2A-1 *et seq.* of this code; the state Teachers Retirement System pursuant to §18-7A-1 *et seq.* of this code; the Teachers Defined Contribution Retirement System pursuant to §18-7B-1 *et seq.* of this code; the Deputy Sheriff Retirement System pursuant to §7-14D-1 *et seq.* of this code; the higher education retirement plan and supplemental retirement plans pursuant to §18-23-4a of this code; the Judges Retirement System pursuant to §51-9-1 *et seq.* of this code; the West Virginia Emergency Medical Services Retirement System pursuant to §16-5V-1 *et seq.* of this code; and any other plan established pursuant to this code for the payment of pension, annuity, disability, or other benefits to any person by reason of his or her service as an officer or employee of this state or of any political subdivision, agency, or instrumentality thereof, whenever the plan is supported, in whole or in part, by public funds.

(b) ‘Beneficiary’ means any person eligible for or receiving benefits because of the service for a public employer by a participant or former participant in a retirement plan.

(c) 'Benefits' means pension, annuity, disability, or any other benefits granted pursuant to a retirement plan.

(d) 'Conviction' means a conviction on or after the effective date of this article in any federal or state court of record whether following a plea of guilty, not guilty, or nolo contendere and whether or not the person convicted was serving as an officer or employee of a public employer at the time of the conviction.

(e) 'Former participant' means any person who is no longer eligible to receive any benefit under a retirement plan because full distribution has occurred.

(f) 'Less than honorable service' means:

(1) Impeachment and conviction of a participant or former participant under the provisions of section nine, article four of the Constitution of West Virginia;

(2) Conviction of a participant or former participant of a felony for conduct related to his or her office or employment which he or she committed while holding the office or during the employment;

(3) Conduct of a participant or former participant which constitutes all the elements of a crime described in either subdivision (1) or (2) of this subsection but for which the participant or former participant was not convicted because:

(i) (A) having been indicted or having been charged in an information for the crime, he or she made a plea-bargaining agreement pursuant to which he or she pleaded guilty to or nolo contendere to a lesser crime; *Provided, That the lesser crime is a felony containing all the elements described in subdivision (1) or (2) of this subsection or*

(ii) (B) having been indicted or having been charged in an information for the crime, he or she was granted immunity from prosecution for the crime; or

(C) Conviction of a participant or former participant for the misdemeanor offenses provided in the following sections of this

code related to his or her office or employment which he or she committed while holding the office or during the employment:

(i) §61-3-13, §61-3-14, and §61-3-20 of this code;

(ii) ~~§61-5-1~~, §61-5-2, ~~§61-5-3~~, §61-5-6, §61-5-21, §61-5-22, §61-5-23, and §61-5-24 of this code; and

(iii) §61-5A-4, §61-5A-5, §61-5A-6, and §61-5A-7 of this code.

(g) ‘Participant’ means any person eligible for or receiving any benefit under a retirement plan because of his or her service as an officer or employee for a public employer.

(h) ‘Public employer’ means the State of West Virginia and any political subdivision, agency, or instrumentality thereof for which there is established a retirement plan.

(i) ‘Supervisory board’ or ‘board’ means the Consolidated Public Retirement Board; the Board of Trustees of any municipal retirement fund; the Board of Trustees of any policemen’s or firemen’s retirement plan; the governing board of any supplemental retirement plan instituted pursuant to authority granted by the previous provisions of §18-23-4a of this code; and any other board, commission, or public body having the duty to supervise and operate any retirement plan.”

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2452**, Creating the West Virginia Cybersecurity Office; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2550**, Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2598**, Relating to submitting a certifying statement attesting to status as a charitable or public service organization; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2617**, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers; on second reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**Com. Sub. for H. B. 2690**, Relating to guaranty associations; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2694**, Relating to the state's ability to regulate hemp; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2718**, Requiring purchasers of roundwood to collect and maintain certain information; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2770**, Fairness in Cost-Sharing Calculation Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2802**, Uniform Partition of Heirs Property Act; on second reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**H. B. 2816**, Removing the terms "hearing impaired," "hearing impairment," and "deaf mute" from the West Virginia Code and substituting terms; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2827**, Removing the residency requirements for hiring deputy assessors; on second reading, coming up in regular order,

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

**H. B. 2828**, Relating to Qualified Opportunity Zones; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2830**, Establishing Next Generation 911 services in this state; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2837**, Relating to the licensing of advance deposit wagering; on second reading, coming up in regular order, was read a second time.

Delegate Espinosa moved to amend the bill on page five, section twelve-e, line one hundred, by striking out “2020” and inserting in lieu thereof the following: “2022”.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 273**), and there were—yeas 55, nays 38, absent and not voting 7, with the nays and absent and not voting being as follows:

Nays: Azinger, Bates, Boggs, N. Brown, Butler, Byrd, Canestraro, Estep-Burton, Evans, Fast, Hansen, Hartman, Hicks, Hornbuckle, D. Jeffries, Kump, Lavender-Bowe, Longstreth, Lovejoy, P. Martin, Miley, Miller, Paynter, Pethtel, Porterfield, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaule, C. Thompson, R. Thompson, Toney, Walker, Williams, Worrell and Zukoff.

Absent and Not Voting: Caputo, Cooper, Ellington, Hollen, Skaff, Swartzmiller and Westfall.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

The bill was ordered to engrossment and third reading.

**H. B. 2926**, Requiring the Secretary of the Department of Veterans' Affairs to study the housing needs of veterans; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2991**, Relating to the Ryan Brown Addiction Prevention and Recovery Fund; on second reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**Com. Sub. for H. B. 3024**, West Virginia Business Ready Sites Program; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3045**, Exempting certain complimentary hotel rooms from hotel occupancy tax; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3132**, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Kessinger and Rohrbach, the bill was amended on page five, section four, line ninety-eight, following the word "measures," by inserting "has completed medical education training on addiction treatment encompassing all forms of medication-assisted treatment" and a comma.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 3133**, Relating to requiring a parolee or probationer found to have suffered with addiction to participate in a support service; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.



**H. B. 3135**, Expiring funds to the balance of the Department of Commerce, Development Office; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

### **First Reading**

**Com. Sub. for S. B. 518**, Restricting sale and trade of dextromethorphan; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**S. B. 545**, Relating to HIV testing; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**Com. Sub. for H. B. 2079**, Removing certain limitations on medical cannabis grower, processor and dispensary licenses; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**Com. Sub. for H. B. 2179**, Allowing nonmembers of a political party to request that party's partisan ballot at a primary election; on first reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**Com. Sub. for H. B. 2433**, Modifying the school calendar to begin not earlier than Labor Day and end prior to Memorial Day on first reading, coming up in regular order, was read a first time and ordered to second reading.

**Com. Sub. for H. B. 2441**, Removing certain requirements related to wages for construction of public improvements; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**H. B. 2497**, Relating to the whistle-blower law; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**Com. Sub. for H. B. 2595**, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System;

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

**Com. Sub. for H. B. 2670**, Relating to damages for medical monitoring; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**Com. Sub. for H. B. 2945**, Relating to vendors paying a single annual fee for a permit issued by a local health department; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**H. B. 2953**, Permitting a critical access hospital to become a community outpatient medical center; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**Com. Sub. for H. B. 2976**, Economic Diversification Act of 2019; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**Com. Sub. for H. B. 3021**, Relating to the disposition of permit fees, registration fees and civil penalties imposed against thoroughbred horse racing licensees; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**H. B. 3095**, Establishing a minimum monthly retirement annuity for certain retirants; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**H. B. 3136**, Relating to the Centers for Medicare and Medicaid Services; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**H. B. 3137**, Relating to the personal income tax fund; on first reading, coming up in regular order, was read a first time and ordered to second reading.

At 1:54 p.m., the House of Delegates recessed until 7:00 p.m.

\* \* \* \* \*

### Evening Session

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### Committee Reports

Delegate Kessinger asked and obtained unanimous consent that all bills on committee reports, with the exception of H. B. 3142, H. B. 3144 and Com. Sub. for S. B. 1, be taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2853**, Establishing the West Virginia Program for Open Education Resources,

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

In accordance with the consent previously granted, the bill (H. B. 2853) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 2397**, Requiring county school boards to provide adequate mental health and counseling services,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2397** – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-22e, relating to requiring county school boards to provide adequate mental health evaluations, services and counseling services for pupils in the public schools; establishing minimum number of school psychologists by 2021-2022 school year; and authorizing alternative professional practitioners,”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2397) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2011**, Road Maintenance Program,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2011** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto five new sections designated §17-30-1, §17-30-2, §17-30-3, §17-30-4, and §17-30-5 all relating to the creation of the Enhanced Road Maintenance Program; providing for Legislative intent; providing for certain maintenance activities to be performed by private vendor contractors; providing for payment; providing for purchasing requirements; providing for reports and audit reviews; and providing an effective date,”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2011) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2729**, Recognition of Emergency Medical Services Personnel Licensure Interstate Compact,

And,

**H. B. 3044**, Requiring the Commissioner of Highways to develop a formula for allocating road funds,

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

In accordance with the consent previously granted, the bills (H. B. 2729 and H. B. 3044) were taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 3131**, Relating to providing salary adjustments to employees of the Department of Health and Human Resources,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 3131** - "A Bill to amend and reenact §5-5-4 and §5-5-4a of the Code of West Virginia, as amended; and to amend said code by adding thereto a new section, designated §5-5-4c, all relating to employees of the Department of Health and Human Resources; requiring the department to conduct a

marketplace analysis; and exempting the department from certain functions of the Division of Personnel,”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 3131) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 3105**, Permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 3105** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60-2-17a; to amend and reenact §60-6-7, §60-6-8, and §60-6-9 of said code; to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto two new sections, designated §60-7-6a and §60-7-8a; and to amend and reenact §61-8-27 of said code, all relating to permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement; clarifying that consumption of alcoholic liquors in public is unlawful; clarifying that West Virginia licensees can only sell liquor by the drink; clarifying certain licensing requirements for licensure; clarifying prohibition on liquor bottle sales in Class A licenses; providing guidance on certain lawful conduct such as wine bottle sales and frozen drink machines; creating a private fair and festival license; definitions; license requirements; license fee; creating the private hotel license and license fee; creating a private nine-hole golf course license and fee; definitions; license requirements; license fee; permitting a private resort hotel to have

inner-connection with a resident brewer who has a brewpub; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees who fail to timely file their renewal application and pay their annual license fees; permitting a license privilege for certain licensees to operate a connected but separately operated Class A on-premises license and a Class B off-premises license; clarifying that certain state licensed gaming is permissible in a private club; and permitting minors to attend a private nine-hole golf course and a private fair or festival under certain conditions.”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 3105) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2703**, Relating to refunds of excise taxes collected from dealers of petroleum products,

And reports back a committee substitute therefor, with the new title, as follows:

**Com. Sub. for H. B. 2703** - “A Bill to amend and reenact §11-14C-30 of the Code of West Virginia, 1931, as amended, relating to refunds of excise taxes collected from dealers of petroleum products under certain circumstances; and eliminating a cap on the amount of tax that may be refunded for fuels lost through evaporation.”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2703) was taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Householder, Criss, Rowan, Linville and Maynard:**

**H. B. 3142** -“A Bill to amend and reenact §11-13A-3, §11-13A-6 and §11-13A-6a of the Code of West Virginia, 1931, as amended, all relating to reducing the severance tax on thermal or steam coal to three percent, effective April 1, 2019, eliminating restrictions on counties and municipalities expending and reporting the expenditure of the county and municipality portion of the severance tax; and establishing minimum amounts of distribution of portion of severance tax on coal dedicated for use and benefit of coal-producing counties.”

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 22<sup>nd</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for H. B. 2521**, Relating to permitting fur-bearer parts.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 22<sup>nd</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:



**S. B. 272**, Updating code relating to Commission on Special Investigations.

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Hartman, Storch, Skaff, Graves, Espinosa, Rowan, Maynard, Hill, Longstreth and Barrett:**

**H. B. 3144** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13EE-1, §11-13EE-2, §11-13EE-3, §11-13EE-4, §11-13EE-5, §11-13EE-6, §11-13EE-7, §11-13EE-8, §11-13EE-9, §11-13EE-10, §11-13EE-11, §11-13EE-12, §11-13EE-13, §11-13EE-14, §11-13EE-15, §11-13EE-16 and §11-13EE-17, all relating generally to North Central Appalachian Coal Severance Tax Rebate; providing short title, findings and purpose; defining terms; providing for rebate of severance tax when capital investment made in new machinery and equipment directly used in severance of coal, or in coal preparation and processing plants; providing rules and procedures for claiming rebate and transfer to successors; imposing recapture tax in certain circumstance; providing rules for interpretation and construction; requiring periodic rebate reports; authorizing rulemaking; and providing for severability and effective date."

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**H. B. 3020**, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions,

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

In accordance with the consent previously granted, the bill (H. B. 3020) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 3057**, Relating to the Adult Drug Court Participation Fund,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 3057** - "A Bill to amend and reenact §62-15-9a of the Code of West Virginia, 1931, as amended, relating to the Adult Drug Court Participation Fund; removing limitations on expenditures; and providing for disposition of moneys in the fund at the end of fiscal year,"

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 3057) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2931**, Clarifying that the State Lottery Commission has no authority over nonlottery games,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2931** - "A Bill to amend and reenact §29-22C-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-10-1 of said code, exempting casino night fundraising events from licensure, and providing that casino night themed fundraisers are not subject to criminal penalty,"

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2931) was taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, a bill was introduced (Originating in the Committee on the Judiciary and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Shott, Capito, Nelson and Foster:**

**H. B. 3143** - "A Bill to amend and reenact §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931, as amended, all relating to requirements for making consumer loans in West Virginia; modifying the authority to make regulated consumer loans; providing that a person must first obtain a license from the Commissioner of Banking authorizing him or her to make regulated consumer loans before engaging in the business of making regulated consumer loans, taking assignments of or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans; and adjusting threshold amounts of consumer loans for which certain finance charges can be imposed."

In accordance with the consent previously granted, the bill (H. B. 3143) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2014**, West Virginia Intellectual Property and Trade Secrets Act,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2014** - “A Bill to repeal §47-22-9 and §47-22-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §47-22-1, §47-22-2, §47-22-3, §47-22-4, §47-22-6, §47-22-7, and §47-22-8 of said code, all relating to the protection of intellectual property and trade secrets; changing the ‘Uniform Trade Secrets Act’ to the ‘West Virginia Intellectual Property and Trade Secrets Act’; providing for definitions; setting forth criminal penalties for certain acts associated with the misappropriation of intellectual property and trade secrets; providing for injunctive and civil relief; allowing for punitive damages and attorney’s fees in certain circumstances; and clarifying applicability of amendments,”

And,

**H. B. 2895**, Allowing victims of certain crimes to get a restraining order,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2895** - “A Bill to amend and reenact §61-11A-8 of the Code of West Virginia, 1931, as amended, relating to allowing victims of certain crimes to get a restraining order prohibiting convicted persons from contacting or living in proximity to the victim, upon a finding that this has caused or will cause the victim emotional distress,”

With the recommendation that the committee substitutes each do pass.

In accordance with the consent previously granted, the bills (Com. Sub. for H. B. 2014 and Com. Sub. for H. B. 2895) were taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, a bill was introduced (Originating in the Committee on Education and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Hamrick, Westfall, Butler, Waxman and Atkinson:**

**H. B. 3145** - “A Bill to amend and reenact §18C-4-1, §18C-4-2, §18C-4-3, §18C-4-4, and §18C-4-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18C-4A-1, §18C-4A-2, and §18C-4A-3 of said code, all relating to modifying certain student financial aid resources available to students pursuing public school teaching careers; abolishing the Underwood-Smith Teacher Loan Assistance Program; renaming the Underwood-Smith Teacher Scholarship and Loan Assistance Fund as the Underwood-Smith Teaching Scholars Program Fund; modifying program purpose to target certain academic disciplines and emphasize the academic distinction of award recipients; modifying award eligibility, renewal, and service agreement criteria to reflect modified program purpose; requiring certain mentoring services be provided to award recipients; preserving eligibility and service agreement criteria for current award recipients; modifying the amount of an award; and limiting tuition and fee charges for program recipients.”

In accordance with the consent previously granted, the bill (H. B. 3145) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 1**, Increasing access to career education and workforce training,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 1) was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 3100**, Clarifying certain provisions of the Nonintoxicating Beer Act,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 3100** - "A Bill to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-10, §11-16-12, and §11-16-17a of the Code of West Virginia, 1931, as amended, all relating to clarifying certain provisions of the Nonintoxicating Beer Act by creating a temporary license for nonintoxicating beer floor plan extensions of existing licensee floorplans; implementing a fee for the license; removing the two growler limit per patron per day for licensees who sell growlers for off premises consumption; providing a 30-day requirement to issue or deny a license application once the application is completed; implementing a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; creating a transportation permit for nonintoxicating beer; implementing a fee for the permit; licensing brewers, resident brewers and distributor representatives; implementing a fee for the license; removing the bond requirements for brewers, resident brewers, distributors and Class S licenses; requiring nonintoxicating beer label registration; and implementing a fee for the registration and subsequent renewals every three years,"

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 3100) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2535**, Relating to purchasing exemptions and procedures,

**H. B. 2760**, Relating to performance reviews of state agencies and regulatory boards,

**H. B. 2850**, Relating to qualifications for commercial driver's license,

**H. B. 3054**, Relating to the state agency for surplus property,

And,

**H. B. 3102**, Creating alternating wine proprietorships for wineries and farm wineries,

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

In accordance with the consent previously granted, the bills (H. B. 2535, H. B. 2760, H. B. 2850, H. B. 3054 and H. B. 3102) were taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2843**, Creating an Office for Federal Surplus Property,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2843** - "A Bill to amend and reenact §5A-3-45 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5A-12-15, all relating to creating the Auto Auction Pilot Program; setting a beginning and ending date for the program, establishing requirements of the program; and requiring a report after completion of the pilot program,"

And,

**H. B. 2951**, Placing the regulation of non-medical professions and occupations in a new chapter of the code,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2951** - "A Bill to amend and reenact §30-1-1 of the Code of West Virginia, 1931, as amended; to repeal §30-2-1, §30-2-2, §30-2-3, §30-2-4, §30-2-5, §30-2-5a, §30-2-6, §30-2-7, §30-2-8, §30-3-9, §30-2-10, §30-2-11, §30-2-12, §30-2-13, §30-2-14, §30-2-15 and §30-2-16 of said code; to repeal §30-6-1, §30-6-2, §30-6-3, §30-6-4, §30-6-5, §30-6-6, §30-6-7, §30-6-8, §30-6-9, §30-6-10, §30-6-11, §30-6-12, §30-6-13, §30-6-14, §30-6-15, §30-6-16, §30-6-17, §30-6-16-, §30-6-19, §30-6-20, §30-6-21, §30-6-22, §30-6-23, §30-6-24, §30-6-22-, §30-6-26, §30-6-27, §30-6-28, §30-6-29, §30-6-30, and §30-6-31 of said code; to repeal §30-9-1, §30-9-2, §30-9-3, §30-9-4, §30-9-5, §30-9-6, §30-9-7, §30-9-8 §30-9-9, §30-9-10 §30-9-11, §30-9-12, §30-9-13, §30-9-14, §30-9-15, §30-9-16, §30-9-17, §30-9-16-, §30-9-19, §30-9-20, §30-9-21, §30-9-22, §30-9-23, §30-9-24, §30-9-25, §30-9-26, §30-9-27, §30-9-28, §30-9-29, §30-9-30, §30-9-31, 30-9-33 and §30-9-34 of said code; to repeal §30-12-1, §30-12-2, §30-12-3, §30-12-4, §30-12-5, §30-12-6, §30-12-7, §30-12-8, §30-12-9, §30-12-10, §30-12-11, §30-12-11a, §30-12-12, §30-12-13, and §30-12-14 of said code; to repeal §30-13-1, §30-13-2, §30-13-3, §30-13-4, §30-13-5, §30-13-6, §30-13-7, §30-13-8, §30-13-9, §30-13-10, §30-13-11, §30-13-12, §30-13-13, §30-13-13a, §30-13-14, §30-13-15, §30-13-16, §30-13-17, §30-13-18, §30-13-19, §30-13-20. §30-13-21, §30-13-22, §30-13-23, and §30-13-24; to repeal §30-13A-1, §30-13A-2, §30-13A-3, §30-13A-4, §30-13A-5, §30-13A-6, §30-13A-7, §30-13A-8, §30-13A-9, §30-13A-10, §30-13A-11, §30-13A-12, §30-13A-13, §30-13A-14, §30-13A-15, §30-13A-16, §30-13A-17, §30-13A-18, §30-13A-19, §30-13A-20, §30-13A-21, §30-13A-22, §30-13A-23, §30-13A-24, and §30-13A-25 of said code; to repeal §30-17-1, §30-17-2, §30-17-3, §30-17-4, §30-17-5, §30-17-6, §30-17-7, §30-17-8, §30-17-9, §30-17-10, §30-17-11, §30-17-12, §30-17-13, §30-17-14, §30-17-15, §30-17-16, §30-17-17, §30-17-18, §30-17-19 of said code; to repeal §30-18-1,



§30-18-2, §30-18-3, §30-18-4, §30-18-5, §30-18-6, §30-18-7, §30-18-8, §30-18-9, §30-18-10, §30-18-11, §30-18-12, and §30-18-13 of said code; to repeal §30-19-1, §30-19-2, §30-19-3, §30-19-4, §30-19-5, §30-19-6, §30-19-7, §30-19-8, §30-19-9, §30-19-10, §30-19-11, §30-19-12, §30-19-13, §30-19-14, §30-19-15, §30-19-16 and §30-19-17 of said code; to repeal §30-22-1, §30-22-2, §30-22-3, §30-22-4, §30-22-5, §30-22-6, §30-22-7, §30-22-8, §30-22-9, §30-22-10, §30-22-11, §30-22-12, §30-22-13, §30-22-14, §30-22-15, §30-22-16, §30-22-17, §30-22-18, §30-22-19, §30-22-20, §30-22-21, §30-22-22, §30-22-23, §30-22-24, §30-22-25, §30-22-26, §30-22-27, and §30-22-28 of said code; to repeal §30-25-1, §30-25-2, §30-25-3, §30-25-4, §30-25-5, §30-25-6, §30-25-7, §30-25-8, §30-25-9, §30-25-10, §30-25-11, §30-25-12, §30-25-13, §30-25-14, §30-25-15, §30-25-16, §30-25-17, and §30-25-18 of said code; to repeal §30-27-1, §30-27-2, §30-27-3, §30-27-4, §30-27-5, §30-27-6, §30-27-7, §30-27-8, §30-27-8a, §30-27-8b, §30-27-9, §30-27-10, §30-27-11, §30-27-11a, §30-27-12, §30-27-13, §30-27-14, §30-27-15, §30-27-16, §30-27-17, §30-27-18, §30-27-19, §30-27-20, §30-27-21, §30-27-22, §30-27-23, and §30-27-24 of said code; to repeal §30-29-1, §30-29-2, §30-29-3, §30-29-4, §30-29-5, §30-29-6, §30-29-7, §30-29-8, §30-29-9, §30-29-10, §30-29-11, §30-29-12, and §30-29-13 of said code; to repeal §30-38-1, §30-38-2, §30-38-3, §30-38-4, §30-38-5, §30-38-6, §30-38-7, §30-38-8, §30-38-9, §30-38-10, §30-38-11, §30-38-12, §30-38-13, §30-38-14, §30-38-15, §30-38-16, §30-38-17, §30-38-18, and §30-38-19 of said code; to repeal §30-38A-1, §30-38A-2, §30-38A-3, §30-38A-4, §30-38A-5, §30-38A-6, §30-38A-7, §30-38A-8, §30-38A-9, §30-38A-10, §30-38A-11, §30-38A-12, §30-38A-13, §30-38A-14, §30-38A-15, §30-38A-16, and §30-38A-17 of said code; to repeal §30-39-1, §30-39-2, §30-39-3, §30-39-4, §30-39-5, §30-39-6, §30-39-7, §30-39-8, §30-39-9, §30-39-10, §30-39-11, §30-39-12, §30-39-13, §30-39-14, §30-39-15, §30-39-16, §30-39-17, §30-39-18, §30-39-19, §30-39-20, and §30-39-21 of said code; to repeal §30-40-1, §30-40-2, §30-40-3, §30-40-4, §30-40-5, §30-40-6, §30-40-7, §30-40-8, §30-40-9, §30-40-10, §30-40-11, §30-40-12, §30-40-13, §30-40-14, §30-40-15, §30-40-16, §30-40-17, §30-40-18, §30-40-19, §30-40-20, §30-40-21, §30-40-22, §30-40-23, §30-40-24, §30-40-25, §30-40-26, and §30-40-27 of said code; to amend said code by adding there to a new article,

designated §30A-1-1, §30A-1-2, §30A-1-3, §30A-1-4, §30A-1-5, §30A-1-6, §30A-1-7, §30A-1-8, §30A-1-9, §30A-1-10, §30A-1-11, §30A-1-12, §30A-1-13, §30A-1-14, §30A-1-15 and §30A-1-16; to amend said code by adding there to a new article, designated §30A-2-1, §30A-2-3, §30A-2-4, §30A-2-5, §30A-2A-6, §30A-2-7, §30A-2-8, §30A-2-9, §30A-2-10, §30A-2-11, §30A-2-12, §30A-2-13, §30A-2-14, §30A-2-15, §30A-2-16, §30A-2-17, §30A-2-18, §30A-2-19, §30A-2-20, §30A-2-21, §30A-2-22, §30A-2-22a, §30A-2-23, §30A-2-24, §30A-2-25, §30A-2-26, §30A-2-27, §30A-2-28, §30A-2-29, §30A-2-30, and §30A-2-31; to amend said code by adding there to a new article, designated §30A-3-1, §30A-3-2, §30A-3-3, §30A-3-4, §30A-3-5, §30A-3-6, §30A-3-7, §30A-3-8, §30A-3-9, §30A-3-10, §30A-3-11, §30A-3-12, §30A-3-13, §30A-3-14, §30A-3-15, §30A-3-16, §30A-3-17, §30A-3-18, §30A-3-19, §30A-3-20, §30A-3-21, §30A-3-22, §30A-3-23, §30A-3-24, §30A-3-25, §30A-3-26, §30A-3-27, §30A-3-28, §30A-3-29, §30A-3-30, §30A-3-31, §30A-3-32, and §30A-3-33; to amend said code by adding there to a new article, designated §30A-4-1, §30A-4-2, §30A-4-3, §30A-4-4, §30A-4-5, §30A-4-6, §30A-4-7, §30A-4-8, §30A-4-9, §30A-4-10, §30A-4-11, §30A-4-11a, §30A-4-12, §30A-4-13, and §30A-4-14; to amend said code by adding there to a new article, designated §30A-5-1, §30A-5-2, §30A-5-3, §30A-5-4, §30A-5-5, §30A-5-6, §30A-5-7, §30A-5-8, §30A-5-9, §30A-5-10, §30A-5-11, §30A-5-12, §30A-5-13, §30A-5-13a, §30A-5-14, §30A-5-15, §30A-5-16, §30A-5-17, §30A-5-18, §30A-5-19, §30A-5-20, §30A-5-21, §30A-5-22, §30A-5-23, and §30A-5-24; to amend said code by adding there to a new article, designated §30A-6-1, §30A-6-2, §30A-6-3, §30A-6-4, §30A-6-5, §30A-6-6, §30A-6-7, §30A-6-8, §30A-6-9, §30A-6-10, §30A-6-11, §30A-6-12, §30A-6-13, §30A-6-14, §30A-6-15, §30A-6-16, §30A-6-17, §30A-6-18, §30A-6-19, §30A-6-20, §30A-6-21, §30A-6-22, §30A-6-23, §30A-6-24, and §30A-6-25; to amend said code by adding there to a new article, designated §30A-7-1, §30A-7-2, §30A-7-3, §30A-7-4, §30A-7-5, §30A-7-6, §30A-7-7, §30A-7-8, §30A-7-9, §30A-7-10, §30A-7-11, §30A-7-12, and §30A-7-13; to amend said code by adding there to a new article, designated §30A-8-1, §30A-8-2, §30A-8-3, §30A-8-4, §30A-8-5, §30A-8-6, §30A-8-7, §30A-8-8, §30A-8-9, §30A-8-10, §30A-8-11, §30A-8-12, §30A-8-13, §30A-8-14, §30A-8-15,

§30A-8-16, and §30A-8-17; to amend said code by adding there to a new article, designated §30A-9-1, §30A-9-2, §30A-9-3, §30A-9-4, §30A-9-5, §30A-9-6, §30A-9-7, §30A-9-8, §30A-9-9, §30A-9-10, §30A-9-11, §30A-9-12, §30A-9-13, §30A-9-14, §30A-9-15, §30A-9-16, §30A-9-17, §30A-9-18, §30A-9-19, §30A-9-20, §30A-9-21, §30A-9-22, §30A-9-23, §30A-9-24, §30A-9-25, §30A-9-26, §30A-9-27, and §30A-9-28; to amend said code by adding there to a new article, designated §30A-10-1, §30A-10-2, §30A-10-3, §30A-10-4, §30A-10-5, §30A-10-6, §30A-10-7, §30A-10-8, §30A-10-9, §30A-10-10, §30A-10-11, §30A-10-12, §30A-10-13, §30A-10-14, §30A-10-15, §30A-10-16, §30A-10-17, and §30A-10-18; to amend said code by adding there to a new article, designated §30A-11-1, §30A-11-2, §30A-11-3, §30A-11-4, §30A-11-5, §30A-11-6, §30A-11-7, §30A-11-8, §30A-11-8a, §30A-11-8b, §30A-11-9, §30A-11-10, §30A-11-11, §30A-11-11a, §30A-11-12, §30A-11-13, §30A-11-14, §30A-11-15, §30A-11-16, §30A-11-17, §30A-11-18, §30A-11-19, §30A-11-20, §30A-11-21, §30A-11-22, §30A-11-23, and §30A-11-24; to amend said code by adding there to a new article, designated §30A-12-1, §30A-12-2, §30A-12-3, §30A-12-4, §30A-12-5, §30A-12-6, §30A-12-7, §30A-12-8, §30A-12-9, §30A-12-10, §30A-12-11, §30A-12-12 and §30A-12-13; to amend said code by adding there to a new article, designated §30A-13-1, §30A-13-2, §30A-13-3, §30A-13-4, §30A-13-5, §30A-13-6, §30A-13-7, §30A-13-8, §30A-13-9, §30A-13-10, §30A-13-11, §30A-13-12, §30A-13-13, §30A-13-14, §30A-13-15, §30A-13-16, §30A-13-17, §30A-13-18 and §30A-13-19; to amend said code by adding there to a new article, designated §30A-14-1, §30A-14-2, §30A-14-3, §30A-14-4, §30A-14-5, §30A-14-6, §30A-14-7, §30A-14-8, §30A-14-9, §30A-14-10, §30A-14-11, §30A-14-12, §30A-14-13, §30A-14-14, §30A-14-15, §30A-14-16 and §30A-14-17; and to amend said code by adding there to a new article, designated §30A-15-1, §30A-15-2, §30A-15-3, §30A-15-4, §30A-15-5, §30A-15-6, §30A-15-7, §30A-15-8, §30A-15-9, §30A-15-10, §30A-15-11, §30A-15-12, §30A-15-13, §30A-15-14, §30A-15-15, §30A-15-16, §30A-15-17, §30A-15-18, §30A-15-19, §30A-15-20 and §30A-15-21; to amend said code by adding there to a new article, designated §30A-16-1, §30A-16-2, §30A-16-3, §30A-16-4, §30A-16-5, §30A-16-6, §30A-16-7, §30A-16-8, §30A-16-9, §30A-16-10, §30A-16-11, §30A-16-12,

§30A-16-13, §30A-16-14, §30A-16-15, §30A-16-16, §30A-16-17, §30A-16-18, §30A-16-19, §30A-16-20, §30A-16-21, §30A-16-22, §30A-16-23, §30A-16-24, §30A-16-25, §30A-16-26 and §30A-16-27; and to amend said code by adding there to a new article, designated §30A-17-1, §30A-17-2, §30A-17-3, §30A-17-4, §30A-17-5, §30A-17-6, §30A-17-7, §30A-17-8, §30A-17-9, §30A-17-10, §30A-17-11, §30A-17-12, §30A-17-13, §30A-17-14, §30A-17-15, §30A-17-16, §30A-17-17, §30A-17-18 and §30A-17-19, all relating to placing the regulation of non-medical professions and occupations in a new Chapter 30A; providing that the general provisions of Chapter 30, Article 1, Article 1A, Article 1 B and Article 1D apply to all Chapter 30A boards and commissions; leaving the regulation of all medically related professions and occupations in Chapter 30; and making no substantive changes in any of these laws.”

With the recommendation that the committee substitutes each do pass.

In accordance with the consent previously granted, the bills (Com. Sub. for H. B. 2843 and Com. Sub. for H. B. 2951) were taken up for immediate consideration, read a first time and ordered to second reading.

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 519** - “A Bill to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to requiring persons employed to dispatch emergency calls in county emergency dispatch centers to complete a training course in emergency cardiovascular care for telephonic cardiopulmonary resuscitation; requiring training to be completed by a certain date; and requiring calls to be transferred to call center in certain circumstances”; which was referred to the Committee on Health and Human Resources then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 613** - “A Bill to amend and reenact §16-19-3, §16-19-5, and §16-19-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-2-31 of said code, all relating to permitting individuals to make an anatomical gift on a hunting or fishing license; adding definition; permitting the Division of Natural Resources to provide donor registrant records collected to the donor registry; requiring the Division of Natural Resources to provide information on the election of organ donation on hunting or fishing licenses; and requiring the Division of Natural Resources to include the election of organ donation on hunting or fishing licenses”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 6** - “Requesting the Division of Highways to name bridge number 22-10-28.14 (22A038), locally known as West Hamlin Bridge, carrying WV 10 over the Guyandotte River in Lincoln County, the ‘U. S. Army SP4 Darrell Gregory Triplett Memorial Bridge’.”

Whereas, Darrell Gregory Triplett was born in West Hamlin and was an honor graduate of Guyan Valley High School in 1965. He served during the Vietnam War. With only a month left in the army, he was coming home on a weekend pass to celebrate his 21<sup>st</sup> birthday when he was killed in a plane crash at Yeager Airport in 1968; and

Whereas, It is fitting that an enduring memorial be established to commemorate U. S. Army SP4 Darrell Gregory Triplett and his contributions to our 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 22-10-28.14 (22A038), locally known as West Hamlin Bridge, carrying WV 10 over the Guyandotte River in Lincoln County, the “U. S. Army SP4 Darrell Gregory Triplett 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 SP4 Darrell Gregory Triplett 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.

### **Leaves of Absence**

At the request of Delegate Kessinger, and by unanimous consent, leaves of absence for the day were granted Delegates Ellington, Hollen and Westfall.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### **Committee Reports**

Delegate Kessinger asked and obtained unanimous consent that all bills on committee reports be taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, bills were introduced (Originating in the Committee on Government Organization and reported with the recommendation that they each do pass), which were read by their titles, as follows:

**By Delegate Howell:**

**H. B. 3146** – “A Bill to amend and reenact §60-3A-17 of the Code of West Virginia, 1931, as amended, relating to requiring retail licensees to purchase a minimum amount of the available SKUs from the commissioner; removing square footage requirements to conduct or restrict alcohol sales; establishing certain conditions for a retail licensee to display at least one of every SKU for sale by a retail licensee to its patrons; requiring the commissioner to supply or reasonably attempt to supply a prepaid order for a retail licensee; and establishing an effective date for changes to this article.”

And,

**By Delegate Howell:**

**H. B. 3147** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-12-5c, relating to the requiring the Board of Insurance and Risk Management, or its insurers, to purchase life insurance products from state resident agents when necessary for the settlement of claims against the state.”

In accordance with the consent previously granted, the bills (H. B. 3146 and H. B. 3147) were taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2941**, Reinstating the film investment tax credit,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2941** - “A Bill to amend and reenact §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-8, §11-13X-11, §11-13X-12, and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment Act; reinstating the film investment tax credit; providing the coordination and management by the West Virginia Development Office; excluding short-term depreciation from

credit; raising the minimum threshold of expenditures to qualify for credit; establishing an annual limit in credits available; requiring the Development Office to develop a database of locations, music, and other resources to be made available to film production teams; and requiring state agencies to solicit bids from West Virginia vendors for film or video projects if available.”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2941) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 3103**, Authorizing operators of a distillery or mini-distillery to offer for purchase and consumption liquor on the premises,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 3103** - “A Bill to amend and reenact §60-4-3a of the Code of West Virginia, 1931, as amended, relating to authorizing operators of a distillery or mini-distillery to offer for purchase and consumption liquor manufactured by the distillery or mini-distillery on the premises if purchased and consumed at a licensed Class A private club operating on the premises of the distillery or mini-distillery; and allowing distilleries and mini-distilleries to sell and serve alcohol beginning at 10:00 a.m. on Sundays,”

And,

**H. B. 3116**, Removing current limitations on sales of nonintoxicating beer and nonintoxicating craft beer growlers,



And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 3116** - “A Bill to amend and reenact §11-16-6a and §11-16-6b of the Code of West Virginia, 1931, as amended, relating to removing current limitations on sales of nonintoxicating beer and nonintoxicating craft beer growlers by brewers, brewpubs, retailers and private clubs,”

With the recommendation that the committee substitutes each do pass.

In accordance with the consent previously granted, the bills (Com. Sub. for H. B. 3103 and Com. Sub. for H. B. 3116) were taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. B. 2974**, Exempting businesses relating to transporting certain used tires to storage, disposal, or recycling locations from provisions of chapter,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2974** - “A Bill to amend and reenact §24A-1-3 of the Code of West Virginia, 1931, as amended, relating to exempting businesses relating to transporting scrap tires, waste tires, or other used tires to storage, disposal, or recycling locations from the provisions of this chapter; and exempting motor vehicles operated under a contract with the West Virginia Department of Environmental Protection exclusively for cleanup and transportation of waste tires and solid waste generated from state authorized waste tire remediation or cleanup projects,”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2974) was taken up for immediate consideration, read a first time and ordered to second reading.

### **Miscellaneous Business**

Pursuant to House Rule 132, consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Jennings during Remarks by Members
- Delegates Waxman and Bibby for H. B. 2730
- Delegate McGeehan for H. B. 2732
- Delegate Espinosa during Remarks by Members on February 15
- Delegate Doyle during Remarks by Members
- Delegate Sponaugle during Remarks by Members

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be added as a cosponsor of the following:

- Delegate Jennings for H. B. 2049
- Delegate Nelson for H. B. 3100, H. B. 3102 and H. B. 3116
- Delegates C. Martin and Nelson for H. B. 3105

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be removed as a cosponsor of the following:

- Delegate Nelson for H. B. 2560

At 7:42 p.m., the House of Delegates adjourned until 11:00 a.m., Monday, February 25, 2019.

---

Monday, February 25, 2019

**FORTY-EIGHTH DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Friday, February 22, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Reordering of the Calendar**

Delegate Summers announced that the Committee on Rules had transferred Com. Sub. for H. B. 2718, on Third Reading, Special Calendar, to the House Calendar; Com. Sub. for S. B. 408, Com. Sub. for S. B. 518, S. B. 545, Com. Sub. for H. B. 2079, Com. Sub. for H. B. 2433, Com. Sub. for H. B. 2441, Com. Sub. for H. B. 2595, H. B. 2729, Com. Sub. for H. B. 2843, Com. Sub. for H. B. 2941, Com. Sub. for H. B. 2951, H. B. 2953, Com. Sub. for H. B. 2976, Com. Sub. for H. B. 3100, Com. Sub. for H. B. 3103, Com. Sub. for H. B. 3116, and H. B. 3147, on Second Reading, Special Calendar, to the House Calendar; and Com. Sub. for H. B. 2179, on First Reading, Special Calendar, to the House Calendar.

**Committee Reports**

Delegate Summers asked and obtained unanimous consent that all bills on committee reports be taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**H. B. 2597**, Creating a hunting permit to safely accommodate visually impaired hunters,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2597** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-46g, relating to creating a Class VI hunting permit to safely accommodate visually impaired hunters; setting forth Class VI permit requirements; requiring that a Class VI permittee and his or her assistant must also hold the underlying hunting licenses or otherwise be exempt; and authorizing rulemaking,"

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2597) was taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Householder and Criss:**

**H. B. 3148** - "A Bill supplementing and amending by increasing an existing item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019."

In accordance with the consent previously granted, the bill (H. B. 3148) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2882**, Creating a health professionals' student loan programs,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2882** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18C-3-5, relating to creating health professionals' student loan programs; providing legislative findings and purpose; establishing a program known as the Nonresident Medical Student Tuition Regularization Program; providing for in-state tuition rates to out-of-state medical and osteopathic students who agree to practice for a specific time in underserved locations and fields within West Virginia; establishing the program eligibility requirements and application procedures; establishing violations and civil penalties for the failure to complete the required service; creating a special revenue account for the program management; and providing for legislative rule making,"

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2882) was taken up for immediate consideration, read a first time and ordered to second reading.

On motion for leave, a bill was introduced (Originating in the Committee on Finance and reported with the recommendation that it do pass), which was read by its title, as follows:

**By Delegates Sponaule, Hardy, Williams, Skaff, Hartman, Ellington, Rowe, Barrett, Westfall, Criss and Bates:**

**H. B. 3149** - "A Bill to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended; and to add thereto a new section designated §60-8-4a, all relating to expanding the ability of hard cider manufactures to produce hard cider in this state; establishing a new tax classification for hard cider as a type of wine manufactured in this state; permitting federal tax credits to

apply to the state tax for those producers who qualify; creating a fund for tax deposits; requiring reports to the Tax Commissioner; and permitting a wine manufacturer to serve full pours of wine at festivals and tastings for which it is properly licensed.”

In accordance with the consent previously granted, the bill (H. B. 3149) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2966**, County Budget Flexibility Act,

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

In accordance with the consent previously granted, the bill (H. B. 2966) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2967**, Permitting a county to retain the excise taxes for the privilege of transferring title of real estate,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. B. 2967** - “A Bill to amend and reenact §11-22-2 of the Code of West Virginia, 1931, as amended, relating to phasing in elimination of state excise tax and replacing it with county excise tax on certain date,”

With the recommendation that the committee substitute do pass.

In accordance with the consent previously granted, the bill (Com. Sub. for H. B. 2967) was taken up for immediate consideration, read a first time and ordered to second reading.

### **Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2612**, Proposing rules related to the completion or updating of source water protection plans.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 11** - “A Bill to amend and reenact §5-10-2 and §5-10-52 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §5-10-56; and to amend said code by adding thereto a new section, designated §18-7A-17c, all relating to retirement and pension benefits of certain members of the West Virginia Public Employees Retirement System and the West Virginia Teachers Retirement System who serve in the Legislature; providing that persons who first become members of the retirement system after June 30, 2019, shall have their final average salary calculated based on total years of service; and providing that members of the Legislature shall receive one day of credited service for each day paid”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 13**, Relating to distributions from State Excess Lottery Fund.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 86** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-22e, relating to county boards of education; requiring boards to provide free feminine hygiene products in grades six through 12 to female students not otherwise having access to the products; and defining terms”; which was referred to the Committee on Education then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 330** - “A Bill to amend and reenact §5F-1-5 of the Code of West Virginia, 1931, as amended, relating to requiring that contact information of an official or employee of the state, who uses a mobile phone either furnished by the employer, or whose service is paid by the employer for the official’s or employee’s personal phone use in state business, be listed on an agency’s online directory and agency’s website with certain exceptions”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 383** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §19-37-1, §19-37-2, §19-37-3, §19-37-4, §19-37-5, §19-37-6, and §19-37-7, all relating to creating West Virginia Healthy Food Crop Block Grant Program; stating findings; defining terms; creating fund; providing general revenue to fund grants for five years; partnering with nonprofit food and farm



organizations; establishing grant selection committee and membership; providing method for allocating grants; limiting grants; providing for rulemaking; and establishing program review reports”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 404** - “A Bill to amend and reenact §19-1B-4, §19-1B-6, §19-1B-7, §19-1B-10, and §19-1B-12a of the Code of West Virginia, 1931, as amended, all relating generally to sediment control during commercial timber harvesting operations; increasing the threshold amount before a logger must follow certain licensing requirements regarding sediment control; requiring the logger to notify the Director of the Division of Forestry at least three days before timbering begins; requiring certain training requirements prior to recertification of certified loggers; providing for appeals; increasing criminal penalties; and editing certain limitations on issuing citations and powers of arrest”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 415** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new chapter, designated §37D-1-1, §37D-1-2, §37D-1-3, §37D-1-4, §37D-1-5, §37D-1-6, §37D-2-1, §37D-2-2, §37D-2-3, §37D-2-4, §37D-2-5, §37D-2-6, §37D-2-7, and §37D-2-8, all relating to creating the Timber Cotenancy Modernization and Majority Protection Act and the Unknown and Unlocatable Timber Interest Owners Act; permitting the harvest of timber by fewer than all the interest owners under certain conditions; providing an exception to waste and trespass; providing short titles; providing declarations of public policy and legislative findings; providing definitions; providing that consent for the lawful use and harvesting of timber

by the persons owning an undivided three fourths of the royalty interests, as defined, in the timber estate is permissible, is not waste, and is not trespass; providing that nonconsenting cotenants may elect a harvest royalty interest or a working interest share of harvest; providing that interests owned by unknown or unlocatable owners be reserved, reported, and deposited in a fund hereby created, known as the Unknown and Unlocatable Timber Interest Owners Fund to be administered by the State Treasurer in conjunction with the West Virginia Uniform Unclaimed Property Act; providing methods for determination of leasehold and contractual terms, including reviews and determinations; providing liability protection for damages resulting from the lawful use or harvesting of timber; requiring surface use agreements in specified circumstances; providing a mechanism for surface owners to acquire title to certain harvested timber interests; preserving common law rights; providing reporting requirements and administrative duties, including civil penalties for noncompliance under the West Virginia Uniform Unclaimed Property Act; providing for rule-making authority; providing crediting of interest to owner's accounts; and providing an effective date of July 1, 2019"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 444**, Supplemental appropriation to DHHR divisions.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 485** - "A Bill to amend and reenact §33-17A-3 and §33-17A-4 of the Code of West Virginia, 1931, as amended, all relating to clarifying notification requirements for property insurance purposes"; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 493** - “A Bill to amend and reenact §17C-6-8 of the Code of West Virginia, 1931, as amended, relating to correcting terminology referring to racing vehicles illegally on the street”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 529** - “A Bill to amend and reenact §11-16-3, §11-16-5, §11-16-6a, §11-16-6b, §11-16-8, §11-16-9, §11-16-10, §11-16-12, and §11-16-17a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §11-16-6c and §11-16-11b, all relating to nonintoxicating beer generally; creating a temporary license for nonintoxicating beer floorplan extensions of existing licensee floorplans; implementing a fee for the license; removing the two growler limit per patron per day for licensees who sell growlers for off premises consumption; increasing allowable growler size to no larger than 128 ounces; providing for certain growler licensees to conduct complimentary samplings; providing a 30-day requirement to issue or deny a license application once the application is completed; implementing a \$100 beer license operations fee and establishing a special revenue account; implementing a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; creating a one-day special license for certain nonprofit and tax exempt entities hosting artistic, athletic, charitable, educational, or religious events to purchase and sell nonintoxicating beer and nonintoxicating craft beer; allowing nonintoxicating beer and nonintoxicating craft beer to have a maximum alcohol content of 15 percent by volume and 11.9 percent by weight; providing limitations on special licenses; setting forth requirements for special licenses; providing for a Class B licensee privilege for nonintoxicating beer or

nonintoxicating craft beer sales at a designated parking area; implementing a license fee; licensing brewers, resident brewers, and distributor representatives; providing for transportation permits for nonintoxicating beer and nonintoxicating craft beer; requiring nonintoxicating beer label registration; implementing an operational fee for licensed representatives, transportation permits and container label registration; removing the bond requirements for brewers, resident brewers, distributors, and Class S licenses; and defining terms.”

At the respective requests of Delegate Summers, and by unanimous consent, reference of the bill (Com. Sub. for S. B. 529) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 531** - “A Bill to amend and reenact §23-5-7 of the Code of West Virginia, 1931, as amended, relating generally to workers’ compensation claims pending in the administrative or appellate process; and providing that hearing loss and impairment claims are not occupational disease claims for the purpose of the requirement that a claimant be represented by counsel in a settlement for medical benefits”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 546** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-27-39, relating generally to health care provider taxes; imposing a contingent 0.13 percent tax on eligible acute care

hospitals; and providing an expiration date for the tax”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 585** - “A Bill to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, relating generally to the criminal offenses of stalking and harassment; clarifying essential elements of harassment; defining terms; and continuing criminal penalties”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 593** - “A Bill to amend and reenact §16-5B-14 of the Code of West Virginia, 1931, as amended, relating to permitting a critical access hospital to become a community outpatient medical center; establishing certain conditions and requirements; and providing for rule-making authority.”

At the respective requests of Delegate Summers, and by unanimous consent, reference of the bill (S. B. 593) to a committee was dispensed with, and it was taken up for immediate consideration, read a first time and ordered to second reading.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 624** - “A Bill to amend and reenact §18-2E-5 of the Code of West Virginia, 1931, as amended, relating to allowing county boards of education to use an alternative assessment, such as the ACT assessment, pursuant to the locally selected assessment option provided for in the Every Student

Succeeds Act; and directing the department to distribute a per student assessment allocation equal to the per student assessment cost as determined by the statewide assessment contract to any county board that chooses to utilize the alternative assessment”; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 641** - “A Bill to repeal §16-2H-3 and §16-2H-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-2H-2 of said code, relating to the Primary Care Support Program; eliminating loan fund; and creating grant fund”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 664** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §48-2-406, relating to authorizing certain members of the federal judiciary to perform marriages”; which was referred to the Committee on the Judiciary.

### **Motions**

Delegate Ellington was recognized and moved, pursuant to House Rule 82, that H. B. 3127 be discharged from the Committee on Education and read a first time.

Delegate Robinson moved that the motion be tabled.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 274**), and there were—yeas 44, nays 53, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Angelucci, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hardy, Hartman, Hicks, Hornbuckle, J. Kelly, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pyles, Robinson, Rowan, Rowe, Skaff, Sponaule, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper, Lavender-Bowe and Rodighiero.

So, a majority of the members present and voting not having voted in the affirmative, the motion was rejected.

The question being on the adoption of the motion that the bill be discharged from the Committee on Education and read a first time, the same was put and prevailed.

The bill (H. B. 3127, Relating to the Secondary Activities Commission and participation by home schooled students) was then read a first time and ordered to second reading.

Delegate Pushkin was recognized and moved that the February 7 motion by Delegate Fluharty to discharge H. B. 2733 from the Committee on Industry and Labor be taken from the table.

On this question, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 275**), and there were—yeas 37, nays 60, absent and not voting 3, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, S. Brown, Byrd, Campbell, Canestraro, Capito, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Longstreth, Lovejoy, Miley, Miller, Pethtel, Pushkin,

Pyles, Robinson, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper, Lavender-Bowe and Rodighiero.

So, a majority of the members present and voting not having voted in the affirmative, the motion did not prevail.

Delegate McGeehan was recognized and moved that the February 22 motion to discharge H. B. 2732 from the Committee on the Judiciary be taken from the table.

On this question, the yeas and nays were demanded, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 276**), and there were—yeas 53, nays 44, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Barrett, Butler, Cadle, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Linville, Malcolm, Mandt, Maynard, Nelson, Pack, Porterfield, Queen, Rohrbach, Rowan, Shott, Steele, Storch, Summers, Sypolt, Waxman, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper, Lavender-Bowe and Rodighiero.

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

Delegate McGeehan then asked and obtained unanimous consent to modify his motion to have H. B. 2732 discharged from the Committee on Education and also read a first time.

On this question, the yeas and nays were taken (**Roll No. 277**), and there were—yeas 56, nays 41, absent and not voting 3, with the nays and absent and not voting being as follows:



Nays: Anderson, Atkinson, Barrett, Butler, Cadle, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Harshbarger, Higginbotham, Hill, Hott, Howell, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Linville, Malcolm, Mandt, Nelson, Pack, Porterfield, Rowan, Shott, Steele, Storch, Summers, Sybolt, Waxman, Westfall, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper, Lavender-Bowe and Rodighiero.

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

The bill (H. B. 2732, Defend the Guard Act) was then read a first time and ordered second reading.

### **Special Calendar**

#### **Third Reading**

**Com. Sub. for S. B. 26**, Permitting certain employees of educational service cooperatives participate in state's teacher retirement systems; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 278**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Lavender-Bowe and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 26) passed.

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

**Com. Sub. for S. B. 489**, Relating to Pharmacy Audit Integrity Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 279**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 489) passed.

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

**Com. Sub. for S. B. 489** - “A Bill to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-51-3, §33-51-4, §33-51-7, §33-51-8, and §33-51-9 of said code; and to amend said code by adding thereto a new section, designated §33-51-10, all relating to the regulation of pharmacy benefit managers; defining terms; requiring pharmacy benefit managers to obtain a license from the Insurance Commissioner before doing business in the state; setting forth terms of licensure of pharmacy benefit managers; establishing fees; authorizing the Insurance Commissioner to promulgate rules for legislative approval; providing network adequacy standards; prohibiting a network to be comprised only of mail-order benefits; requiring the Insurance Commissioner to enforce the licensure provisions relating to pharmacy benefit managers; providing for the applicability of provisions to pharmacy benefit managers; clarifying that requirements do not apply to certain prescription drug plans; prohibiting certain practices by an auditing entity; providing exemptions; prohibiting different treatment of a federal 340B drug discount program; requiring the reporting of certain data relating to the payment of pharmacy claims; permitting the public employees insurance agency to cancel a contract if certain

conditions are not met; providing disciplinary procedures; and providing civil penalties.”

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

On this question, the yeas and nays were taken (**Roll No. 280**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 489) takes effect from its passage.

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

**Com. Sub. for H. B. 2229**, Adding violations of law upon which a public servant’s retirement plan may be forfeited; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 281**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2229) passed.

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

**Com. Sub. for H. B. 2229** - “A Bill to amend and reenact §5-10A-2 of the Code of West Virginia, 1931, as amended, relating generally to disqualification for public service retirement plan benefits, modifying the definition of less than honorable service,

removing the exception of a misdemeanor from that aspect of less than honorable service involving impeachment and conviction, removing the requirement that the participant or former participant plead guilty or nolo contendere to felony criminal conduct to constitute less than honorable service; and providing that conviction of specified misdemeanor conduct related to the participant's term in office or participant's term of employment in public service constitutes less than honorable service."

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

**Com. Sub. for H. B. 2452**, Creating the West Virginia Cybersecurity Office; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 282**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2452) passed.

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

**Com. Sub. for H. B. 2550**, Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 283**), and there were—yeas 98, nays none,

absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2550) passed.

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

**H. B. 2598**, Relating to submitting a certifying statement attesting to status as a charitable or public service organization; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 284**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2598) passed.

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

**Com. Sub. for H. B. 2690**, Relating to guaranty associations; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 285**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2690) passed.

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

**Com. Sub. for H. B. 2694**, Relating to the state's ability to regulate hemp; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 286**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Jennings and Porterfield.

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2694) passed.

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

**Com. Sub. for H. B. 2770**, Fairness in Cost-Sharing Calculation Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 287**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2770) passed.

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

**Com. Sub. for H. B. 2770** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-15-4s; and to amend said code by adding thereto a new section, designated §33-16-3dd; and to amend said code by adding thereto a new section, designated §33-24-7s; and to amend said code by adding thereto a new section, designated §33-25-8p; and to amend said code by adding thereto a new section, designated §33-25A-8s, all relating to establishing the Fairness in Cost-Sharing Calculation Act; providing for definitions; establishing health plan cost sharing calculations; establishing pharmacy benefits cost sharing calculations; and providing for rule-making authority.”

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

**H. B. 2816**, Removing the terms “hearing impaired,” “hearing impairment,” and “deaf mute” from the West Virginia Code and substituting terms; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 288**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2816) passed.

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

**H. B. 2827**, Removing the residency requirements for hiring deputy assessors; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 289**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2827) passed.

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

**H. B. 2828**, Relating to Qualified Opportunity Zones; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 290**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Doyle, Hanna and Phillips.

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2828) passed.

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



**Com. Sub. for H. B. 2830**, Establishing Next Generation 911 services in this state; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 291**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2830) passed.

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

**H. B. 2837**, Relating to the licensing of advance deposit wagering; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 292**), and there were—yeas 77, nays 20, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Azinger, Butler, Cadle, Fast, Harshbarger, Hollen, D. Jeffries, J. Jeffries, Jennings, J. Kelly, Kessinger, Kump, C. Martin, P. Martin, Pack, Porterfield, Rowan, Toney, Waxman and Worrell.

Absent and Not Voting: Cooper, Fleischauer and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2837) passed.

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

**H. B. 2926**, Requiring the Secretary of the Department of Veterans' Affairs to study the housing needs of veterans; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 293**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Fleischauer and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2926) passed.

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

**Com. Sub. for H. B. 3024**, West Virginia Business Ready Sites Program; on second reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**H. B. 3045**, Exempting certain complimentary hotel rooms from hotel occupancy tax; on third reading, coming up in regular order, was read a third time.

Delegate C. Martin requested to be excused from voting on the passage of H. B. 3045 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 294**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Campbell and Rowe.

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3045) passed.

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

**H. B. 3132**, Relating to exempting providers that serve no more than 30 patients with office-based medication-assisted treatment; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 295**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Kessinger and Robinson.

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3132) passed.

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

**Com. Sub. for H. B. 3133**, Relating to requiring a parolee or probationer found to have suffered with addiction to participate in a support service; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 296**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3133) passed.

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

**H. B. 3134**, Establishing criminal penalties for negligent homicide, and increasing criminal penalties for reckless driving; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Shott asked and obtained unanimous consent to amend the bill on third reading and the rule was suspended to permit the offering and consideration of an amendment on third reading.

On motion of Delegate Shott, the bill was amended on page two, section three, line nineteen, after the word “be”, by inserting the words “imprisoned in a state correctional facility”.

Having been engrossed, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 297**), and there were—yeas 63, nays 33, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, S. Brown, Cadle, Caputo, Cowles, Diserio, Doyle, Fast, Fluharty, Hardy, Hicks, Hill, Hornbuckle, Howell, J. Jeffries, Jennings, Lavender-Bowe, Longstreth, McGeehan, Miley, Paynter, Phillips, Porterfield, Pushkin, Rowe, Sponaule, Staggers, C. Thompson, Tomblin, Walker and Zukoff.

Absent and Not Voting: Cooper, Estep-Burton, C. Martin and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3134) passed.

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

**H. B. 3135**, Expiring funds to the balance of the Department of Commerce, Development Office; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 298**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Cooper, Robinson and Rodighiero.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3135) passed.

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

On this question, the yeas and nays were taken (**Roll No. 299**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: S. Brown, Cooper, Criss, Maynard, Robinson and Rodighiero.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3135) takes effect from its passage.

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

**Second Reading**

**Com. Sub. for H. B. 2011**, Road Maintenance Program; on second reading, coming up in regular order, was read a second time.

Delegate Fleischauer moved to amend the on page three, line thirty-one, following the period at the end of section three, by inserting a new section, to read as follows:

**“§17-30-4. Pilot project regarding Enhanced Road Maintenance Program by combined paving and maintenance contract provisions.**

The commissioner shall initiate a pilot project in District 4 of the Division of Highways to evaluate whether combining contract terms requiring the contractor to maintain paved secondary roads for seven years after performing the initial paving of the secondary roads would produce a result both more convenient for the public and cost effective for the division. The district shall let at least three projects involving combined paving and maintenance contracts for secondary roads in each of the counties in the district during the pilot project.

The division shall draft criteria for which roads would be covered, how requirements would be implemented and evaluated, and share the criteria and the results in yearly reports pursuant to §17-30-5, and to all of the Legislators in District 4.”

And,

By renumbering sections four and five of the bill accordingly.

On the adoption of the amendment, the yeas and nays were demanded and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 300**), and there were—yeas 40, nays 58, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fast, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Lavender-Bowe, Longstreth, Lovejoy, C. Martin, Miley, Pethtel, Pushkin, Pyles, Queen, Rowe, Skaff, Sponaugle, Staggers, Summers, Swartzmiller, C. Thompson, R. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Fleischauer then moved to amend the bill on page one, following the enacting clause, by inserting a new section, to read as follows:

**“ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.**

**§5-5-4c. Division of Highways regional field employee pay equity salary adjustment.**

(a) The Legislature hereby finds that the Division of Highways has extreme difficulty with recruiting and retaining regional field employees.

(b) The Legislature hereby directs that a pay equity salary adjustment and increase be provided to all regional field employees of the Division of Highways. This salary adjustment shall be for a total of nine percent of the employee’s annual salary in effect on July 1, 2019, apportioned over a three-year period as follows:

(1) On July 1, 2019, applicable employees of the Division of Highways shall be given an increase in annual pay of three percent of the employee’s annual salary in effect on July 1, 2019;

(2) On July 1, 2020, applicable employees of the Division of Highways shall be given an increase in annual pay of three percent of the employee’s annual salary in effect on July 1, 2019; and

(3) On July 1, 2021, applicable employees of the Division of Highways shall be given an increase in annual pay of three percent of the employee's annual salary in effect on July 1, 2019.

(c) Funding for the pay rates for employees of the Division of Highways shall be provided from the general revenue appropriations to the Division of Highways.

(d) In the event any provision of this section conflicts with any rule, policy, or provision of this code, this section shall control. Due to the limits of funding, the implementation of the pay rates and employment requirements are not subject to the provisions of §6C-2-1 et seq. of this code. The provisions of this section are rehabilitative in nature and it is the specific intent of the Legislature that no private cause of action, either express or implied, arises pursuant to the provisions or implementation of this section.

(e) If, following this pay raise, the employee makes more than the maximum allowable by the Division of Personnel for the pay grade, this salary increase still takes effect, and that employee shall make more than the pay grade maximum.”

And,

By renumbering sections four and five of the bill accordingly.

Delegate Howell arose to a point of order as to the germaneness of the amendment.

The Speaker ruled that the Gentleman's point of order was well taken and the amendment was not germane to the bill.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2014**, West Virginia Intellectual Property and Trade Secrets Act; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Robinson, the bill was amended on page four, section two, line forty-eight, by inserting the following new subsection:



“(f) Nothing in this section shall be construed to apply to any information about the marketing and distribution of any substance regulated under Schedule II of the Controlled Substances Act, Title 21 Code of Federal Regulations, §1308.12 (b) and §1308.12 (c), including all opioids and opiates.”

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2049**, Relating to a prime contractor’s responsibility for wages and benefits; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Shott, the bill was amended on page two, following line nineteen, by striking out §38-2-6 in its entirety.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2378**, Relating generally to grounds for revocation of a teaching certificate; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Foster, the bill was amended on page two, section six, line nineteen, after the word “code”, by inserting “or comparable statute in any other state”.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2396**, West Virginia Fresh Food Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2397**, Requiring county school boards to provide adequate mental health and counseling services; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2497**, Relating to the whistle-blower law; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2535**, Relating to purchasing exemptions and procedures; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2617**, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2662**, Relating to certificates or employment of school personnel; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Foster, the bill was amended on page three, section five, line forty-nine, after the word “code”, by inserting “or comparable statute in any other state”.

And,

On page seven, section eight-e, line eighty-three, after the word “code”, by inserting the following “or comparable statute in any other state”.

The bill was then ordered to engrossment and third reading.

**H. B. 2665**, Supplemental appropriation for PEIA Rainy Day Fee; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2670**, Relating to damages for medical monitoring; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2703**, Relating to refunds of excise taxes collected from dealers of petroleum products; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2760**, Relating to performance reviews of state agencies and regulatory boards; on second reading, coming up in regular

order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2802**, Uniform Partition of Heirs Property Act; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Fast and Shott, the bill was amended on page three, section three, after the section heading, by striking the remainder of the section in its entirety and inserting in lieu thereof the following:

“(a) This article applies to partition actions filed on or after the effective date of this article.

(b) In an action to partition real property under §37-4-1 *et seq.* of this code, the court shall first determine whether the property is heirs property as that term is defined in §37-16-2 of this code.

(c) If the court determines the property is heirs property, the property must be partitioned under this article unless all of the cotenants otherwise agree in a record or unless one of the exceptions in §37-16-3(f) or §37-16-3(g) of this code applies to the property. The court may also apply provisions of §37-4-1 *et seq.* of this code that are not inconsistent with this article.

(d) If the court determines that the property is not heirs property, or if one of the exceptions in §37-16-3(f) or §37-16-3(g) of this code applies to the property, the partition action will be governed under §37-4-1 *et seq.* of this code.

(e) If a parcel of real property has been severed into a surface estate and a mineral estate and either, but not both, of the severed estates meets the definition of “heirs property,” this article applies only to the estate that meets the definition.

(f) This article does not apply to the partition of severed coal estates.

(g) This article does not apply to the partition of severed oil or natural gas estates if:

(1) under §37B-1-4(a) of this code there are six or fewer oil or natural gas royalty owner cotenants, thereby prohibiting the use of §37B-1-1 *et seq.* of this code for the development, operation and production of oil, natural gas, or their constituents and the plaintiff in the partition action has made reasonable, good faith efforts to locate and negotiate with all oil or natural gas royalty owner cotenants, but has been unable, despite reasonable, good faith efforts, including the delivery in writing of its final lease offer and the passage of 45 days, to obtain consent to the proposed oil and natural gas development from all royalty owner cotenants; or

(2) under §37B-1-4(a) of this code there are seven or more oil or natural gas royalty owner cotenants and the plaintiff in the partition action has made reasonable, good faith efforts to locate and negotiate with all oil or natural gas royalty owner cotenants, but has been unable, despite reasonable, good faith efforts, including the delivery in writing of its final lease offer and the passage of 45 days, to obtain consent to the proposed oil and natural gas development from royalty owners vested with at least three-fourths of the undivided right to develop, operate and produce oil, natural gas, or their constituents, thereby prohibiting the use of §37B-1-1 *et seq.* of this code for the development, operation and production of oil, natural gas, or their constituents.

(h) Any interest in oil or natural gas which is covered by a valid oil or natural gas lease, which was negotiated through reasonable, good faith efforts, shall not be sold or transferred in a partition by sale under this article or under §37-4-1 *et seq.* of this code.”

And,

On page five, section five, after the section heading, by striking the remainder of the section in its entirety and inserting in lieu thereof the following:

“(a) The court, in its discretion, may appoint commissioners to make an assessment of partition alternatives under §37-16-8 of this code.

(b) If the court appoints commissioners pursuant to §37-16-5(a) of this code, each commissioner must be disinterested and impartial and not a party to or a participant in the action.

(c) If the court appoints commissioners under §37-16-5(a) of this code, the commissioners must consider all of the factors in §37-16-9 of this code in evaluating whether partition in kind would result in substantial prejudice to the cotenants as a group. The commissioners must file a report with the court that provides an assessment of whether partition in kind would result in substantial prejudice to the cotenants as a group and this assessment must be supported by sufficient facts.”

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2831**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2850**, Relating to qualifications for commercial driver’s license; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2853**, Establishing the West Virginia Program for Open Education Resources; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2866**, Relating to the termination, expiration, or cancellation of oil or natural gas leases; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2895**, Allowing victims of certain crimes to get a restraining order; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2931**, Clarifying that the State Lottery Commission has no authority over nonlottery games; on second

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

**Com. Sub. for H. B. 2943**, Relating to deliveries by wine specialty shop; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2945**, Relating to vendors paying a single annual fee for a permit issued by a local health department; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2974**, Exempting businesses relating to transporting certain used tires to storage, disposal, or recycling locations from provisions of chapter; on second reading, coming up in regular order, was read a second time.

Delegates C. Martin and P. Martin moved to amend the bill on page three, section three, line sixty-six, by striking out subdivision (15) in its entirety and renumbering the remaining section accordingly.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 301**), and there were—yeas 49, nays 49, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Azinger, Bibby, Capito, Cowles, Criss, Doyle, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Linville, Malcolm, Mandt, Pack, Phillips, Porterfield, Queen, Rohrbach, Rowan, Shott, Staggers, Steele, Storch, Summers, Swartzmiller, Sypolt, Tomblin, Waxman, Westfall, Wilson, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 2991**, Relating to the Ryan Brown Addiction Prevention and Recovery Fund; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Ellington, the bill was amended on page three, section two, line twenty, following the “Fund”, by striking out the period and inserting in lieu thereof the following proviso:

“: *Provided, however,* That state agencies may recover any reasonable administrative costs, contractual damages, or expenses incurred in the pursuit of the litigation prior to the proceeds being transferred to the Fund.”

The bill was then ordered to engrossment and third reading.

**Com. Sub. for H. B. 3016**, Relating to the State Aeronautics Commission; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

In accordance with House Rule 58, and having voted on the prevailing side, Delegate Hanna moved that the House of Delegates reconsider the rejection of the amendment offered by Delegates C. Martin and P. Martin to Com. Sub. for H. B. 2974.

On the motion to reconsider the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 302**), and there were—yeas 53, nays 45, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Azinger, Bibby, Capito, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hardy, Harshbarger, Hartman, Higginbotham, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger,

Linville, Malcolm, Mandt, Miller, Pack, Pethtel, Porterfield, Queen, Rohrbach, Rowan, Shott, Steele, Storch, Summers, Sypolt, Waxman, Wilson, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper and Rodighiero.

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

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 303**), and there were—yeas 46, nays 52, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Butler, Byrd, Cadle, Canestraro, Caputo, Diserio, Estep-Burton, Evans, Fleischauer, Fluharty, Hanna, Hansen, Hicks, Hill, Hollen, Hornbuckle, Kump, Lavender-Bowe, Longstreth, Lovejoy, C. Martin, P. Martin, Maynard, McGeehan, Miley, Nelson, Paynter, Pethtel, Pushkin, Pyles, Robinson, Skaff, Sponaugle, Swartzmiller, C. Thompson, R. Thompson, Toney, Walker, Williams and Zukoff.

Absent and Not Voting: Cooper and Rodighiero.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

At 1:47 p.m., the House of Delegates recessed until 6:30 p.m.

\* \* \* \* \*

### Evening Session

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.



## Special Calendar

### Second Reading

-continued-

**H. B. 3020**, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 3021**, Relating to the disposition of permit fees, registration fees and civil penalties imposed against thoroughbred horse racing licensees; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3044**, Requiring the Commissioner of Highways to develop a formula for allocating road funds; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Summers, the bill was amended on page two, line ten, subsection (3), following the words "in a county", by inserting the words "and their condition".

The bill was then ordered to engrossment and third reading.

**H. B. 3054**, Relating to the state agency for surplus property; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 3057**, Relating to the Adult Drug Court Participation Fund; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3095**, Establishing a minimum monthly retirement annuity for certain retirants; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3102**, Creating alternating wine proprietorships for wineries and farm wineries; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 3105**, Permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 3131**, Relating to providing salary adjustments to employees of the Department of Health and Human Resources; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3136**, Relating to the Centers for Medicare and Medicaid Services; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Shott, the bill was amended on page two, section two-a, line twenty-one, by adding a new subdivision (6) to read as follows:

“(6) Participating in, and complying with, a substance abuse treatment or recovery program approved by the Department for a total of at least 20 hours per week.”

The bill was then ordered to engrossment and third reading.

**H. B. 3137**, Relating to the personal income tax fund; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Householder and Linville, the bill was amended on page three, by striking out section thirty-three in its entirety and inserting in lieu thereof the following:

**“§11B-2-33. Personal income tax reduction fund.**

(a) The personal income tax reduction fund is hereby established. The personal income tax reduction fund shall be

funded continuously and on a revolving basis in accordance with this section, with all interest or other earnings on the moneys therein credited to the fund. The personal income tax reduction fund shall be funded as provided by this section, by other provisions of this code, and by any appropriation made to the fund by the Legislature. Moneys in the personal income tax reduction fund may be expended solely for the purposes set forth in this section.

(b) Notwithstanding any other provision of this code to the contrary, moneys to be deposited in the personal income tax reduction fund include:

(1) The net amount of all West Virginia state sales and use tax collections on all sales made on and after January 1, 2019, that are delivered into West Virginia that are paid by any out-of-state vendor. The State Tax Commissioner shall deposit the amounts as required by this section into the fund;

(2) The net amount of the state's share of the gross sales received by the State Lottery Commission that are derived from lottery games authorized under §29-22-1 et seq., of this code on and after January 1, 2019, that utilize an electronic computer and a video screen to operate a lottery game and communicate the results thereof, such as the games of 'Travel' or 'Keno', and which do not utilize an interactive electronic terminal device allowing input by an individual player, that are made available by the State Lottery Commission in locations other than (A) private clubs licensed in accordance with the provisions of article seven, chapter sixty of this code, (B) retail licensees licensed in accordance with the provisions of article three-a of said chapter sixty, or (C) in the facilities of class A licensees which are licensed in accordance with the provisions of section nine, article sixteen, chapter eleven of this code, in which facility at least seventy-five percent of the nonintoxicating beer sold by the class A licensee in the preceding year was sold for consumption on the premises. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(3) The net amount of the state's share of gross terminal income received by the State Lottery Commission that are derived from lottery games that are derived from limited video lottery operations authorized under §29-22B-1, et seq., of this code on and after January 1, 2019, that are operated at a retail location by a licensed operator authorized by the State Lottery Commission to operate limited video lottery terminals as a limited video lottery retailer. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(4) The net amount of the state's share of gross revenues received by the State Lottery Commission that are derived from racetrack video lottery terminals at a secondary location of a licensed racetrack authorized under §29-22A-1 et seq. of this code on and after January 1, 2019. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(5) The net amount of the state's share of gross revenues received by the State Lottery Commission that are derived from racetrack table games at a secondary location of a licensed racetrack authorized under §29-22C-1 et seq. of this code on and after January 1, 2019. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(6) The net amount of the state's share of gross revenues received by the State Lottery Commission that are derived from sports wagering at a secondary location of a licensed racetrack authorized under §29-22D-1 et seq. of this code on and after January 1, 2019. The State Lottery Commission shall deposit the amounts as required by this section into the fund;

(7) The net amount of the state's share of gross revenues received by the State Lottery Commission that are derived from interactive gaming at a primary or secondary location of a licensed racetrack authorized under §29-22E-1 et seq. of this code on and after January 1, 2019. The State Lottery Commission shall deposit the amounts as required by this section into the fund; and

(8) All other amounts directed to be deposited into the fund by any provision of this code or appropriation.

(c)(1) If at the end of any fiscal year the personal income tax reduction fund is funded at an amount equal to or exceeding \$200 million, the Secretary of Revenue shall certify the same to the State Tax Commissioner on or before the next ensuing July 31.

(2) Upon the certification, for all taxable years beginning on or after the next ensuing January 1, the tax imposed by §11-21-3 of this code shall, in lieu of the provisions of §11-21-4e of this code, be imposed in accordance with the following as if fully set forth therein:

(A) *Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, estates and trusts.* — The tax imposed by section three of this article on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust shall be determined in accordance with the following table:

If the West Virginia

<u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$10,000</u>	<u>2.5% of the taxable income</u>
<u>Over \$10,000 but not over \$25,000</u>	<u>\$250.00 plus 3.5% of excess over \$10,000</u>
<u>Over \$25,000 but not over \$40,000</u>	<u>\$775.00 plus 4.0% of excess over \$25,000</u>
<u>Over \$40,000 but not over \$60,000</u>	<u>\$1,375.00 plus 5.5% of excess over \$40,000</u>
<u>Over \$60,000</u>	<u>\$2,475.00 plus 6.0% of excess over \$60,000</u>

(B) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by section three of this article on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia

<u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$5,000</u>	<u>2.5% of the taxable income</u>
<u>Over \$5,000 but not over \$12,500</u>	<u>\$125.00 plus 3.5% of excess over \$5,000</u>
<u>Over \$12,500 but not over \$20,000</u>	<u>\$387.50 plus 4.0% of excess over \$12,500</u>
<u>Over \$20,000 but not over \$30,000</u>	<u>\$687.50 plus 5.5% of excess over \$20,000</u>
<u>Over \$30,000</u>	<u>\$1,237.50 plus 6.0% of excess over \$30,000</u>

(3) Upon the certification, on the next ensuing July 1, the Secretary of Revenue shall transfer \$200 million from the personal income tax reduction fund to the general revenue fund of the state.

(d)(1) After the occurrence of the events described in §11B-2-33(c)(1) of this code, if at the end of any fiscal year the personal income tax reduction fund is funded at an amount equal to or exceeding \$200 million, less the amount required to be transferred by §11B-2-33(c)(3), if required, the Secretary of Revenue shall certify the same to the State Tax Commissioner on or before the next ensuing July 31.

(2) Upon the certification, for all taxable years beginning on or after the next ensuing January 1, the tax imposed by §11-21-3 of

this code shall, in lieu of the provisions of §11-21-4e, be imposed in accordance with the following as if fully set forth therein:

(A) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, estates and trusts. — The tax imposed by section three of this article on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust shall be determined in accordance with the following table:

If the West Virginia

<u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$10,000</u>	<u>2.0% of the taxable income</u>
<u>Over \$10,000 but not over \$25,000</u>	<u>\$200.00 plus 3.0% of excess over \$10,000</u>
<u>Over \$25,000 but not over \$40,000</u>	<u>\$650.00 plus 3.5% of excess over \$25,000</u>
<u>Over \$40,000 but not over \$60,000</u>	<u>\$1,175.00 plus 5.0% of excess over \$40,000</u>
<u>Over \$60,000</u>	<u>\$2,175.00 plus 5.5% of excess over \$60,000</u>

(B) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by section three of this article on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia

<u>taxable income is:</u>	<u>The tax is:</u>
<u>Not over \$5,000</u>	<u>2.0% of the taxable income</u>
<u>Over \$5,000 but not over \$12,500</u>	<u>\$100.00 plus 3.0% of excess over \$5,000</u>
<u>Over \$12,500 but not over \$20,000</u>	<u>\$325.00 plus 3.5% of excess over \$12,500</u>
<u>Over \$20,000 but not over \$30,000</u>	<u>\$587.50 plus 5.0% of excess over \$20,000</u>
<u>Over \$30,000</u>	<u>\$1,087.50 plus 5.5% of excess over \$30,000</u>

(3) Upon the certification, on the next ensuing July 1, the Secretary of Revenue shall transfer \$200 million from the personal income tax reduction fund to the general revenue fund of the state.

(e)(1) After the occurrence described in §11B-2-33(d)(1) of this code, if at the end of any fiscal year the personal income tax reduction fund is funded at an amount equal to or exceeding \$200 million, less the amount required to be transferred by §11B-2-33(d)(3), if required, the Secretary of Revenue shall certify the same to the State Tax Commissioner on or before the next ensuing July 31.

(2) Upon the certification, for all taxable years beginning on or after the next ensuing January 1, the tax imposed by §11-21-3 of this code shall, in lieu of the provisions of §11-21-4e, be imposed in accordance with the following as if fully set forth therein: The Tax Commissioner shall publish by administrative notice the provisions set forth in §11B-2-33(d)(2) of this code after reducing each percentage by 0.5% to the same effect of reducing those percentages as provided by §11B-2-33(c)(2) and §11B-2-33(d)(2)



of this code, which published provisions shall for all taxable years beginning on or after the next ensuing January 1, be the tax imposed by §11-21-3 of this code in lieu of the provisions of §11-21-4e.

(3) Upon the certification, on the next ensuing July 1, the Secretary of Revenue shall transfer \$200 million from the personal income tax reduction fund to the general revenue fund of the state.

(f) The moneys in the personal income tax reduction fund shall be made available to the West Virginia Board of Treasury Investments for management and investment of the moneys in accordance with the provisions of article six-c, chapter twelve of this code and to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of article six, chapter twelve of this code in such amounts as may be directed in the discretion of the Secretary of Revenue. Any balance of the personal income tax reduction fund, including accrued interest and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in personal income tax reduction fund for the purposes set forth in this section.”

The bill was then ordered to engrossment and third reading.

**H. B. 3139**, Relating to funding of the Public Employees Health Insurance Program; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Householder, the bill was amended page two, section twenty-seven, line five, following the words “from employers”, by striking out the word “participating” and inserting in lieu thereof the words “required by law to participate”.

And,

On page two, section twenty-seven, line seven, following the words “April 1, 2019” and the period, by inserting a new sentence to read as follows: “The Rainy Day Fee may not be assessed or collected from employers who may, but are not required to, participate in PEIA under §5-16-22 of this code.”

Delegate Bates moved to amend the bill on page one, following the article heading, by inserting the following:

**“§5-16-5. Purpose, powers and duties of the finance board; initial financial plan; financial plan for following year; and annual financial plans.**

(a) The purpose of the finance board created by this article is to bring fiscal stability to the Public Employees Insurance Agency through development of annual financial plans and long-range plans designed to meet the agency’s estimated total financial requirements, taking into account all revenues projected to be made available to the agency and apportioning necessary costs equitably among participating employers, employees and retired employees and providers of health care services.

(b) The finance board shall retain the services of an impartial, professional actuary, with demonstrated experience in analysis of large group health insurance plans, to estimate the total financial requirements of the Public Employees Insurance Agency for each fiscal year and to review and render written professional opinions as to financial plans proposed by the finance board. The actuary shall also assist in the development of alternative financing options and perform any other services requested by the finance board or the director. All reasonable fees and expenses for actuarial services shall be paid by the Public Employees Insurance Agency. The actuary shall submit a projection of the increase in expenditures for employees’ health insurance benefits for the next plan year finance board. Any financial plan or modifications to a financial plan approved or proposed by the finance board pursuant to this section shall be submitted to and reviewed by the actuary and may not be finally approved and submitted to the Governor and to the Legislature without the actuary’s written professional opinion that the plan may be reasonably expected to generate sufficient revenues to meet all estimated program and administrative costs of the agency, including incurred but unreported claims, for the fiscal year for which the plan is proposed. The actuary’s opinion on the financial plan for each fiscal year shall allow for no more than thirty days of accounts payable to be carried over into the next

fiscal year. The actuary's opinion for any fiscal year shall not include a requirement for establishment of a reserve fund.

(c) All financial plans required by this section shall establish:

(1) Maximum levels of reimbursement which the Public Employees Insurance Agency makes to categories of health care providers;

(2) Any necessary cost-containment measures for implementation by the director;

(3) The levels of premium costs to participating employers; and

(4) The types and levels of cost to participating employees and retired employees.

The financial plans may provide for different levels of costs based on the insureds' ability to pay. The finance board may establish different levels of costs to retired employees based upon length of employment with a participating employer, ability to pay or other relevant factors. The financial plans may also include optional alternative benefit plans with alternative types and levels of cost. The finance board may develop policies which encourage the use of West Virginia health care providers.

In addition, the finance board may allocate a portion of the premium costs charged to participating employers to subsidize the cost of coverage for participating retired employees, on such terms as the finance board determines are equitable and financially responsible.

(d)(1) The finance board shall prepare an annual financial plan for each fiscal year during which the finance board remains in existence. The finance board chairman shall request the actuary to estimate the total financial requirements of the Public Employees Insurance Agency for the fiscal year.

(2) The finance board shall prepare a proposed financial plan designed to generate revenues sufficient to meet all estimated program and administrative costs of the Public Employees

Insurance Agency for the fiscal year. The proposed financial plan shall allow for no more than thirty days of accounts payable to be carried over into the next fiscal year. Before final adoption of the proposed financial plan, the finance board shall request the actuary to review the plan and to render a written professional opinion stating whether the plan will generate sufficient revenues to meet all estimated program and administrative costs of the Public Employees Insurance Agency for the fiscal year. The actuary's report shall explain the basis of its opinion. If the actuary concludes that the proposed financial plan will not generate sufficient revenues to meet all anticipated costs, then the finance board shall make necessary modifications to the proposed plan to ensure that all actuarially determined financial requirements of the agency will be met.

(3) Upon obtaining the actuary's opinion, the finance board shall conduct one or more public hearings in each congressional district to receive public comment on the proposed financial plan, shall review the comments and shall finalize and approve the financial plan.

(4) Any financial plan shall be designed to allow thirty days or less of accounts payable to be carried over into the next fiscal year. For each fiscal year, the Governor shall provide his or her estimate of total revenues to the finance board no later than October 15, of the preceding fiscal year: *Provided, That, beginning October 15, 2019 and each year thereafter, the Governor's estimate of the total revenues shall include at least eighty percent of the projected growth in expenditures for employees health insurance as projected by the actuary: *Provided, however, That* for the prospective financial plans required by this section, the Governor shall estimate the revenues available for each fiscal year of the plans based on the estimated percentage of growth in general fund revenues. The finance board shall submit its final, approved financial plan, after obtaining the necessary actuary's opinion and conducting one or more public hearings in each congressional district, to the Governor and to the Legislature no later than January 1, preceding the fiscal year. This estimated available revenue figure shall become final by the sixteenth day after the first day of*

commencement of each legislative session. The financial plan for a fiscal year becomes effective and shall be implemented by the director on July 1, of the fiscal year. In addition to each final, approved financial plan required under this section, the finance board shall also simultaneously submit financial statements based on generally accepted accounting practices (GAAP) and the final, approved plan restated on an accrual basis of accounting, which shall include allowances for incurred but not reported claims: *Provided, however,* That the financial statements and the accrual-based financial plan restatement shall not affect the approved financial plan.

(e) The provisions of chapter twenty-nine-a of this code shall not apply to the preparation, approval and implementation of the financial plans required by this section.

(f) By January 1, of each year the finance board shall submit to the Governor and the Legislature a prospective financial plan, for a period not to exceed five years, for the programs provided in this article. Factors that the board shall consider include, but are not limited to, the trends for the program and the industry; the medical rate of inflation; utilization patterns; cost of services; and specific information such as average age of employee population, active to retiree ratios, the service delivery system and health status of the population.

(g) The prospective financial plans shall be based on the estimated revenues submitted in accordance with subdivision (4), subsection (d) of this section and shall include an average of the projected cost-sharing percentages of premiums and an average of the projected deductibles and copays for the various programs. Beginning in the plan year which commences on July 1, 2002, and in each plan year thereafter, until and including the plan year which commences on July 1, 2006, the prospective plans shall include incremental adjustments toward the ultimate level required in this subsection, in the aggregate cost-sharing percentages of premium between employers and employees, including the amounts of any subsidization of retired employee benefits. Effective in the plan year commencing on July 1, 2006, ~~and in each plan year thereafter,~~ through the plan year commencing on July 1, 2019 the aggregate

premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, shall be at a level of eighty percent for the employer and twenty percent for employees, except for the employers provided in subsection (d), section eighteen of this article whose premium cost-sharing percentages shall be governed by that subsection. Beginning with the plan year commencing on July 1, 2020 and each year thereafter, the finance board shall not increase in the aggregate the employees' premium and cost sharing provisions that are in effect for the plan year commencing July 1, 2019 other than adjustments for the projected growth in employees' health insurance expenditures. For the plan year commencing on July 1, 2020 and each year thereafter, the Legislature shall appropriate in general and special revenues at least eighty percent of the projected growth in employees' health insurance expenditures as determined by the actuary: *Provided*, That if the Legislature has appropriated more than eighty percent in the previous year, the Legislature can reduce their share of the growth in employees' health insurance expenditures by the percent funded by Legislature over eighty percent for one year: *Provided*, however, That the Legislature's share of the growth in employees' health insurance expenditures may not be less than seventy percent. The employees' share of the projected growth in employees' health insurance expenditures as determined by the actuary may not be more than twenty percent. The finance board shall establish the employees' twenty percent share of projected increases in employees' health insurance expenditures through increases in any combination of premiums, reduction in benefits, deductibles, copayments, co-insurances, out-of-pocket maximums or incentives for wellness.

(h) After the submission of the initial prospective plan, the board may not increase costs to the participating employers or change the average of the premiums, deductibles and copays for employees, except in the event of a true emergency as provided in this section: *Provided*, That if the board invokes the emergency provisions, the cost shall be borne between the employers and employees in proportion to the cost-sharing ratio for that plan year: *Provided*, however, That for purposes of this section, 'emergency'

means that the most recent projections demonstrate that plan expenses will exceed plan revenues by more than one percent in any plan year: *Provided further*, That the aggregate premium cost-sharing percentages between employers and employees, including the amounts of any subsidization of retired employee benefits, may be offset, in part, by a legislative appropriation for that purpose.

~~(h)~~ (i) The finance board shall meet on at least a quarterly basis to review implementation of its current financial plan in light of the actual experience of the Public Employees Insurance Agency. The board shall review actual costs incurred, any revised cost estimates provided by the actuary, expenditures and any other factors affecting the fiscal stability of the plan and may make any additional modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met. The finance board may not increase the types and levels of cost to employees during its quarterly review except in the event of a true emergency.

~~(h)~~ (j) For any fiscal year in which legislative appropriations differ from the Governor's estimate of general and special revenues available to the agency, the finance board shall, within thirty days after passage of the budget bill, make any modifications to the plan necessary to ensure that the total financial requirements of the agency for the current fiscal year are met.”

On the adoption of the amendment, Delegate Bates demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 304**), and there were—yeas 42, nays 56, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, Tomblin, Toney, Walker, Williams and Zukoff.

Absent and Not Voting: Hicks and R. Thompson.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

**H. B. 3140**, Relating to the Division of Natural Resources Infrastructure; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Anderson, the bill was amended on page two, section seven, line nineteen, before the word "recreational", by inserting the words "new construction of".

The bill was then ordered to engrossment and third reading.

**H. B. 3141**, Requiring capitol building commission authorization for certain renovations; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3143**, Relating to requirements for consumer loans in West Virginia; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3145**, Relating to student financial aid resources; on second reading, coming up in regular order, was read a second time.

Delegate Storch moved to amend the bill on page one, section one, line four following the word "science", by inserting in lieu thereof "special education, or music education".

On page two, section one, line twenty following the word "science," by inserting in lieu thereof the following "special education, or music education".

On page three, section one, line thirty-three following the word "science", by inserting in lieu thereof "special education, or music education".



On page seven, section three, line eight following the word “science,” by inserting in lieu thereof the following “special education, or music education”.

On page eight, section three, line thirty-four following the word “science,” by inserting in lieu thereof the following “special education, or music education”.

And,

On page ten, section five, line four following the word “science,” by inserting in lieu thereof the following “special education, or music education”.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 305**), and there were—yeas 51, nays 47, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Azinger, Bibby, Butler, Cadle, Capito, Cooper, Cowles, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Howell, D. Jeffries, J. Jeffries, Jennings, Kessinger, Kump, Linville, Malcolm, Mandt, C. Martin, P. Martin, Maynard, Pack, Phillips, Porterfield, Rowan, Shott, Steele, Summers, Sypolt, Waxman, Westfall, Wilson, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Hicks and R. Thompson.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

The bill was then ordered to engrossment and third reading.

**H. B. 3146**, Relating to retail licensees; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

### First Reading

**Com. Sub. for H. B. 2519**, The Campus Self Defense Act; on first reading, coming up in regular order, was read a first time.

Pursuant to House Rule 103, Delegate Byrd moved that the bill be rejected on first reading.

The question being, "Shall the bill be rejected?", the yeas and nays were demanded, which demand was sustained.

Having been ordered, the yeas and nays were taken (**Roll No. 306**), and there were—yeas 36, nays 62, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Angelucci, Atkinson, S. Brown, Byrd, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Fleischauer, Fluharty, Hansen, Hollen, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pushkin, Pyles, Robinson, Rowe, Shott, Skaff, Storch, Sypolt, C. Thompson, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

Absent and Not Voting: Hicks and R. Thompson.

So, a majority of the members present and voting not having voted in the affirmative, the motion to reject the bill on first reading did not prevail.

The bill was then ordered to second reading.

**H. B. 3142**, Relating to reducing the severance tax on thermal or steam coal; on first reading, coming up in regular order, was read a first time and ordered to second reading.

**H. B. 3144**, North Central Appalachian Coal Severance Tax Rebate Act; on first reading, coming up in regular order, was read a first time and ordered to second reading.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### Committee Reports

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 352**, Relating to Division of Corrections and Rehabilitation acquiring and disposing of services, goods, and commodities,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 352) was referred to the Committee on Finance.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. J. R. 26**, Giving the Legislature more control over the manufacture and sale of alcohol amendment,

And reports the same back with the recommendation that it be adopted, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the resolution (H. J. R. 26) was referred to the Committee on the Judiciary.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**S. B. 453**, Relating to background checks of certain financial institutions,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 157**, Authorizing Department of Administration promulgate legislative rules,

**Com. Sub. for S. B. 295**, Relating to crimes against public justice,

**S. B. 440**, Relating to Antihazing Law,

And,

**Com. Sub. for S. B. 510**, Relating to medical professional liability,

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

Delegate Capito, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 25<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for S. B. 61**, Adding certain crimes for which prosecutor may apply for wiretap,

And,

**S. B. 377**, Relating to minimum wage and maximum hour standards.

### **Miscellaneous Business**

Delegate Westfall noted to the Clerk that he was absent on Friday, February 22, 2019, when the votes were taken on Com. Sub. for H. B. 2532, Com. Sub. for H. B. 2540, Com. Sub. for H. B. 2541, H. B. 2730, Com. Sub. for H. B. 2807, H. B. 2829, H. B. 2872, Com. Sub. for H. B. 2901, H. B. 2934, H. B. 2968, H. B. 3134, Com. Sub. for S. B. 13, S. B. 442, S. B. 443 and S. B. 444, and that had he been present, he would have voted “Yea” thereon.

Delegate Ellington noted to the Clerk that he be recorded as having voted “Nay” on the motion to discharge on H. B. 3129.

Pursuant to House Rule 132, consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Hornbuckle regarding discharge motions.

- Delegate Bates regarding the amendment offered to H. B. 3139

- Speaker Hanshaw and Delegate Foster during Miscellaneous Business on February 22

Pursuant to House Rule 94b, Members filed forms with the Clerk’s Office to be removed as a cosponsor of the following:

- Delegate Higginbotham for H. B. 2894

At 7:32 p.m., the House of Delegates adjourned until 9:00 a.m., Tuesday, February 26, 2019.



---

Tuesday, February 26, 2019

**FORTY-NINTH DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 9:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Monday, February 25, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Committee Reports**

Delegate Butler, Chair of the Committee on Technology and Infrastructure, submitted the following report, which was received:

Your Committee on Technology and Infrastructure has had under consideration:

**S. B. 10**, Relating to Second Chance Driver's License Program,

**S. B. 153**, Providing greater flexibility for making infrastructure project grants,

And,

**S. B. 542**, Relating to registration fees for military-related special registration plates,

And reports the same back with the recommendation that they each do pass, but that they first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bills (S. B. 10, S. B. 153 and S. B. 542) were each referred to the Committee on Finance.

Delegate Butler, Chair of the Committee on Technology and Infrastructure, submitted the following report, which was received:

Your Committee on Technology and Infrastructure has had under consideration:

**S. B. 190**, DOH rule relating to employment procedures,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (S. B. 190) was referred to the Committee on the Judiciary.

Delegate Butler, Chair of the Committee on Technology and Infrastructure, submitted the following report, which was received:

Your Committee on Technology and Infrastructure has had under consideration:

**Com. Sub. for S. B. 3**, Establishing WV Small Wireless Facilities Deployment Act,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 3) was referred to the Committee on the Judiciary.

Delegate Butler, Chair of the Committee on Technology and Infrastructure, submitted the following report, which was received:

Your Committee on Technology and Infrastructure has had under consideration:

**H. C. R. 14**, U. S. Army CPT Benjamin Ronk Memorial Bridge,

**H. C. R. 20**, PFC Charles Everett Hurd Memorial Bridge,



**H. C. R. 36**, SPEC 5 Garry Monzel “Michael” Shannon Memorial Bridge,

**H. C. R. 47**, U. S. Army PFC Arnold Miller Memorial Bridge,

**H. C. R. 54**, U. S. Navy AOAN David “Wayne” Cornell Memorial Bridge,

**H. C. R. 62**, U. S. Marine Corps LCpl Michael Linn Cooper Memorial Bridge,

**H. C. R. 63**, U. S. Army SSG Boggs G. Collins Memorial Road,

**H. C. R. 65**, Vietnam Veterans Memorial Highway,

**H. C. R. 66**, U. S. Army SPC Thurman “Duwayne” Young Memorial Bridge,

**H. C. R. 68**, Bluefield Police Lt. Aaron L. Crook Memorial Road,

**H. C. R. 73**, U. S. Army SGT Matthew T. Miller Memorial Bridge,

**H. C. R. 74**, U. S. Army PFC James Leslie Pridemore Memorial Road,

And,

**S. C. R. 12**, U. S. Army CPL Lee Roy Young Memorial Bridge,

And reports the same back with the recommendation that they each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions ( H. C. R. 14, H. C. R. 20, H. C. R. 36, H. C. R. 47, H. C. R. 54, H. C. R. 62, H. C. R. 63, H. C. R. 65, H. C. R. 66, H. C. R. 68, H. C. R. 73, H. C. R. 74 and S. C. R. 12) were each referred to the Committee on Rules.

Delegate Butler, Chair of the Committee on Technology and Infrastructure submitted the following report, which was received:

Your Committee on Technology and Infrastructure has had under consideration:

**H. C. R. 6**, U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders Jr. Memorial Bridge,

And reports back a committee substitute therefor, with a new title, as follows:

**Com. Sub. for H. C. R. 6** - "Requesting the Division of Highways name bridge number 20-60-36.23 (20A160), locally known as U.S. Route 60 Cedar Grove Overpass 3565 Bridge, carrying U.S. Route 60 over County Route 81, Kanawha County, the 'U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders Jr. Memorial Bridge'."

**H. C. R. 9**, Kingmont Veterans Bridge PVT Jarrett Springer, U. S. Army WWII, PFC Benjamin "Benny" Hamrick, USMC Vietnam,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 9** - "Requesting the Division of Highways rename bridge number 25-64/1-0.04 (25A106), locally known as Kingmont Road Overpass, carrying Route 64 over Interstate 79 in Marion County, as the 'Kingmont Veterans Bridge PVT Jarrett Springer, U. S. Army WWII, PFC Benjamin "Benny" Hamrick, USMC Vietnam',"

**H. C. R. 17**, U. S. Marine Corps CPL Larry Scott Kennedy Memorial Bridge,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 17** - "Requesting the Division of Highways name bridge number 20-73/5-0.55, locally known as

Point Lick Bridge, carrying Route 73/5 over Campbells Creek in Kanawha County, the ‘U. S. Marine Corps CPL Larry Scott Kennedy Memorial Bridge’,”

**H. C. R. 37**, SSGT Thomas Gavin Hess Memorial Bridge,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 37** - “Requesting the Division of Highways name bridge number 42-21-13.39, locally known as the Spillway Bridge, near Elkins in Randolph County, crossing the Tygart Valley River on Georgetown Road, the ‘SSGT Thomas Gavin Hess Memorial Bridge’,”

**H. C. R. 40**, U. S. Army CAPT William H. Denney, Jr. Memorial Bridge,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 40** - “Requesting the Division of Highways name bridge number 16-55-11.40 (16A136), locally known as U. S. 220 Connector Bridge, carrying West Virginia Route 55 over South Valley Branch Railroad and Dumpling Run in Hardy County, the ‘U. S. Army CAPT William H. Denney, Jr. Memorial Bridge’,”

**H. C. R. 42**, U. S. Navy Petty Officer 2d Class Joseph Allen Ashley Memorial Bridge,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 42** - “Requesting the Division of Highways name bridge number :44-7-3.42 (44A015), locally known as Grace Bridge, carrying County Route 7 over Spring Creek in Roane County, the ‘U. S. Navy Petty Officer 2d Class Joseph Allen Ashley Memorial Bridge’,”

**H. C. R. 58**, U.S. Army SGT Tommy Meadows Memorial Road,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 58** - "Requesting Division of Highways to name that portion of I-64/I-77 beginning at mile marker 93 and ending at mile marker 94 in Kanawha County, the 'U. S. Army SGT Tommy Meadows Memorial Road',"

**H. C. R. 64**, U. S. Army CPL Jerry Lee Noble Memorial Bridge,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 64** - "Requesting the Division of Highways to name bridge number 04-5/6-7.33 (O4A193), locally known as the Riffle Box Beam Bridge, carrying County Route 5/6 over Perkins Fork of Cedar Creek in Braxton County, the 'U. S. Army CPL Jerry Lee Noble Memorial Bridge',"

**H. C. R. 72**, U. S. Army PFC Harold Paul Cottle Memorial Highway,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 72** - "Requesting the Division of Highways name that portion of County Route 14 in Roane, West Virginia, north of Spencer, from its intersection with County Route 9 (Spring Creek Road) to Route 14/12 (Hospital Drive), the 'U. S. Army PFC Harold Paul Cottle Memorial Highway',"

And,

**H. C. R. 78**, U. S. Air Force Amn Kenneth Wayne Hammar Memorial Bridge,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 78** - “Requesting the Division of Highways name bridge number 20-61/7-0.56 (20A185), locally known as Pratt Pony Truss, carrying County Route 61/7 over Paint Creek in Kanawha County, the ‘U. S. Air Force Amn Kenneth Wayne Hammar Memorial Bridge’,”

With the recommendation that the committee substitutes each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (Com. Sub. for H. C. R. 6, Com. Sub. for H. C. R. 9, Com. Sub. for H. C. R. 17, Com. Sub. for H. C. R. 37, Com. Sub. for H. C. R. 40, Com. Sub. for H. C. R. 42, Com. Sub. for H. C. R. 58, Com. Sub. for H. C. R. 64, Com. Sub. for H. C. R. 72 and Com. Sub. for H. C. R. 78) were each referred to the Committee on Rules.

### **Messages from the Executive**

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on February 25, 2019, he approved **Com. Sub. for S. B. 18, Com. Sub. for S. B. 323, Com. Sub. for H. B. 2191 and Com. Sub. for H. B. 2446.**

### **Messages from the Senate**

A message from the Senate, by

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

**H. B. 2036**, Permitting vehicles displaying disabled veterans’ special registration plates to park in places where persons with mobility impairments may park.

A message from the Senate, by

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

**Com. Sub. for H. B. 2821**, Updating provisions for command, clerical and other pay.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 238** - “A Bill to amend and reenact §17C-12-7 of the Code of West Virginia, 1931, as amended, relating to increasing certain penalties for illegally passing a stopped school bus; increasing driver’s license suspension periods for violators; and requiring forward and rear-facing exterior cameras on all county school buses purchased after July 1, 2019”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 316** - “A Bill to amend and reenact §8-22-27a of the Code of West Virginia, 1931, as amended, relating to municipal options to recalculate or preserve previously approved pensions awarded through the state Municipal Policemen’s or Municipal Firemen’s Pension and Relief Funds prior to effective date of §8-22-27a as enacted during the regular legislative session of 2017”; which was referred to the Committee on Pensions and Retirement then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 400** - “A Bill to amend and reenact §30-4-3, §30-4-8, and §30-4-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-4-8a, all relating generally to dentistry; permitting the West Virginia Board of Dentistry to create specialty licenses; setting forth those specialty licenses; changing the specific examination an applicant must pass before being issued a license to practice dentistry; changing the type of exam an applicant must

pass before being issued a license to practice dental hygiene; and defining terms”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 421** - “A Bill to amend and reenact §5B-2E-10 of the Code of West Virginia, 1931, as amended, relating to annual legislative review of the economic development tax credit”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 432** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-56-1, §16-56-2, §16-56-3, §16-56-4, §16-56-5, §16-56-6, §16-56-7, §16-56-8, §16-56-9, §16-56-10, §16-56-11, §16-56-12, §16-56-13, §16-56-14, and §16-56-15, all relating to enacting the Recognition of Emergency Medical Services Personnel Licensure Interstate Compact; entering into the compact with all jurisdictions also enacting the compact; stating purpose of compact; defining terms; identifying member states as home states; retaining authority of member state to require license under circumstances not covered by compact; setting conditions for home state’s license to authorize practice in a remote state under the compact; requiring member states to recognize licenses issued by another member state under certain conditions; setting requirements for individuals to exercise privilege to practice; setting scope of practice; making individuals practicing in remote states subject to that state’s laws; authorizing remote states to take action against individual’s privilege to practice within that state under certain circumstances; providing effect of restrictions on license on compact privileges; setting conditions of practicing in remote state under compact terms; defining relationship of compact with Emergency Management

Assistance Compact; setting terms and requirements for certification of veterans, certain service members, and their spouses; recognizing exclusive power of home states to impose adverse action against license issued by home state; providing consequences for compact participation if individual's license is subject to adverse action by home state; requiring member states to report adverse actions against licenses; authorizing states to take action against individual's privilege to practice within that state; requiring home state EMS authority investigate and take appropriate action based on reported conduct in remote state; authorizing alternative programs in lieu of adverse action; authorizing member state's EMS authority to issue subpoenas; authorizing member state's EMS authority to issue certain cease and desist orders; establishing Interstate Commission for EMS Personnel Practice; providing venue; maintaining state sovereign immunity; providing for membership; providing for voting; requiring annual meetings; requiring meetings to be public; providing exceptions; authorizing commission prescribe bylaws and/or rules to govern conduct; granting certain powers to commission; providing for financing for the commission; making validity of annual assessment against state contingent upon funds being appropriated by the Legislature or otherwise being made available; providing for qualified immunity of certain persons; requiring commission defend certain persons for actions arising out of actions occurring within the scope of duties related to the commission; requiring commission indemnify and hold harmless certain persons under certain circumstances; providing for development and maintenance of coordinated database and reporting system; requiring member states provide certain information to coordinated database; requiring notification by coordinated database administrator of adverse action taken against individual in member state; authorizing member state to designate information not to be shared with the public without express permission of contributing state; providing for removal of information from database when required to be expunged; authorizing rule-making commission; providing scope of rulemaking; providing procedures for rulemaking; authorizing emergency rulemaking by the commission; providing that commission rules are not binding on the State of West Virginia



until they have been authorized as legislative rules; providing timeline and procedure for proposing legislative rules; authorizing emergency rulemaking; directing state government to enforce compact and take necessary actions to effectuate its purposes and intent; directing courts take judicial notice of compact and rules promulgated pursuant to compact; providing procedures for the commission to follow if member state has defaulted; authorizing member state be terminated from the compact under certain conditions; setting terms of termination; authorizing appeal; authorizing mediation and binding dispute resolution between commission and member state; authorizing enforcement of the compact by the commission; authorizing legal action; establishing venue; providing for venue in West Virginia; providing implementation date for the compact; making any state joining after implementation subject to rules as they exist when the compact is adopted; authorizing member state withdraw from the compact; maintaining member state authority to enter into licensure or cooperative agreements with nonmember state; authorizing amendment of the compact; providing for liberal construction; providing for severability of the compact if it is found to violate constitution of member state; directing Emergency Medical Services Advisory Council review decisions of the commission; and authorizing Emergency Medical Services Advisory Council make recommendation to Legislature for withdrawal from the compact”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 441** - “A Bill to amend and reenact §18B-4-5 of the Code of West Virginia, 1931, as amended, relating to campus police officers of state institutions of higher learning; and allowing governing boards of state institutions of higher learning to appoint all qualified individuals to serve as campus police officers”; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 511** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §60-1-5c; to amend and reenact §60-4-3b of said code; to amend and reenact §60-8-3 and §60-8-17 of said code; and to amend said code by adding thereto two new sections, designated §60-8-3a and §60-8-6b, all relating to wine production and wine sales generally; creating alternating wine proprietorships for wineries and farm wineries and setting forth requirements for the proprietorships; authorizing farm entities in proprietorships to manufacture and sell wine; authorizing certain groceries to sell wine through mobile applications and web-based internet sales with at-store pickup; clarifying tasting, sampling, and sale procedures and requirements for wineries and farm wineries; permitting wineries or farm wineries to sell wine for on-premises and off-premises consumption at festivals and fairs; establishing a wine club license for festivals and fairs and setting forth requirements; permitting certain charitable events to auction wine bottles for off-premises consumption; defining terms; limiting number of charitable auction licenses; permitting the sale of wine in Division II and III college stadiums; authorizing wine specialty shops to obtain an additional license privilege to deliver wine with gift baskets and setting forth requirements; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees that fail to timely file their renewal applications and pay their license fees; and authorizing the commissioner to propose rules for promulgation”; which was referred to the Committee on Government Organization.

A message from the Senate, by

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

**S. B. 535** - “A Bill setting the date of collections of a municipal sales and service tax and use tax enacted by the City of

Buckhannon pursuant to the amendment to its Municipal Home Rule Plan approved by the Municipal Home Rule Board on January 16, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 538** - “A Bill to amend and reenact §17-2D-2 of the Code of West Virginia, 1931, as amended, relating generally to the West Virginia Highway Design-Build Pilot Program; modifying monetary project limits of the program and terminology; and allowing use of program with limits for projects financed with bonds”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 539** - “A Bill to amend and reenact §15-2A-6 of the Code of West Virginia, 1931, as amended, relating to the accrued benefit of retirees in the West Virginia State Police Retirement System Plan B”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 544** - “A Bill to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended, relating to increasing salaries for members of the West Virginia State Police over a three-year period; increasing the annual interval salary increase; and setting effective dates”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 547** - “A Bill to amend and reenact §19-25-2, §19-25-3, §19-25-4, §19-25-5, and §19-25-6 of the Code of West Virginia, 1931, as amended, all relating generally to limiting landowner liability for injuries to, or caused by, persons entering or going upon land for noncommercial recreational purposes, wildlife propagation purposes, military training purposes, law-enforcement training purposes, or homeland defense training purposes; clarifying that limitation on liability and duty to warn applies only to landowner permitting the general public to enter or go upon such land for recreational or wildlife propagation purposes; providing that a landowner is not liable for, and has no duty to warn of, dangerous or hazardous wild animals on the land; deleting obsolete language providing that a landowner does not confer invitee or licensee status on persons invited or permitted upon land; substituting the term ‘fee’ for the term ‘charge’; defining the term ‘fee’; providing that for the purposes of limiting landowner liability, a fee does not include a fee for an annual event or occurrence, if the total of such fees in a year do not exceed \$25 per individual; providing that for the purposes of limiting landowner liability, a fee does not include voluntary donations to certain charitable entities; amending the term ‘land’ to include premises; amending the definition of the term ‘owner of land’ to specifically include any person holding legal possession, ownership, or partial ownership of an interest in land or a person sponsoring land or premises for volunteer improvement or maintenance purposes; amending the definition of the term ‘recreational purposes’ to specifically include parking on or traversing land to engage in recreational activities and maintaining, or making improvements to, land for the purpose of making recreational activities accessible; naming the activities of rock climbing, bouldering, and kayaking as being activities within the definition of ‘recreational purposes’; and making numerous technical corrections”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 554** - “A Bill to amend and reenact §29-18-4a of the Code of West Virginia, 1931, as amended, relating to aligning the salary of the Director of the State Rail Authority with similar positions in state government; and providing that the Secretary of Transportation set the salary with the consent of the authority”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 592** - “A Bill to amend and reenact §7-18-3 and §7-18-4 of the Code of West Virginia, 1931, as amended, all relating to municipal or county taxation of hotel rooms booked through a market facilitator; defining terms; providing for collection and remittance of the tax imposed by any municipality or county; requiring the marketplace facilitator separately state the tax on all bills, invoices, accounts, books of account, and records relating to occupancy or use of a hotel room; and deeming all taxes collected be held in trust by the marketplace facilitator until remitted”; which was referred to the Committee on Government Organization then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 596** - “A Bill to amend and reenact §17A-2-12a of the Code of West Virginia, 1931, as amended, relating to including voluntary donations to the Department of Veterans Assistance on forms created by the Division of Motor Vehicles”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 597** - “A Bill to amend and reenact §30-38A-7, §30-38A-12, and §30-38A-17 of the Code of West Virginia, 1931, as amended, all relating to conforming the state law to the federal law for appraisal management companies’ registration; expanding certification requirements; changing requirements for removing appraiser from panel; and imposing disciplinary action reporting requirement”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 603** - “A Bill to amend and reenact §32A-2-3 of the Code of West Virginia, 1931, as amended, relating to persons engaged in the business of currency exchange, transportation, or transmission; and adding exemptions”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 627** - “A Bill to amend and reenact §19-1-11 of the Code of West Virginia, 1931, as amended, relating generally to the Rural Rehabilitation Loan Program; authorizing the Commissioner of Agriculture to utilize other governmental entities, in addition to the State Treasurer, to service the loan program; and exempting the loan program from having to utilize the State Agency for Surplus Property to dispose of repossessed items”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 654** - “A Bill to amend and reenact §31-17A-2 of the Code of West Virginia, 1931, as amended, relating to amending an exception under the definition of ‘mortgage loan originator’ related to retailers of manufactured or modular homes”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 656** - “A Bill to amend and reenact §11-10-5t and §11-10-5z of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-13V-7 of said code, all relating to electronic filing of tax returns and electronic funds transfers in payment of taxes; and raising to \$50,000 the tax liability threshold amount at which taxpayers must file returns electronically or pay by electronic funds transfers”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 665** - “A Bill to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating to allowing for expedited oil and gas well permitting and expedited oil and gas well permit modifications upon the payment of applicable expedited fees; designating the proceeds of such expedited fees; providing for the daily pro rata refund of the expedited fees if the permit is not approved between day 45 and day 60 after the submission of a permit application; providing for the daily pro rata refund of one half of the modification fees between day 10 and day 20 after the submission of a permit modification application; and relating generally to horizontal well oil and gas permitting”; which was referred to the Committee on Energy.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 666** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-28-1, §11-28-2, §11-28-3, §11-28-4, and §11-28-5, all relating to creating the West Virginia Motorsports Entertainment Complex Investment Act"; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 667** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2-17, relating to creating the West Virginia Motorsport Committee; setting forth who serves on the committee; setting forth its duties; requiring meetings and hearings; and requiring reports"; which was referred to the Committee on Government Organization.

### **Resolutions Introduced**

Delegates Caputo, Angelucci, S. Brown, Barrett, Bates, Boggs, N. Brown, Campbell, Canestraro, Cooper, Dean, Diserio, Ellington, Hartman, Hill, D. Jeffries, J. Jeffries, Jennings, Lavender-Bowe, Lovejoy, C. Martin, Maynard, McGeehan, Miley, Paynter, Pethel, Robinson, Rohrbach, Sponaule, Staggers, Steele, Storch, Swartzmiller, Sypolt, C. Thompson, Walker, Worrell and Zukoff offered the following resolution, which was read by its title and referred to the Committee on Energy then Rules:

**H. R. 16** - "Recognizing the recent rise in Black Lung, particularly Progressive Massive Fibrosis, the most-deadly form of Black Lung in West Virginia."

Whereas, It has been established that many individuals during the course of their lives, and in pursuit of their livelihoods in order to raise their families in West Virginia, have been exposed to the hazard of inhaling minute particles of coal dust and silica and as a result have sustained chronic respiratory disabilities; and

Whereas, Occupational pneumoconiosis, also known as Black Lung, in these affected miners have resulted in loss of employment



opportunities, increased medical costs, and considerable pain and suffering to them and their families; and

Whereas, In a recent study from the American Journal of Public Health in September, 2018, found that over 20 percent of miners with 25 years or more of tenure have Black Lung; and

Whereas, Half of the 4,679 Black Lung cases determined by the U.S. Department of Labor between 1970 and 2016 have occurred since the year 2000; and

Whereas, 2,000 cases of Progressive Massive Fibrosis have been discovered since 2010; and

Whereas, Most miners with Progressive Massive Fibrosis last worked in West Virginia; and

Whereas, West Virginia has seen an 11 percent increase in Progressive Massive Fibrosis since 1972; and

Whereas, Nationally the percentage of miners diagnosed with Black Lung increased from zero percent in 1972 to 8.3 in 2014; and

Whereas, There has been 62 Black Lung related lung transplants in the United States, 79 percent of which have occurred in the last decade; therefore, be it

*Resolved by the House of Delegates:*

That the State of West Virginia is hereby requested to renew its resolve to do whatever it takes to eradicate this terrible disease; and, be it

*Further Resolved,* That the State of West Virginia work with all interested parties to protecting miners from contracting this disease and supporting miners who have already been affected by this disease by any means necessary.

Delegates C. Thompson, Hartman, Boggs, S. Brown, Angelucci, Sponaule, Estep-Burton, Rodighiero, Zukoff, Rohrbach, Campbell, Bates, N. Brown, Doyle, Evans, Hornbuckle, Lavender-Bowe and R. Thompson offered the following

resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 79** - "Requesting the Division of Highways name bridge number 42-25-0.04 (42A185), locally known as Glenmore Bridge, carrying County Route 25 over Isner Creek in Randolph County, the 'U. S. Army PFC Homer Jacob Day Memorial Bridge'."

Whereas, U. S. Army Private First Class Homer Jacob Day, son of Isaac Cecil Day and Ourtilla May Mallow Day, was born April 10, 1922, in Whitmer, Randolph County, West Virginia. He was raised on the family farm at the head of Moyer Hollow Road and attended the Glenmore School at Glenmore. Before his induction, Private Day worked on the family farm; and

Whereas, Private Day was 20 years old when he was inducted into the military service on October 12, 1942, at Fort Hayes, Ohio. He was sent overseas on April 6, 1944, where he served his country in various engagements in the European theatre of operations. Private Day was killed in action while serving with Company I, 330<sup>th</sup> Infantry Regiment, 83<sup>rd</sup> Infantry in Normandy, France; and

Whereas, Private Day's body was returned home from overseas where funeral services were conducted by the Reverend Mr. Ross, of the Church of the Nazarene, at the family home in Glenmore. At the time of his death he was survived by his mother, and his brothers and sisters: Mrs. Masel Everhart, Mrs. Dallas White, Earl Day who was serving in the U. S. Army in Panama, as well as Rosa, Geraldine, Betty, Nevin, Leonard, Gerald and David who were living at home; and

Whereas, Private Day's body was interred by F. E. Runner in the IOOF Cemetery. Military rites were conducted by the H. W. Daniels Post of the American Legion and the Tygart Valley Veterans of Foreign Post. Honorary pall bearers were Marian Bell, Gussie Bender, Willa Jean, Maxine Moyer, Doris Moyer, Betty Moyer, Bernice Swecker and Beatrice Swecker; and

Whereas, It is fitting that an enduring memorial be established to commemorate U. S. Army Private First Class Homer Jacob Day and his contributions to our state and the supreme sacrifice for his country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Commissioner of the Division of Highways is hereby requested to name bridge number 42-25-0.04 (42A185), locally known as Glenmore Bridge, carrying County Route 25 over Isner Creek in Randolph County, the “U. S. Army PFC Homer Jacob Day Memorial Bridge”; and, be it

*Further Resolved,* That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge, containing bold and prominent letters, proclaiming the bridge as the “U. S. Army PFC Homer Jacob Day Memorial Bridge”; and, be it

*Further Resolved,* That the Clerk forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates Householder, Kump, Bibby, Hardy, Wilson and Barrett offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 80** - “Requesting the Division of Highways name bridge number 02-7-5.94 (02A015), locally known as Elk Branch Bridge, carrying County Route 7 over Elk Branch in Berkeley County, the ‘Norman A. Silver Memorial Bridge’.”

Whereas, Norman A. Silver was born in 1913, married his childhood sweetheart, Carrie G. Shriver, and together they had 13 children. Norman and Carrie Silver farmed over 1,800 acres of land and, with their children, operated a local sawmill; and

Whereas, Mr. Silver was a long-time resident of Berkeley County, dedicating his life to the ministry, and donating land for churches and rescue missions. He also donated land to the State of West Virginia on Back Creek Valley Road in Hedgesville, West

Virginia, to make the road and bridge safer, turning it from a one lane to a two-lane bridge; and

Whereas, It is fitting that an enduring memorial be established to commemorate Norman A. Silver for his service to his ministry, his community and the State of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 02-7-5.94 (02A015), locally known as Elk Branch Bridge, carrying County Route 7 over Elk Branch in Berkeley County, the “Norman A. Silver Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge the “Norman A. Silver Memorial Bridge”; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates Maynard, Robinson, Capito, Angelucci, Atkinson, Azinger, Barrett, Bibby, Boggs, N. Brown, S. Brown, Butler, Byrd, Campbell, Canestraro, Cooper, Criss, Dean, Diserio, Doyle, Ellington, Estep-Burton, Evans, Fast, Fleischauer, Fluharty, Graves, Hamrick, Hanna, Hansen, Harshbarger, Hartman, Hicks, Hill, Hollen, Hornbuckle, Hott, Howell, D. Jeffries, J. Jeffries, Jennings, J. Kelly, Kessinger, Kump, Lavender-Bowe, Linville, Longstreth, Malcolm, C. Martin, Miley, Miller, Pack, Paynter, Pethel, Phillips, Porterfield, Pyles, Queen, Rodighiero, Rohrbach, Rowan, Rowe, Shott, Skaff, Sponaugle, Staggers, Steele, Storch, Swartzmiller, Sypolt, C. Thompson, R. Thompson, Tomblin, Toney, Walker, Waxman, Westfall, Williams, Wilson, Worrell and Zukoff offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 81** - “Requesting the Capitol Building Commission to create a subcommittee to raise private funds sufficient to erect a statue of Charles Elwood ‘Chuck’ Yeager on the State Capitol

Complex grounds wherein the end of Washington Street East intersects California Avenue.”

Whereas, Charles Elwood “Chuck” Yeager was born February 13, 1923, in Myra, West Virginia to Albert Hal and Susie Mae Yeager; and

Whereas, From a young age, Charles Elwood “Chuck” Yeager would assist his father in repairing and troubleshooting natural gas drilling equipment and his father’s trucks; and

Whereas, Charles Elwood “Chuck” Yeager’s interest and skill in machinery work grew rapidly as he became a teenager; and

Whereas, Charles Elwood “Chuck” Yeager graduated from Hamlin High School in Hamlin, West Virginia in June 1941; and

Whereas, Charles Elwood “Chuck” Yeager enlisted in the Army Air Corps in September 1941 at the age of eighteen; and

Whereas, Charles Elwood “Chuck” Yeager earned his pilot’s wings with Class 43-C on March 10, 1943, and shortly thereafter joined the 363<sup>rd</sup> Fighter Squadron, 357<sup>th</sup> Fighter Group; and

Whereas, Charles Elwood “Chuck” Yeager flew several successful missions before being shot down on March 5, 1944; and

Whereas, Charles Elwood “Chuck” Yeager evaded capture with the help of the French underground and reunited with his unit in England; and

Whereas, Charles Elwood “Chuck” Yeager completed his final flight on January 15, 1945, totaling 64 combat missions during his career; and

Whereas, In January 1946, Charles Elwood “Chuck” Yeager was handpicked by Colonel Albert Boyd to attend the Air Force Flight Test Center at Edwards AFB; and

Whereas, Colonel Albert Boyd selected Charles Elwood “Chuck” Yeager to be the first person to surpass the speed of sound; and

Whereas, On October 14, 1947, Charles Elwood “Chuck” Yeager became the first person to fly faster than the speed of sound with a top speed of Mach 1.06; and

Whereas, Charles Elwood “Chuck” Yeager continued to test planes until 1954 when he took over command of the 417<sup>th</sup> Fighter Bomber Squadron, and later took command of the 1<sup>st</sup> Fighter Day Squadron at George AFB in 1957; and

Whereas, After being promoted to Colonel, Charles Elwood “Chuck” Yeager took command of the USAF Aerospace Research Pilot School; and

Whereas, on February 25, 1975, Charles Elwood “Chuck” Yeager retired from active duty; and

Whereas, Charles Elwood “Chuck” Yeager has remained a beloved figure nationally, but holds a special place in the heart of West Virginians; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Capitol Building Commission is hereby requested to create a subcommittee of five members to design and raise private funds sufficient to erect a statue of Charles Elwood “Chuck” Yeager on the State Capitol Complex grounds wherein the end of Washington Street East intersects California Avenue; and, be it

*Further Resolved,* That the subcommittee report its progress in raising private funds to the Regular Session of the Legislature annually on February 13<sup>th</sup> until sufficient funds are raised.

Delegates Boggs, Robinson, Estep-Burton, Rowe, C. Thompson, Sponaugle and S. Brown offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 82** - “Requesting the Division of Highways to name bridge number 20-60-22.55 EB & WB (20A346, 20A680), locally known as Campbells Creek Overpass EB & WB, carrying US 60 (EB & WB) over Port Amherst Drive and Railroad in Kanawha

County, the ‘U. S. Navy Veteran Samuel H. Slack, Jr. Memorial Bridge’.”

Whereas, Samuel H. Slack, Jr., son of Samuel H. Slack, Sr. and Ida Mae Slack, was born October 25, 1925; and

Whereas Samuel H. Slack, Jr. was a Naval Veteran who served in WWII, Korea, and Vietnam; and

Whereas, Mr. Slack, was a member of the Ammen, whose crew was honored by the Taiwanese Government in 1998 for their participation in the artillery Battle of Quemog in 1958 during the Korean War to “liberate” Taiwan from the Chinese Nationalist Party; and

Whereas, Mr. Slack served on the USS Longbeach at a time in history when the US Navy launched its first nuclear fleet of ships; and

Whereas, This member of the “Greatest Generation” should be honored for his outstanding service to the US Navy, his state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 20-60-22.55 EB & WB (20A346, 20A680), locally known as Campbells Creek Overpass EB & WB, carrying US 60 (EB & WB) over Port Amherst Drive and Railroad in Kanawha County, the “U. S. Navy Veteran Samuel H. Slack, Jr. Memorial Bridge”; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the “U. S. Navy Veteran Samuel H. Slack, Jr. Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegate Hanshaw (Mr. Speaker) offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 83** - "Requesting the creation of the West Virginia Distressed Water and Wastewater Utility Systems Viability Study Committee to conduct a study regarding the state's distressed water and wastewater infrastructure and submit a written report of findings and recommendations to the Joint Committee on Government and Finance."

Whereas, The provision of clean water and the collection and treatment of wastewater, made possible through infrastructure development, has resulted in a drastic reduction in the incidence of disease, increase in life expectancy, and other major public health advancements; and

Whereas, The development of water and wastewater infrastructure has also advanced economic development through increased production and productivity within West Virginia's economic sectors and commercial expansion geographically throughout the state; and

Whereas, A substantial portion of the state's water or wastewater infrastructure has reached or will soon reach the end of its useful life, potentially endangering the viability of certain water and wastewater systems and the ability of utilities to maintain regulatory compliance; and

Whereas, West Virginia water and wastewater utilities face substantial capital investment needs to maintain and replace aging infrastructure; and

Whereas, For some water and wastewater utilities, adequately addressing infrastructure needs may adversely affect their ability to maintain reasonable rates; and

Whereas, Many water and wastewater utilities have experienced a loss of customers resulting from the decline in populations served which has created additional rate burden on the remaining population; and



Whereas, Failing to timely address infrastructure needs will inevitably result in the inability of water and wastewater utilities to adequately serve customers and maintain regulatory compliance, threatening human health and hindering economic growth; and

Whereas, Infrastructure needs cannot be met through reliance on government grant and loan programs alone and instead require a comprehensive plan to confront the financial, organizational, and regulatory challenges that contribute to infrastructure investment limitations; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature of West Virginia hereby establish the West Virginia Distressed Water and Wastewater Utility Systems Viability Study Committee will conduct a study and submit a written report to the Joint Committee on Government and Finance no later than October 1, 2019, with recommendations regarding:

(a) The ability of the state's water and wastewater infrastructure to adequately serve residents and allow utilities to comply with regulatory requirements;

(b) The use of criteria for classifying a water or wastewater system as "distressed", and remedies to assist distressed water and wastewater systems including methods to:

(1) Encourage the transfer, regionalization, or sale of distressed systems with or to non-distressed systems;

(2) Ensure the most prudent uses of grant funding and low-cost loans in assisting distressed systems;

(3) Mitigate the rate shock in assisting distressed systems;

(4) Encourage private investment in distressed systems; and

(5) Ensure a reasonable balance between expanding service to unserved areas of the state and assisting distressed systems; and, be it

*Further Resolved*, That the committee consider data regarding noncompliance and deficiencies of the state's water and wastewater utilities compiled, summarized, or analyzed by the United States Environmental Protection Agency, the West Virginia Department of Environmental Protection, the West Virginia Department of Health and Human Resources Bureau for Public Health, and the Public Service Commission of West Virginia; and, be it

*Further Resolved*, That the committee undertake all other actions necessary to complete its study, including reviewing funding of West Virginia Infrastructure and Jobs Development Council projects, examining laws and regulations of other jurisdictions, touring water and wastewater facilities, and consulting with experts; and, be it

*Further Resolved*, That the committee shall include the following members:

(a) The Secretary of the West Virginia Department of Environmental Protection or designee;

(b) The Secretary of the West Virginia Department of Health and Human Resources Bureau for Public Health or designee;

(c) A representative from the Rural Water Association;

(d) The Chairman of the Public Service Commission of West Virginia or designee;

(e) A representative from the West Virginia Infrastructure and Jobs Development Council;

(f) A representative from the West Virginia Association of Regional Planning and Development Council;

(g) A representative from the West Virginia Municipal League;

(h) A representative from the state's largest private water and wastewater utility;

(i) A representative from a professional engineering firm experienced in the design and construction of water and wastewater systems in West Virginia, to be selected by the Governor;

(j) The Speaker of the House of Delegates or designee; and

(k) The President of the West Virginia Senate or designee; and, be it

*Further Resolved*, That the committee shall meet bi-weekly, or as otherwise necessary, submit a written report that presents the study's findings and conclusions, including a summary and analysis of the data and materials reviewed, and recommendations for legislation not later than October 1, 2019; and, be it

*Further Resolved*, That members of the committee shall serve without compensation; and, be it

*Further Resolved*, That the Governor, or designee, shall be responsible for designating staff to assist the committee in performing its duties and, by June 1, 2019, convening the committee for its meeting, at which the committee shall adopt rules of procedures, a work schedule, and any additional preliminary measures that it deems necessary for the timely performance of its duties; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Governor, who shall be responsible for transmitting a copy to each person who is to serve on the committee or his or her designee.

Delegates Hartman, Staggers, C. Thompson and Sponaugle offered the following resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**H. C. R. 84** - "Requesting the Division of Highways name bridge number 42-39-0.67 (42A092), locally known as Mill Creek Box Beam Bridge, carrying County Route 39 over the Tygart Valley River in Randolph County, the 'U. S. Army SGT Robert R. "Bob" Defibaugh Memorial Bridge'."

Whereas, Sergeant Defibaugh was born on August 31, 1936, in Elkins, West Virginia. He was a lifelong resident of Randolph County and attended Tygarts Valley High School; and

Whereas, Sergeant Defibaugh served in the 82<sup>nd</sup> and 101<sup>st</sup> Airborne Division in the United States Army; and

Whereas, Upon returning home from military service, Sergeant Defibaugh began farming, and on February 18, 1956, he married Shirley Scott. On April 29, 1968, they started a small restaurant business called the Mill Creek Drive Inn. Soon thereafter they opened two more small businesses in Mill Creek called Bob's Mini Mart and Valley View Motel. These businesses have been passed down and have been family owned and operated for over 50 years; and

Whereas, Sergeant Defibaugh also served his community as a Mill Creek Town Councilman for several terms. He loved dirt track racing and raced on several dirt tracks around the state. Sergeant and Mrs. Defibaugh opened a dirt track in 1986 in Mill Creek called the Upper Valley Raceway. He was inducted into the Elkins Raceway Wall of Legends in 2018; and

Whereas, Sergeant and Mrs. Defibaugh had 6 children, 13 grandchildren, and 23 great-grandchildren. He retired from the Randolph County school system as a bus driver, and routinely drove his bus across this very bridge to pick up students. Sergeant Defibaugh's life and legacy reflects hard work, love, and service to not only his family but his community and country. He passed away on August 21, 2000; and

Whereas, For these reasons it is fitting and proper that the bridge be named in honor of Sergeant Defibaugh; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 42-39-0.67 (42A092), locally known as Mill Creek Box Beam Bridge, carrying County Route 39 over the Tygart Valley River in Randolph County, the "U. S. Army SGT Robert R. 'Bob' Defibaugh Memorial Bridge"; and, be it

*Further Resolved*, That the Commissioner of the Division of Highways is requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the “U. S. Army SGT Robert R. ‘Bob’ Defibaugh Memorial Bridge”; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

### **Special Calendar**

#### **Third Reading**

**Com. Sub. for H. B. 2011**, Road Maintenance Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 307**), and there were—yeas 83, nays 15, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Angelucci, Boggs, S. Brown, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Longstreth, Miller, Pushkin, Robinson, Rodighiero, Rowe and R. Thompson.

Absent and Not Voting: Bates and Kessinger.

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

Delegate Summers moved that the bill take effect July 1, 2019.

On this question, the yeas and nays were taken (**Roll No. 308**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Estep-Burton, Robinson and Rodighiero.

Absent and Not Voting: Bates and Kessinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2011) takes effect July 1, 2019.

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

**Com. Sub. for H. B. 2014**, West Virginia Intellectual Property and Trade Secrets Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 309**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fleischauer.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2014) passed.

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

**Com. Sub. for H. B. 2049**, Relating to a prime contractor's responsibility for wages and benefits; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Shott asked and obtained unanimous consent to amend the bill on third reading and the rule was suspended to permit the offering and consideration of an amendment on third reading.

On motion of Delegate Shott, the bill was amended on page one, section seven, line eleven, after the semicolon by inserting the word "and".

And,

On page one, section seven, line thirteen, after the word “benefits”, by striking out the semicolon and the word “and”, and inserting a period in lieu thereof.

Having been engrossed, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 310**), and there were—yeas 58, nays 41, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Steele, Storch, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2049) passed.

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

**Com. Sub. for H. B. 2049** - “A Bill to amend and reenact §21-5-7 of the Code of West Virginia, 1931, as amended, relating to a prime contractor’s responsibility for wages and benefits of employees of a subcontractor; requiring notice to prime contractor within 100 days of the missing wages becoming payable; instituting a one year statute of limitations; and requiring employee to provide verifiable proof to substantiate missing wages.”

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

**Com. Sub. for H. B. 2378**, Relating generally to grounds for revocation of a teaching certificate; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 311**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2378) passed.

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

**Com. Sub. for H. B. 2396**, West Virginia Fresh Food Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 312**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Porterfield.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2396) passed.

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

**Com. Sub. for H. B. 2397**, Requiring county school boards to provide adequate mental health and counseling services; on third



reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**H. B. 2497**, Relating to the whistle-blower law; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 313**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2497) passed.

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

**H. B. 2535**, Relating to purchasing exemptions and procedures; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 314**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2535) passed.

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

**Com. Sub. for H. B. 2617**, Relating to the form for making offer of optional uninsured and underinsured coverage by insurers; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 315**), and there were—yeas 95, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fleischauer, Pyles, Robinson and Rowe.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2617) passed.

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

**Com. Sub. for H. B. 2662**, Relating to certificates or employment of school personnel; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 316**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2662) passed.

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

**H. B. 2665**, Supplemental appropriation for PEIA Rainy Day Fee; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 317**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2665) passed.

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

On this question, the yeas and nays were taken (**Roll No. 318**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2665) takes effect from its passage.

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

**Com. Sub. for H. B. 2670**, Relating to damages for medical monitoring; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 319**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2670) passed.

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

**Com. Sub. for H. B. 2703**, Relating to refunds of excise taxes collected from dealers of petroleum products; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 320**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2703) passed.

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

**H. B. 2760**, Relating to performance reviews of state agencies and regulatory boards; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 321**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Robinson.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2760) passed.

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

**Com. Sub. for H. B. 2802**, Uniform Partition of Heirs Property Act; on third reading, coming up in regular order, was read a third time.

Delegate Capito requested to be excused from voting on the passage of Com. Sub. for H. B. 2802 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 322**), and there were—yeas 86, nays 13, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Byrd, Capito, Fleischauer, Foster, Lavender-Bowe, Miley, Paynter, Porterfield, Rowe, Sponaugle, Steele, C. Thompson and Walker.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2802) passed.

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

**Com. Sub. for H. B. 2831**, Finding and declaring certain claims against the state and its agencies to be moral obligations of the state; on third reading, coming up in regular order, was read a third time.

Delegates Fast and Byrd requested to be excused from voting on Com. Sub. for H. B. 2831 under the provisions of House Rule 49.

Based upon the facts provided by the Delegates, the Speaker excused both Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 323**), and there were—yeas 91, nays 6, excused 2, absent and not voting 1, with the nays, excused and absent and not voting being as follows:

Nays: Capito, Mandt, C. Martin, P. Martin, Nelson and Paynter.

Excused: Byrd and Fast.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2831) passed.

Delegate Summers moved that the bill take effect from passage.

On this question, the yeas and nays were taken (**Roll No. 324**), and there were—yeas 96, nays 1, excused 2, absent and not voting 1, with the nays, excused and absent and not voting being as follows:

Nays: Nelson.

Excused: Byrd and Fast.

Absent and Not Voting: Kessinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2831) takes effect from passage.

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

**H. B. 2850**, Relating to qualifications for commercial driver's license; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 325**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2850) passed.

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

**H. B. 2853**, Establishing the West Virginia Program for Open Education Resources; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 326**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2853) passed.

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

**H. B. 2853** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §10-1-14a, relating to establishing the West Virginia Program for Open Education Resources; defining open education resource materials; providing duties of Library Commission; and requiring annual report.”

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

**Com. Sub. for H. B. 2866**, Relating to the termination, expiration, or cancellation of oil or natural gas leases; on third reading, coming up in regular order, was read a third time.

Delegates Harshbarger and Capito requested to be excused from voting on the passage of Com. Sub. for H. B. 2866 under the provisions of House Rule 49.

The Speaker replied that the Delegates were a member of a class of persons possibly to be affected by the passage of the bill and directed the Members to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 327**), and there were—yeas 95, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Capito, Foster, Steele and Wilson.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2866) passed.

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

At 10:53 a.m., the House of Delegates recessed for ten minutes.



\* \* \* \* \*

### Morning Session

\* \* \* \* \*

-continued-

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

### Special Calendar

#### Third Reading

-continued-

**Com. Sub. for H. B. 2895**, Allowing victims of certain crimes to get a restraining order; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 328**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2895) passed.

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

**Com. Sub. for H. B. 2931**, Clarifying that the State Lottery Commission has no authority over nonlottery games; on second reading, coming up in regular order, was reported by the Clerk.

Delegate Summers asked unanimous consent to postpone the bill one day, which consent was not given, objection being heard.

Delegate Summers then so moved, which motion prevailed.

**Com. Sub. for H. B. 2943**, Relating to deliveries by wine specialty shop; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 329**), and there were—yeas 91, nays 7, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Fast, Hollen, D. Jeffries, Kump, Porterfield, Toney and Worrell.

Absent and Not Voting: Kessinger and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2943) passed.

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

**Com. Sub. for H. B. 2945**, Relating to vendors paying a single annual fee for a permit issued by a local health department; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 330**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2945) passed.

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

**Com. Sub. for H. B. 2974**, Exempting businesses relating to transporting certain used tires to storage, disposal, or recycling locations from provisions of chapter; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 331**), and there were—yeas 59, nays 40, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, N. Brown, S. Brown, Butler, Byrd, Cadle, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hanna, Hill, J. Kelly, Kump, Lavender-Bowe, Longstreth, C. Martin, P. Martin, Miley, Paynter, Pushkin, Pyles, Robinson, Rodighiero, Skaff, Sponaugle, Staggers, Swartzmiller, Sypolt, C. Thompson, Toney, Walker, Williams and Zukoff.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2974) passed.

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

**Com. Sub. for H. B. 2991**, Relating to the Ryan Brown Addiction Prevention and Recovery Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 332**), and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bibby, Graves, Malcolm, McGeehan and Wilson.

Absent and Not Voting: Kessinger and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2991) passed.

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

**Com. Sub. for H. B. 3016**, Relating to the State Aeronautics Commission; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 333**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger and Storch.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3016) passed.

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

**H. B. 3020**, Relating to sole source contracts for goods and services with nonprofit corporations affiliated with the respective education institutions; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 334**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Kump, Robinson and Rowe.

Absent and Not Voting: Hicks and Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3020) passed.

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

**Com. Sub. for H. B. 3021**, Relating to the disposition of permit fees, registration fees and civil penalties imposed against thoroughbred horse racing licensees; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 335**), and there were—yeas 89, nays 9, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Atkinson, Azinger, Fast, Hollen, D. Jeffries, J. Kelly, Kump, Porterfield and Toney.

Absent and Not Voting: Hicks and Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3021) passed.

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

**Com. Sub. for H. B. 3024**, West Virginia Business Ready Sites Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 336**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3024) passed.

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

On this question, the yeas and nays were taken (**Roll No. 337**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Kessinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3024) takes effect from its passage.

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

**H. B. 3044**, Requiring the Commissioner of Highways to develop a formula for allocating road funds; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 338**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3044) passed.

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

**H. B. 3054**, Relating to the state agency for surplus property; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 339**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cadle.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3054) passed.

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

**Com. Sub. for H. B. 3057**, Relating to the Adult Drug Court Participation Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 340**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3057) passed.

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

**H. B. 3095**, Establishing a minimum monthly retirement annuity for certain retirants; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 341**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3095) passed.

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

**H. B. 3102**, Creating alternating wine proprietorships for wineries and farm wineries; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 342**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fast, Hollen, D. Jeffries, Porterfield and Worrell.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3102) passed.

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

**Com. Sub. for H. B. 3105**, Permitting the Alcohol Beverage Control Administration to request the assistance of law



enforcement; on third reading, coming up in regular order, was reported by the Clerk.

On motion of Delegate Summers, the bill was postponed one day.

**Com. Sub. for H. B. 3131**, Relating to providing salary adjustments to employees of the Department of Health and Human Resources; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 343**), and there were—yeas 87, nays 12, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Caputo, Diserio, Estep-Burton, Fleischauer, Kump, Lavender-Bowe, Longstreth, Pushkin, Pyles, Robinson and Walker.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 3131) passed.

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

**H. B. 3136**, Relating to the Centers for Medicare and Medicaid Services; on third reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**H. B. 3137**, Relating to the personal income tax fund; on third reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**H. B. 3139**, Relating to funding of the Public Employees Health Insurance Program; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 344**), and there were—yeas 93, nays 6, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cowles, Estep-Burton, Miller, Pyles, Rowe and Westfall.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3139) passed.

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

On this question, the yeas and nays were taken (**Roll No. 345**), and there were—yeas 95, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Cowles, Longstreth, Pyles and Rowe.

Absent and Not Voting: Kessinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3139) takes effect from its passage.

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

**H. B. 3140**, Relating to the Division of Natural Resources Infrastructure; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 346**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3140) passed.

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

**H. B. 3140** - “A Bill to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended, and to amend and reenact §20-5-4 of said code, all related to the ability of the Director of the Division of Natural Resources to authorize repair, renovation and rehabilitation for existing facilities, buildings, amenities, and infrastructure and exempting these certain Division of Natural Resource’s purchases from review and approval of the Division of Purchasing; and adding state forests to the definition of recreational facilities.”

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

On this question, the yeas and nays were taken (**Roll No. 347**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3140) takes effect from its passage.

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

**H. B. 3141**, Requiring capitol building commission authorization for certain renovations; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Capito asked and obtained unanimous consent to amend the bill on third reading and the rule was suspended to permit the offering and consideration of an amendment on third reading.

On motion of Delegate Capito, the bill was amended on page one, section four, line thirteen, by striking out the words “the public” and inserting in lieu thereof the word “all”.

Having been engrossed, the bill was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 348**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3141) passed.

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

**H. B. 3143**, Relating to requirements for consumer loans in West Virginia; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 349**), and there were—yeas 75, nays 24, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, N. Brown, S. Brown, Canestraro, Caputo, Doyle, Estep-Burton, Fleischauer, Fluharty, Hansen, Hicks, Hornbuckle, Kump, Lavender-Bowe, Lovejoy, Miley, Pushkin, Robinson, Rodighiero, Rowe, Sponaugle, C. Thompson, Walker and Zukoff.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3143) passed.

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

**H. B. 3145**, Relating to student financial aid resources; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 350**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Foster.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3145) passed.

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

**H. B. 3146**, Relating to retail licensees; on third reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

At 12:41 p.m., the House of Delegates recessed until 3:00 p.m.

\* \* \* \* \*

### Afternoon Session

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

### **Reordering of the Calendar**

Delegate Summers announced that the Committee on Rules had transferred Com. Sub. for S. B. 529, S. B. 593, Com. Sub. for H. B. 2597 and H. B. 2732, on Second Reading, Special Calendar, to the House Calendar; and Com. Sub. for H. B. 2079, Com. Sub. for H. B. 2595, H. B. 2729, Com. Sub. for H. B. 2843, H. B. 2932, Com. Sub. for H. B. 2941 and Com. Sub. for H. B. 2951, on Second Reading, House Calendar to the Special Calendar,

### **Special Calendar**

#### **Second Reading**

**Com. Sub. for H. B. 2079**, Removing certain limitations on medical cannabis grower, processor and dispensary licenses; on second reading, coming up in regular order, was, in the absence of objection, placed at the foot of bills on second reading.

**Com. Sub. for H. B. 2519**, The Campus Self Defense Act; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with amendments pending, and the rule was suspended to permit the consideration of amendments on that reading.

**Com. Sub. for H. B. 2595**, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the general right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

**H. B. 2729**, Recognition of Emergency Medical Services Personnel Licensure Interstate Compact; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2843**, Creating an Office for Federal Surplus Property; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2882**, Creating a health professionals' student loan programs; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2932**, Transferring regulation and licensing of charitable bingo, charitable raffles, and charitable raffle boards; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2941**, Reinstating the film investment tax credit; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2951**, Placing the regulation of non-medical professions and occupations in a new chapter of the code; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 2966**, County Budget Flexibility Act; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2967**, Permitting a county to retain the excise taxes for the privilege of transferring title of real estate; on second reading, coming up in regular order, was read a second time.

Delegates Hardy, Cowles, Bates and Barrett moved to amend the bill on page one, section two, line six, by striking out "ten" and inserting in lieu thereof "twenty".

And,

On page one, section two, line eight, by striking out “in every year thereafter, and additional ten” and inserting in lieu thereof “for the next four years thereafter, an additional twenty”.

On the adoption of the amendment, Delegate Hardy demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 351**), and there were—yeas 42, nays 57, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Azinger, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Caputo, Cowles, Dean, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hanna, Hansen, Hardy, Hartman, Hicks, Hornbuckle, Howell, Lavender-Bowe, Longstreth, P. Martin, McGeehan, Miley, Paynter, Phillips, Pushkin, Robinson, Skaff, Sponaugle, Swartzmiller, Sypolt, C. Thompson, R. Thompson, Walker and Williams.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

The bill was then ordered to engrossment and third reading.

**H. B. 3127**, Relating to the Secondary School Activities Commission and participation by home schooled students; on second reading, coming up in regular order, was read a second time.

Delegate Hamrick moved to amend the bill on page one, following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-15. Ages of persons to whom schools are open; enrollment for less than full-time and for extracurricular**



**participation; conditions; enrollment of suspended or expelled student.**

(a) The public schools shall be open for the full instructional term to all persons who have attained the entrance age as stated in ~~section five, article two and section eighteen, article five, chapter eighteen~~ §18-5-44 and §18-8-1a of this code. ~~Provided, That A~~ public school may not deny the enrollment in any curricular or extracurricular course, program or activity of any person to whom the schools are open who meets the student health, safety, conduct and residence conditions established for any other student, subject to the following:

(1) Persons enrolling for less than full-time shall enroll on or before the first day of the instructional term;

(2) Persons enrolled for less than full-time shall be included in the county's net enrollment for the purposes of §18-9A-1 et seq. of this code on a full-time-equivalent basis in accordance with guidelines established by the department of education;

(3) Persons enrolling only for participation in an extracurricular activity may only enroll in the school in whose attendance zone the primary residence of the student is established;

(4) Persons enrolled in a non-public school may not enroll in a public school for participation in an extracurricular activity that is offered at the non-public school;

(5) Persons enrolled only for participation extracurricular activities shall be included in the county's net enrollment for the purposes of §18-9A-1 et seq. of this code as a one-tenth full-time-equivalent student;

(6) County boards shall provide methods for evaluation of the subject matter competency of persons enrolling who have previously been instructed through nonaccredited sources to determine: (i) Academic placement and course credits for competency attained for persons enrolling on a full-time basis; (ii) Sufficient competency prerequisite for enrollment in course or courses for persons enrolling for less than full-time; and (iii) For

persons enrolling for less than full-time to participate in extracurricular activities, academic performance at a level sufficient for eligibility when required of all other students; and

(7) Any student suspended or expelled from public or private school shall only be permitted to enroll in public school upon the approval of the superintendent of the county where the student seeks enrollment: *Provided, however,* That in making such decision, the principal of the school in which the student may enroll shall be consulted by the superintendent and the principal may make a recommendation to the superintendent concerning the student's enrollment in his or her new school: *Provided further however,* That if enrollment to public school is denied by the superintendent, the student may petition the board of education where the student seeks enrollment.

(b) Persons over the age of 21 may enter only those programs or classes authorized by the State Board of Education and deemed appropriate by the county board of education conducting any such program or class: *Provided,* That authorization for such programs or classes shall in no way serve to affect or eliminate programs or classes offered by county boards of education at the adult level for which fees are charged to support such programs or classes."

Delegates Longstreth and Caputo moved to amend the amendment on page one, section fifteen, line seventeen, by striking out the word "one-tenth" and inserting in lieu thereof the word "one-half".

Delegate Angelucci asked and obtained unanimous consent to be added as cosponsor of the amendment offered by Delegates Longstreth and Caputo.

Delegate Walker requested to be excused from voting on H. B. 3127 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 352**), and there were—yeas 52, nays 47, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Bibby, Butler, Cadle, Capito, Cooper, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hollen, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kump, Linville, Malcolm, C. Martin, P. Martin, Maynard, McGeehan, Nelson, Pack, Phillips, Porterfield, Rowan, Shott, Steele, Summers, Sypolt, Wilson and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the amendment to the amendment was adopted.

On the question of the adoption of the amendment, as amended, the yeas and nays, were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 353**), and there were—yeas 69, nays 30, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, N. Brown, S. Brown, Campbell, Canestraro, Caputo, Cooper, Criss, Diserio, Evans, Foster, Hansen, Hartman, Householder, J. Jeffries, Lavender-Bowe, Malcolm, C. Martin, P. Martin, Miller, Nelson, Pethtel, Porterfield, Rodighiero, Sponaugle, Steele, Summers, Swartzmiller, C. Thompson and Tomblin.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the amendment, as amended, was adopted.

The bill was then ordered to engrossment and third reading.

**H. B. 3142**, Relating to reducing the severance tax on thermal or steam coal; on second reading, coming up in regular order, was read a second time.

Delegates Nelson and Shott moved to amend the bill on page one, section three, line twelve, by striking out the word “three” and inserting in lieu thereof the word “four”.

And,

On page one, section three, line twelve, after the word “percent” and the period, by adding the following:

*“Provided, however, That effective July 1, 2020, the tax rate imposed by this subsection on the gross value of thermal or steam coal produced shall be reduced to three percent.”*

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 354**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett and McGeehan.

Absent and Not Voting: Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

The bill was then ordered to engrossment and third reading.

**H. B. 3144**, North Central Appalachian Coal Severance Tax Rebate Act; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Bates, Rowe and Longstreth, the bill was amended on page fifteen, section seven, line three, following

the words “of this code”, by inserting “and any local, state or federal tax or fee” and the comma.

On page fourteen, section seven, line six, following the words “of this state”, by inserting “or of the appropriate federal agency or court” and the comma.

And,

On page fourteen, section seven, line seven, following the words “plan agreement”, by inserting a period and striking out the words “with the Tax Commissioner” and the period.

The bill was then ordered to engrossment and third reading.

**H. B. 3148**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Human Services; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**H. B. 3149**, Relating to manufacturing and producing hard cider in West Virginia; on second reading, coming up in regular order, was read a second time and ordered to engrossment and third reading.

**Com. Sub. for H. B. 2079**, Removing certain limitations on medical cannabis grower, processor and dispensary licenses; on second reading, having been placed at the foot of bills on second reading in earlier proceedings, was, read a second time.

Delegates Fluharty, Byrd, Westfall and Hornbuckle, moved to amend the bill on page one, prior to section three, by inserting §16A-2-1 as follows:

**“§16A-2-1. Definitions.**

(a) The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) ‘Act’ means the West Virginia Medical Cannabis Act and the provisions contained in chapter sixty-a of this code.

(2) ‘Advisory board’ means the advisory board established under article eleven of this chapter.

(3) ‘Bureau’ mean the Bureau for Public Health within the West Virginia Department of Health and Human Resources.

(4) ‘Caregiver’ means the individual designated by a patient or, if the patient is under eighteen years of age, an individual under article five, to deliver medical cannabis.

(5) ‘Certified medical use’ means the acquisition, possession, use or transportation of medical cannabis by a patient, or the acquisition, possession, delivery, transportation or administration of medical cannabis by a caregiver, for use as part of the treatment of the patient’s serious medical condition, as authorized in a certification under this act, including enabling the patient to tolerate treatment for the serious medical condition.

(6) ‘Change in control’ means the acquisition by a person or group of persons acting in concert of a controlling interest in an applicant or permittee either all at one time or over the span of a 12-consecutive-month period.

(7) ‘Commissioner’ means the Commissioner of the Bureau for Public Health.

(8) ‘Continuing care’ means treating a patient ~~for at least six months~~, in the course of which the practitioner has completed a full assessment of the patient’s medical history and current medical condition, including an in-person consultation with the patient, and is able to document and make a medical diagnosis based upon the substantive treatment of the patient.

(9) ‘Controlling interest’ means:

(A) For a publicly traded entity, voting rights that entitle a person to elect or appoint one or more of the members of the board of directors or other governing board or the ownership or beneficial

holding of five percent or more of the securities of the publicly traded entity.

(B) For a privately held entity, the ownership of any security in the entity.

(10) ‘Dispensary’ means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit issued by the bureau to dispense medical cannabis. The term does not include a health care medical cannabis organization under article thirteen of this chapter.

(11) ‘Family or household member’ means the same as defined in section two hundred four, article twenty-seven, chapter forty-eight of this code.

(12) ‘Financial backer’ means an investor, mortgagee, bondholder, note holder or other source of equity, capital or other assets, other than a financial institution.

(13) ‘Financial institution’ means a bank, a national banking association, a bank and trust company, a trust company, a savings and loan association, a building and loan association, a mutual savings bank, a credit union or a savings bank.

(14) ‘Form of medical cannabis’ means the characteristics of the medical cannabis recommended or limited for a particular patient, including the method of consumption and any particular dosage, strain, variety and quantity or percentage of medical cannabis or particular active ingredient.

(15) ‘Fund’ means the Medical Cannabis Program Fund established in section two, article nine of this chapter.

(16) ‘Grower’ means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the bureau under this act to grow medical cannabis. The term does not include a health care medical cannabis organization under article thirteen of this chapter.

(17) ‘Grower/processor’ means either a grower or a processor.

(18) ‘Identification card’ means a document issued under article five of this chapter that authorizes access to medical cannabis under this act.

(19) ‘Individual dose’ means a single measure of medical cannabis.

(20) ‘Medical cannabis’ means cannabis for certified medical use as set forth in this act.

(21) ‘Medical cannabis organization’ means a dispensary, grower or processor. The term does not include a health care medical cannabis organization under article thirteen of this chapter.

(22) ‘Patient’ means an individual who:

(A) Has a serious medical condition;

(B) Has met the requirements for certification under this act;  
and

(C) Is a resident of this state.

(23) ‘Permit’ means an authorization issued by the bureau to a medical cannabis organization to conduct activities under this act.

(24) ‘Physician’ means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either article three or article fourteen, chapter thirty of this code to practice medicine and surgery in this state.

(25) ‘Post-traumatic stress disorder’ means a diagnosis made as part of continuing care of a patient by a medical doctor, licensed counselor or psychologist.

(26) ‘Practitioner’ means a physician who is registered with the bureau under article four of this chapter.



(27) ‘Prescription drug monitoring program’ means the West Virginia Controlled Substances Monitoring program under article nine, chapter sixty-a of this code.

(28) ‘Principal’ means an officer, director or person who directly owns a beneficial interest in or ownership of the securities of an applicant or permittee, a person who has a controlling interest in an applicant or permittee or who has the ability to elect the majority of the board of directors of an applicant or permittee or otherwise control an applicant or permittee, other than a financial institution.

(29) ‘Processor’ means a person, including a natural person, corporation, partnership, association, trust or other entity, or any combination thereof, which holds a permit from the bureau under this act to process medical cannabis. The term does not include a health care medical cannabis organization under article thirteen of this chapter.

(30) ‘Registry’ means the registry established by the bureau for practitioners.

(31) ‘Serious medical condition’ means any of the following, as has been diagnosed as part of a patient’s continuing care:

(A) Cancer.

(B) Positive status for human immunodeficiency virus or acquired immune deficiency syndrome.

(C) Amyotrophic lateral sclerosis.

(D) Parkinson’s disease.

(E) Multiple sclerosis.

(F) Damage to the nervous tissue of the spinal cord with objective neurological indication of intractable spasticity.

(G) Epilepsy.

(H) Neuropathies.

(I) Huntington's disease.

(J) Crohn's disease.

(K) Post-traumatic stress disorder.

(L) Intractable seizures.

(M) Sickle cell anemia.

(N) Severe chronic or intractable pain of neuropathic origin or severe chronic or intractable pain in which conventional therapeutic intervention and opiate therapy is contraindicated or has proved ineffective as determined as part of continuing care.

(O) Terminally ill.

(32) 'Terminally ill' means a medical prognosis of life expectancy of approximately one year or less if the illness runs its normal course."

Delegate Shott arose to a point of order as to the germaneness of the amendment.

The Speaker ruled that the amendment was germane to the purpose of the bill.

On the adoption of the amendment, Delegate Fluharty demanded the yeas and nays, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 355**), and there were—yeas 63, nays 35, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Atkinson, Azinger, Butler, Cadle, Cooper, Criss, Ellington, Espinosa, Fast, Foster, Graves, Hanna, Hardy, Hill, Hollen, Hott, Howell, D. Jeffries, Jennings, D. Kelly, J. Kelly, Malcolm, C. Martin, P. Martin, Pack, Phillips, Porterfield, Rohrbach, Rowan, Shott, Summers, Toney, Waxman, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cowles and Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

On motion of Delegates Byrd, Hornbuckle, Westfall and Fluharty, the bill was amended on page four, after section thirteen, by inserting §16A-8-1 as follows:

**“§16A-8-1. Dispensing to patients and caregivers.**

(a) *General rule.* — A dispensary that has been issued a permit under article six of this chapter may lawfully dispense medical cannabis to a patient or caregiver upon presentation to the dispensary of a valid identification card for that patient or caregiver. The dispensary shall provide to the patient or caregiver a receipt, as appropriate. The receipt shall include all of the following:

(1) The name, address and any identification number assigned to the dispensary by the bureau.

(2) The name and address of the patient and caregiver.

(3) The date the medical cannabis was dispensed.

(4) Any requirement or limitation by the practitioner as to the form of medical cannabis for the patient.

(5) The form and the quantity of medical cannabis dispensed.

~~(b) *Requirements.* — A dispensary shall have a physician or a pharmacist onsite at all times during the hours the dispensary is open to receive patients and caregivers. A physician or a pharmacist shall, prior to assuming duties under this paragraph, successfully complete the course established in subsection (a), section one, article three of this chapter. A physician may not issue a certification to authorize patients to receive medical cannabis or otherwise treat patients at the dispensary.~~

(c) *Filing with bureau.* — Prior to dispensing medical cannabis to a patient or caregiver, the dispensary shall file the receipt

information with the bureau utilizing the electronic tracking system. When filing receipts under this subsection, the dispensary shall dispose of any electronically recorded certification information as provided by rule.

(d) *Limitations.* — No dispensary may dispense to a patient or caregiver:

(1) A quantity of medical cannabis greater than that which the patient or caregiver is permitted to possess under the certification; or

(2) A form of medical cannabis prohibited by this act.

(e) *Supply.* — When dispensing medical cannabis to a patient or caregiver, the dispensary may not dispense an amount greater than a 30-day supply until the patient has exhausted all but a seven-day supply provided pursuant to section five, article four of this chapter.

(f) *Verification.* — Prior to dispensing medical cannabis to a patient or caregiver, the dispensary shall verify the information in subsections (e) and (g) of this section by consulting the electronic tracking system included in the bureau's electronic database established under section one, article three of this chapter and the dispensary tracking system under section one, article seven of this chapter.

(g) *Form of medical cannabis.* — Medical cannabis dispensed to a patient or caregiver by a dispensary shall conform to any requirement or limitation set by the practitioner as to the form of medical cannabis for the patient.

(h) *Safety insert.* — When a dispensary dispenses medical cannabis to a patient or caregiver, the dispensary shall provide to that patient or caregiver, as appropriate, a safety insert. The insert shall be developed and approved by the bureau. The insert shall provide the following information:

(1) Lawful methods for administering medical cannabis in individual doses.

(2) Any potential dangers stemming from the use of medical cannabis.

(3) How to recognize what may be problematic usage of medical cannabis and how to obtain appropriate services or treatment for problematic usage.

(4) How to prevent or deter the misuse of medical cannabis by minors or others.

(5) Any other information as determined by the bureau.

(i) *Sealed and labeled package.* — Medical cannabis shall be dispensed by a dispensary to a patient or caregiver in a sealed, properly labeled and child-resistant package. The labeling shall contain the following:

(1) The information required to be included in the receipt provided to the patient or caregiver, as appropriate, by the dispensary.

(2) The packaging date.

(3) Any applicable date by which the medical cannabis should be used.

(4) A warning stating:

‘This product is for medicinal use only. Women should not consume during pregnancy or while breastfeeding except on the advice of the practitioner who issued the certification and, in the case of breastfeeding, the infant’s pediatrician. This product might impair the ability to drive or operate heavy machinery. Keep out of reach of children.’

(5) The amount of individual doses contained within the package and the species and percentage of tetrahydrocannabinol and cannabidiol.

(6) A warning that the medical cannabis must be kept in the original container in which it was dispensed.

(7) A warning that unauthorized use is unlawful and will subject the person to criminal penalties.

(8) Any other information required by the bureau.”

On motion of Delegate Ellington, the bill was amended on page three, section thirteen, line three, by reinserting the stricken word “ten”, and removing the underlined number, “50”.

On page three, section thirteen, line five, by reinserting the stricken word “ten” and removing the underlined number “50”.

And,

On page three, section thirteen, line eight, by striking out the word “two” and inserting the word “ten”.

There being no further amendments, the bill was ordered to engrossment and third reading.

#### **First Reading**

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for S. B. 157**, Authorizing Department of Administration promulgate legislative rules,

**Com. Sub. for S. B. 295**, Relating to crimes against public justice,

**S. B. 440**, Relating to Antihazing Law,

**S. B. 453**, Relating to background checks of certain financial institutions,

And,

**Com. Sub. for S. B. 510**, Relating to medical professional liability.

### **Leaves of Absence**

At the request of Delegate Summers, and by unanimous consent, leave of absence for the day was granted Delegate Kessinger.

### **Miscellaneous Business**

Delegate Bates noted to the Clerk that he was absent on today when the votes were taken on Roll Nos. 307 and 308, and had he been present, he would have voted “Yea” thereon.

Delegate Storch noted to the Clerk that she was absent on today when the votes were taken on Roll Nos. 332 and 333, and had she been present, she would have voted “Yea” thereon.

At 4:24 p.m., the House of Delegates adjourned until 11:00 a.m., Wednesday, February 27, 2019.





---

Wednesday, February 27, 2019

## FIFTIETH DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Tuesday, February 26, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

### Committee Reports

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 26<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**H. B. 2351**, Relating to regulating prior authorizations,

And,

**Com. Sub. for H. B. 2607**, Relating to the licensure of nursing homes.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 26<sup>th</sup> day of February, 2019, presented to

His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**H. B. 2666**, Supplemental appropriation to the Department of Veterans' Assistance,

And,

**H. B. 2668**, Supplemental appropriation to the Department of Administration, Public Defender Services.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 26<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for H. B. 2324**, Authorizing the acupuncture board to issue certificates to perform auricular acudetox therapy.

Delegate Storch, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

**Com. Sub. for S. B. 241**, Permitting county court clerks scan certain documents in electronic form,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 241) was referred to the Committee on Government Organization.

Delegate Storch, Chair of the Committee on Political Subdivisions, submitted the following report, which was received:

Your Committee on Political Subdivisions has had under consideration:

**S. B. 24**, Relating generally to local boards of health,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (S. B. 24) was referred to the Committee on Finance.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**Com. Sub. for S. B. 369**, Relating to generic drug products,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 369) was referred to the Committee on the Judiciary.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**Com. Sub. for S. B. 641**, Relating to Primary Care Support Program,

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

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**S. B. 519**, Requiring county emergency dispatchers complete course for telephonic cardiopulmonary resuscitation,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (S. B. 519) was referred to the Committee on Finance.

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**Com. Sub. for S. B. 310**, Establishing certain requirements for dental insurance,

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

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**Com. Sub. for S. B. 60**, Licensing practice of athletic training,

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

Delegate Maynard, Chair of the Committee on Fire Departments and Emergency Medical Services, submitted the following report, which was received:

Your Committee on Fire Departments and Emergency Medical Services has had under consideration:

**Com. Sub. for S. B. 345**, Relating to fire service equipment and training funds for VFDs,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 345) was referred to the Committee on Finance.

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

**Com. Sub. for S. B. 14**, Creating WV Farm-to-School Grant Program,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 14) was referred to the Committee on Finance.

Delegate Hollen, Chair of the Committee on Pensions and Retirement, submitted the following report, which was received:

Your Committee on Pensions and Retirement has had under consideration:

**S. B. 617**, Relating to method of payment to Municipal Pensions Security Fund.

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (S. B. 617) was referred to the Committee on Finance.

Delegate Hollen, Chair of the Committee on Pensions and Retirement, submitted the following report, which was received:

Your Committee on Pensions and Retirement has had under consideration:

**Com. Sub. for S. B. 316**, Preserving previously approved state Municipal Policemen's or Firemen's pensions.

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 316) was referred to the Committee on Finance.

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

**Com. Sub. for S. B. 344**, Relating to operation of state-owned farms.

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 344) was referred to the Committee on Government Organization.

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 248** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §7-4A-1, §7-4A-2, §7-4A-3, §7-4A-4, §7-4A-5, §7-4A-6, §7-4A-7, and §7-4A-8, all relating to creating the Prosecuting Attorney’s Detectives Act; providing a short title; making legislative findings; providing for law-enforcement titles; setting forth the duties and powers of prosecuting attorney’s detectives; providing for compensation of prosecuting attorney’s detectives; permitting prosecuting attorneys to hire detectives; establishing arrest power of prosecuting attorney’s detectives; setting forth requirements; limiting off-duty employment; and providing miscellaneous provisions”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 249** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §44-1-6a, relating to the administration of estates and trusts; creating a limited letter of administration that may be issued for estates that do not exceed the value of \$2,000; establishing procedures and responsibilities relating to a limited letter of administration; providing for a cause of action for parties affected by an applicant’s failure to carry out distribution as stated in the application; and providing for a \$50 fee for each application regardless of whether the clerk issues a limited letter of administration”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 329** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-8g, relating to agricultural education in high

schools; setting forth findings; encouraging agricultural programs be made available to high school students; requiring State Department of Education to assist in establishing agricultural programs in certain instance; and requiring report to Legislative Oversight Commission on Education Accountability when funding is the primary reason that an agricultural program is not established”; which was referred to the Committee on Education then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**S. B. 472** - “A Bill to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to exempting retirement income of members of certain uniformed services from state income tax”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**Com. Sub. for S. B. 489**, Relating to Pharmacy Audit Integrity Act.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 520** - “A Bill to amend and reenact §16-5T-3 and §16-5T-4 of the Code of West Virginia, 1931, as amended, all relating to drug overdoses; requiring entities report drug overdoses; requiring details for drug overdose reports; eliminating mandatory reporters; and making grammatical corrections”; which was referred to the Committee on Health and Human Resources.



A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 537** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-29B-31, relating to creating a workgroup to review the hospice standards in this state; designating members of workgroup; providing for duties of workgroup; providing that the West Virginia Health Care Authority shall provide staff for the workgroup; providing for public hearings; providing for the submission of a final report to the Legislature; establishing a termination date of the workgroup; providing a time frame for the West Virginia Health Care Authority to consider modifying the hospice standards; providing that the hospice standards in effect January 1, 2018, remain in effect until new standards are developed in accordance with this section and approved by the Governor; and providing an effective date for newly developed hospice standards”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 561** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60-2-17a and §60-2-17b; to amend and reenact §60-6-7, §60-6-8, and §60-6-9 of said code; to amend and reenact §60-7-2, §60-7-3, §60-7-4, §60-7-5, §60-7-6, and §60-7-12 of said code; to amend said code by adding thereto two new sections, designated §60-7-6a and §60-7-8a; and to amend and reenact §61-8-27 of said code, all relating to permitting the Alcohol Beverage Control Administration to request the assistance of law enforcement; implementing a \$100 operations fee and establishing special revenue account and fund; clarifying that consumption of alcoholic liquors in public is unlawful; clarifying that West Virginia licensees can only sell liquor by the drink; clarifying certain

licensing requirements for licensure; clarifying prohibition on liquor bottle sales in Class A licenses; providing guidance on certain lawful conduct such as wine bottle sales and frozen drink machines; creating a private fair and festival license; definitions; license requirements; license fee; creating the private hotel license and license fee; creating a private nine-hole golf course license and fee; definitions; license requirements; license fee; permitting a private resort hotel to have inner-connection with a resident brewer who has a brewpub; providing a 30-day requirement to issue or deny a completed license application; creating a reactivation fee for licensees who fail to timely file their renewal application and pay their annual license fees; permitting a license privilege for certain licensees to operate a connected but separately operated Class A on-premises license and a Class B off-premises license; clarifying that certain state-licensed gaming is permissible in a private club; and permitting minors to attend a private hotel, private nine-hole golf course, and a private fair or festival under certain conditions”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 566** - “A Bill to amend and reenact §29-5A-1 of the Code of West Virginia, 1931, as amended, relating to compensation for members of the State Athletic Commission for attendance and participation at public meetings”; which was referred to the Committee on Government Organization.

A message from the Senate, by

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

**Com. Sub. for S. B. 600** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-1-8, relating generally to preservation of biological evidence obtained through criminal investigations and criminal trials; directing the Secretary of Military Affairs and

Public Safety to investigate methods of preservation of biological evidence and developing a proposal for the centralized storage and preservation of biological materials obtained in criminal matters statewide; requiring the Secretary of Military Affairs and Public Safety to supply the Senate President and Speaker of the House of Delegates with proposals for such a plan along with proposed legislation; and defining terms”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 615** - “A Bill to amend and reenact §7-7-4 of the Code of West Virginia, 1931, as amended, relating to providing county commissioners an ongoing mechanism to consider compensation increases for elected officials every two years”; which was referred to the Committee on Government Organization then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 622** - “A Bill to amend and reenact §3-8-1a, §3-8-2, §3-8-4, §3-8-5, §3-8-5b, §3-8-5e, §3-8-7, §3-8-8, §3-8-9, and §3-8-12 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto five new sections, designated §3-8-5c, 3-8-5g, §3-8-9a, §3-8-9b, and §3-8-9c, all relating generally to the regulation and control of elections; modifying and adding definitions; modifying requirements for information to be included in independent expenditure reports; providing that persons or committees required to file federal expenditure reports are not exempt from requirement to file state-level expenditure and electioneering disclosure reports; raising the threshold amounts for required disclosure of independent expenditures occurring within a certain time frame preceding elections; requiring electronic filing of certain financial

disclosure statements; removing the deadline before an election for a political action committee or political party committee to file a statement of organization; modifying record-keeping requirements for certain receipts and expenditures made for political purposes and requiring that records be maintained for a period of five years; modifying deadlines for financial disclosure reports; providing that candidates for certain offices may file financial disclosure statements by mail, facsimile, or electronic means; modifying limits on contributions to candidates and candidate committees; modifying limits on contributions to state party executive committees and legislative caucus campaign committees; modifying limits on contributions to political action committees; providing that precandidates may accept contributions for a general election campaign prior to nomination, but may not expend such funds until after nomination is declared; providing that persons receiving precandidacy contributions are subject to certain expenditure reporting requirements; prohibiting foreign nationals from making contributions or donations to candidates, committees, and parties, and prohibiting receipt of a contribution or donation by a foreign national; modifying daily rate of civil penalty for persons filing late, inaccurate, or incomplete financial statements; requiring the Secretary of State to publish an online list of persons filing late financial statements; providing that membership organizations are subject to certain limitations applying to corporate contributions and solicitation of contributions by corporations; adding certain expenses to the list of permissible expenses of political committees; providing that coordinated expenditures are treated as contributions and providing exceptions thereto; permitting political party committees and legislative caucus campaign committees to make coordinated expenditures up to certain limits in connection with certain state-level candidates; permitting political committees to engage in joint fundraising efforts pursuant to a written agreement filed with the Secretary of State subject to certain requirements; requiring the Secretary of State to promulgate legislative rules pertaining to joint fundraising efforts; permitting unlimited transfers of money between and among state party executive committees, legislative caucus campaign committees, and national committees of the same political party for voter registration and get-out-the-vote initiatives; providing that

prohibition against intimidating or coercing certain government employees into engaging in political activity also extends to intimidating or coercing employees into refraining from political activity; eliminating prohibition on a political organization organized under Section 527 of the Internal Revenue Code from soliciting or accepting donations before registering with the Secretary of State; providing that it is unlawful for any person to establish more than one political committee with the intent to evade contribution limitations; and deleting obsolete language”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 640** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-56-1, §16-56-2, §16-56-3, and §16-56-4, all relating to the regulation of sudden cardiac arrest prevention; training and education; rulemaking; and removal from athletic activity”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 642** - “A Bill to amend and reenact §16-30-3 and §16-30-4 of the Code of West Virginia, 1931, as amended, all relating to providing options in living wills, and combined medical powers of attorney and living wills, that permit the principal to either be provided with medically assisted food and fluids or not to be provided with medically assisted food and fluids if the principal is unable to communicate his or her desires; redefining a term; and clarifying what constitutes a ‘terminal condition’ and a ‘persistent vegetative state’”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**Com. Sub. for S. B. 651** - “A Bill to amend and reenact §20-1-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §20-5-4 of said code, all relating to the ability of the Director of the Division of Natural Resources to authorize repair, renovation, and rehabilitation for existing facilities, buildings, amenities, and infrastructure; and adding state forests to the definition of ‘recreational facilities’”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 653** - “A Bill to amend and reenact §30-3-15 of the Code of West Virginia, 1931, as amended, relating generally to the practice of medical corporations; eliminating references to podiatry corporations; replacing references to the practice of podiatry with podiatric medicine; providing that authorized medical corporations may only practice medicine and surgery through individual physicians, podiatric physicians, or physician assistants licensed to practice medicine; permitting podiatric physicians and physician assistants to be employees rather than shareholders of a medical corporation; and providing that licensed hospitals do not need to obtain a certificate of authorization from the Board of Medicine so long as the hospital does not exercise control of the independent medical judgment of licensed physicians and licensed podiatric physicians”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 655** - “A Bill to amend and reenact §19-21A-3 and §19-21A-4 of the Code of West Virginia, 1931, as amended, all relating to conservation districts generally; clarifying the authority of the State Conservation Committee to operate and administer a conservation grant program; providing financial assistance to conservation districts and others to promote approved conservation practices; and defining terms”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 668** - “A Bill to amend and reenact §30-3E-1, §30-3E-3, §30-3E-9, §30-3E-11, and §30-3E-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-3E-10a, all relating to physician assistants collaborating with physicians in hospitals; requiring written notice to the appropriate licensing board; requiring rulemaking; and specifying practice requirements”; which was referred to the Committee on Health and Human Resources.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 669** - “A Bill to amend the Code of West Virginia, 1931, by adding thereto a new article, designated §39-4A-1, §39-4A-2, §39-4A-3, §39-4A-4, and §39-4A-5, all relating to the appointment of commissioners to acknowledge signatures by persons residing in or out of the State of West Virginia covering deeds, leases, and other writings pertaining to West Virginia property for recordation in the State of West Virginia; qualifications; authority of Secretary of State to appoint a commissioner; authority of Secretary of State to deny, refuse to renew, revoke, suspend, or impose a condition on a commission; fees; powers of commissioners; prohibited acts; rule-making authority; application of Revised Uniform Law on

Notarial Acts; and inclusion of commissioners in online database”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 670** - “A Bill to amend and reenact §18-30-2, §18-30-3, §18-30-4, and §18-30-7 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia College Prepaid Tuition and Savings Program; expanding eligible educational institutions to include a private or religious primary, middle, or secondary school; and changing Board of the College Prepaid Tuition and Savings Program membership”; which was referred to the Committee on Education then Finance.

### **Resolutions Introduced**

Delegate Maynard offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 85** - “Requesting the Joint Committee on Government and Finance study the feasibility of combining the volunteer fire departments in our state under a single policy for workers’ compensation coverage, self-insuring workers’ compensation coverage for volunteer fire departments, or other workers’ compensation coverage options.”

Whereas, There appears to be a will and desire among the volunteer and part-volunteer fire departments of the state to form a self-insurance structure; and

Whereas, There also appears to be a revenue source available to fund such a program through a possible increase of the insurance surtax percentage of 0.45 percent pursuant to §33-3-33 of the Code of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*



That the Joint Committee on Government and Finance is hereby requested to study the feasibility of combining the volunteer fire departments in our state under a single policy for workers' compensation coverage, self-insuring workers' compensation coverage for volunteer fire departments, or other workers' compensation coverage options; and, be it

*Further Resolved*, That in conducting the study, the Committee include an evaluation of the benefit, necessity, and feasibility of expanding the current scope of workers' compensation coverage for volunteers, including, but not limited to, presumptions for cardiovascular or pulmonary disease, occupational pneumoconiosis, or other occupational disease, as well as a comparison of those proposals to other means of supplementing workers' compensation insurance through secondary insurance policies; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and be it

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

### **Petitions**

Delegates Hamrick, Waxman, Queen and Miley presented a petition from residents of Harrison and Marion counties, requesting the Department of Highways reopen Harrison County Route 12, known as Janes Hill Road; which was referred to the Committee on Technology and Infrastructure.

Delegate Doyle presented a petition from 1,099 residents advocating for the restoration of human health criteria updates to the water quality standards in S. B. 163, as recommended by the

Department of Environmental Protection; which was referred to the Committee on the Judiciary.

Delegate Lavender-Bowe asked and obtained unanimous consent to be removed as a cosponsor of Com. Sub. for H. B. 2941.

### **Reordering of the Calendar**

Delegate Summers announced that the Committee on Rules had transferred Com. Sub. for H. B. 2718, on third reading, House Calendar, to the Special Calendar; Com. Sub. for H. B. 2519, H. B. 2739, Com. Sub. for H. B. 2931, Com. Sub. for H. 3105 and H. B. 3137, on third reading, Special Calendar, to the House Calendar.

Delegate Summers moved that Com. Sub. for H. B. 2519 be transferred from the House Calendar to the Special Calendar.

On this question, the yeas and nays were taken (**Roll No. 356**), and there were—yeas 59, nays 40, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Angelucci, Bates, S. Brown, Campbell, Canestraro, Capito, Caputo, Cooper, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hicks, Hollen, Hornbuckle, Kump, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Robinson, Rowe, Shott, Skaff, Sponaugle, Storch, C. Thompson, Walker, Westfall, Williams and Zukoff.

Absent and Not Voting: Byrd.

So, two thirds of the members present and voting not having voted in the affirmative, the motion was rejected.

### **Special Calendar**

#### **Third Reading**

**Com. Sub. for H. B. 2079**, Removing certain limitations on medical cannabis grower, processor and dispensary licenses; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 357**), and there were, including pairs—yeas 84, nays 16, absent and not voting none, with the nays and paired being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Byrd

Nay: Butler

Nays: Cadle, Cowles, Fast, Hardy, Hollen, D. Jeffries, Jennings, J. Kelly, Kessinger, Malcolm, P. Martin, Porterfield, Rohrbach, Summers and Toney.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2079) passed.

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

**Com. Sub. for H. B. 2079** - “A Bill to amend and reenact §16A-2-1 of the Code of West Virginia, 1931, as amended; to amend and reenact §16A-4-3 of said code; to amend and reenact §16A-6-13 of said code; to amend and reenact §16A-8-1 of said code; and to amend and reenact §16A-16-1 of said code, all relating to medical cannabis; revising definition of ‘continuing care’; adding requirements for practitioners issuing a certification to use medical cannabis; adding a requirement that practitioners provide an attestation to the Bureau of Public Health; revising dispensary permit numeric criteria; authorizing grower, processor and dispensary permittees to hold all three types of permits; removing requirement that a physician or pharmacist be present at a dispensary; and authorizing the bureau to implement a process for certification pre-registration, and providing conditions thereto.”

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

On this question, the yeas and nays were taken (**Roll No. 358**), and there were—yeas 88, nays 11, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Butler, Cadle, Fast, Hollen, D. Jeffries, Jennings, J. Kelly, Kessinger, P. Martin, Porterfield and Toney.

Absent and Not Voting: Byrd.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2079) takes effect from its passage.

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

**Com. Sub. for H. B. 2397**, Requiring county school boards to provide adequate mental health and counseling services; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 359**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2397) passed.

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

**Com. Sub. for H. B. 2595**, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System; on third reading, coming up in regular order, with the right to amend, was reported by the Clerk.

On motion of Delegates Graves and Householder, the bill was amended on page fifteen, following §16-5V-6, line sixty-seven, by striking out all of §20-28-10 in its entirety and inserting in lieu thereof the following:

**“§20-2B-10. Class CS/~~LE~~ nonresident conservation law-enforcement and sports education stamp.**

(a) Any nonresident hunter, angler or trapper licensed to hunt, fish or trap in this state, in addition to a Class E, EE, F, H, LL or XXJ license, shall have a Class CS/~~LE~~ nonresident conservation, ~~law enforcement and sports education~~ stamp. The fee for the stamp is ~~\$12~~ \$6.50.

(b) The revenue derived from the sale of Class CS/~~LE~~ nonresident stamps shall be deposited in the State Treasury and shall be credited to the Division of Natural Resources. ~~Fifty percent of the revenue shall be used and paid out, upon order of the director, for the law enforcement section’s expenses relating to the general enforcement of state laws pertaining to the conservation of fish and wildlife and law enforcement education programs for hunters, anglers and trappers: *Provided*, That no expenditures of the revenue derived from the sale of the Class CS/~~LE~~ stamp shall be made for law enforcement purposes not directly related to the wildlife resources of the state or for the educational programs set forth in this subsection. Fifty percent of t~~ The revenue shall be used and paid out for capital improvements and land purchases or leases benefitting wildlife except that at the discretion of the director, a maximum of 20 percent of the revenue may be used for the operation and maintenance of the capital improvements and lands: *Provided*, That no expenditures of the revenue derived from the sale of the conservation stamps shall be made for recreational facilities that are used by or for the benefit of the general public rather than by or for purchasers of hunting, fishing or trapping licenses. Any unexpended moneys derived from the sale of Class CS/~~LE~~ stamps shall be carried forward to the next fiscal year.

**§20-2B-11. Class LE nonresident law enforcement stamp.**

(a) Any nonresident hunter, angler, or trapper licensed to hunt, fish, or trap in this state, in addition to a Class E, EE, F, H, LL, or XXJ license, shall have a Class LE nonresident law-enforcement and education stamp. The fee for the stamp is \$8.50. Any unexpended moneys derived from the sale of Class LE stamps shall be carried forward to the next fiscal year.

(b) The revenue derived from the sale of Class LE stamps shall be deposited in the State Treasury and shall be credited to the Division of Natural Resources. The revenue shall be used and paid out, upon order of the director, for the law-enforcement section's expenses relating to the general enforcement of state laws pertaining to the conservation of fish and wildlife and law-enforcement education programs for hunters, anglers and trappers: *Provided*, That no expenditures of revenue derived from the sale of the law-enforcement stamps shall be made for law-enforcement purposes not directly related to the wildlife resources of the state or for the educational programs set forth in this section.

(c) Beginning after January 1, 2020, if the requirements of §20-17-4 of this code are met and the provisions of §20-17-1 *et seq.* of this code are in full force and effect, the revenue derived from the sale of Class LE nonresident stamps shall be deposited in the State Treasury and shall be credited used and paid out, upon order of the director, for the law-enforcement section's expenses relating to the general enforcement of state laws pertaining to the conservation of fish and wildlife and law-enforcement education programs for hunters, anglers and trappers: *Provided*, That no expenditures of the revenue derived from the sale of Class LE nonresident stamps shall be made for law-enforcement purposes not directly related to the wildlife resources of the state or for the educational programs set forth in this section: *Provided further*, that \$2.00 from the fee for each Class LE nonresident stamp collected and credited pursuant to this section shall be used and paid out monthly, upon order of the director, into the Natural Resources Police Officer Retirement Fund pursuant to §20-17-7 of this code.”

And,

On page thirty, section eight, line two, following the words “equal to”, by striking out the word “eight” and inserting in lieu thereof the word “nine”.

Having been engrossed, the bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 360**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2595) passed.

On motion of Delegates Graves and Householder, the title of the bill was amended to read as follows:

**Com. Sub. for H. B. 2595** - “A Bill to amend and reenact §5-10-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; to amend and reenact §7-14D-5 of said code; to amend and reenact §8-22A-6 of said code; to amend and reenact §16-5V-6 of said code; to amend and reenact §20-2B-10 of said code; to amend said code by adding thereto a new section, designated §20-2B-11; and to amend said code by adding thereto a new article, designated §20-17-1, §20-17-2, §20-17-3, §20-17-4, §20-17-5, §20-17-6, §20-17-7, §20-17-8, §20-17-9, §20-17-10, §20-17-11, §20-17-12, §20-17-13, §20-17-14, §20-17-15, §20-17-16, §20-17-17, §20-17-18, §20-17-19, §20-17-20, §20-17-21, §20-17-22, §20-17-23, §20-17-24, §20-17-25, §20-17-26, §20-17-27, §20-17-28, §20-17-29, §20-17-30, §20-17-31, §20-17-32, §20-17-33, §20-17-34, §20-17-35 and §20-17-36, all relating to establishing the West Virginia Division of Natural Resources Police Officer Retirement System; adding and modifying certain stamp fees to contribute to the new retirement system; providing for additional members of the Consolidated

Public Retirement Board; and providing for criminal offense of defrauding the system and penalties therefor.”

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

**Com. Sub. for H. B. 2718**, Requiring purchasers of roundwood to collect and maintain certain information; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 361**), and there were—yeas 95, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Butler, Foster, Jennings and McGeehan.

Absent and Not Voting: Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2718) passed.

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

**Com. Sub. for H. B. 2843**, Creating an Office for Federal Surplus Property; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 362**), and there were—yeas 90, nays 8, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Cadle, Doyle, Fluharty, Hansen, McGeehan, Nelson, Tomblin and Walker.

Absent and Not Voting: Byrd and Skaff.



So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2843) passed.

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

**Com. Sub. for H. B. 2882**, Creating a health professionals' student loan programs; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 363**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Byrd and Hicks.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2882) passed.

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

**H. B. 2932**, Transferring regulation and licensing of charitable bingo, charitable raffles, and charitable raffle boards; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 364**), and there were—yeas 90, nays 8, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Butler, Cadle, Fast, Hollen, Kump, Porterfield, Toney and Worrell.

Absent and Not Voting: Byrd and Hicks.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2932) passed.

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

Delegate Lovejoy asked and obtained unanimous consent to be added as a cosponsor of Com. Sub. for H. B. 2941.

**Com. Sub. for H. B. 2941**, Reinstating the film investment tax credit; on third reading, coming up in regular order, was read a third time.

Delegates Lavender-Bowe, Evans, J. Kelly, Hamrick, Howell, Cadle and Campbell requested to be excused from voting on Com. Sub. for H. B. 2941 under the provisions of House Rule 49.

The Delegates being members of a class of persons possibly to be affected by the passage of the bill, the Speaker directed the Members to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 365**), and there were—yeas 73, nays 26, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Azinger, Bibby, Butler, Cadle, Cooper, Cowles, Criss, Espinosa, Fast, Foster, Harshbarger, Hollen, Hott, Householder, Howell, Jennings, Kump, Mandt, P. Martin, Maynard, Nelson, Paynter, Porterfield, Westfall, Wilson and Worrell.

Absent and Not Voting: Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2941) passed.

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

**Com. Sub. for H. B. 2951**, Placing the regulation of non-medical professions and occupations in a new chapter of the code; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 366**), and there were—yeas 54, nays 43, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, N. Brown, S. Brown, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Paynter, Pethtel, Pushkin, Pyles, Queen, Robinson, Rodighiero, Rohrbach, Rowe, Skaff, Sponaule, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Westfall, Williams, Worrell and Zukoff.

Absent and Not Voting: Azinger, Byrd and Shott.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2951) passed.

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

**H. B. 2966**, County Budget Flexibility Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 367**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fast.

Absent and Not Voting: Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 2966) passed.

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

**Com. Sub. for H. B. 2967**, Permitting a county to retain the excise taxes for the privilege of transferring title of real estate; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 368**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Byrd and Robinson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2967) passed.

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

**H. B. 3127**, Relating to the Secondary School Activities Commission and participation by home schooled students; on third reading, coming up in regular order, was read a third time.

Delegate Kump demanded the previous question, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 369**), and there were—yeas 59, nays 39, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Angelucci, Barrett, Bates, Boggs, S. Brown, Campbell, Canestraro, Caputo, Cowles, Diserio, Doyle, Estep-

Burton, Evans, Fleischauer, Fluharty, Hansen, Harshbarger, Hornbuckle, D. Kelly, J. Kelly, Longstreth, Lovejoy, Miley, Pack, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rohrbach, Rowe, Sponaugle, Storch, Swartzmiller, C. Thompson, Toney, Walker and Williams.

Absent and Not Voting: Byrd and Steele.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 370**), and there were—yeas 46, nays 52, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Azinger, Barrett, Bibby, Boggs, Butler, Cadle, Cowles, Criss, Ellington, Espinosa, Fast, Foster, Hamrick, Hanna, Hardy, Higginbotham, Hill, Hollen, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Kump, Linville, Lovejoy, Malcolm, Mandt, C. Martin, P. Martin, Maynard, McGeehan, Pack, Phillips, Porterfield, Rodighiero, Shott, Staggers, Sypolt, Waxman, Wilson and Worrell.

Absent and Not Voting: Byrd and Steele.

So, a majority of the members present and voting not having voted in the affirmative, the Speaker declared the bill (H. B. 3127) rejected.

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

**H. B. 3136**, Relating to the Centers for Medicare and Medicaid Services; on third reading, coming up in regular order, was reported by the Clerk.

On motion of Delegate Sypolt, the bill was moved to the foot of all bills on third reading.

**H. B. 3142**, Relating to reducing the severance tax on thermal or steam coal; on third reading, coming up in regular order, was read a third time.

During the debate, Delegate Porterfield raised a point of order regarding the content of questions by Delegate Rowe, to which point the Speaker replied that the point was well taken and that questions and answers should be directed to the question before the House.

Delegate Kump demanded the previous question, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 371**), and there were—yeas 72, nays 26, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Angelucci, Barrett, Bates, S. Brown, Caputo, Cowles, Diserio, Doyle, Estep-Burton, Fleischauer, Fluharty, Hansen, Hornbuckle, Linville, Lovejoy, Miley, Pethtel, Pushkin, Pyles, Robinson, Rowe, Sponaugle, Storch, Walker and Williams.

Absent and Not Voting: Byrd and Steele.

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 372**), and there were, including pairs—yeas 88, nays 11, absent and not voting 1, with the nays and absent and not voting and paired being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Steele

Nay: Doyle

Nays: Cowles, Fleischauer, Hansen, Hornbuckle, Pushkin, Robinson, Rowe, Sponaugle, C. Thompson and Williams.

Absent and Not Voting: Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3142) passed.

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

**H. B. 3142** - “A Bill to amend and reenact §11-13A-3, §11-13A-6 and §11-13A-6a of the Code of West Virginia, 1931, as amended, all relating to reducing the severance tax on thermal or steam coal to four percent, effective July 1, 2019; reducing the severance tax on thermal or steam coal to three percent, effective July 1, 2020; eliminating restrictions on counties and municipalities expending the county and municipality portion of severance taxes; eliminating certain reporting requirements; and establishing minimum amounts of distribution of portion of severance taxes on coal dedicated for use and benefit of coal-producing counties.”

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

**H. B. 3144**, North Central Appalachian Coal Severance Tax Rebate Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 373**), and there were—yeas 88, nays 9, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Bates, Caputo, Doyle, Fleischauer, Hansen, Pushkin, Sponaugle and Walker.

Absent and Not Voting: Byrd, Linville and Steele.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3144) passed.

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

Having voted on the prevailing side, Delegate Skaff moved that the House of Delegates reconsider the vote regarding transferring Com. Sub. for H. B. 2519 from the House Calendar to the Special Calendar.

Delegate Fleischauer seconded the motion.

On the motion to reconsider, the yeas and nays were demanded, which demand was not sustained.

On this question, the Speaker declared the motion rejected.

At 4:03 p.m., the House of Delegates recessed until 7:00 p.m.

\* \* \* \* \*

### **Evening Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

### **Reordering of the Calendar**

Delegate Summers announced that the Committee on Rules had transferred H.B. 3136, on third reading, Special Calendar, to the House Calendar; and Com. Sub. for H. B. 2519 on third reading, House Calendar, to the Special Calendar

### **Special Calendar**

#### **Third Reading**

-continued-



**Com. Sub. for H. B. 2519**, The Campus Self Defense Act; on third reading, coming up in regular order, with amendments pending, was reported by the Clerk.

Delegate J. Jeffries moved that the Rules of the House be suspended and all amendments pending be rejected en masse.

On this question, the yeas and nays were taken (**Roll No. 374**), and there were—yeas 50, nays 48, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Anderson, Angelucci, Atkinson, Barrett, Bates, Boggs, S. Brown, Byrd, Campbell, Canestraro, Capito, Caputo, Cowles, Diserio, Doyle, Espinosa, Estep-Burton, Evans, Fluharty, Hansen, Hartman, Hicks, Hollen, Hornbuckle, D. Kelly, J. Kelly, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Queen, Robinson, Rowe, Shott, Skaff, Sponaule, Storch, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

Absent and Not Voting: Fleischauer and Harshbarger.

So, two thirds of the members present and voting not having voted in the affirmative, the motion was rejected.

Delegate Summers moved that debate on each amendment be limited to one recognition per Delegate, not to exceed two minutes, with a total limit of fifteen minutes per amendment.

On this question, the yeas and nays were taken (**Roll No. 375**), and there were—yeas 78, nays 20, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: S. Brown, Byrd, Cowles, Doyle, Estep-Burton, Hansen, Hartman, Hicks, Hollen, Hornbuckle, D. Kelly, J. Kelly, Pushkin, Pyles, Robinson, Rowe, Shott, Tomblin, Walker and Williams.

Absent and Not Voting: Fleischauer and Harshbarger.

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

Delegates Hansen, Pyles and Fleischauer moved to amend the bill on page forty-four, section five-b, line eighty, by striking out the period, inserting a comma and “or, taking any disciplinary action deemed appropriate, including suspension or expulsion of a student or discharge of an employee, for carrying a concealed deadly weapon while under the influence of drugs or alcohol, for carrying a concealed deadly weapon in a prohibited area or event, or unlawfully brandishing a deadly weapon on the campus.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 376**), and there were—yeas 33, nays 66, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Bates, S. Brown, Byrd, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Hansen, Hartman, Hicks, Hollen, Hornbuckle, D. Kelly, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Pethtel, Pushkin, Pyles, Rohrbach, Rowe, Shott, Skaff, Walker, Williams and Zukoff.

Absent and Not Voting: Harshbarger.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegates Skaff, Walker, Hansen and Fleischauer moved to amend the bill on page forty, section five-b, line fifty-six, by striking out the word “or”.

And,

On page forty-four, section five-b, line fifty-eight, by striking out the period, inserting a comma, and the following:

“or,

(13) In on-campus or off-campus transportation vehicles, including personal rapid transports, buses, aircraft, or other

vehicles utilized by the institution of higher education to transport students and faculty to university activities and facilities.”

The question being on the adoption of the amendment, the same was put and did not prevail.

There being two conflicting amendments and the adoption of one precluding adoption of the other, the Speaker informed the House that both would be explained before the first was voted upon.

Delegate Shott moved to amend the bill on page forty-two, line ten, after the words “§61-7-14”, by inserting the words “and § 18B-4-5b”.

On page forty-two, line ten, after the words “of this code”, by inserting the words “and any lawful rules or regulations promulgated pursuant to this or other relevant sections of the code” and a colon.

And,

On page forty-two, line eleven, after the word “arena”, by striking out the words “with a capacity of more than 1,000 spectators”, and inserting “including but not limited to athletic competition, academic classes, team practice, intramurals, recreation, or any other permitted or scheduled use employed by students, faculty, or the public, and any other limitation required to comply with prohibitions established by an athletic conference in which the institution is a member” and a semicolon.

Whereupon,

Delegate Byrd asked and obtained unanimous consent that the amendment sponsored by Delegate S. Brown and himself be withdrawn.

On the adoption of the amendment offered by Delegate Shott, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 377**), and there were—yeas 48, nays 52, absent and not voting none, with the yeas being as follows:

Yeas: Anderson, Angelucci, Azinger, Bates, S. Brown, Byrd, Campbell, Canestraro, Capito, Caputo, Cooper, Cowles, Criss, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hollen, Hornbuckle, D. Kelly, J. Kelly, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Queen, Rohrbach, Rowe, Shott, Skaff, Staggers, Storch, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Shott moved to amend the bill on page forty-two, line twenty-five, after the words “higher education”, by deleting the semicolon and inserting a comma and the words “including all walkways, hallways, open areas, adjacent meeting rooms, anterooms, restrooms, waiting rooms, or other areas located within a 150-foot radius of the spaces designated for, or related to, the disciplinary or grievance procedure” and a semicolon.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 378**), and there were—yeas 34, nays 66, absent and not voting none, with the yeas being as follows:

Yeas: Angelucci, Bates, Byrd, Campbell, Capito, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Hansen, Hartman, Hollen, Hornbuckle, D. Kelly, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Rowe, Shott, Skaff, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Shott moved to amend the bill on page forty-three, line thirty-six, after the word “occurring”, by deleting the colon, inserting a period, and thereafter inserting the following:

“For the purposes of this subsection ‘school-sponsored function’ includes, but is not necessarily limited to: tours, demonstrations, field trips, events, clubs, camps, classes, clinics, programs, and like events, authorized by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school, including K-12 school district or individual school(s) as a curricular, co-curricular, or interscholastic activity, managed or supervised in part by the department, commission, board, district, school, or district or school employee. When a pre-K-12 school sponsored activity is so conducted in a location, the concealed carrying of pistols or revolvers is prohibited. A sign reading ‘Pre-K-12 school-sponsored activity in progress’ will be posted during these activities” and a semicolon.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 379**), and there were—yeas 45, nays 55, absent and not voting none, with the yeas being as follows:

Yeas: Anderson, Angelucci, Atkinson, Bates, S. Brown, Byrd, Campbell, Canestraro, Capito, Caputo, Cooper, Cowles, Diserio, Doyle, Ellington, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hicks, Hollen, Hornbuckle, Lavender-Bowe, Linville, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Rohrbach, Rowe, Shott, Skaff, Storch, Sypolt, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Shott moved to amend the bill on page forty-three, line forty-four, after the words “being provided”, by deleting the semicolon, inserting a period, and thereafter inserting the following:

“Waiting rooms for designated patient care or mental-counselling areas may be considered a designated area. This prohibition includes not only traditional patient care facilities, but also research labs and other research areas where and when, as part of a research program, patient care is delivered by or under the supervision or direction of a licensed health care provider” and a semicolon.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 380**), and there were—yeas 42, nays 56, absent and not voting 2, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Angelucci, Atkinson, Bates, S. Brown, Byrd, Campbell, Canestraro, Capito, Caputo, Cooper, Cowles, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Hansen, Hicks, Hollen, Hornbuckle, D. Kelly, J. Kelly, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Rohrbach, Rowe, Skaff, Storch, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

Absent and Not Voting: N. Brown and Sponaule.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Shott moved to amend the bill on page forty-four, line fifty-eight, after the words “study areas” and the semicolon, by inserting the following:

“(13) The concealed carry of pistols or revolvers is prohibited on premises which involve a ticketed or charitable theater or film performance, musical recital, lecture, speech, live performance,

entertainment, concert or other event where the introduction of firearms is inconsistent with the safety and security of the event. Concealed carry of pistols or revolvers is not prohibited at publicly accessible outdoor grounds or rights-of-way appurtenant to the above noted premises including parking lots;

(14) The concealed carry of a pistol or revolver is prohibited in areas for which state or federal law, licensing requirements, or contracts require total exclusion of firearms solely at the discretion of the state or federal government, or firearm exclusion is required by a campus accrediting authority. Where appropriate, signage will conform to the overriding federal law, state law or accrediting requirements;

(15) Gun exclusion zones if created by state law as well as those created by public policy may sometimes comprise only a portion of a building. In some instances, it may not be feasible to exclude concealed pistols or revolvers only from designated exclusion zones. The following factors and principles will govern the implementation of these rules and regulations in those buildings in which some, but not all parts are designated as exclusion zones:

(A) the percentage of assignable space or rooms in a building that are designated as exclusion zones;

(B) The extent to which the areas designated as exclusion zones are segregable from other areas of the building;

(C) The extent to which use of the building, and hence its status as an exclusion zone, varies from day-to-day or week-to-week;

(D) If a small number of rooms or a small fraction of assignable space in a building is subject to exclusion, only the rooms or areas that qualify for exclusion should be excluded. Appropriate signage must be posted for excluded rooms or areas.

(E) if a significant fraction of the total building in terms of number of rooms or assignable space is subject to exclusion, or if the excludable space is not able to be segregated from other space,

then as a matter of practicality, the whole building will be excluded. Appropriate signage must be posted for any such building.

(16) No one may possess a firearm on campus while engaged in any type of criminal activity, while consuming alcohol, while under the influence of alcohol, or while under the influence of any drug, including illegal drugs and prescription medication.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 381**), and there were—yeas 43, nays 57, absent and not voting none, with the yeas being as follows:

Yeas: Anderson, Angelucci, Atkinson, Bates, S. Brown, Byrd, Campbell, Capito, Caputo, Cooper, Cowles, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Hansen, Hicks, Hollen, Hornbuckle, D. Kelly, J. Kelly, Lavender-Bowe, Linville, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Queen, Rowe, Shott, Skaff, Storch, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Shott moved to amend the bill on page forty-four, line seventy-seven, after “(f)”, by inserting “(1)”.

And,

On page forty-four, line eighty, after the words “this section” and the period, by inserting the following:

“(2) Accidental discharge of a concealed pistol or revolver is conduct which may be subject to disciplinary action.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.



The yeas and nays having been ordered, they were taken (**Roll No. 382**), and there were—yeas 41, nays 58, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Anderson, Angelucci, Azinger, Bates, S. Brown, Byrd, Campbell, Capito, Caputo, Cooper, Cowles, Diserio, Doyle, Ellington, Estep-Burton, Evans, Fleischauer, Hansen, Hartman, Hollen, Hornbuckle, D. Kelly, Lavender-Bowe, Longstreth, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Rohrbach, Rowe, Shott, Skaff, Storch, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

Absent and Not Voting: Linville.

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

An amendment offered by Delegate Shott, was reported by the Clerk.

Whereupon,

Delegate Shott obtained unanimous consent that the amendment be withdrawn.

Delegates Shott and Skaff moved to amend the bill on page forty-five, line ninety-nine, after the word “revolver” and the period, by inserting the following:

“(i) For the purposes of this section, a ‘license to carry a concealed deadly weapon’ refers to a current and valid license, lawfully issued by the State of West Virginia pursuant to §61-7-4 or to a current and valid provisional license, lawfully issued pursuant to §61-7-4a of this code to a currently serving or honorably discharged member of the United State armed forces, reserve or National Guard, or a current and valid license or permit recognized under §61-7-6a of this code.”

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 383**), and there were—yeas 38, nays 62, absent and not voting none, with the yeas being as follows:

Yeas: Anderson, Angelucci, Bates, S. Brown, Byrd, Campbell, Capito, Caputo, Cowles, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Hansen, Hicks, Hollen, Hornbuckle, D. Kelly, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Rohrbach, Rowe, Shott, Skaff, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

So, a majority of the members present and voting not having voted in the affirmative, the amendment was rejected.

Delegate Shott moved to amend the bill on page forty-five, line one hundred three, after the word “code”, by inserting the following subsection:

“(k) No later than December 15<sup>th</sup> of each calendar year, the state institutions of higher learning shall report on any issues related to implementation of ‘The Campus Self Defense Act’ to the Joint Committee on Government and Finance, including all financial effects and costs, any effect on enrollment, any effect on retention or recruitment of faculty and staff, any incidents on campus related to concealed carry of a pistol or revolver, or any other issue which the state institution of higher learning identifies as relevant information for the Joint Committee on Government and Finance to assess and evaluate the effect of ‘The Campus Self Defense Act’ on higher education in the State of West Virginia.”

And,

By renumbering the remaining paragraphs as “(l)” and “(m)”, respectively.

On the adoption of the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 384**), and there were—yeas 51, nays 49, absent and not voting none, with the nays being as follows:

Nays: Azinger, Barrett, Bibby, Boggs, N. Brown, Butler, Cadle, Criss, Dean, Espinosa, Fluharty, Foster, Graves, Hamrick, Hanna, Hardy, Harshbarger, Higginbotham, Hill, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Kessinger, Kump, Malcolm, C. Martin, P. Martin, Maynard, McGeehan, Pack, Paynter, Phillips, Porterfield, Rodighiero, Rowan, Sponaugle, Steele, Summers, Swartzmiller, Sypolt, C. Thompson, R. Thompson, Toney, Waxman, Wilson and Worrell.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Having been engrossed, the bill was then read a third time.

Delegate Wilson demanded the previous question, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 385**), and there were—yeas 49, nays 51, absent and not voting none, with the yeas being as follows:

Yeas: Atkinson, Azinger, Bibby, N. Brown, Butler, Cadle, Capito, Cooper, Criss, Dean, Espinosa, Fast, Graves, Hamrick, Hanna, Hardy, Harshbarger, Hartman, Higginbotham, Hill, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Linville, C. Martin, P. Martin, Maynard, McGeehan, Nelson, Pack, Paynter, Phillips, Porterfield, Rodighiero, Rowan, Staggers, Summers, Sypolt, C. Thompson, R. Thompson, Tomblin, Toney, Waxman, Westfall, Wilson and Hanshaw (Mr. Speaker).

So, a majority of the members present and voting not having voted in the affirmative, the motion was rejected.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 386**), and there were—yeas 59, nays 41, absent and not voting none, with the nays being as follows:

Nays: Anderson, Angelucci, Bates, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hicks, Hollen, Hornbuckle, D. Kelly, Lavender-Bowe, Longstreth, Lovejoy, Mandt, Miley, Miller, Nelson, Pethtel, Pushkin, Pyles, Robinson, Rowe, Shott, Skaff, Sponaugle, Storch, C. Thompson, Walker, Westfall, Williams, Zukoff and Hanshaw (Mr. Speaker).

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2519) passed.

Delegate Pyles moved that the bill take effect July 1, 2099.

On this question, the yeas and nays were taken (**Roll No. 387**), and there were—yeas 31, nays 69, absent and not voting none, with the yeas being as follows:

Yeas: Anderson, Angelucci, Bates, S. Brown, Byrd, Campbell, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Hansen, Hollen, Hornbuckle, Lavender-Bowe, Longstreth, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rowe, Shott, Skaff, Sponaugle, C. Thompson, Walker, Williams and Zukoff.

So, two thirds of the members present and voting not having voted in the affirmative, the motion was rejected.

**H. B. 3146**, Relating to retail licensees; on third reading, coming up in regular order, was reported by the Clerk.

Delegate Pack asked and obtained unanimous consent to allow an amendment to be offered on third reading.

On motion of Delegate Pack, the bill was amended on page one, after the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

**“ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

**§60-3A-17. Wholesale prices set by commissioner; retail licensees to purchase liquor from state; transportation and storage; method of payment; requiring a minimum amount of liquor purchases; removing liquor inventory square footage requirements; special or prepaid orders through retail licensees.**

(a) The commissioner shall fix wholesale prices for the sale of liquor, other than wine, to retail licensees. The commissioner shall sell liquor, other than wine, to retail licensees according to a uniform pricing schedule. The commissioner shall obtain, if possible, upon request, any liquor requested by a retail licensee and those permitted to manufacture and sell liquor pursuant to §60-4-3 of this code.

(b) Wholesale prices shall be established in order to yield a net profit for the General Revenue Fund of not less than \$6,500,000 annually on an annual volume of business equal to the average for the past three years. The net revenue derived from the sale of alcoholic liquors shall be deposited into the General Revenue Fund in the manner provided in §60-3-17 of this code.

(c) Notwithstanding any provision of this code to the contrary, the commissioner shall specify the maximum wholesale markup percentage which may be applied to the prices paid by the commissioner for all liquor, other than wine, in order to determine the prices at which all liquor, other than wine, will be sold to retail licensees. A retail licensee shall purchase all liquor, other than wine, for resale in this state only from the commissioner, and the provisions of §60-6-12 and §60-6-13 of this code shall not apply to the transportation of the liquor. Beginning July 1, 2020, a retail licensee must purchase at least 200 of the available stock keeping units ('SKUs') of liquor the commissioner lists as West Virginia product. *Provided,* That a retail licensee shall purchase wine from a wine distributor who is duly licensed under §60-8-1 *et seq.* of this code. All liquor, other than wine, purchased by retail licensees shall be stored in the state at the retail outlet or outlets operated by the retail licensee: *Provided, however,* That the commissioner, in his

or her discretion, may upon written request permit a retail licensee to store liquor at a site other than the retail outlet or outlets.

(d) The sale of liquor by the commissioner to retail licensees shall be paid by electronic funds transfer which shall be initiated by the commissioner on the business day following the retail licensees order or by money order, certified check or cashier's check which shall be received by the commissioner at least 24 hours prior to the shipping of the alcoholic liquors: *Provided*, That if a retail licensee posts with the commissioner an irrevocable letter of credit or bond with surety acceptable to the commissioner from a financial institution acceptable to the commissioner guaranteeing payment of checks, then the commissioner may accept the retail licensee's checks in an amount up to the amount of the letter of credit.

(e) (1) A retail licensee may not sell liquor to persons licensed under the provisions of §60-7-1 *et seq.* of this code at less than ~~40~~ 115 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

(2) A retail licensee may not sell liquor to the general public at less than ~~40~~ 115 percent of the retail licensee's cost as defined in §47-11A-6 of this code.

(f) Beginning July 1, 2020, a retail licensee will not be required to have a particular amount of square footage devoted to the sale of liquor: *Provided*, That a retail licensee have enough shelf or display space to display at least one of each SKUs offered for sale to its patrons.

(g) No special order or prepaid order of liquor from a retail licensee attempting to procure a liquor product for a licensee licensed under §60-7-1 *et seq.* of this code or a patron may be denied. The commissioner may supply the order through inventor in the warehouse. If the liquor requested by the special or prepaid order is not in stock at the warehouse in this state, the commissioner must make reasonable attempts to procure the special or prepaid order for the retail licensee."

Having been engrossed, the bill was read a third time.

Delegate Phillips requested to be excused from voting on H.B. 3146 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 388**), and there were—yeas 12, nays 87, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Bibby, Foster, Hamrick, Hott, Jennings, Malcolm, Phillips, Shott, Summers, Waxman, Wilson and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper.

So, a majority of the members present and voting not having voted in the affirmative, the Speaker declared the bill (H. B. 3146) rejected.

**H. B. 3148**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Human Services; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 389**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3148) passed.

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

On this question, the yeas and nays were taken (**Roll No. 390**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Cooper.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3148) takes effect from its passage.

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

**H. B. 3149**, Relating to manufacturing and producing hard cider in West Virginia; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 391**), and there were—yeas 80, nays 19, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Azinger, Cowles, Espinosa, Fast, Hardy, Hollen, D. Jeffries, J. Jeffries, Jennings, Kessinger, Kump, Malcolm, C. Martin, Maynard, Pack, Porterfield, Toney, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Cooper.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (H. B. 3149) passed.

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



### Second Reading

**Com. Sub. for S. B. 157**, Authorizing Department of Administration promulgate legislative rules; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 295**, Relating to crimes against public justice; on second reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**S. B. 440**, Relating to Antihazing Law; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 453**, Relating to background checks of certain financial institutions; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

**“ARTICLE 2. DIVISION OF ~~BANKING~~ FINANCIAL INSTITUTIONS.**

**§31A-2-4. Jurisdiction of commissioner; powers, etc., of division transferred to commissioner; powers and duties of commissioner.**

(a) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, the commissioner has supervision and jurisdiction over state banks, regulated consumer lenders, residential mortgage lenders, and brokers licensed pursuant to §31-17-1 *et seq.* of this code, credit unions, and all other persons now or hereafter made subject to his or her supervision or jurisdiction. All powers, duties, rights, and privileges vested in the division are hereby vested in the commissioner. He or she shall be the chief executive officer of the Division of ~~Banking~~ Financial Institutions and is responsible for the division’s organization, services, and personnel and for the

orderly and efficient administration, enforcement, and execution of the provisions of this chapter and all laws vesting authority or powers in or prescribing duties or functions for the division or the commissioner.

(b) The commissioner shall:

(1) Maintain an office for the division and there keep a complete record of all the division's transactions, of the financial conditions of all financial institutions, and records of the activities of other persons as the commissioner considers important. Notwithstanding any other provision of this code, heretofore or hereafter enacted, the records relating to the financial condition of any financial institution and any information contained in the records shall be confidential for the use of the commissioner and authorized personnel of the Division of ~~Banking~~ Financial Institutions. No person shall divulge any information contained in any records except as authorized in this subdivision in response to a valid subpoena or subpoena duces tecum issued pursuant to law in a criminal proceeding or in a civil enforcement action brought by the state or federal regulatory authorities. Subpoenas shall first be directed to the commissioner, who shall authorize disclosure of relevant records and information from the records for good cause, upon imposing terms and conditions considered necessary to protect the confidential nature of the records, the financial integrity of the financial institution or the person to which the records relate and the legitimate privacy interests of any individual named in the records. Conformity with federal procedures shall be sought where the institution maintains federal deposit insurance. The commissioner has and may exercise reasonable discretion as to the time, manner, and extent the other records in his or her office and the information contained in the records are available for public examination;

(2) Require all financial institutions to comply with all the provisions of this chapter and other applicable laws, or any rule promulgated or order issued thereunder;

(3) Investigate all alleged violations of this chapter and all other laws which he or she is required to enforce and of any rule promulgated or order issued thereunder; and

(4) Require a criminal background investigation, including requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national, or international criminal history check, of each:

(A) Applicant seeking approval to charter and/or control a state bank, state credit union, or a foreign bank state agency or representative office;

(B) Applicant seeking a license to engage in the business of money transmission, currency exchange, or other activity regulated under §32A-2-1 *et seq.* of this code;

(C) Applicant subject to the commissioner's supervision seeking a license to engage in the business of regulated consumer lending, mortgage lending, or brokering; and

(D) Division of ~~Banking~~ Financial Institutions regulatory employee applicants.

(E) ~~Provided, That. The provisions of this subdivision are not applicable~~ where the applicant is a company or entity already subject to supervision and regulation by the Federal Reserve Board or other federal bank, thrift, or credit union regulator, or is a direct or indirect subsidiary of a company or entity subject to the supervision and regulation, or where the applicant is a company subject to the supervision and regulation of the federal Securities and Exchange Commission whose stock is publicly traded on a registered exchange or through the National Association of Securities Dealers automated quotation system, or the applicant is a direct or indirect subsidiary of such a company, the investigation into criminal background is not required. The provisions of this subdivision are not applicable to applicants seeking interim bank charters organized solely for the purpose of facilitating the acquisition of another bank pursuant to §31A-4-5 of this code.

~~Provided, however, That~~ The requirements of this subdivision are applicable to the principals of the applicant where a nonexempt applicant under this subdivision is not a natural person. ~~the principals of the applicant are subject to the requirements of this subdivision~~ As used in this subdivision, the term ‘principals’ means the chief executive officer, regardless of title, managing partner if a partnership, members of the organizing group if no chief executive officer has yet been appointed, trustee, or other person controlling the conduct of the affairs of a licensee. A person controlling 10 percent or more of the stock of any corporate applicant shall be considered to be a principal under this provision. Notwithstanding any other provision of this code to the contrary, the commissioner may determine alternate acceptable forms for background check information for direct or indirect principals of a licensee or applicant for a mortgage lender or broker license or a money transmission license who are not residents of the United States if such licensee or applicant also has owners or principals who are residents of the United States and the division has been provided adequate background information, as provided in this subdivision, for such owners or principals of the licensee or applicant who are United States residents. The commissioner may establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records related to criminal background investigations and fingerprints of persons subject to this subsection.

(A) To reduce the points of contact which the Federal Bureau of Investigation may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry or its designated vendor as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(B) To reduce the points of contact which the commissioner may have to maintain, the commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

(c) In addition to all other authority and powers vested in the commissioner by provisions of this chapter and other applicable laws, the commissioner may:

(1) Provide for the organization of the division and the procedures and practices of the division and implement the procedures and practices by the promulgation of rules and forms as appropriate and the rules shall be promulgated in accordance with §29A-3-1 *et seq.* of this code;

(2) Employ, direct, discipline, discharge, and establish qualifications and duties for all personnel for the division, including, but not limited to, examiners, assistant examiners, conservators, and receivers, establish the amount and condition of bonds for the personnel he or she considers appropriate and pay the premiums on the bonds and, if he or she elects, have all personnel subject to and under the classified service of the state personnel division;

(3) Cooperate with organizations, agencies, committees, and other representatives of financial institutions of the state in connection with schools, seminars, conferences, and other meetings to improve the responsibilities, services, and stability of the financial institutions;

(4) In addition to the examinations required by §31A-2-6 of this code, inspect, examine, and audit the books, records, accounts, and papers of all financial institutions and any third-party vendor providing information technology services to financial institutions at such times as circumstances in his or her opinion may warrant;

(5) Call for and require any data, reports, and information from financial institutions under his or her jurisdiction, at such times and in such form, content, and detail considered necessary by him or her in the faithful discharge of his or her duties and responsibilities in the supervision of the financial institutions;

(6) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, supervise the location, organization, practices, and procedures of financial institutions and, without limitation on

the general powers of supervision of financial institutions, require financial institutions to:

(A) Maintain their accounts consistent with rules prescribed by the commissioner and in accordance with generally accepted accounting practices;

(B) Observe methods and standards which he or she may prescribe for determining the value of various types of assets;

(C) Charge off the whole or any part of an asset which at the time of his or her action could not lawfully be acquired;

(D) Write down an asset to its market value;

(E) Record or file writings creating or evidencing liens or other interests in property;

(F) Obtain financial statements from prospective and existing borrowers;

(G) Obtain insurance against damage and loss to real estate and personal property taken as security;

(H) Maintain adequate insurance against other risks as he or she may determine to be necessary and appropriate for the protection of depositors and the public;

(I) Maintain an adequate fidelity bond or bonds on its officers and employees;

(J) Take other action that in his or her judgment is required of the institution in order to maintain its stability, integrity, and security as required by law and all rules promulgated by him or her; and

(K) Verify any or all asset or liability accounts;

(7) Subject to the powers vested in the board by §31A-3-1 *et seq.* of this code, receive from any person or persons and consider any request, petition, or application relating to the organization, location, conduct, services, policies, and procedures of any

financial institution and to act on the request, petition, or application in accordance with any provisions of law applicable thereto;

(8) In connection with the investigations required by §31A-2-4(b)(3) of this code, issue subpoenas and subpoenas duces tecum, administer oaths, examine persons under oath, and hold and conduct hearings. Any subpoenas or subpoenas duces tecum shall be issued, served, and enforced in the manner provided in §29A-5-1 of this code. Any person appearing and testifying at a hearing may be accompanied by an attorney employed by him or her;

(9) Issue declaratory rulings in accordance with the provisions of §29A-4-1 of this code;

(10) Study and survey the location, size, and services of financial institutions, the geographic, industrial, economic, and population factors affecting the agricultural, commercial, and social life of the state, and the needs for reducing, expanding, or otherwise modifying the services and facilities of financial institutions in the various parts of the state, and compile and keep current data thereon to aid and guide him or her in the administration of the duties of his or her office;

(11) Implement all of the provisions of this chapter, except the provisions of §31A-3-1 *et seq.* of this code, and all other laws which he or she is empowered to administer and enforce by the promulgation of rules in accordance with the provisions of §29A-3-1 *et seq.* of this code;

(12) Implement the provisions of chapter 46A of this code applicable to consumer loans and consumer credit sales by the promulgation of rules in accordance with the provisions of §29A-3-1 *et seq.* of this code as long as the rules do not conflict with any rules promulgated by the state's Attorney General;

(13) Foster and encourage a working relationship between the Division of ~~Banking~~ Financial Institutions and financial institutions, credit, consumer, mercantile, and other commercial and finance groups and interests in the state in order to make

current appraisals of the quality, stability, and availability of the services and facilities of financial institutions;

(14) Provide to financial institutions and the public copies of the West Virginia statutes relating to financial institutions, suggested drafts of bylaws commonly used by financial institutions, and any other forms and printed materials found by him or her to be helpful to financial institutions, their shareholders, depositors, and patrons and make reasonable charges for the copies;

(15) Delegate the powers and duties of his or her office, other than the powers and duties excepted in this subdivision, to qualified division personnel who shall act under the direction and supervision of the commissioner and for whose acts he or she is responsible, but the commissioner may delegate to the deputy commissioner of ~~banking~~ financial institutions and to no other division personnel the following powers, duties and responsibilities, all of which are hereby granted to and vested in the commissioner and for all of which the commissioner also is responsible. The commissioner shall:

(A) Order any person to cease violating any provision or provisions of this chapter or other applicable law or any rule promulgated or order issued thereunder;

(B) Order any person to cease engaging in any unsound practice or procedure which may detrimentally affect any financial institution or depositor of the financial institution;

(C) Revoke the certificate of authority, permit, or license of any financial institution except a banking institution in accordance with the provisions of §31A-2-13 of this code; and

(D) Accept an assurance in writing that the person will not in the future engage in the conduct alleged by the commissioner to be unlawful, which could be subject to an order under the provisions of this chapter. This assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving the assurance fails to comply with its terms,



the assurance is prima facie evidence that prior to this assurance the person engaged in conduct described in the assurance;

(16) Seek and obtain civil administrative penalties against any person who violates this chapter, the rules issued pursuant to this chapter, or any orders lawfully entered by the commissioner or board of banking and financial institutions in an amount not more than \$5,000 per day for each violation: *Provided*, That all of the pertinent provisions of §29A-5-1 *et seq.* of this code shall apply to any assessment of a penalty under this subsection;

(17) Receive from state banking institutions applications to change the locations of their principal offices and to approve or disapprove these applications;

(18) Expend funds in order to promote consumer awareness and understanding of issues related to residential mortgage lending. In furtherance of this duty, there is established in the State Treasury a special revenue account to be known as the Consumer Education Fund, which shall be administered by the Commissioner of ~~Banking~~ Financial Institutions. Ten percent of all civil administrative penalties collected by the Division of ~~Banking~~ Financial Institutions during each fiscal year shall be deposited into the fund and may be expended by the commissioner to promote consumer awareness and understanding of issues related to residential mortgage lending. The account shall be a special revenue account and may be invested and retain all earnings and interest. Any remaining balance less than \$500,000, including accrued interest, in the fund at the end of the fiscal year shall not revert to the General Revenue Fund, but shall remain in the account. Any balance which exceeds \$500,000 as of June 30, 2012, and each year thereafter, shall revert to the General Revenue Fund; and

(19) Take other action as he or she may consider necessary to enforce and administer the provisions of this chapter, except the provisions of §31A-3-1 *et seq.* of this code, and all other laws which he or she is empowered to administer and enforce and apply to any court of competent jurisdiction for appropriate orders, writs, processes, and remedies.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 510**, Relating to medical professional liability; on second reading, coming up in regular order, was read a second time and ordered to third reading.

### **Miscellaneous Business**

Pursuant to House Rule 132, consent was obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegate Hanshaw (Mr. Speaker) regarding the presentation by the West Virginia Schools for the Deaf and Blind

- Delegate Steele regarding the final amendment offered to Com. Sub. for H. B. 2519 by Delegate Shott

- Delegates Walker, Kessinger and Malcolm regarding Com. Sub. for H. B. 2519

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be removed as a cosponsor of the following:

- Delegate Nelson for H. B. 2603

At 11:13 p.m., the House of Delegates adjourned until 11:00 a.m., Thursday, February 28, 2019.

---

Thursday, February 28, 2019

## FIFTY-FIRST DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Wednesday, February 27, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

### Reordering of the Calendar

Delegate Summers announced that the Committee on Rules had transferred Com. Sub. for S. B. 408, Com. Sub. for S. B. 518, S. B. 545 and S. B. 593 on second reading, House Calendar to the Special Calendar.

### Committee Reports

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**Com. Sub. for S. B. 259**, Expanding Coyote Control Program,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 259) was referred to the Committee on Finance.

Delegate Harshbarger, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**Com. Sub. for S. B. 402**, Authorizing Division of Forestry investigate and enforce timber theft violations,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Government Organization.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 402) was referred to the Committee on Government Organization.

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**Com. Sub. for S. B. 19**, Relating to Senior Farmers Market Nutrition Program,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 19) was referred to the Committee on Finance.

Delegate Cooper, Chair of the Committee on Agriculture and Natural Resources, submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**Com. Sub. for S. B. 285**, Relating to sale of homemade food items,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 285) was referred to the Committee on the Judiciary.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 187**, Authorizing Department of Revenue to promulgate legislative rules,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 187) was referred to the Committee on the Judiciary.

### **Messages from the Executive**

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on February 27, 2019, he approved **S. B. 27, S. B. 268 and S. B. 269**.

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 105** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-5-2c, relating to creating the new criminal offense of impaired operation of a motor vehicle placing nonpassengers at risk of physical injury; clarifying that offense is separate and distinct from operating a motor vehicle under the influence; and establishing penalties”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect October 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 318** - “A Bill to amend and reenact §9-7-1, §9-7-3, §9-7-6, and §9-7-6a of the Code of West Virginia, 1931, as amended, all relating to transferring the Medicaid Fraud Control Unit to the Office of the Attorney General; establishing an effective date the Medicaid Fraud Control Unit will transfer to the Office of the Attorney General; establishing the Legislative Auditor to deliver a report on the performance of the Medicaid Fraud Control Unit; establishing investigation powers with the Attorney General; establishing the Secretary of the Department of Health and Human Resources may share documents with the Attorney General; establishing persons able to maintain a civil action; and establishing liability limits for employees acting in good faith”; which was referred to the Committee on Health and Human Resources then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 326** - “A Bill to repeal §15-5-4, §15-5-15a, and §15-5-25 of the Code of West Virginia, 1931, as amended; to amend and reenact §5F-2-1 of said code; to amend and reenact §15-1J-2 and §15-1J-4 of said code; to amend and reenact §15-5-1, §15-5-2, §15-5-3, §15-5-4b, §15-5-4c, §15-5-13, §15-5-24, and §15-5-26 of said code; and to amend and reenact §29-31-2, §29-

31-3, and §29-31-4 of said code, all relating to the reorganization of state agencies involved in emergency and disaster planning, response, recovery, and resiliency; providing legislative findings; modifying the powers and duties of the West Virginia Military Authority; designating a special revenue account to receive funding; modifying definitions; reorganizing the Division of Homeland Security and Emergency Management within the Adjutant General's Department; modifying membership of the West Virginia Disaster Recovery Board; reorganizing the State Resiliency Office within the Adjutant General's Department; creating the position of Director of the State Resiliency Office; eliminating paid leave for disaster service volunteers; eliminating the State Resiliency Office Board; and modifying the authority and duties of the State Resiliency Office"; which was referred to the Committee on Government Organization then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 348** - "A Bill to amend and reenact §16-9A-1, §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7, and §16-9A-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §16-9A-11, §16-9A-12, §16-9A-13, and §16-9A-14, all relating to tobacco; providing legislative intent; defining terms; raising the legal age from 18 years of age to 21 years for the selling, furnishing, or distribution of tobacco products and increasing penalties for violations; making it illegal for a person under the age of 21 to purchase tobacco products or tobacco-derived products and providing for suspension of driving privileges or a fine; increasing the penalty for certain tobacco-related offenses on public school property; exempting any active duty military personnel over the age of 18; exempting veterans' organizations from rules regulating smoking in indoor spaces adopted by local boards of health; prohibiting political subdivisions from legislating regarding the sale or marketing of tobacco products or tobacco-related products if contrary to state law; requiring certain facilities to provide for

smoking and nonsmoking sections; and providing for a secondary offense of driving and using a tobacco product or a tobacco-derived product with a passenger under the age of 17 and providing for a fine”; which was referred to the Committee on Health and Human Resources then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 379** - “A Bill to amend and reenact §18-2-7b of the Code of West Virginia, 1931, as amended, relating to permitting the county boards of education to include faith-based electives in classroom drug prevention programs”; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 396** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-1-22, relating to waiver of initial occupational licensing fees for certain individuals; requiring boards and licensing authorities to waive certain initial occupational licensing fees for low-income individuals and military families; defining terms; requiring individuals seeking waiver of initial occupational licensing fees to apply on a form provided by the board or licensing authority; and granting rule-making authority”; which was referred to the Committee on Government Organization then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 414** - “A Bill to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and



reenact §8-16-18 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to amend and reenact §16-13A-9 of said code; to amend and reenact §24-1-1 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, and §24-2-11 of said code, all relating to clarifying Public Service Commission jurisdiction over water and sewer utilities owned by municipalities; establishing uniformity in the class of publications required by municipalities and public service districts for the revision in rates; providing a time period for the filing of and resolution of complaints filed at the Public Service Commission regarding actions of municipalities; cleaning up language regarding reference to other sections of the code regarding notice requirements for municipal utilities; and relating to the time period pertaining to the filing of appeals and the resolution of appeals for rate and construction projects decided by county commissions”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 467** - “A Bill to amend and reenact §8-12-17 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-16-18 of said code; to amend and reenact §8-19-4 of said code; to amend and reenact §8-20-10 of said code; to amend and reenact §16-13-16 of said code; to amend and reenact §16-13A-9 of said code; to amend and reenact §24-1-1 of said code; to amend and reenact §24-2-1, §24-2-2, §24-2-3, §24-2-4a, §24-2-4b, and §24-2-11 of said code, all relating to clarifying Public Service Commission jurisdiction over water and sewer utilities owned by municipalities; establishing uniformity in the class of publications required by municipalities and public service districts for the revision in rates; providing a time period for the filing of and resolution of complaints filed at the Public Service Commission regarding actions of municipalities; cleaning up language regarding reference to other sections of the code regarding notice requirements for municipal utilities; and relating to the time period

pertaining to the filing of appeals and the resolution of appeals for rate and construction projects decided by county commissions”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 487** - “A Bill to amend and reenact §55-7B-7a of the Code of West Virginia, 1931, as amended, relating to the admissibility of health care staffing requirements in litigation; providing that compliance with minimum staffing requirements creates a conclusive presumption that appropriate staffing was provided and a rebuttable presumption that adequate supervision of patients to prevent accidents was provided; and requiring that if staffing is less than requirements dictated by applicable regulations then there is a presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervision was a contributing cause of the patient’s fall and resulting injuries or death”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 522** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-3-11; and to amend said code by adding thereto a new article, designated §17-30-1, §17-30-2, §17-30-3, §17-30-4, and §17-30-5, all relating to enhancing maintenance and repair of the state’s roads and highways; creating the Special Road Repair Fund as a sub-account of the State Road Fund; providing for a general revenue allocation for fiscal years 2020 and 2021 into the fund; creating the Enhanced Road Repair and Maintenance Program; stating legislative finding and purpose of program; requiring Division of Highways county supervisors consult with county commissions and legislators to submit project requests to the Division of Highways; setting forth a funding formula; setting

forth requirements concerning bidding, vendors, and contracts with private vendors; specifying uses of Special Road Repair Fund; defining terms; providing requirements for Commissioner of Highways and districts; requiring for rulemaking; and requiring reporting by Division of Highways and Legislative Auditor”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 530** - “A Bill to repeal §29-6-7a, §29-6-9, §29-6-10a, §29-6-14, and §29-6-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §29-6-1, §29-6-2, §29-6-3, §29-6-4, §29-6-6, §29-6-7, §29-6-8, §29-6-10, §29-6-12, §29-6-16, §29-6-17, §29-6-19, §29-6-20, §29-6-21, §29-6-22, §29-6-23, §29-6-24, and §29-6-27 of said code, all relating to the state employee merit system; defining terms; allowing Governor to make additions to classified service; providing exemptions to classified service; providing makeup and duties of the State Personnel Board; defining a quorum; providing for bimonthly meetings and emergency meetings of the board; revising the Director of Personnel’s duties; providing the director may develop programs that include monetary incentives; allowing director to establish pilot projects that may delegate functions to appointing authorities; establishing board will review and approve all classified exempt positions and all classification and pay plans; providing rulemaking for the Division of Personnel; removing classification and compensation determinations from grievance procedure; establishing that no private cause of action exists for violations of the section; authorizing the division prepare, maintain, and revise pay plans; establishing the rates in pay plan be automatically adjusted upon across-the-board raises; providing authority of Governor to restrict the pay plan upon fiscal constraints; establishing that record of performance be considered whether to extend or withhold a benefit from an employee; revising the process for postings of positions by the agency and DOP; providing appointing authority may reject candidate for criminal

background or having been convicted of corruption; providing that an appointing authority may select from top 20 percent of applicants on register and above 80 percent score on examination; modifying term ‘discharge’ to ‘dismissal’; providing for leave of absence for state employees not working due to work-related injury; clarifying that state employees not eligible for certain offices even if declining to receive compensation; establishing the confidentiality of employee records; allowing local political subdivisions to participate in the classified service system; amending penalties section; and providing that leave donation program be established through rulemaking”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 543** - “A Bill to amend and reenact §17A-10-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §17C-16-4, §17C-16-5, and §17C-16-6 of said code; and to amend said code by adding thereto a new section, designated §46A-6-107a, all relating generally to automobile warranties and inspections; changing annual mandatory state inspections of motor vehicles to inspections every two years; adjusting inspection sticker fee and charge for vehicle inspections; providing that a used motor vehicle may be sold ‘as is’ under certain circumstances; providing certain disclosure requirements for ‘as is’ sales of used motor vehicles; allowing cancellation of an ‘as is’ sale within a 48-hour period if the vehicle has mechanical issues; providing that a consumer shall sign and date the disclosure for an ‘as is’ sale in order for the disclosure to be effective; providing that a merchant disclose in writing certain defects or malfunctions when selling a used motor vehicle ‘as is’; providing that the merchant provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle; and providing that an ‘as is’ sale of a used motor vehicle waives implied warranties but does not waive any express warranties”; which was referred to the Committee on Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 555** - “A Bill to amend and reenact §18B-5-3 of the Code of West Virginia, 1931, as amended, relating to the authority of the Higher Education Policy Commission, the Council for Community and Technical College Education, and institutional governing boards to enter into contracts for programs, services, and facilities; and providing for specified flexibility entering into agreements with certain affiliated nonprofit corporations”; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 564** - “A Bill to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended; and to amend and reenact §9-5-12 of said code, all relating to expanding comprehensive coverage for pregnant women through Medicaid to 185 percent of the federal poverty level; providing coverage for 60 days postpartum; providing an effective date; and expanding comprehensive coverage for pregnant women between 185 percent and 300 percent of the federal poverty level including prenatal care, delivery, and 60 days postpartum through the Children’s Health Insurance Program”; which was referred to the Committee on Health and Human Resources then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 574** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §27-5-2a, relating to permitting an authorized staff physician, after examination, to order the involuntary

hospitalization of an individual whom the physician believes is addicted or mentally ill and likely to cause serious harm to himself or herself or other individuals; setting forth a procedure; defining terms; providing for payment for services; limiting liability; and requiring the West Virginia Supreme Court of Appeals to produce information to hospitals regarding contact information for mental hygiene commissioners, designated county magistrates, and circuit judges”; which was referred to the Committee on Health and Human Resources then the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 605** - “A Bill to amend and reenact §18-2-25a and §18-2-25b of the Code of West Virginia, 1931, as amended, all relating to providing that schools that do not follow established protocol on concussions and head injuries in interscholastic athletics are subject to disciplinary actions by the Secondary Schools Athletics Commission; and providing that schools that do not follow the requirements of their emergency action plans for athletics are subject to disciplinary actions by the Secondary Schools Athletics Commission”; which was referred to the Committee on Education.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 625** - “A Bill to amend and reenact §29-5A-3, §29-5A-3a, §29-5A-8, §29-5A-14, §29-5A-20, and §29-5A-24 of the Code of West Virginia, 1931, as amended, all relating to the State Athletic Commission’s direction, management, and control over all boxing and mixed martial arts events, contests, and matches in West Virginia; authorizing the commission to promulgate legislative rules regulating said boxing and mixed martial arts events; authorizing the commission to issue, suspend, or revoke the licenses required to promote, contend in, judge, referee, or otherwise participate in said boxing and mixed martial arts events; establishing the requirements for licensure as a promoter,

contestant, manager, trainer, judge, matchmaker, or official; establishing restrictions and prohibitions against conflicts of interest; and establishing appropriate rules for regulating and sanctioning amateur boxing events”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 632** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-48; to amend said code by adding thereto a new section, designated §18-20-11; to amend and reenact §18A-2-8 of said code; and to amend and reenact §18A-3-6 of said code, all relating to improving student safety; requiring safety and security measures of each school facility be upgraded when necessary to ensure, to the best of the county board’s ability, the safety of students; creating a Safe Schools Fund; requiring video cameras in certain public special education classrooms; setting forth time requirements for retaining the video; setting forth requirements for video access; adding to justifications for which a school employee can be suspended or dismissed; requiring the State Superintendent to maintain a database of all individuals suspended or dismissed for certain reasons; and adding to justifications for which a teacher’s certificate can be revoked and for which a certificate can be automatically revoked”; which was referred to the Committee on Education then Finance.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**S. B. 633** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-41-4, relating to authorizing the West Virginia Board of Physical Therapy to conduct criminal background checks on applicants seeking their initial license; providing the information may not be shared across state lines; and authorizing the board to obtain

fingerprints from applicants for initial licenses”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate, to take effect July 1, 2019, and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 637** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12-5b, relating to revocation, cancellation, or suspension of business registration certificates; providing procedures therefor; and specifying effective date”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of

**Com. Sub. for S. B. 657** - “A Bill to amend and reenact §46A-6A-2 of the Code of West Virginia, 1931, as amended, relating to including certain new self-propelled agricultural vehicles in the definition of motor vehicle for the purpose of consumer protections related to express warranties by manufacturers of agricultural vehicles”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 658** - “A Bill to amend and reenact §17A-6E-4 of the Code of West Virginia, 1931, as amended, relating to motor vehicle salesperson licenses; and modifying the felony disqualification”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the passage by the Senate and requested the concurrence of the House of Delegates in the passage, of



**S. B. 671** - “A Bill to amend and reenact §29-3-8 of the Code of West Virginia, 1931, as amended, relating to eliminating the State Fire Marshal’s comprehensive report regarding the transfer of authority and responsibility of providing fire services to the counties”; which was referred to the Committee on Government Organization.

A message from the Senate, by

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

**S. B. 672** - “A Bill to amend and reenact §18-9D-21 of the Code of West Virginia, 1931, as amended, relating to authorizing the School Building Authority to promulgate legislative rules; authorizing School Building Authority rules relating to requirements governing the Comprehensive Educational Facility Plan, funding of School Building Authority projects, School Building Authority school planning and design criteria, School Building Authority project administration and review, School Building Authority contract and agreements, School Building Authority reporting procedures, and the School Access Safety Act, by deleting certain provisions in series two through five and series seven that are procedural in nature, and deleting series six in its entirety due to its content being solely procedural”; which was referred to the Committee on Education.

A message from the Senate, by

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

**S. B. 673** - “A Bill to repeal §18B-1D-2, §18B-1D-3, §18B-1D-4, and §18B-1D-5 of the Code of West Virginia, 1931, as amended; to repeal §18B-7-8 of said code; to amend and reenact §18B-1D-1 and §18B-1D-8 of said code; and to amend and reenact §18C-1-1 of said code, all relating to public higher education accountability and planning; ensuring efficiency in planning and accountability; modifying the data collection and reporting processes; eliminating the requirement for a statewide master plan for public higher education; eliminating the requirement for state

and institutional compacts for public higher education; eliminating the requirement for a human resources report card for public higher education; modifying the reporting methods for certain institutional and statewide reports; modifying the reporting method for the student financial aid report card for public higher education; and continuing the accountability system for public higher education”; which was referred to the Committee on Education.

A message from the Senate, by

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

**S. B. 674** - “A Bill supplementing and amending by increasing an existing item of appropriation of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2019, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2019”; which was referred to the Committee on Finance.

A message from the Senate, by

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

**S. B. 675** - “A Bill to amend and reenact §22-15A-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-15A-3a, all relating to requiring the Department of Environmental Protection to create and implement an Adopt-A-Stream Program; encouraging the removal of litter along West Virginia’s rivers and streams by volunteers; and allowing the Litter Control Fund to be used to fund the program”; which was referred to the Committee on the Judiciary.

A message from the Senate, by

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

**S. B. 676** - “A Bill to amend and reenact §17-2A-11 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto new sections, designated §20-1-12a and §20-1-18d; and to amend said code by adding thereto a new article, designated §20-17-1, §20-17-2, §20-17-3, §20-17-4, and §20-17-5, all relating to off-road vehicle recreation; creating an Off-Road Vehicle Recreation Fund for development and maintenance of public roads suitable for off-road vehicle recreation; revising digital road map requirements; requiring an inventory and mapping of state forest roads; describing allowable uses of the Off-Road Vehicle Recreation Fund; defining terms; requiring the development of a comprehensive recreation plan and plans for the construction and maintenance of suitable roads; establishing a program of grants and cooperative agreements to develop and maintain suitable roads and access thereto; mandating review of expenditures; providing for appeals of grant or agreement decisions; and requiring the proposal of legislative rules”; which was referred to the Committee on Government Organization.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Rules:

**S. C. R. 38** - “Urging CSX and other potential partners to support the New River Train.”

Whereas, The New River Train has operated profitably for 53 years, running between Huntington and Hinton during two October weekends; and

Whereas, On average, 4,800 people ride the train during the two-day weekend; and

Whereas, The Cabell-Huntington Convention and Visitors Bureau estimates the New River Train’s economic impact to be \$2.2 million in Huntington alone and \$5 million for the area; and

Whereas, Travel spending by all overnight and day visitors in West Virginia was \$4.3 billion in the 2017 calendar year; and

Whereas, Travel spending in Cabell County (where the New River Train originates) was \$115.2 million in 2017, generating \$33.4 million earnings and 1,140 jobs for West Virginia workers, and travel spending in Summers County (where the New River Train lays over) was \$17.4 million, generating \$4.6 million in earnings and 230 jobs for West Virginia workers; and

Whereas, Collis P. Huntington Railroad Historical Society, Inc., has worked in cooperation with CSX and Amtrak to operate the New River Train; and

Whereas, Amtrak has announced they are eliminating charter/special trains such as the New River Train; and

Whereas, Amtrak removed Huntington as a point of access for private railcars; and

Whereas, The New River Train, without this support, finds itself evaluating its options and model of operations; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature urges CSX and other potential partners to support the New River Train; and, be it

*Further Resolved,* That the Legislature recognizes the importance and value of the New River Train, and the Collis P. Huntington Railroad Historical Society, Inc. as its operator; and, be it

*Further Resolved,* That the Legislature appreciates the value that this train and others like it adds to our state's economy, history, and legacy; and, be it

*Further Resolved,* That the Legislature commits to exploring ways to support this industry in both the short and long terms; and, be it

*Further Resolved*, That the Legislature recognizes the role that private-public partnerships can play in forwarding common goals of both sectors; and, be it

*Further Resolved*, That the Legislature asks CSX and other potential partners to consider supporting the Collis P. Huntington Railroad Historical Society in any way that they can, whether as a sponsor or partner, and enabling the society to continue running the New River Train; and, be it

*Further Resolved*, That the Legislature asks CSX and other potential partners to join with us in securing a future for the special and historical train industry, and to allow our great state to continue benefitting from the tourism and economic opportunities that special trains provide; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Richard H. Anderson, President and Chief Executive Officer of Amtrak, James M. Foote, President and Chief Executive Officer of CSX, the Collis P. Huntington Railroad Historical Society, Inc., and to the members of West Virginia's congressional delegation.

### **Resolutions Introduced**

Delegates Kessinger, Steele, Higginbotham, Robinson, Zukoff and Staggers offered the following resolution, which was read by its title and referred to the Committee on Health and Human Resources then Rules:

**H. R. 17** - "Urging the Environmental Protection Agency, West Virginia Department of Environmental Protection, West Virginia Bureau for Public Health, Agency for Toxic Substances and Disease Registry, and Centers for Disease Control to assist Minden, West Virginia residents with both relocation assistance and specialized medical treatment as a result of their long-term exposure to Polychlorinated Biphenyl, dioxins, and dibenzofurans."

Whereas, Polychlorinated Biphenyl (PCB) is a toxic substance known to cause harm to human health and the health of the environment; and

Whereas, PCB's were burned in Minden, West Virginia; and

Whereas, When PCB's are burned they can form dioxins and dibenzofurans which are toxic chemicals; and

Whereas, It has been confirmed by EPA that PCB contamination has spread throughout Minden, West Virginia; and

Whereas, The EPA has proposed Minden, WV for the National Priorities List of Superfund sites, a designation reserved for the most toxic sites in the United States; and

Whereas, PCB contamination has been discovered on residential properties in Minden, West Virginia; and

Whereas, Frequent flooding spreads PCB contamination further throughout Minden, WV; and

Whereas, The true extent of PCB contamination has not yet been discovered; and

Whereas, The community members in Minden believe that PCB contamination is a contributing factor to alarming rates of cancer amongst other illnesses; and

Whereas, There are many Minden, WV residents that wish to be relocated so that they can abstain from the future risks to their health; and

Whereas, Minden residents do not have access to medical services that are specific to PCB exposure, yet these resources exist in society; and

Whereas, The presence of PCB contamination is reducing property values in Minden, West Virginia, which decreases the ability of residents to move according to their will; and

Whereas, The EPA, WVDEP, WVBPH, ATSDR, and CDC are not readily willing to relocate Minden Residents who wish to be relocated; and

Whereas, Minden residents have lived amongst PCB contamination for many decades; and

Whereas, Chronic and multigenerational exposure to PCB's across many decades has not been adequately studied from a public health perspective by CDC, ATSDR, and WVBPH; and

Whereas, Exposure to PCB has been correlated with Brain Cancer, Breast Cancer, Gastrointestinal Cancers, Liver Cancer, Lung Cancer, Malignant Melanoma, Non-Hodgkin's Lymphoma, Pancreatic Cancer, Prostate Cancer, Thyroid Cancer, Nonmelanoma Skin Cancer, recurrent infections, skin infections, respiratory infections, harm to the immune system, lowered IQ, abnormal reflexes, greater response to stress, less habituation to repeated stimuli, modified Brazelton Neonatal Behavioral Assessment Scale results, memory reduction, Anxiety, Depression, Thyroid disease, reduced testosterone in males, longer menstrual cycles, reduced sperm mobility, Endometriosis, earlier menarche in young women, elevated Plasma triglyceride levels, Hypertension, Ischemic Heart disease, Myocardial Infarction, diastolic blood pressure, systolic blood pressure, Diabetes, Liver disease, Asthma, Arthritis, Low Birthweight, shortened gestation periods, Chloracne, Porphyria Cutanea Tarde, soft tissue sarcoma, eczema, benign fatty tumors, epidermoid cysts, rash not otherwise specified, dyschromia, skin sensitivity, and NMSCs, rare diseases, and possibly more illnesses yet to be discovered; and

Whereas, It is inhumane to expect people to continue to live in an environment that can harm them; and

Whereas, The concerns that Minden residents have about their health while living in Minden, West Virginia have merit; and

Whereas, The EPA has failed to remediate Minden after three separate clean up attempts; and

Whereas, Future efforts of EPA and WVDEP will be focusing on clean-up of Minden; and

Whereas, The long term nature of remediation will not adequately meet all of the needs of Minden residents; and

Whereas, Relocation and long term specialized health resources have been deemed an essential need by Minden-led community groups since the 1980's; therefore, be it

*Resolved by the House of Delegates:*

That Minden residents who wish to be relocated be provided the assistance to do so; and, be it

*Further Resolved,* That Minden residents who need lifelong access to specialized health care resources that are familiar with the health consequences of PCB, Dioxin, and Dibenzofuran exposure be provided the assistance to obtain such medical care; and, be it

*Further Resolved,* That the Clerk forward a copy of this resolution to the Administrator of the Environmental Protection Agency, Cabinet Secretary of the West Virginia Department of Environmental Protection, Commissioner for the West Virginia Bureau for Public Health, Administrator of the Agency for Toxic Substances and Disease Registry, and Director of the Centers for Disease Control.

## Special Calendar

### Third Reading

**Com. Sub. for S. B. 157,** Authorizing Department of Administration promulgate legislative rules; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 392**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Paynter.



Absent and Not Voting: Byrd, Miley and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 157) passed.

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

On this question, the yeas and nays were taken (**Roll No. 393**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Paynter.

Absent and Not Voting: Byrd, Miley and Porterfield.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 157) takes effect from its passage.

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

**S. B. 440**, Relating to Antihazing Law; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 394**), and there were—yeas 75, nays 22, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Barrett, Bibby, Boggs, N. Brown, Butler, Cadle, Dean, Fluharty, Graves, Hardy, Hornbuckle, Jennings, Kump, McGeehan, Paynter, Phillips, Pushkin, Robinson, Sponaugle, Storch, Wilson and Worrell.

Absent and Not Voting: Byrd, Miley and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 440) passed.

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

**S. B. 453**, Relating to background checks of certain financial institutions; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 395**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Byrd, Miley and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 453) passed.

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

**Com. Sub. for S. B. 510**, Relating to medical professional liability; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 396**), and there were, including pairs—yeas 86, nays 12, absent and not voting 2, with the paired, nays and absent and not voting being as follows:

Pursuant to House Rule 43, the following pairing was filed and announced by the Clerk:

Paired:

Yea: Byrd

Nay: Fluharty

Nays: Angelucci, S. Brown, Canestraro, Caputo, Doyle, Fleischauer, Longstreth, Robinson, Sponaugle, Walker and Zukoff.

Absent and Not Voting: Miley and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 510) passed.

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

### **Second Reading**

**Com. Sub. for S. B. 295**, Relating to crimes against public justice; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Shott, the bill was amended on page one, section seventeen, line three, immediately following the words “parole officer”, by striking out the words “court security officer”.

On page one, section seventeen, line eight, immediately following the words “parole officer”, by striking out the words “court security officer”.

And,

On page two, section seventeen, line twenty-four, immediately following the words “parole officer”, by striking out the words “court security officer”.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 408**, Determining indigency for public defender services; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 518**, Restricting sale and trade of dextromethorphan; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page one, after line seven, by inserting a new subsection (d) to read as follows:

“(d) A person making a retail sale of a finished drug product containing any quantity of dextromethorphan shall require and obtain proof of age from the purchaser before completing the sale, unless from the purchaser’s outward appearance the person making the sale would reasonably presume the purchaser to be at least 25 years of age.”

And,

By renumbering the remaining subsections accordingly.

The bill was then ordered to third reading.

**S. B. 545**, Relating to HIV testing; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

**“§64-7-4. Office of the Insurance Commission.**

The legislative rule filed in the State Register on April 3, 2003, authorized under the authority of §64-7-1(e) of this code, relating to standards for AIDS-related underwriting questions and AIDS testing in connection with applications for life or health insurance policies (AIDS Regulations, 114 CSR 27) is authorized with the following: amendment:

5.9. The testing is required to be administered on a nondiscriminatory basis for all individuals in the same underwriting class. No proposed insured may be denied coverage or rated a substandard risk on the basis of HIV testing unless acceptable testing protocol is followed including the use of FDA-licensed tests. ~~The following is the acceptable HIV testing protocol for use in this state:~~

~~a. An initial enzyme linked immunosorbent assay (ELISA) test is administered to the proposed insured, and it indicates the presence of HIV antibodies; and~~

~~b. A second ELISA test is administered and it indicates the presence of HIV; and~~

~~c. A Western Blot test is conducted and it confirms the results of the two ELISA tests.~~

5.10. If any ~~of the tests in the ELISA~~ ~~ELISA Western Blot series produce~~ confirmatory test produces a negative result, the testing ceases and the proposed insured cannot be denied coverage based on AIDS-related testing.

~~For Example: If the initial ELISA test yields a negative result, the testing ceases. If the initial ELISA test yields a positive result and the subsequent ELISA test yields a negative result, the testing ceases. If both ELISA tests yield a positive result and the Western Blot test yields a negative result, for purposes of insurability, the results are negative.”~~

On motion of Delegate Ellington, the amendment recommended by the Committee on Health and Human Resources was amended on page one, section four, line two, after the words, “authority of”, by removing “§64-7-1(e)” and inserting in lieu thereof “§33-2-10(a)”.

The Health and Human Resources Committee amendment, as amended, was then adopted.

The bill was then ordered to third reading.

**S. B. 593**, Permitting critical access hospital become community outpatient medical center; on second reading, coming up in regular order, was read a second time and ordered to third reading.

### **First Reading**

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for S. B. 60**, Licensing practice of athletic training,

**Com. Sub. for S. B. 310**, Establishing certain requirements for dental insurance,

And,

**Com. Sub. for S. B. 641**, Relating to Primary Care Support Program.

At 11:42 p.m., on motion of Delegate Summers, the House of Delegates recessed until 5:30 p.m.

\* \* \* \* \*

### **Evening Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### **Committee Reports**

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 441**, Relating to higher education campus police officers,

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

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**S. B. 636**, Authorizing legislative rules for Higher Education Policy Commission,

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

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 28<sup>th</sup> day of February, 2019, presented to His Excellency, the Governor, for his action, the following bill, signed by the President of the Senate and the Speaker of the House of Delegates.

**Com. Sub. for H. B. 2612**, Proposing rules related to the completion or updating of source water protection plans.

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

Your Committee on Rules has had under consideration:

**H. C. R. 15**, Requesting the Joint Committee on Government and Finance study the impact of business regulations and economic development incentives to recruit and retain small business,

**H. C. R. 20**, PFC Charles Everett Hurd Memorial Bridge,

**H. C. R. 65**, Vietnam Veterans Memorial Highway,

**H. C. R. 66**, U. S. Army SPC Thurman ‘Duwayne’ Young Memorial Bridge,

**H. C. R. 74**, U. S. Army PFC James Leslie Pridemore Memorial Road,

**H. C. R. 81**, Erecting a statue of Charles Elwood “Chuck” Yeager on the State Capitol Complex grounds,

And,

**S. C. R. 35**, Designating days for displaying Honor and Remember Flag at WV Veterans Memorial,

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

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**Com. Sub. for S. B. 520**, Requiring entities report drug overdoses,

And,

**S. B. 668**, Relating to physician assistants collaborating with physicians in hospitals,

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

Delegate Ellington, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

**Com. Sub. for S. B. 318**, Transferring Medicaid Fraud Control Unit to Attorney General's office,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 318) was referred to the Committee on Finance.



Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 72**, Creating Sexual Assault Victims' Bill of Rights,

And,

**Com. Sub. for S. B. 393**, Protecting right to farm,

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

Delegate Anderson, Chair of the Committee on Energy, submitted the following report, which was received:

Your Committee on Energy has had under consideration:

**S. B. 635**, Relating generally to coal mining activities,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 2020**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. B. 2020** - "A Bill making appropriations of public money out of the treasury in accordance with section 51, article VI of the Constitution,"

With the recommendation that the committee substitute do pass.

At the respective requests of Delegate Summers, and by unanimous consent, the bill (Com. Sub. for H. B. 2020) was taken up for immediate consideration, read a first time and ordered to second reading.

### **Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2690**, Relating to guaranty associations.

A message from the Senate, by

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

**H. B. 2746**, Relating to administration of estates.

A message from the Senate, by

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

**H. B. 2827**, Removing the residency requirements for hiring deputy assessors.

A message from the Senate, by

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

**H. C. R. 19**, U. S. Marine Sgt. Stephen E. Drummond Memorial Bridge.

### **Miscellaneous Business**

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be added as a cosponsor of the following:

- Delegate Hanshaw (Mr. Speaker) for H. C. R. 85

**Leaves of Absence**

At the request of Delegate Summers, and by unanimous consent, leaves of absence for the day were granted Delegates Miley and Porterfield.

At 6:44 p.m., the House of Delegates adjourned until 11:00 a.m., Friday, March 1, 2019.



---

Friday, March 1, 2019

**FIFTY-SECOND DAY**

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

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

The Clerk proceeded to read the Journal of Thursday, February 28, 2019, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Committee Reports**

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 3**, Establishing WV Small Wireless Facilities Deployment Act,

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

At the respective requests of Delegate Summers, and by unanimous consent, the bill (Com. Sub. For S. B. 3) was taken up for immediate consideration, read a first time and ordered to second reading.

Delegate Harshbarger, Chair of the Committee on Agriculture and Natural Resources submitted the following report, which was received:

Your Committee on Agriculture and Natural Resources has had under consideration:

**Com. Sub. for S. B. 317**, Authorizing three or more adjacent counties form multicounty trail network authority,

And reports the same back with the recommendation that it do pass, and with the recommendation that second reference to the Committee on the Judiciary be dispensed with and that it be referred to the Committee on Government Organization.

In the absence of objection, the original second reference to the Committee on the Judiciary was abrogated and the Speaker referred the bill (Com. Sub. for S. B. 317) to the Committee on Government Organization.

Delegate Westfall, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**Com. Sub. for S. B. 30**, Eliminating tax on annuity considerations collected by life insurer,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 30) was referred to the Committee on Finance.

Delegate Westfall, Chair of the Committee on Banking and Insurance, submitted the following report, which was received:

Your Committee on Banking and Insurance has had under consideration:

**Com. Sub. for S. B. 340**, Repealing obsolete provisions of code relating to WV Physicians Mutual Insurance Company,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on the Judiciary.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 340) was referred to the Committee on the Judiciary.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 360**, Relating to third-party litigation financing,

**Com. Sub. for S. B. 481**, Relating to Judicial Vacancy Advisory Commission,

And,

**Com. Sub. for S. B. 491**, Extending effective date for voter registration in conjunction with driver licensing,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 101**, Equalizing penalties for intimidating and retaliating against certain public officers and other persons,

**Com. Sub. for S. B. 163**, Authorizing DEP promulgate legislative rules,

**S. B. 190**, DOH rule relating to employment procedures,

**Com. Sub. for S. B. 237**, Improving ability of law enforcement to locate and return missing persons,

**S. B. 531**, Relating generally to workers' compensation claims,

And,

**S. B. 664**, Authorizing certain members of federal judiciary perform marriages,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 264**, Requiring courts to order restitution to crime victims where economically practicable,

And reports the same back with the recommendation that it do pass, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 264) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 40**, Establishing Military Service Members Court program,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, but that it first be referred to the Committee on Finance.

In accordance with the former direction of the Speaker, the bill (Com. Sub. for S. B. 40) was referred to the Committee on Finance.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:



**Com. Sub. for S. B. 223**, Authorizing Department of Commerce promulgate legislative rules,

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

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 175**, Authorizing DHHR promulgate legislative rules,

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

Delegate Capito, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 1<sup>st</sup> day of March, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for S. B. 270**, Streamlining process for utilities access to DOH rights-of-way,

**Com. Sub. for S. B. 356**, Requiring MAPS provide state and federal prosecutors information,

**S. B. 358**, Exempting Purchasing Division purchases for equipment to maintain security at state facilities,

**Com. Sub. for S. B. 387**, Relating generally to extradition,

And,

**S. B. 452**, Supplemental appropriation to Second Chance Driver's License Program.

Delegate Capito, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 1<sup>st</sup> day of March, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for S. B. 13**, Relating to distributions from State Excess Lottery Fund,

**S. B. 442**, Supplementing, amending, and decreasing appropriation to Insurance Commission,

**S. B. 443**, Supplemental appropriation of federal moneys to DHHR divisions,

And,

**S. B. 444** - Supplemental appropriation to DHHR divisions.

Delegate Capito, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 1<sup>st</sup> day of March, 2019, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for S. B. 26**, Permitting certain employees of educational service cooperatives, participate in state's teacher retirement systems

And,

**Com. Sub. for S. B. 489**, Relating to Pharmacy Audit Integrity Act.

### Messages from the Executive

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on February 28, 2019, he approved **S. B. 272, H. B. 2459, Com. Sub. for H. B. 2481, H. B. 2492 and Com. Sub. for H. B. 2521.**

### Messages from the Senate

A message from the Senate, by

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

**Com. Sub. for H. B. 2740**, Barring a parent from inheriting from a child in certain instances.

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

On page six, section twelve, by striking out the section caption and substituting therefor a new section caption, to read as follows:

**“§42-1-12. When a child may inherit from a parent who has been barred from inheritance.”**

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 397**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, S. Brown, Miley, Porterfield, Rodighiero and Williams.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2740) passed.

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

A message from the Senate, by

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

**H. B. 2759**, Providing for the ancillary administration of West Virginia real estate owned by nonresidents by affidavit and without administration.

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

On page twelve, section one, line forty-two, by striking out the words “of \$20 for” and inserting in lieu thereof the words “that is the amount of”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 398**), and there were—yeas 95, nays 1, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Howell.

Absent and Not Voting: S. Brown, Miley, Porterfield and Rodighiero.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2759) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 17** - “Requesting the Division of Highways name bridge number 17-7-4.07 (17A042), locally known as Sardis Bridge, carrying County Route 7 over Tenmile Creek in Harrison County, the ‘Sardis District Veterans Memorial Bridge’.”

Whereas, Naming this bridge after all the men and women who have served in the United States armed forces from the Sardis District is a fitting and enduring memorial to commemorate their service; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 17-7-4.07 (17A042), locally known as Sardis Bridge, carrying County Route 7 over Tenmile Creek in Harrison County, the “Sardis District Veterans 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 “Sardis District Veterans 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.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 24** - “Requesting the Division of Highways name bridge number 28-11-8.67 (28A028), locally known as Montcalm Bridge, carrying County Route 11 over the Bluestone River in Mercer County, the ‘Hazel Dickens Memorial Bridge’.”

Whereas, Hazel Dickens was born in Montcalm, Mercer County, on June 1, 1925, as the eighth child of Sarah (Simkins) Dickens and Pastor H. N. Dickens, a Primitive Baptist Church minister and logging truck driver; and

Whereas, When she was 16 years old, Hazel, along with her parents and some of her siblings, moved to Baltimore, Maryland, to be close to one of her brothers, who was there being treated for tuberculosis. She worked several jobs, including as a waitress, store clerk, and factory worker. Hazel spent her evenings playing double-bass for hillbilly and bluegrass bands in Baltimore and writing songs based on her memories of growing up in the mountains of southern West Virginia; and

Whereas, Eventually, she moved to Washington, D.C., and formed a musical partnership with Alice Gerrard. Hazel drew upon the Primitive Baptist musical tradition to develop her unique vocal style. Although slight in physical stature, Hazel sang with an unamplified voice that was strong, loud, and powerful enough to keep the faithful seated in rear pews wide awake. At the same time, the themes of the songs she authored told of the plight of working men and women, the tragedy of poverty, the strength of family love, and the power of faith; and

Whereas, In a performing career that spanned nine decades, from 1936 to her final performance on March 16, 2011, Hazel put her heart into her music and maintained her steadfast love for her West Virginia roots. She had a profound influence on other female vocalists, including Alison Krauss, Emmylou Harris, and the Judds. She also carried the story of the plight of coal miners through four songs in the soundtrack of the 1976 Academy Award-winning documentary “Harlan County, USA” and sang “Beautiful Hills of Galilee” in a powerful graveyard scene in the 1987 movie “Matewan”; and

Whereas, Hazel Dickens traveled to venues around the world where she performed to great acclaim and, following her passing on April 22, 2011, at the age of 85, her family brought her back home to Mercer County and her final resting place at Roselawn Cemetery; and

Whereas, It is fitting that an enduring memorial be established to commemorate Hazel Dickens and her contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name bridge number 28-11-8.67 (28A028), locally known as Montcalm Bridge, carrying County Route 11 over the Bluestone River in Mercer County, the “Hazel Dickens 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 “Hazel Dickens Memorial Bridge”; and, be

*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.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 27** - “Requesting the Joint Committee on Government and Finance study the supply or shortage of drivers with commercial driver’s licenses (CDLs); whether there are drivers 18 to 21 years old with CDLs sufficient for meeting any shortage, and if they are able to be insured; and explore establishing an insurance pool specifically for CDL drivers 18 to 21 years old for the solid waste industry.”

Whereas, It is important that a supply of skilled and safe drivers be available for employment by the solid waste industry; and

Whereas, Many companies report difficulty in obtaining and retaining commercial drivers; and

Whereas, It is recognized that it may be difficult to obtain insurance at a reasonable cost for young and inexperienced drivers; and

Whereas, It is in the best interest of the state to assist in ensuring solid waste companies are able to provide their services to the public; and

Whereas, Public sector insurance pools may be an acceptable way to reduce the cost of insuring younger commercial drivers; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the supply or shortage of drivers with commercial driver's licenses (CDLs); whether there are drivers 18 to 21 years old with CDLs sufficient for meeting any shortage, and if they are able to be insured; and explore establishing an insurance pool specifically for CDL drivers 18 to 21 years old for the solid waste industry; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2020, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 28** - "Requesting the Division of Highways name a portion of U.S. Route 35 at the intersection with Interstate 64, in Putnam County, the 'U.S. Army SP5 James Henry Caruthers Memorial Road'."



Whereas, James Henry Caruthers was born on August 11, 1945, to James Henry and Josephine Della “Teeny” Legg Caruthers. He graduated from Poca High School in 1963 and attended Concord College.

Whereas, In 1966, he was drafted into the U.S. Army and proudly and honorably served his country in Vietnam; and

Whereas, Upon his discharge, he returned to his company, Putnam Fabrication. He was also employed by Terradon Corporation and West Virginia Steel. He was elected to three terms as Putnam County Commissioner, and also elected Mayor of Poca and councilman. In 2001, Jim was appointed by Governor Bob Wise to serve on the West Virginia Statewide Addressing and Mapping Board. He initiated the Putnam County Transportation Committee, which still exists today. He was a member of the Central West Virginia Regional Airport, the Putnam County Republican Executive Committee, the Nitro Moose, and a life member of the VFW, Post 9097, Hurricane, West Virginia; and

Whereas, While recognized and winning numerous awards for his public service, in 2008, Jim was selected for the PF Tucker Award by the Regional Intergovernmental Council. In 2011, he was proud to receive the Mayo Lester Community Service Award, bestowed upon him by the Putnam County Chamber of Commerce, and, in 2015, was presented with the Distinguished West Virginian Award by Governor Earl Ray Tomblin; and

Whereas, James Henry Caruthers, 72, a life-long resident of Poca, West Virginia, passed away, Wednesday, March 28, 2018, is survived by his adoring wife, Kim Blair; son, Jonathan Caruthers (Warrant Officer, USMC, stationed in Beaufort, South Carolina), and his partner, Jillianne Sprague; other sons, Jeffrey Blair, Esq. and his wife, Dr. Amy Schultz of Scott Depot, West Virginia; and Brian Blair and partner Desi Andrews of Parkersburg, West Virginia; and

Whereas, It is fitting that an enduring memorial be established to commemorate James Henry Caruthers and his contributions to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name a portion of U.S. Route 35 at the intersection with Interstate 64, in Putnam County, the “U.S. Army SP5 James Henry Caruthers Memorial Road”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs at both ends identifying the portion of the road as the “U.S. Army SP5 James Henry Caruthers Memorial Road”; 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.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 34** - “Requesting the Division of Highways name bridge number 26-2/26-0.13 (26A095), locally known as the Sixth Street Bridge, carrying Sixth Street over West Virginia Route 2 and U.S. Route 250 in Marshall County, the ‘U.S. Army SPC Julian Lee Berisford Memorial Bridge’.”

Whereas, Julian Lee Guthrie Berisford was born in Wheeling on June 13, 1984, to Shelley Guthrie and Julie Berisford, of Moundsville, West Virginia; and

Whereas, Julian Lee Berisford graduated from John Marshall High School in 2002, and studied Parks and Recreation at West Liberty State College; and

Whereas, Julian Lee Berisford was known to his friends and family as someone who was good to be around, ready with a joke or a friendly gesture, and was a fan of fishing and the West Virginia Mountaineers; and

Whereas, Julian Lee Berisford enlisted in the United States Army in 2007 and, after successfully completing paratrooper school, was assigned to the 4th Brigade Combat Team, 25th Infantry Division (Airborne), stationed in Fort Richardson, Alaska, with the rank of Specialist; and

Whereas, During that time, Julian Lee Berisford had also fallen in love with, and became engaged to, Gina Marie Yankovich, whom he married on December 31, 2007, and in November of the following year they had a daughter, Mya; and

Whereas, SPC Julian Lee Berisford was subsequently deployed to Afghanistan as part of Operation Enduring Freedom; and

Whereas, After serving many months in Afghanistan, SPC Julian Lee Berisford was granted leave and scheduled to come home for a visit to celebrate his daughter's first birthday; however, before the scheduled date of his leave, his team set out on another mission where they came under hostile fire during their patrol, and SPC Julian Lee Berisford was killed in action on November 4, 2009; and

Whereas, It is fitting that an enduring memorial be established to commemorate SPC Julian Lee Berisford and his contributions to our 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 26-2/26-0.13 (26A095), locally known as the Sixth Street Bridge, carrying Sixth Street over West Virginia Route 2 and U.S. Route 250 in Marshall County, the "U.S. Army SPC Julian Lee Berisford 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 SPC Julian Lee Berisford Memorial Bridge"; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed forward a copy of this resolution to the Commissioner of the Division of Highways.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**S. C. R. 36** - “Requesting the Division of Highways name bridge number 26-250-38.73 (26A073), locally known as Boggs Run Bridge, carrying U.S. Route 250 over Marshall Street in Marshall County, the ‘U.S. Army CPL Cory M. Hewitt Memorial Bridge’.”

Whereas, Cory Michael Hewitt was born May 22, 1978, in a hospital in Wheeling, West Virginia, although the family resided in Sand Hill, Marshall County, West Virginia; and

Whereas, Cory Michael Hewitt played football and the trombone in the band, and was known to slip out of his shoulder pads at halftime, grab his trombone, and join the band for the halftime show, and then slip back into his football uniform to play in the second half; and

Whereas, Cory Michael Hewitt graduated from West Liberty State College in 2001, where he is remembered by his professors as a model student; and

Whereas, Not having 20/20 vision kept him from his dream job of being a member of the Secret Service or the FBI, so he followed in the footsteps of his father to become a member of the U.S. Army; and

Whereas, CPL Cory Michael Hewitt was assigned to the 705<sup>th</sup> Ordinance Company (Explosive Ordinance Disposal), 63<sup>rd</sup> Ordinance Battalion, 52<sup>nd</sup> Ordinance Group, 20<sup>th</sup> Support Command (CBRNE) in Iraq; and

Whereas, CPL Cory Michael Hewitt was killed on December 21, 2004, by a suicide bomber in the forward Operating Base Marez, Mosul, Iraq; and

Whereas, CPL Cory Michael Hewitt was awarded the Bronze Star Medal and the Purple Heart Medal; and

Whereas, It is fitting that an enduring memorial be established to commemorate CPL Cory M. Hewitt and his sacrifice for 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 26-250-38.73 (26A073), locally known as Boggs Run Bridge, carrying U.S. Route 250 over Marshall Street in Marshall County, the “U.S. Army CPL Cory M. Hewitt Memorial Bridge”; and, be it

*Further Resolved*, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “U.S. Army CPL Cory M. Hewitt 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.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on the Judiciary then Rules:

**S. C. R. 39** - “Requesting the Joint Committee on Government and Finance to create a Joint Select Committee on Requirements Governing Water Quality Standards.”

Whereas, There is disagreement on what water quality standards should be; and

Whereas, Industry representatives and environmentalists disagree on what standards are adequate to protect the public health and well-being while still allowing businesses to be successful in their endeavors; and

Whereas, Federal standards must also be considered in determining the state's water quality standards; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to create a Joint Select Committee on Requirements Governing Water Quality Standards; and, be it

*Further Resolved,* That the Legislature hereby authorizes the Joint Select Committee on Requirements Governing Water Quality Standards to study the issues concerning water quality standards, while maintaining compliance with federal regulations, specifically the proposed Triennial Review of Water Quality Standards; and, be it

*Further Resolved,* That the Joint Select Committee on Requirements Governing Water Quality Standards shall be composed of five members of the Senate appointed by the President of the Senate and five members of the House of Delegates appointed by the Speaker of the House of Delegates. No more than three of the five members appointed by the President of the Senate and the Speaker of the House of Delegates, respectively, may be members of the same political party. In addition, the President of the Senate and Speaker of the House of Delegates shall be ex officio nonvoting members of the Joint Select Committee on Requirements Governing Water Quality Standards and shall designate the co-chairpersons; and, be it

*Further Resolved,* That the Joint Select Committee on Requirements Governing Water Quality Standards may meet at any time, both during sessions of the Legislature and in the interim, or as often as may be necessary to receive information and testimony, and report on its findings and conclusions. All members of the committee are entitled to compensation and reimbursement for

expenses as authorized for members of the Legislature in accordance with the performance of their interim duties; and, be it

*Further Resolved*, That, at the conclusion of its study, the Joint Select Committee on Requirements Governing Water Quality Standards report to the Joint Committee on Government and Finance its findings, conclusions, and recommendations together with drafts of any legislation necessary to effectuate its recommendations; and, be it

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

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title and referred to the Committee on Technology and Infrastructure then Rules:

**Com. Sub. for S. C. R. 40** - "Requesting the Division of Highways name bridge number 2657, S-242(17), (40A030), located on Rt. 34 within the city limits of Hurricane, in Putnam County, the 'U.S. Army CPL Roy E. Clark Memorial Bridge'."

Whereas, Roy Edward Clark was born March 22, 1946, in Culloden, West Virginia, the son of Lawrence Willard Clark and Mazy Ann Woodard; and

Whereas, Roy E. Clark graduated from Hurricane High School in 1966, where he was known by his friends as a kind, humble, honest, and caring young man. Roy loved athletics and was a member of both the basketball and track teams; and

Whereas, After graduating high school, Roy E. Clark served with the U.S. Army in Vietnam, Company C, 5<sup>th</sup> Battalion, 46<sup>th</sup> Infantry, 198<sup>th</sup> Infantry Brigade; and

Whereas, On May 24, 1969, CPL Roy E. Clark was mortally wounded when his company came under heavy enemy fire near the village of Trà Vinh, Vietnam. With complete disregard for his own safety, CPL Roy E. Clark continued to expose himself to intense enemy fire, laying down a suppressive fire that provided cover to his comrades, enabling them to reach a safe position; and

Whereas, CPL Roy E. Clark was posthumously awarded the Bronze star with “V” for valor for saving the lives of many of his fellow soldiers through his timely and courageous actions; and

Whereas, It is fitting that an enduring memorial be established to commemorate CPL Roy E. Clark and his sacrifice for his state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways name bridge number 2657, S-242(17), (40A030), located on Rt. 34 within the city limits of Hurricane, in Putnam County, the “U.S. Army CPL Roy E. Clark 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 CPL Roy E. Clark 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.

### **Special Calendar**

#### **Unfinished Business**

The following resolutions, coming up in regular order, as unfinished business, were reported by the Clerk and adopted:

**S. C. R. 35,** Designating days for displaying Honor and Remember Flag at WV Veterans Memorial,



**H. C. R. 15**, Requesting the Joint Committee on Government and Finance study the impact of business regulations and economic development incentives to recruit and retain small business,

**H. C. R. 20**, PFC Charles Everett Hurd Memorial Bridge,

**H. C. R. 65**, Vietnam Veterans Memorial Highway,

**H. C. R. 66**, U. S. Army SPC Thurman ‘Duwayne’ Young Memorial Bridge,

**H. C. R. 74**, U. S. Army PFC James Leslie Pridemore Memorial Road,

And,

**H. C. R. 81**, Erecting a statue of Charles Elwood “Chuck” Yeager on the State Capitol Complex grounds.

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

### **Third Reading**

**Com. Sub. for S. B. 295**, Relating to crimes against public justice; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 399**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: S. Brown, Miley, Porterfield and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 295) passed.

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

**Com. Sub. for S. B. 408**, Determining indigency for public defender services; on third reading, coming up in regular order, was, on motion of Delegate Summers, postponed one day.

**Com. Sub. for S. B. 518**, Restricting sale and trade of dextromethorphan; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 400**), and there were—yeas 92, nays 3, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Fluharty, J. Jeffries and McGeehan.

Absent and Not Voting: S. Brown, Miley, Porterfield, Rodighiero and Sypolt.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 518) passed.

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

**S. B. 545**, Relating to HIV testing; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 401**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: S. Brown, Miley, Porterfield and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 545) passed.

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

**S. B. 545** - “A Bill to amend and reenact §64-7-4, of the Code of West Virginia, 1931, as amended, relating to authorizing the Office of the Insurance Commission to promulgate a legislative rule relating HIV testing; and eliminating outdated testing protocols.”

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

On this question, the yeas and nays were taken (**Roll No. 402**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: S. Brown, Miley, Porterfield and Rodighiero.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 545) takes effect from its passage.

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

**S. B. 593**, Permitting critical access hospital become community outpatient medical center; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 403**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: S. Brown, Miley, Porterfield and Rodighiero.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 593) passed.

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

### **Second Reading**

**Com. Sub. for S. B. 60**, Licensing practice of athletic training; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page six, line twenty-five, by striking out the defined terms, “‘BOC’ means National Athletic Trainers’ Association Board of Certification. ‘CAATE’ means the Commission on Accreditation of Athletic Training Education.”

On page seven line thirteen, by striking out subdivision (3) in its entirety and renumbering the remaining subdivisions accordingly.

On page eight, line twenty-two, by striking out subdivision (7) in its entirety and inserting in lieu thereof a new subdivision (7) to read as follows: “(7) Complete a criminal background check as required by §30-1D-1” and a semicolon.

And,

On page fifteen, section eleven, line twenty-three, by striking out subdivisions (7) and (8) and inserting the following:

“(7) An athletic trainer licensed in another jurisdiction who is forced to leave his or her residence or place of employment due to a declared local, state, or national disaster or emergency and due to the displacement seeks to practice as an athletic trainer. This exemption applies for no longer than 60 calendar days in a calendar year following the declaration of the emergency. The athletic trainer shall notify the board of his or her intent to practice;

(8) Nothing in this article may be construed to prohibit or otherwise limit the use of the term ‘athletic trainer’ in secondary school settings by persons who were practicing athletic training

under a West Virginia Board of Education Athletic Certification, provided the practice is in accordance with Board of Education policy in effect prior to July 1, 2011; and

(9) Nothing contained in this article prohibits a person from practicing within his or her scope of practice as authorized by law.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 310**, Establishing certain requirements for dental insurance; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 641**, Relating to Primary Care Support Program; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page one, section two, line nineteen, after the period, by inserting the following:

“Additionally, the Secretary may use certain portions of funds within this account for activities in support of rural and primary care.”

The bill was then ordered to third reading.

**Com. Sub. for H. B. 2020**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with the general right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

### **First Reading**

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

**Com. Sub. for S. B. 72**, Creating Sexual Assault Victims' Bill of Rights,

**Com. Sub. for S. B. 393**, Protecting right to farm,

**Com. Sub. for S. B. 441**, Relating to higher education campus police officers,

**Com. Sub. for S. B. 520**, Requiring entities report drug overdoses,

**S. B. 635**, Relating generally to coal mining activities,

**S. B. 636**, Authorizing legislative rules for Higher Education Policy Commission,

And,

**S. B. 668**, Relating to physician assistants collaborating with physicians in hospitals.

At 12:21 p.m., on motion of Delegate Summers, the House of Delegates recessed until 5:00 p.m.

\* \* \* \* \*

### **Evening Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

### **Speaker Pro Tempore Cowles in the Chair**

Mr. Speaker, Mr. Hanshaw, addressed the House from the floor as follows:

Mr. Speaker, Mr. Hanshaw: Friends, good evening. I bluntly struggle with what even to say. I have spent this afternoon from meeting to meeting, from room to room, from phone call to phone call, trying

to explain how we got where we are as a body. I have spent the last four hours thinking to myself, where are we as a House and what possible example are we setting for the people of this state?

What possible example are we as a body setting for those who sit at home and watch our session? The pace at which I move this House is well-known and many of you joke about it and that is fine. But, let's not joke about it tonight. Let's not joke about it tonight. I have said for five years now that among the highest professional honors of my life has been the privilege to represent the 33<sup>rd</sup> Delegate District in this Legislature. From the day I came to this body and sat in that seat where Delegate Maynard sits today, till the time you gave me the opportunity to stand at that podium and represent our entire House of Delegates it has been my privilege, it is my privilege, to often speak for our body, to often speak for our chamber about what we believe to be good about our state, about what we believe to be good about the 1.8 million people that we represent that we call our friends, that we call our neighbors, that we call our family, that we call our constituents and I am deeply proud of that.

Like almost every person here in this House I have chosen West Virginia. This is my home not because I couldn't go elsewhere but because I chose it, just like so many of you chose it. We have made this our home because we are proud of it. We have chosen this state as our home because we love it, and with that means we love the

people in it, with that choice means we love who we are as a people, who we are as a state. So I have struggled, I have struggled for the last four, six hours it is now to answer the question of how we got where we are, how we got where we are.

Friends, we owe it to ourselves to do better. We owe it to ourselves, we owe it to our constituents, we owe it to the men and women and children and families that we represent to do better than we are. We have but 60 days a year as a body to come to this Capitol, to come to this Legislature and form ourselves into a collective, form ourselves into a unit into, into a whole to bring about better for the State of West Virginia, to bring about better for the people who have chosen this place as their home. To bring about better for the place that we say we love and that I know we do. But we owe it to ourselves to do better. Friends, over the course of these past fifty now two days we have allowed national level politics to become a cancer on our state, to become a cancer on our Legislature, to invade our chamber in a way that, frankly, makes me ashamed. Frankly makes me ashamed.

Ladies and gentlemen, we address each other in this body, we address each other in committee, we address each other on the floor of this House with opening remarks that began, my friend from the 1<sup>st</sup>, my friend from the 3<sup>rd</sup>, my friend from the 27<sup>th</sup>, I hope we mean it. I hope we mean that. I hope that's not a hollow acknowledgment of some trite title. I hope we mean that.



Because if we don't, everything else we do here is for naught. If we don't mean that, everything else we do here is but a hollow gesture.

Ladies and gentlemen, we've allowed the proceedings in this House to reach a point at which... we have now had a staff member physically injured. We all have passion, all have belief, we all have, we all have motivation. We all have things that drive us to do what we do and be who we are and represent those that we do, but we can do better. We can do better and we owe it to the 1.8 million people that we represent to do better. We owe it to the 1.8 million people we represent to be better.

It's, it's a privilege to travel all over this world wearing an emblem that has that flying WV on it, or a shirt that says West Virginia, or some duffle bag that says Mountaineers, something else that depicts our state. I've had that privilege, many of you have had that privilege. I've flown through airports when other West Virginians have stopped me. I've walked on streets in foreign countries when people wearing that same logo about our state have stopped me and it matters not where you are. Doesn't matter who that other person is. All they have to do is see that logo. All they have to do is see the outline of that state. That's all it takes. That's takes because it doesn't matter where you are in the world when another West Virginian sees that state, sees that logo, sees that outline, we are instant friends.

I see some of you shaking your heads because you've had that experience. You've walked down the streets of London and run into someone from West Virginia. You've walked across the streets of Paris and run into someone from here in our state, you've been on the beaches in Australia and encountered somebody else who grew up two counties over from you. These are our friends.

To the ladies and gentlemen who I hope watch our proceedings here on the camera tonight, we are your representatives. We are the one hundred men and women that you have sent here to represent you and I want to pledge to you tonight that on behalf of the one hundred members of this Legislature, we owe it to you to do better and I for one intend to spend the next eight days here in this Legislature doing so. I hope that all of you do. I hope that all of us collectively do. Friends, we can't have this. We cannot have this. We are supposed to be the model of democracy. We are supposed to be the model for how a democratic republic operates and that's not a philosophical trite worn out phrase. That's our government. That's our government, that's what our people deserve. That's what our people expect. That's what they sent us here to be. That's what they sent us here to do. It's who we are. It's who we are. We are supposed to have disagreement here, we are supposed to engage in high minded debate, we are supposed to air out things in ways that sometimes are uncomfortable. That's okay. That's okay, that's what makes our country

great. That's what is good about our country. That's what separates the United States of America from other places in this world where people don't have the same kind of opportunity that we have.

But, ladies and gentlemen, we owe it to one another to do that in a respectful way. We owe it to the 1.8 million people we represent to model the kind of behavior we expect from each other and we expect from our citizens, we expect from our family members and we expect from our children. I really don't know how to conclude, because I didn't know how to begin. For five hours today I thought about why I love West Virginia, why I chose it, why I wanted to be in this Legislature at all if that's going to be the way we engage in dialogue with one another. If it's going to be the kind of language we use to address each other, if it's going to be the way we treat those around us, if it's going to be the way we interact with those who are simply doing a job.

We can do better. We can do better. It was four weeks ago that I look out here now and I see a number of us who stood together down in front of this building and joined the Governor and pulled a rope and honored Dr. King. "Darkness cannot drive out darkness; only light can do that. Hate cannot drive out hate only love can do that." I wish I was smart enough to have said that but that's Dr. King; That's Dr. King.

Friends, we can do better. We can be more than what we are today. We have

eight more days to do it but we owe it to ourselves and we owe it to the 1.8 million people who watch us, who believe in us, who sent us here, who expect more of us to do it. Be what the people sent you here to be. Thank you.

### **Speaker Hanshaw in the Chair**

#### **Messages from the Executive and Other Communications**

The following communication was laid before the House of Delegates and read by the Clerk:

House of Delegates  
West Virginia Legislature  
Building 1, Room M-212  
1900 Kanawha Blvd., East  
Charleston, WV 25305  
March 1, 2019

Roger Hanshaw, Speaker  
WV House of Delegates  
Building 1, Room 228M  
1900 Kanawha Boulevard, East  
Charleston, West Virginia 25085

Dear Speaker Hanshaw:

I, Anne Lieberman, do hereby resign my position as Sergeant-at-Arms for the West Virginia House of Delegates effective immediately.

Sincerely,

Anne Lieberman

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### Committee Reports

On motions for leave, the following resolutions were introduced (Originating in the Committee on Government Organization and reported with the recommendation that they each be adopted), which was read by their titles, as follows:

**By Delegates Howell, Pack, Azinger, Bibby, Cadle, Diserio, Hansen, Hicks, Hott, D. Jeffries, J. Jeffries, C. Martin, Nelson, Paynter, Phillips, Staggers, Swartzmiller, Sypolt, Walker and Worrell:**

**H. C. R. 86** - "Requesting the Joint Committee on Government and Finance to study the consolidation of municipal, county and municipal, and county and county governments for efficiencies and economies of scale and to determine what appropriate incentives the state can provide."

Whereas, The Legislature recognizes that the 55 county governments and the many municipal governments therein may be able to consolidate municipal and county services including, but not limited to, combining public school districts, library districts, fire districts, and other public services; and

Whereas, The Legislature is committed to ensuring effective, efficient and fiscally responsible governmental services to the citizens of this state; and

Whereas, The consolidated governmental functions may realize certain economies of scale that the state may be able to enhance through incentives including for road construction and repair; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study the consolidation of municipal, county and municipal, and county and county consolidation for efficiencies and economies of scale and to determine what appropriate incentives the state can provide; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Regular Session of the Legislature 2020

on its findings, conclusions and recommendations, and together with any drafts of legislation necessary to effectuate any recommendations; and, be it

*Further Resolved*, That the State Auditor, the Department of Transportation, the Division of Highways, the State Board of Education, and the State Budget Office and any other agency or entity of state government deemed necessary, shall cooperate with the Legislature and provide such information as may be relevant to perform this study; and be it

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

**By Delegates Howell, Pack, Azinger, Bibby, Cadle, Diserio, Hansen, Hicks, Hott, D. Jeffries, J. Jeffries, C. Martin, Nelson, Paynter, Phillips, Staggers, Swartzmiller, Sypolt, Walker and Worrell:**

**H. C. R. 87** - "Requesting the Joint Committee on Government and Finance study the Public Service Commission to compare the interstate and intrastate regulation of haulers subjected to single, dual and multiple regulatory jurisdictions."

Whereas, The Legislature is committed to evaluating and eliminating duplicative, redundant and overly burdensome regulations; and

Whereas, The jurisdiction of the Public Service Commission over certain haulers, in relationship to federal regulations and our surrounding states' regulations appear to overlap and at times contradict each other, creating a confusing and unworkable framework of regulatory schemes; and

Whereas, The Legislature would like to ensure that the regulatory requirements in this state are adequate to protect the public while allowing business activity to thrive and provide the services our citizens desire; and

Whereas, Businesses and regulatory enforcement agencies have expressed concerns regarding the confusing and likely

duplicative, redundant and unworkable regulatory schemes among the rules of the Public Service Commission, federal regulations and the regulations of surrounding states related to certain haulers; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study the Public Service Commission to compare the interstate and intrastate regulation of haulers subjected to single, dual and multiple regulatory jurisdictions; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Regular Session of the Legislature 2020 on its findings, conclusions and recommendations, together with any drafts of legislation necessary to effectuate any recommendations; and, be it,

*Further Resolved,* That the Public Service Commission, the County and Regional Solid Waste Authorities, the Department of Environmental Protection and the Division of Natural Resources shall cooperate with the Legislature and provide such information as may be necessary to perform this study; and, be it

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

And,

**By Delegates Howell, Pack, Azinger, Bibby, Cadle, Diserio, Hansen, Hicks, Hott, D. Jeffries, J. Jeffries, C. Martin, Nelson, Paynter, Phillips, Staggers, Swartzmiller, Sypolt, Walker and Worrell:**

**H. C. R. 88** - "Requesting the Joint Committee on Government and Finance study the Board of Risk and Insurance Management by evaluating their contracting for services, reviewing their premium structures and rates, identifying their activities to provide transparency to the public and governmental entities and reviewing their fiscal responsibilities."

Whereas, The Legislature is committed to ensuring the efficiency of all executive agencies; and

Whereas, The Legislature is committed to state agencies being fiscally responsible and ensuring transparency to the taxpayers; and

Whereas, The Board of Risk and Insurance Management has entered into multi-year contracts and has extended certain contracts, so that it is necessary to review the activities of the Board of Risk and Insurance Management by evaluating their processes for establishing premiums, risk rate structures and overall efficiency to ensure that the Board of Risk and Insurance Management is operating responsibly; and

Whereas, Because of the known discrepancies between the various databases across state government, it is necessary to evaluate the mechanisms of communication, or lack thereof, among the various agencies to ensure the accuracy of the states asset inventories in relationship to the appropriate risk coverage for state assets, in order to provide adequate risk protection of the taxpayers' money; and

Whereas, The Legislature is committed to periodically auditing agencies for their performance of their duties to ensure best practices and compliance with applicable laws and the Board of Risk and Insurance management has not been formally audited by the Legislature since 2006; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study the Board of Risk and Insurance Management by evaluating their contracting for services, reviewing their premium structures and rates, identifying their activities to provide transparency to the public and governmental entities and reviewing their fiscal responsibilities; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Regular Session of the Legislature 2020 on its findings, conclusions and recommendations, together with



any drafts of legislation necessary to effectuate any recommendations; and, be it,

*Further Resolved*, That the Board of Risk and Insurance Management, the Real Estate Division, The Fleet Management Division, the Department of Administration, the State Auditor, the Enterprise Resources Planning Board, and the State Budget Office shall cooperate with the Legislature and provide such information as may be necessary to perform this study; and, be it

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

The Speaker referred the resolutions to the Committee on Rules.

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 344**, Relating to operation of state-owned farms,

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

Delegate Howell, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 330**, Requiring contact information be listed on agency's online directory and website,

And,

**S. B. 667**, Creating WV Motorsport Committee,

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

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 154**, Using school facilities for funeral and memorial services for certain community members,

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

Delegate Hamrick, Chair of the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration:

**Com. Sub. for S. B. 624**, Allowing county boards of education use alternative assessment provided in Every Student Succeeds Act.

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

Delegate Householder, Chair of the Committee on Finance submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 100**, Increasing court fees to fund law-enforcement standards training and expenses,

And,

**Com. Sub. for S. B. 316**, Preserving previously approved state Municipal Policemen's or Firemen's pensions,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 373**, Relating to financial responsibility of inmates,

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

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**S. B. 519**, Requiring county emergency dispatchers complete course for telephonic cardiopulmonary resuscitation,

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

### **Leaves of Absence**

At the request of Delegate Summers, and by unanimous consent, leaves of absence for the day were granted Delegates Miley and Porterfield.

### **Miscellaneous Business**

Delegate Sponaugle asked and obtained unanimous consent to have the remarks of Speaker Hanshaw when addressing the House from the floor printed in the Journal.

Pursuant to House Rule 132, consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegates Pushkin, Caputo and Angelucci after obtaining unanimous consent to address the House today

At 5:19 p.m., the House of Delegates adjourned until 9:00 a.m., Saturday, March 2, 2019.





























































