

# JOURNAL of THE SENATE State of West Virginia

**EIGHTY-FIFTH LEGISLATURE**

Regular Sixty-Day Session, 2021

First Extraordinary Session, 2021

Second Extraordinary Session, 2021

Third Extraordinary Session, 2021

**VOLUME II**



NOTE: The second volume continues with Journal proceedings proper (page 1401) of March 25 and concludes with the proceedings of April 9, ending with page 2802 of the Regular Session.



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

**Eng. House Bill 2940**, Making a supplementary appropriation to the Department of Education, State Board of Education – State Department of Education.

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

**Eng. House Bill 2941**, Supplementary appropriation decreasing an existing item and adding a new item of appropriation to the Department of Revenue, Insurance Commissioner.

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

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

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

That the total appropriation for the fiscal year ending June 30, 2021, to fund 8883, fiscal year 2021, organization 0704, be supplemented and amended by decreasing an existing item of appropriation as follows:

## **TITLE II – APPROPRIATIONS.**

### **Sec. 6. Appropriations of federal funds.**

#### **DEPARTMENT OF REVENUE**

*362 – Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2021 Org 0704

	<b>Appropriation</b>	<b>Federal Funds</b>
2 Current Expenses .....	13000	\$ 83,000

And, that the total appropriation for the fiscal year ending June 30, 2021, to fund 8883, fiscal year 2021, organization 0704, be supplemented and amended by adding a new item of appropriation as follows:

## **TITLE II – APPROPRIATIONS.**

### **Sec. 6. Appropriations of federal funds.**

#### **DEPARTMENT OF REVENUE**

*362 – Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2021 Org 0704

	<b>Appropriation</b>	<b>Federal Funds</b>
1a Personal Services and Employee Benefits.....	00100	\$ 83,000

The bill (Eng. H. B. 2941), as amended, was then ordered to third reading.

(Senator Maynard in the Chair.)

The Senate proceeded to the tenth order of business.

**Com. Sub. for Senate Bill 419**, Redefining “firearm” to match federal code.

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

**Com. Sub. for Senate Bill 458**, Relating to possession of firearms by individuals during state of emergency.

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

**Senate Bill 488**, Relating to distributing hotel occupancy tax to convention and visitor's bureaus.

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

**Senate Bill 521**, Extending licensure renewal term of certain private investigators, security guards, and associated firms.

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

**Com. Sub. for Senate Bill 534**, Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds.

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

**Com. Sub. for Senate Bill 585**, Requiring BOE create and provide course in family and consumer sciences in secondary schools.

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

**Senate Bill 588**, Requiring county boards of education and county superintendents to comply with instructions of State Board of Education.

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

**Com. Sub. for Senate Bill 604**, Requiring county commissions create districts for towing services.

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

**Senate Bill 680**, Allowing State Superintendent of Schools define classroom teachers certified in special education.

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

**Senate Bill 710**, Requiring impact statement in certain instances of school closing or consolidation.

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

**Com. Sub. for Senate Joint Resolution 11**, Constitutional Officer Term Limit Amendment.

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

And,

**Eng. Com. Sub. for House Bill 2260**, Relating to procurement of child placing services.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Lindsay, Rucker, and Romano.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolutions on March 24, 2021:

**Senate Bill 419:** Senators Maynard, Phillips, and Rucker;

**Senate Bill 458:** Senator Maynard;

**Senate Bill 634:** Senators Romano, Woodrum, Rucker, and Woelfel;

**Senate Bill 668:** Senator Woodrum;

**Senate Bill 699:** Senator Phillips;

**Senate Joint Resolution 1:** Senators Maynard and Azinger;

**Senate Joint Resolution 2:** Senator Smith;

**Senate Joint Resolution 6:** Senator Smith;

**Senate Joint Resolution 7:** Senator Smith;

**Senate Joint Resolution 8:** Senator Smith;

**Senate Resolution 28:** Senator Smith;

And,

**Senate Resolution 29:** Senators Phillips, Lindsay, Hamilton, Stollings, and Romano.

Pending announcement of meetings of standing committees of the Senate, including majority and minority party caucuses,

On motion of Senator Takubo, at 1 p.m., the Senate adjourned until tomorrow, Friday, March 26, 2021, at 10 a.m.

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## FRIDAY, MARCH 26, 2021

The Senate met at 10:06 a.m.

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

Prayer was offered by Jake Nichols, Senate Parliamentarian, Elkview, West Virginia.

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

Pending the reading of the Journal of Thursday, March 25, 2021,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for House Bill 2792**—A Bill to amend and reenact §24-2-20 of the Code of West Virginia, 1931, as amended, relating generally to natural gas public utilities; providing for the expansion of direct access to natural gas service for new customers and allowing existing natural gas utility customers to have direct access to natural gas service if an existing user expands its service in the amount of 25 million cubic feet of natural gas per year or more; allowing this direct access for users without the permission, consent, control, review, or input of the Public Service Commission; amending certification requirements by users to the

Public Service Commission; reiterating that the Public Service Commission has no jurisdiction of a Federal Energy Regulatory Commission regulated gas company; requiring the Public Service Commission to promulgate rules to implement the provisions no later than July 1, 2021; amending legislative findings; and establishing an effective date.

Referred to the Committee on Government Organization.

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

**Eng. Com. Sub. for House Bill 2797**, Declaring certain claims to be moral obligations of the State.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

**Eng. House Bill 2905**, Relating to repealing the prohibition against the use of certain words.

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

**Eng. Com. Sub. for House Bill 2953**—A Bill to amend and reenact §7-17-3 and §7-17-12 of the Code of West Virginia, 1931, as amended; all relating to clarifying that counties may hire firefighters as paid staff; delineating that a county commission may contract with the fire department of any political subdivision for fire protection services; and, modifying the existing procedures for amending fire fees to add an additional procedure for a referendum to take place, if desired, instead of utilizing the current requirement that 10 percent of voters petition for such amendment.

Referred to the Committee on Government Organization.

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

**Eng. House Bill 3107**—A Bill to amend and reenact §23-4-1f of the Code of West Virginia, 1931, as amended, relating to allowing workers' compensation benefits for first responders diagnosed with post-traumatic stress disorder resulting from an event or events that occurred during their employment; providing for diagnosis; noting that treatment can be conducted by other licensed mental health professionals once the initial diagnosis has been made by a psychiatrist; making benefits and employer immunity contingent on employers adding PTSD to their scope of workers' compensation coverage; and, requiring the Offices of the Insurance Commission to report annually to the Legislature on first responder PTSD claims.

Referred to the Committee on Health and Human Resources.

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

**Eng. Com. Sub. for House Bill 3137**—A Bill to amend and reenact §11-22-2 of the Code of West Virginia, 1931, as amended, relating to accelerating the conversion of the state excise tax on the privilege of transferring real property into a county excise tax.

Referred to the Committee on Finance.

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

**Eng. House Bill 3191**—A Bill to amend and reenact §5-10-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-7A-13a of said code, all relating to requiring employers to send certain notifications when retirants are hired as temporary, part-time employees.

Referred to the Committee on Pensions.

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

**Eng. Com. Sub. for House Bill 3231**—A Bill to amend and reenact §24-3-8 of the Code of West Virginia, 1931, as amended, relating to public utility security deposits and interest thereon; prohibiting the charging of interest on security deposits held for up to eighteen months; and updating reference to prior law.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 3293**—A Bill to amend and reenact §18-2-5c and §18-2-25 of the Code of West Virginia, 1931, as amended, all relating to single-sex participation in interscholastic athletic events; providing county school districts must confirm the sex of pupil at time of birth prior to pupil's participation in single-sex interscholastic athletic events under the control, supervision, and regulation of the West Virginia Secondary Schools Activities Commission; providing sex at birth be identified by original birth certificate or by a signed physician's statement; providing that the commission must verify with each county board that each student participating in single-sex interscholastic events is participating according to the student's sex at the time of the student's birth; and clarifying that these requirements do not apply to co-educational secondary school interscholastic athletic events.

Referred to the Committee on Education.

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

**Eng. House Bill 3294**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21A-2D-1, §21A-2D-2, §21A-2D-3, §21A-2D-4, §21A-2D-5, §21A-2D-6, §21A-2D-7, §21A-2D-8, and §21A-2D-9; amending said code by adding thereto a new article designated §21A-6B-1, §21A-6B-2, §21A-6B-3, §21A-6B-4, §21A-6B-5, §21A-6B-6, and §21A-6B-7; all generally relating to unemployment insurance; creating the Unemployment Insurance Program Integrity Act; providing short title; providing definitions; providing the commissioner, on a weekly basis, check unemployment insurance rolls against Division of Corrections and Rehabilitation’s list of imprisoned individuals, check new hire records against the National Directory of New Hires, and check unemployment insurance rolls against a commercially available database that provides cross-matching functions to verify eligibility for unemployment benefits; providing for data sharing between Workforce West Virginia and other departments, agencies, or divisions; providing for action by bureau to make new eligibility determinations; requiring commissioner to implement internal administrative policies regarding the recovery of fraudulent unemployment overpayments, cooperative agreements with the U.S. Department of Labor to investigate unemployment fraud, and recover overpayments of unemployment benefits; providing a mechanism for an employer to contact Workforce when an employee is offered their job back but refuses to be rehired; reporting of relevant data, to the extent permitted by federal law, by commissioner to the Legislature; providing for rulemaking; providing an effective date; establishing the Short Time Compensation Program within Workforce West Virginia; defining terms; providing that the commissioner of Workforce West Virginia establish and implement a short-time compensation program by July 1, 2023; requiring program to meet applicable federal and state law; providing that an employer that wishes to participate submit an application; requiring the commissioner to develop an employer application form to request approval of a plan and an approval process to participate in the program; establishing requirements for an application; providing procedure for commissioner approval or disapproval of a plan; providing for the effective date of a plan, expiration of a plan, revocation of a plan,

and modification of a plan; employee eligibility requirements to receive short-time compensation under a plan; prescribing employee benefits and limitations on benefits; and providing for rulemaking.

Referred to the Committee on the Judiciary.

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

**House Concurrent Resolution 12**—Requesting the Division of Highways name bridge number 07-016/00.006.46(), (07A039), (38.70976, -81.09931) locally known as MINNORA BRIDGE (SCTB), carrying WV 16 over WEST FK LITTLE KANAWHA River in Calhoun County, the “U.S. Army PFC Charles E. Jarvis Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 25**—Requesting the Division of Highways name bridge numbers (54-077/00-164.69 (NB&SB), (54A249,54A250) (39.11568,-81.54558) locally known as City Beer Overpass N&S (CIBB), carrying IS77 over County Route 21 in Wood County, the “U.S. Army SSG William ‘Billy’ E. Fries Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 26**—Requesting the Division of Highways name bridge number 18-33/00-011.48 () (18A127), - 81.72619), locally known as WEST RIPLEY BRIDGE (CSWB), carrying US 33 over MILL CREEK in Jackson County, the “U. S. Navy SK3C Victor Yoak Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 33**—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. and Carrie G. Silver Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 48**—Requesting the Joint Committee on Government and Finance study the judicial workload of courts and judges in the State of West Virginia.

Referred to the Committee on the Judiciary.

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

**House Concurrent Resolution 56**—Urging the FDA to not pass proposed new rules which would hurt and unfairly burden West Virginia farmers.

Referred to the Committee on Rules.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 25th day of March, 2021, 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. 156)**, Authorizing Department of Homeland Security to promulgate legislative rules.

**(Com. Sub. for S. B. 160)**, Authorizing Department of Revenue to promulgate legislative rules.

And,

**(Com. Sub. for S. B. 182)**, Authorizing miscellaneous agencies and boards to promulgate legislative rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Bill 307**, Relating generally to in-state tuition rates for certain persons.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

At the request of Senator Tarr, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Education.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 424**, Creating fixed income credit for low-income senior citizens.

And,

**Eng. Com. Sub. for House Bill 2026**, Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 360**, Allowing poll workers to work half days.

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

**Com. Sub. for Senate Bill 360** (originating in the Committee on Government Organization)—A Bill to amend and reenact §3-1-30 and §3-1-44 of the Code of West Virginia, 1931, as amended, all relating to authorizing poll clerks to work and be compensated for both full and half days worked during an election.

**Senate Bill 508**, Relating to public records management and preservation fees.

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

**Com. Sub. for Senate Bill 508** (originating in the Committee on Government Organization)—A Bill to amend and reenact §5A-8-15 of the Code of West Virginia, 1931, as amended, relating to public records management and preservation; and increasing available funds in the Public Records and Preservation Revenue Account for grants to counties for records management, access, and preservation purposes.

**Senate Bill 543**, Establishing Chuck Yeager Mountain State Medal of Excellence.

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

**Com. Sub. for Senate Bill 543** (originating in the Committee on Government Organization)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §10-3-3, relating to establishing a medal of excellence in honor of Chuck Yeager, known as the Chuck Yeager Mountain State Medal of Excellence; providing a process by which to

annually provide this award to a West Virginian who demonstrates exceptional leadership or innovation; and establishing other related criteria.

**Senate Bill 635**, Requiring State Fire Commission propose rules for sprinkler protection in basements of certain buildings.

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

**Com. Sub. for Senate Bill 635** (originating in the Committee on Government Organization)—A Bill to amend and reenact §15A-11-5 of the Code of West Virginia, 1931, as amended, relating to requiring the State Fire Commission to propose rules regarding specifically to sprinkler protection and fire protection requirements; requiring sprinkler systems and compliance with fire protection requirements for basements exceeding 2,500 square feet in buildings constructed after certain date; requiring sprinkler systems throughout buildings constructed after certain date housing emergency fire, rescue, or ambulance services; and exempting emergency services buildings that house only equipment and do not have sleeping areas or quarters within them.

And,

**Senate Bill 641**, Allowing counties to use severance tax proceeds for litter cleanup programs.

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

**Com. Sub. for Senate Bill 641** (originating in the Committee on Government Organization)—A Bill to amend and reenact §11-13A-6a of the Code of West Virginia, 1931, as amended, relating to coal severance tax; and providing for the use of severance funds for litter programs.

With the recommendation that the five committee substitutes do pass.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 655**, Eliminating sunset and legislative audit provisions for certain PSC rules.

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

**Com. Sub. for Senate Bill 655** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §24A-2-2b of the Code of West Virginia, 1931, as amended, relating to rescheduling a review of Public Service Commission rules regarding recovering, hauling, and storing wrecked or disabled vehicles; and changing a sunset requirement on those rules.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Com. Sub. for Senate Bill 657** (originating in the Committee on Education), Relating to free expression on state institution of higher education campuses.

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

**Com. Sub. for Com. Sub. for Senate Bill 657** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-20-1, §18B-20-2, §18B-20-3, §18B-20-4, §18B-20-5, §18B-20-6, §18B-20-7, §18B-20-8, and §18B-20-9, all relating to free expression on state institution of higher education campuses; providing for definitions; defining protected expressive activities; defining public forums and prohibiting “free speech zones”; permitting expressive activity on campus under certain conditions; allowing state institutions of higher education to maintain and enforce reasonable time, place, and manner restrictions under certain parameters; requiring state institutions of higher education to treat student organizations which are open to all students equally; encouraging state institutions of higher education to develop materials to educate the campus community on its policies relating to protected speech and expression activities; requiring posting of policies on website; allowing a person or student organization who believes a violation of this article has occurred to bring an action for relief against the state institution of higher education; establishing the relief available for a violation of the article and enacting a one-year statute of limitations for alleged violations under the article.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Maroney, from 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

**Senate Bill 671**, Appointing Director of Office of Emergency Medical Services.

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

**Com. Sub. for Senate Bill 671** (originating in the Committee on Health and Human Resources)—A Bill to amend and reenact §16-4C-4 of the Code of West Virginia, 1931, as amended, relating to providing for the appointment of a Director of the Office of Emergency Medical Services; and requiring that the Office of Emergency Medical Services director be appointed by the Secretary of the Department of Health and Human Resources.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Maroney, from 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

**Senate Bill 714** (originating in the Committee on Health and Human Resources)—A Bill to repeal §30-3E-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-9, §30-3E-10a, §30-3E-11, §30-3E-12, §30-3E-13, and §30-3E-17 of said code, all relating to Physician Assistant Practice Act, defining terms; limiting rule-making authority; revising licensure requirements; revising practice requirements; eliminating practice agreement requirement; revising practice notification requirement; revising collaboration requirements; expanding scope of practice for physician's assistant; and revising complaint process.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Maroney, from 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

**Senate Bill 715** (originating in the Committee on Health and Human Resources)—A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-33-1, §29-33-2, §29-33-3, and §29-33-4, all relating to the Recovery and Hope Act; creating the State Recovery and Hope Office, and providing powers thereof; providing for the appointment of the State Recovery and Hope Officer; and authorizing the State Recovery and Hope Officer to act.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 2267**, Establishing an optional bus operator in residence program for school districts.

And has amended same.

And,

**Eng. House Bill 2852**, Relating to distribution of the allowance for increased enrollment.

And has amended same.

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

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2499**, Tax reduction for arms and ammo manufacturing.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

The Senate proceeded to the sixth order of business.

Senators Karnes, Azinger, Boley, Clements, Grady, Hamilton, Jeffries, Lindsay, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Takubo, Trump, Weld, Woelfel, and Woodrum offered the following resolution:

**Senate Concurrent Resolution 55**—Supporting the Atlantic Coast Pipeline and the use of natural gas as a critical source of energy across the State of West Virginia and the United States.

Whereas, The Atlantic Coast Pipeline has created thousands of good-paying jobs in West Virginia and across the United States; and

Whereas, The utilization of natural gas as a renewable energy source has resulted in the economic development of billions of dollars in West Virginia and across the United States; and

Whereas, Natural gas provides a clean, affordable power source to the State of West Virginia and to millions of people in the United States; and

Whereas, Natural gas is the number one source of agricultural fertilizer in the United States, and together with coal, natural gas promises to be a major economic engine for the people of West Virginia and the United States as a whole; and

Whereas, The Atlantic Coast Pipeline will be one of the integral means of delivering renewable natural gas to the entire country for years to come; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby supports the Atlantic Coast Pipeline and the use of natural gas as a critical source of energy across the State of West Virginia and the United States; and, be it

*Further Resolved,* That the Legislature recognizes the importance of the continued development of the Atlantic Coast Pipeline and the use of clean burning natural gas for the citizens of West Virginia and all of the United States; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Atlantic Coast Pipeline, LLC, the Federal Energy Regulatory Commission, and

the West Virginia delegation of the United States Senate and the U.S. Congress.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Resolution 30**, Memorializing life of Honorable Mr. Shirley Dean Love.

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

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

The question being on the adoption of the resolution, and on this question, Senator Romano demanded the yeas and nays.

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

The nays were: None.

Absent: Takubo—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 30) adopted.

Thereafter, at the request of Senator Weld, and by unanimous consent, the remarks by Senators Baldwin, Caputo, Stollings, Trump, Plymale, and Woodrum regarding the adoption of Senate Resolution 30 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 474**, Exempting DOH from Purchasing Division procedures.

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

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 474) passed with its title.

Senator Weld moved that the bill take effect July 1, 2021.

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

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 474) takes effect July 1, 2021.

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

**Eng. Com. Sub. for Senate Bill 587**, Making contract consummation with state more efficient.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Hamilton and Takubo—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 587) passed with its title.

Senator Weld moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Hamilton and Takubo—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 587) takes effect from passage.

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

**Eng. Com. Sub. for Senate Bill 673,** Relating to venue for bringing civil action or arbitration proceedings under construction contracts.

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

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 673) passed with its title.

Senator Weld moved that the bill take effect July 1, 2021.

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

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 673) takes effect July 1, 2021.

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

**Eng. Com. Sub. for House Bill 2094**, Relating to the juvenile restorative justice programs.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2094 pass?”

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2094) passed.

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

**Eng. Com. Sub. for House Bill 2094**—A Bill to amend and reenact §49-1-206 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-4-725 of said code, all relating to the juvenile restorative justice programs; defining the term “restorative

justice program”; authorizing a court or prosecuting attorney to offer a juvenile, against whom a petition has been filed alleging that the juvenile has committed certain offenses, the opportunity to participate in a voluntary restorative justice program, where available, at any time prior to disposition of the case; listing offenses alleged to have been committed by a juvenile eligible for participation in a restorative justice program; authorizing the juvenile or victim or both to decline participation in a restorative justice program; providing for future participation in a restorative justice program after any declination by a juvenile or victim or both; requiring certain measures agreed to by the victim and juvenile to be included in a restorative justice program to provide redress to the victim and community; requiring dismissal of a petition against a juvenile upon successful completion of a restorative justice program including all agreed-to measures; clarifying information which is inadmissible against a juvenile in a subsequent proceeding.

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

**Eng. Com. Sub. for House Bill 2382**, Authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2382 pass?”

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

Absent: Takubo—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2382) passed with its title.

Senator Weld moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Unger, and Woelfel—10.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2382) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 2896**, 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 and put upon its passage.

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2896) passed with its title.

Senator Weld moved that the bill take effect from passage.

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

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2896) takes effect from passage.

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

**Eng. House Bill 2898**, Making a supplementary appropriation to WorkForce West Virginia – Workforce Investment Act.

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

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2898) passed with its title.

Senator Weld moved that the bill take effect from passage.

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

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2898) takes effect from passage.

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

**Eng. House Bill 2901**, 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 and put upon its passage.

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2901) passed with its title.

Senator Weld moved that the bill take effect from passage.

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

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2901) takes effect from passage.

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

At the request of Senator Tarr, unanimous consent being granted, Senator Tarr addressed the Senate regarding his explanation for the supplemental bills.

**Eng. House Bill 2903**, Making a supplementary appropriation to the Department of Homeland Security, West Virginia State Police.

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

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2903) passed with its title.

Senator Weld moved that the bill take effect from passage.

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

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2903) takes effect from passage.

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

**Eng. House Bill 2940**, Making a supplementary appropriation to the Department of Education, State Board of Education – State Department of Education.

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

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2940) passed with its title.

Senator Weld moved that the bill take effect from passage.

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

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2940) takes effect from passage.

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

**Eng. House Bill 2941**, Supplementary appropriation decreasing an existing item and adding a new item of appropriation to the Department of Revenue, Insurance Commissioner.

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

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

The nays were: None.

Absent: Takubo—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2941) passed with its title.

Senator Weld moved that the bill take effect from passage.

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

The nays were: None.

Absent: Takubo—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2941) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 419,** Redefining “firearm” to match federal code.

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

**Com. Sub. for Senate Bill 458,** Relating to possession of firearms by individuals during state of emergency.

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

**Senate Bill 488,** Relating to distributing hotel occupancy tax to convention and visitor’s bureaus.

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

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

**Senate Bill 521,** Extending licensure renewal term of certain private investigators, security guards, and associated firms.

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

**Com. Sub. for Senate Bill 534,** Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds.

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

**Com. Sub. for Senate Bill 585**, Requiring BOE create and provide course in family and consumer sciences in secondary schools.

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

**Senate Bill 588**, Requiring county boards of education and county superintendents to comply with instructions of State Board of Education.

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

**Com. Sub. for Senate Bill 601**, Relating generally to public employees grievance procedure.

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

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

On page four, section three, lines two and three, by striking out the words "or representative".

Following discussion,

The question being on the adoption of Senator Trump's amendment to the bill, the same was put and prevailed.

On motion of Senator Trump, the following amendment to the bill (Com. Sub. for S. B. 601) was next reported by the Clerk and adopted:

On page five, section three, lines twenty-nine through thirty-eight, by striking out all of subdivision (2) and inserting in lieu thereof a new subdivision, designated subdivision (2), to read as follows:

(2) Failure to state a claim. – The employer may, upon waiver or appeal to level three, file a motion to dismiss asserting that the board lacks jurisdiction under §6C-2-2(i) of this code; that the grievance was untimely; that the grievant has failed to state a claim under this article upon which relief may be granted; or a remedy wholly unavailable to the grievant is requested. Upon filing of the motion, the administrative law judge shall immediately hold in abeyance all other proceedings, and must, within 10 days of receipt of the filing, issue a ruling on the motion or schedule the motion for a hearing. In no event shall a motion to dismiss be held in abeyance while other proceedings take place. Within 10 days of receipt of an order of dismissal, the employee may refile the grievance, in accordance with this article and applicable rules of procedure, if the initial grievance was timely filed.

On motion of Senator Romano, the following amendment to the bill (Com. Sub. for S. B. 601) was next reported by the Clerk:

On page nine, section six, line two, after the word “expenses” by changing the colon to a period and striking out the remainder of the subsection.

Following discussion,

The question being on the adoption of Senator Romano’s amendment to the bill, and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Martin, Plymale, Romano, Rucker, Stollings, Stover, Unger, Woelfel, Woodrum, and Blair (Mr. President)—19.

The nays were: Azinger, Boley, Clements, Karnes, Maynard, Nelson, Phillips, Roberts, Smith, Swope, Sypolt, Tarr, Trump, and Weld—14.

Absent: Takubo—1.

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

The bill (Com. Sub. for S. B. 601), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 604**, Requiring county commissions create districts for towing services.

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

**Senate Bill 680**, Allowing State Superintendent of Schools define classroom teachers certified in special education.

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

**Senate Bill 710**, Requiring impact statement in certain instances of school closing or consolidation.

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

**Com. Sub. for Senate Joint Resolution 11**, Constitutional Officer Term Limit Amendment.

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

**Eng. Com. Sub. for House Bill 2260**, Relating to procurement of child placing services.

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

At the request of Senator Rucker, unanimous consent being granted, the Senate returned to the sixth order of business which agenda includes the making of main motions.

Senator Rucker moved that the Senate reconsider the vote by which in earlier proceedings today it adopted Senator Romano's amendment (*shown in the Senate Journal of today, page 1438*) to

**Eng. Com. Sub. for Senate Bill 601**, Relating generally to public employees grievance procedure.

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

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

The roll being taken, the yeas were: Azinger, Boley, Clements, Grady, Karnes, Maroney, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—19.

The nays were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Martin, Romano, Stollings, Stover, Unger, and Woelfel—13.

Absent: Plymale and Takubo—2.

So, a majority of those present and voting having voted in the affirmative, the President declared Senator Rucker's reconsideration motion had prevailed.

The question again being on the adoption of Senator Romano's amendment to the bill (Eng. Com. Sub. for S. B. 601), and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Grady, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Stover, Unger, and Woelfel—12.

The nays were: Azinger, Boley, Clements, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker,

Smith, Swope, Sypolt, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—20.

Absent: Plymale and Takubo—2.

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

The bill (Eng. Com. Sub. for S. B. 601), as amended by Senator Trump, was again ordered to engrossment and third reading.

(Senator Hamilton in the Chair.)

The Senate proceeded to the tenth order of business.

**Com. Sub. for Senate Bill 401**, Relating to WV Consumer Credit and Protection Act.

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

**Com. Sub. for Senate Bill 603**, Authorizing new market entrants to conduct remote sports wagering and remote interactive wagering.

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

**Com. Sub. for Senate Bill 634**, Requiring training of certain officers for persons with autism spectrum disorder.

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

**Com. Sub. for Senate Bill 660**, Providing for cooperation between law-enforcement agencies and military authorities.

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

**Com. Sub. for Senate Bill 668**, Creating Psychology Interjurisdictional Compact.

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

**Senate Bill 712**, Relating to oversight fees for certain gas-producing wells.

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

At the request of Senator Smith, unanimous consent being granted, the bill was referred to the Committee on Finance.

**Senate Bill 713**, Relating generally to inmate good time.

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

**Eng. Com. Sub. for House Bill 2290**, Initiating a State Employment First Policy to facilitate integrated employment of disabled persons.

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

**Eng. House Bill 2897**, Expiring funds to the balance of the Department of Commerce.

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

**Eng. House Bill 2899**, Making a supplementary appropriation to the Department of Commerce.

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

And,

**Eng. House Bill 2920**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund.

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

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

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senators Woelfel, Maroney, and Grady.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Weld, unanimous consent being granted, a leave of absence for the day was granted Senator Takubo.

The Presiding Officer announced the replacement of Senator Takubo with Senator Weld on the committee of conference as to

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

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolutions on March 25, 2021:

**Senate Bill 8**: Senator Grady;

**Senate Bill 237**: Senator Grady;

**Senate Bill 307**: Senator Rucker;

**Com. Sub. for Senate Bill 335**: Senator Martin;

**Senate Bill 337**: Senator Martin;

**Senate Bill 572:** Senator Grady;

**Com. Sub. for Senate Bill 614:** Senator Grady;

**Senate Bill 620:** Senator Jeffries;

**Senate Bill 631:** Senators Romano and Jeffries;

**Senate Bill 633:** Senator Grady;

**Senate Bill 660:** Senators Woodrum, Rucker, and Romano;

**Senate Bill 662:** Senators Romano and Ihlenfeld;

**Senate Bill 663:** Senator Woodrum;

**Senate Bill 671:** Senators Plymale and Stollings;

**Senate Bill 701:** Senator Jeffries;

**Senate Bill 705:** Senator Lindsay;

**Senate Bill 706:** Senator Romano;

**Senate Bill 708:** Senator Romano;

**Senate Concurrent Resolution 23:** Senator Lindsay;

**Senate Concurrent Resolution 24:** Senator Lindsay;

**Senate Concurrent Resolution 25:** Senator Lindsay;

**Senate Concurrent Resolution 26:** Senator Lindsay;

**Senate Concurrent Resolution 28:** Senator Lindsay;

**Senate Concurrent Resolution 29:** Senator Lindsay;

**Senate Concurrent Resolution 30:** Senator Lindsay;

**Senate Concurrent Resolution 31:** Senator Lindsay;

And,

**Senate Concurrent Resolution 32:** Senator Lindsay.

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

On motion of Senator Weld, at 12:15 p.m., the Senate adjourned until tomorrow, Saturday, March 27, 2021, at 12 Noon.

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## SATURDAY, MARCH 27, 2021

The Senate met at 12:03 p.m.

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

Prayer was offered by Jeffrey L. Branham, Senate Doorkeeper, Cross Lanes, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert L. Karnes, a senator from the eleventh district.

Pending the reading of the Journal of Friday, March 26, 2021,

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

The Senate proceeded to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 356,** Allowing for written part of drivers' exam given in high school drivers' education course.

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

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

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

**Eng. Com. Sub. for Senate Bill 435**, Requiring county superintendents to authorize certain school principals or administrators at nonpublic schools to issue work permits for enrolled students.

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

**Eng. Com. Sub. for House Bill 2145**—A Bill to amend and reenact §18A-4-8 and §18A-4-8a of the Code of West Virginia, 1931, as amended, all relating to class titles for school service personnel; adding class titles for Aide V and Aide VI and their associated qualifications, posting requirements; county discretion; and respective pay grades.

Referred to the Committee on Education.

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

**Eng. Com. Sub. for House Bill 2573**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-10-1, §5B-10-2, §5B-10-3, §5B-10-4, §5B-10-5, §5B-10-6, §5B-10-7, §5B-10-8 and §5B-10-9, and to amend and reenact §12-4-14 of said code; all generally relating to providing transparency regarding the spending of public monies; enacting the West Virginia Development Achievements Transparency Act; providing a short title for the West Virginia Development Achievements Transparency Act; providing

legislative purpose and findings; providing for definitions; outlining reporting requirements for entities providing a development subsidy; directing the Auditor to create a searchable website to view development subsidy data; detailing the items required to be provided on the Auditor's searchable website; protecting confidentiality of certain subsidy data; providing that a granting body may compile information from a recipient corporation; providing that a granting body shall review information from a recipient corporation to ensure reasonable accuracy; providing that the State Auditor shall publish a list detailing any granting body or recipient corporation that fails to comply with article 9, chapter 5B of this code; providing that the Auditor shall publish a list of any granting body or recipient corporation that intentionally submits false, misleading, or fraudulent information; providing that the Auditor shall notify the Joint Committee on Government and Finance of any granting body or recipient corporation that intentionally submits false, misleading or fraudulent information; permitting the Auditor to hold public hearings or training sessions to ensure compliance with the article; reenacting §12-4-14 of this code as the West Virginia Grant Transparency and Accountability Act; providing a short title for West Virginia Grant Transparency and Accountability Act; providing legislative intent; defining terms; providing that any grantee of state grant funds that grants said funds to a subgrantee, such funds shall be treated as a state grant; providing that the Auditor shall notify the Treasurer regarding any grantor agency that fails to comply with reporting and recordkeeping provisions of this code and that such agency shall not encumber or expend grant funds until State Auditor determines that reporting and recordkeeping are brought into compliance with this code; requiring each state grantmaking agency designate a Chief Accountability Officer; allowing grantor agencies or the State Auditor to issue stop payment orders; requiring the State Auditor to maintain a searchable and publicly accessible database of state grants; requiring State Auditor, in cooperation with state grant making agencies, to promulgate legislative, procedural and interpretive rules regarding stop payment procedures; providing for informal conference to resolve conflicts between grantor agency and grantee when grantor agency reasonably believes grant funds

are subject to recovery; providing formal procedures for grantor agency to follow to determine if grant funds are subject to recovery, including notice and hearing requirements; requiring grantor agencies to take affirmative and timely action to recover misspent and improperly held grant funds, once said funds are determined to be misspent or improperly held; providing grantor agencies methods to recover misspent or improperly held grant funds; allowing the Attorney General to take action to recover any grants funds that have been misapplied or improperly held; creating a special revenue fund known as the Grant Recovery Fund for recovered grant funds for which the use is not restricted by law or otherwise appropriated; providing for rulemaking by the State Auditor; requiring the State Auditor to adopt conflicts of interest policies for state grants and requiring grantors, grantees, and subgrantees to disclose such conflicts; changing the notification requirement from the Legislative Auditor to the State Auditor for state agencies administering a state grant; requiring the State Auditor to maintain a debarred list in the form of a computerized database accessible by state agencies and the public, with public disclosure to the extent allowed by federal law; defining prohibited political activity; requiring grantors, grantees, subgrantees, and personnel thereof to not use grant funds for prohibited political activities or to be knowingly compensated with grant funds for prohibited political activities; providing exception for 501(c)(3) and 501(c)(4) organizations that receive state grant funds for federally permissible advocacy; providing criminal penalties; and providing for reporting by the State Auditor to the Joint Legislative Committee on Government and Finance that demonstrates efficiencies cost savings, and reductions in fraud, waste and abuse.

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

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

**Eng. Com. Sub. for House Bill 2694**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new

article, designated §61-7B-1, §61-7B-2, §61-7B-3, §61-7B-4, and §61-7B-5, all relating to creating the “Second Amendment Preservation Act”; stating legislative findings; providing prohibitions for agencies of the state, political subdivision of the state, or employees, while acting in their official capacity, of an agency or political subdivision of the state; requiring the Attorney General to publish model policies; and providing for severability.

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

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

**Eng. Com. Sub. for House Bill 2726**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §17-30-1 and §17-30-2; to amend and reenact §29-2A-3 and §29-2A-12 of said code; and to amend said code by adding thereto a new section, designated §29-2A-12a, all relating to use of airspace; use of space above and below public roads; permit by political subdivisions of space above or below public roads owned or controlled by political subdivisions; procedure to be followed in permitting by political subdivisions of space above or below public roads owned or controlled by political subdivisions; powers and duties of the West Virginia State Aeronautics Commission; operation of manned aircraft at low altitude; low or dangerous flight of unmanned aircraft; landing of unmanned aircraft on land or water of another.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2842**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new

section, designated §8-12-22, relating to placing limitations on the authority of municipalities, political subdivisions, and local governing bodies generally; forbidding a municipality, political subdivision, or a local governing body to enact any code, ordinance, or land use regulation that would prohibit, have the effect of prohibiting, or regulate in any manner a public utility or department of public utilities from furnishing a utility service to a utility customer based on an energy source which is provided or used by a utility service; forbidding a municipality, political subdivision, or a local governing body to enact any code, ordinance, or land use regulation that would prohibit or regulate a customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service based on the energy source provided or used by a utility service, forbidding a municipality, political subdivision, or a local governing body to enact any code, ordinance, or land use regulation that would prohibit or regulate a public utility or department of public utilities from utilizing vehicles, equipment, machinery, or tools, to provide utility services to a utility customer based on the energy source used by or powering those vehicles, equipment, machinery, or tools used by the utility service; and defining terms.

Referred to the Committee on Energy, Industry, and Mining; and then to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2933**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-3-62, relating to creating the Anti-Discrimination Against Israel Act; forbidding WV state agencies, political subdivisions, and pension plans from doing business with, or, investing in, companies that boycott Israel; defining terms; providing for rulemaking; and setting an effective date.

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

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

**Eng. Com. Sub. for House Bill 2981**—A Bill to amend and reenact §9A-1-9 and §9A-1-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §16-5-19 of said code, all relating to establishing suicide prevention assistance to veterans in this state; requiring the Department of Veterans' Assistance to create program; requiring the medical examiner to share information; and providing an internal effective date.

Referred to the Committee on Military.

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

**Eng. Com. Sub. for House Bill 3254**—A Bill to amend and reenact §61-10-15 of the Code of West Virginia, 1931, as amended, relating to authorizing members of development authorities to accept compensation for services which the members rendered.

Referred to the Committee on the Judiciary.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2021, and requested the concurrence of the Senate in the passage of

**Eng. Com. Sub. for House Bill 3266**—A Bill to amend and reenact §18A-4-16 of the Code of West Virginia, 1931, as amended, relating to the termination of extracurricular contracts upon retirement; providing effective date; not prohibiting post-retirement employment with county board consistent with rules of consolidated public retirement board.

Referred to the Committee on Education.

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

**Eng. House Bill 3299**—A Bill to amend and reenact §18B-17-2 of the Code of West Virginia, 1931, as amended, relating to authorizing legislative rules for the Higher Education Policy Commission regarding the Mental Health Loan Repayment Program and Administrative Exemption.

Referred to the Committee on Education.

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

**Eng. House Bill 3301**—A Bill to amend and reenact §7-11B-3, §7-11B-7, §7-11B-8, §7-11B-9, §7-11B-10, §7-11B-18, and §7-11B-22 of the Code of West Virginia, 1931, as amended, relating generally to property tax increment financing districts; authorizing payment in lieu of tax agreements for property located within property tax increment financing districts; authorizing a county commission or municipality to modify the termination time of certain districts; extending length of certain districts; providing clarification as to the discharge of any tax increment financing obligations outstanding on the termination date of a property tax district; eliminating certain existing limitations on the terms of property tax increment financing obligations issued to refund existing obligations; providing clarifications with respect to the base assessed value and termination date when two or more tax increment financing districts have been combined; and changing the notice required to be given to other levying bodies prior to a new project plan for a property tax district being considered for approval.

Referred to the Committee on Finance.

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

**Com. Sub. for House Concurrent Resolution 17**—Requesting the Division of Highways name a portion of Rt 85 South, starting at the Van Community Park of the community of Van and ending at the bridge at Clinton Camp Rd in Wharton in Boone County, the “U. S. Army SSG James C. Vickers Highway”.

Referred to the Committee on Transportation and Infrastructure.

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

**Com. Sub. for House Concurrent Resolution 22**—Requesting the Division of Highways name bridge number: 51-022/00-000.16 (51A094), (38.51804, -80.44792) locally known as GRASSY CREEK BX BM, carrying CR 22 over GRASSY CREEK in Webster county, the “U. S. Army PVT Bill O’Dell Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 27**—Requesting the Division of Highways name bridge number: 52-017/00-001.07 (52A153), (39.59450, -80.66128) locally known as LeMasters Bridge, carrying CR 17 over Barker Run in Wetzel county. the “U.S. Army Tec 5 Harvey LeMasters Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 38**—Requesting the Division of Highways to name bridge number: 26-001/01-000.01 (26A080), (40.02115, -80.73147) locally known as 4th Street Overpass, carrying CR 1/1 over US 250 & WV 2 in Marshall county, the “U. S. Marine Sergeant David Andrew Green Memorial Bridge”.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 68**—Providing for the issuance of not to exceed \$22 million of refunding bonds pursuant to the Safe Roads Amendment of 1996, §13-2G-1 *et seq.* and §17-26-1 *et seq.* of the Code of West Virginia.

Referred to the Committee on Finance.

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

**House Concurrent Resolution 70**—Calling for the construction of a licensed Off Highway Vehicle semi-contiguous trail to parallel the Appalachian Hiking Trail on the western side.

Referred to the Committee on Natural Resources.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 26th day of March, 2021, 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. 2701)**, Relating to authorizing the Division of Rehabilitation Services to approve acceptable training programs required for low vision individuals to obtain a Class G drivers license.

**(H. B. 2788)**, Expiring funds to the unappropriated surplus balance from State Excess Lottery Revenue Fund.

**(Com. Sub. for H. B. 2789)**, Supplementing and amending the appropriations to Public Defender Services.

**(Com. Sub. for H. B. 2802)**, Supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Homeland Security, Division of Emergency Management.

**(Com. Sub. for H. B. 2803)**, Supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Commerce, Division of Forestry.

And,

**(H. B. 2804)**, Expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2021.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Smith, from the Committee on Energy, Industry, and Mining, submitted the following report, which was received:

Your Committee on Energy, Industry, and Mining has had under consideration

**Senate Bill 336**, Relating to nonferrous metal sales and transportation to secondary recycler.

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

**Com. Sub. for Senate Bill 336** (originating in the Committee on Energy, Industry, and Mining)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-15-24; and to amend said code by adding thereto a new section, designated §61-3-45b, all relating to nonferrous metal sales and transportation to a secondary recycler; providing for definitions; providing for permits for secondary metals recyclers to purchase nonferrous metals; providing for permit requirements for fixed and nonfixed sites; providing that the Superintendent of the West Virginia State Police shall develop applications and permits; providing for a permit fee for secondary metals recyclers; providing that a secondary metals recycler permit to purchase nonferrous metals is valid for two years; providing for a permit for persons or entities to sell or transport nonferrous metals over the highways; providing for a fee for a replacement permit for a lost or destroyed original permit; providing for record retention criteria; providing that a seller or transportation permit is valid for two years; providing for denial, revocation, or suspension of a permit for violations of law and for penalties; providing that only secondary metals recyclers can purchase nonferrous metals from persons or entities with a valid permit; providing that secondary metals recyclers shall retain records of all purchases of nonferrous metals; providing for record retention of at least one year; providing for a limit for secondary metals recyclers purchasing nonferrous metals through cash transactions; providing for signage to be displayed; providing for penalties when a secondary metals recycler violates certain provisions; providing for limitations on selling nonferrous metals; providing for penalties for sellers violating certain provisions relating to selling nonferrous metals; providing for revocation of permits for secondary metals recyclers

and sellers violating certain provisions of purchasing or selling nonferrous metals; providing for holds placed on stolen nonferrous metals; providing for law enforcement to issue written notice to a secondary metals recycler relating to stolen nonferrous metals; providing for a 15 calendar day hold for the secondary metals recycler to retain the nonferrous metals as provided in the written notice from law enforcement; providing that law enforcement provide written notice to the secondary metals recycler relating to allegedly stolen nonferrous metals; providing for 30 calendar days for an extended hold of allegedly stolen nonferrous metals by the secondary metals recycler; providing for automatic release of any holds if no order has been received to retain the nonferrous metals by a court; providing for limitations on transporting nonferrous metals on the highways of this state without a valid permit and for penalties for violating transportation requirements; providing for revocation of a transportation permit; providing for exemptions from required permits to obtain, transport, or sell nonferrous metals to a secondary metals recycler; providing for preemption of other laws, rules, or regulations by any county or municipality; providing for additional criminal offenses for illegally obtaining nonferrous metals; providing for penalties to property damage when the damage is below \$5,000; providing for penalties for property damage when the damage is greater than or equal to \$5,000; providing for penalties when another person receives a great bodily injury during the course of illegally obtaining nonferrous metals; providing for penalties when illegally obtaining nonferrous metals results in the death of a person; providing for penalties for disruption of communication or electrical services to more than 10 people; providing for revocation of a permit upon conviction for illegally obtaining nonferrous metals; providing immunity from civil liability to the owner of real or personal property for any injury sustained by a person attempting to or obtaining nonferrous metals illegally, or for any injury caused by dangerous conditions to a person attempting to or obtaining nonferrous metals illegally; providing that no duty of care is expected of an owner of real or personal property to persons attempting to or obtaining nonferrous metals illegally; and providing for rule-making authority.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Randy E. Smith,  
*Chair.*

The bill (Com. Sub. for S. B. 336), under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

**Com. Sub. for Senate Bill 470** (originating in the Committee on Government Organization), Limiting release of certain personal information maintained by state agencies.

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

**Com. Sub. for Com. Sub. for Senate Bill 470** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §5A-8-21 and §5A-8-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5A-8-24, all relating to clarifying that disclosure of certain information such as home addresses are exempt and disclosure would constitute an unreasonable invasion of privacy; providing prohibition of disclosure of home address or unpublished telephone number of certain public officials within the justice system; creating a cause of action for intentional or reckless disregard for disclosure of protected information of certain public officials within the justice system; providing a procedure for removal request of certain information for certain public officials within the justice system; and providing a cause of action for

failure to comply with a removal request of certain information for certain public officials within the justice system.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 470) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Bill 492**, Establishing program for bonding to reclaim abandoned wind and solar generation facilities.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 492) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 530**, Establishing causes for revocation, cancellation, or suspension of business registration certificate.

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

**Com. Sub. for Senate Bill 530** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12-5b, relating to specifying additional grounds for revocation, cancellation, or suspension of business registration certificates; directing means of notice and opportunity for cure; providing procedures therefor; and specifying effective date.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 530) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 622**, Increasing compensation for elected county officials.

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

**Com. Sub. for Senate Bill 622** (originating in the Committee on Government Organization)—A Bill to amend and reenact §7-7-4 of the Code of West Virginia, 1931, as amended, relating to increasing the compensation of elected county officials.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 642**, Requiring legal advertisements by State Auditor be posted to central website.

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

**Com. Sub. for Senate Bill 642** (originating in the Committee on Government Organization)—A Bill to amend and reenact §59-3-2 of the Code of West Virginia, 1931, as amended, relating to publication of legal notices of the state and its agencies; requiring State Auditor to establish public notice database on website centralizing access to all state and state agency postings of legal advertisements required by law; mandating state and its agencies publish all required legal advertisements on database in addition to newspaper publication after certain date; requiring State Auditor

propose rules and emergency rules relating to database; and mandating State Auditor annually report to Joint Committee on Government and Finance.

With the recommendation that the committee substitute do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

The bill (Com. Sub. for S. B. 642), under the original double committee reference, was then referred to the Committee on Finance.

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 674**, Clarifying that unpaid restitution does not preclude person from obtaining driver's license.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 674) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 684**, Adding Curator of Division of Arts, Culture, and History as ex officio voting member to Library Commission.

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

**Com. Sub. for Senate Bill 684** (originating in the Committee on Government Organization)—A Bill to amend and reenact §10-1-12 of the Code of West Virginia, 1931, as amended, relating to the State Library Commission; adding the Curator of the West Virginia Division of Arts, Culture, and History as an ex officio voting member; and updating other language.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 684) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 695**, Providing procedures for decreasing or increasing corporate limits by annexation.

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

**Com. Sub. for Senate Bill 695** (originating in the Committee on Government Organization)—A Bill to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §8-7-2 of said code, all relating to counties and municipalities; and providing procedures for decreasing corporate limits or increasing corporate limits by annexation and annexation by minor boundary adjustments.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Bill 716** (originating in the Committee on Government Organization)—A Bill to amend and reenact §5B-1A-9 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §5B-1C-1, §5B-1C-2, §5B-1C-3, §5B-1C-4, §5B-1C-5, §5B-1C-6, §5B-1C-7, §5B-1C-8, §5B-1C-9, §5B-1C-10, §5B-1C-11, §5B-1C-12, §5B-1C-13, §5B-1C-14, §5B-1C-15, §5B-1C-16, §5B-1C-17, §5B-1C-18, and §5B-1C-19; to amend and reenact §11-14C-47 of said code; to amend and reenact §17-2A-8 of said code; to amend said code as amended, by adding thereto a new section, designated §17-2A-11a; to amend said code by adding thereto a new section, designated §17-19-16; to amend and reenact §20-1-7 of said code; to amend and reenact §20-2-24 of said code; to amend said code by adding thereto a new section, designated §20-2-43; to amend and reenact §20-5-2 of said code; and to amend said code by adding thereto a new section,

designated §20-17-20, all relating to encouraging public access to and use of state roads and trails; removing the liability of railroad companies who give land to nonprofits or state or local entities for the purpose of developing that land for tourism, rail to trail programs, campgrounds, or parks; establishing an Adventure Travel Recreation Program within the Division of Natural Resources; making legislative findings and declaring legislative intent; defining terms; establishing an Adventure Travel Recreation Commission and specifying the composition and duties thereof; establishing the Office of Adventure Travel Recreation and defining the duties and responsibilities thereof; establishing conservation priorities of the office; providing for distribution of program information; authorizing contracts for goods and services to carry out responsibilities of the office; restricting the use of eminent domain; providing immunity and protection from liability for property holders or owners; requiring opportunity for public comment and for use for best available science; authorizing the creation of state vehicular recreation areas and providing for protection of sensitive areas; authorizing the designation and development of a West Virginia Statewide Motorized Trail; providing for a program of grants and cooperative agreements; apportioning funds; establishing criteria for various functions; detailing special, mandatory preconditions for grant and project applications; establishing an Adventure Travel Recreation Fund; and specifying an apportionment and allowable uses of moneys in the fund; requiring a percentage of taxes collected from motor fuels to be used to map state roads using the graphic information system; requiring the Commissioner of Highways to post online any petition, notice, order, decision, or other record related to the abandonment or discontinuance of any state highway or road, or any part thereof; and providing that any member of the public shall be allowed to participate in or attend a hearing relating to the abandonment or discontinuance of any state highway or road by virtual means; creating an inventory and mapping system of all roads in state forests, state parks, national forests and national parks; creating a process to facilitate the reporting and removal of illegal gates on public roads; to create a means by which members of the public may report illegal gates; creating a method of verification; creating a process by which to notify law enforcement

of the gates so that they may be removed; and providing an effective date; authorizing the director of the Division of Natural Resources to promulgate rules relating to qualifications of outfitters and guides, consistent with the federal outfitter and guide operating guidelines as set out in Appendix H of the USDA Forest Service Outfitter and Guide Operating Guidelines; and permitting outfitters and guides to offer services for jeep tours with fees assessed by the director; creating a wildlife viewing stamp for certain hunting and fishing licensees and permit holders; allowing dispersed camping on state property; and requiring a dispersed camping stamp; requiring training for outfitters and guides; enacting Adopt-A-Trail programs for trails and paths; extending the concept to authorize volunteer improvements to trails and paths; empowering nonprofit entities to administer any necessary improvements; providing provisions for disposal of solid waste left along trails and paths; and providing an effective date.

And reports the same back with the recommendation that it do pass; but with the further recommendation that it first be referred to the Committee on Finance.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Maynard, and by unanimous consent, the bill (S. B. 716) contained in the foregoing report from the Committee on Government Organization was then referred to the Committee on Finance.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 717** (originating in the Committee on Finance)—A Bill supplementing and amending appropriations of public moneys out of the Treasury in the State Fund, General Revenue, by decreasing an existing item of appropriation and increasing an

existing item of appropriation to West Virginia Council for Community and Technical College Education, West Virginia Council for Community and Technical College Education - Control Account, fund 0596, fiscal year 2021, organization 0420, by supplementing and amending appropriations for the fiscal year ending June 30, 2021.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Joint Resolution 1** (originating in the Committee on the Judiciary), Protection of the Right to Bear Arms Amendment.

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

**Com. Sub. for Com. Sub. for Senate Joint Resolution 1** (originating in the Committee on Finance)—Proposing an amendment to the Constitution of the State of West Virginia, amending section 22, article III thereof, relating to the right to keep and bear arms; prohibiting county or municipal governments from enacting ordinances, acts, resolutions, or rules that are contrary to, or more restrictive than, state law governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or firearm accessories; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

With the recommendation that the committee substitute for committee substitute be adopted.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Joint Resolution 7**, Motor Vehicle and Other Personal Property Tax Reduction Amendment.

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

**Com. Sub. for Senate Joint Resolution 7** (originating in the Committee on Finance)—Proposing an amendment to the Constitution of the State of West Virginia, amending article X thereof, by adding thereto a new section, designated section one-d, relating generally to ad valorem taxation and assessment of tangible personal property; authorizing the Legislature to exempt one or more species of tangible personal property from taxation; authorizing the Legislature to reduce the rate of taxation or assessment for one or more species of tangible personal property; authorizing the Legislature to establish different statewide rates of taxation, statewide rates of assessment, and statewide methods of valuation for different species of tangible personal property; clarifying that the Legislature and levying bodies remain subject to constitutional limits on rate of taxation and assessment; authorizing the Legislature to classify property as real or personal for taxation purposes; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Joint Resolution 9**, Disabled Veterans' Exemption from Ad Valorem Property Taxation Amendment.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 24, 2021;

And,

**Com. Sub. for Senate Joint Resolution 10**, Limiting the Terms of Members of the House of Delegates and Senate Amendment.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 24, 2021;

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

[CLERK'S NOTE: The committee report for Committee Substitutes for Senate Joint Resolutions 9 and 10 inadvertently stated the resolutions had been read a first time and referred to the Committee on Finance on March 24, 2021, and were now on second reading. However, the joint resolutions were not read a first time on March 24, 2021, and were referred to the Committee on Finance on first reading. Therefore, Committee Substitutes for

Senate Joint Resolutions 9 and 10 will be on first reading Monday, March 29, 2021.]

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2003**, Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with an amendment from the Committee on Government Organization pending.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2495**, Relating to the filing of asbestos and silica claims.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The Senate proceeded to the fifth order of business.

### **Filed Conference Committee Reports**

The Clerk announced the following conference committee report had been filed at 12:19 p.m. today:

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

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 55**, Supporting Atlantic Coast Pipeline.

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

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 419**, Redefining “firearm” to match federal code.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Beach and Maroney—2.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 419) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 458,** Relating to possession of firearms by individuals during state of emergency.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 458) passed with its title.

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

**Eng. Senate Bill 521,** Extending licensure renewal term of certain private investigators, security guards, and associated firms.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 521) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 534**, Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 534) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 585**, Requiring BOE create and provide course in family and consumer sciences in secondary schools.

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

On the passage of the bill, the yeas were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Azinger and Sypolt—2.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 585) passed with its title.

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

**Eng. Senate Bill 588**, Requiring county boards of education and county superintendents to comply with instructions of State Board of Education.

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

Pending discussion,

Senator Takubo requested unanimous consent that the bill lie over one day, retaining its place on the calendar.

Which consent was not granted, Senator Lindsay objecting.

Senator Trump then moved that the bill lie over one day, retaining its place on the calendar.

On motion of Senator Takubo, at 12:42 p.m., the Senate recessed.

The Senate reconvened at 1:05 p.m. and resumed consideration of

**Eng. Senate Bill 588**, Requiring county boards of education and county superintendents to comply with instructions of State Board of Education.

The question being on the adoption of Senator Trump's motion that the bill lie over one day, retaining its place on the calendar.

Following discussion,

The question being on the adoption of Senator Trump's aforesaid motion, the same was put and prevailed.

**Eng. Com. Sub. for Senate Bill 601**, Relating generally to public employees grievance procedure.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for Senate Bill 601 pass?"

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Karnes, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—18.

The nays were: Baldwin, Beach, Caputo, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Martin, Plymale, Romano, Stollings, Stover, Unger, and Woelfel—15.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 601) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 604**, Requiring county commissions create districts for towing services.

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

Senator Maynard requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

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

On the passage of the bill, the yeas were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Azinger, Karnes, and Martin—3.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 604) passed with its title.

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

**Eng. Senate Bill 680**, Allowing State Superintendent of Schools define classroom teachers certified in special education.

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

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Karnes, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

The nays were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Unger, and Woelfel—11.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 680) passed with its title.

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

**Eng. Senate Bill 710**, Requiring impact statement in certain instances of school closing or consolidation.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover,

Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 710) passed with its title.

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

**Eng. Com. Sub. for Senate Joint Resolution 11**, Constitutional Officer Term Limit Amendment.

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

On the adoption of the resolution, the yeas were: Azinger, Baldwin, Beach, Boley, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Caputo, Stollings, and Unger—3.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. Com. Sub. for S. J. R. 11) adopted, as follows:

**Eng. Com. Sub. for Senate Joint Resolution 11**—Proposing an amendment to the Constitution of the State of West Virginia, amending section four, article VII thereof, relating to preventing any individual from serving in the office of Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, or Attorney

General for more than three consecutive terms; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each House agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section four, article VII thereof, be amended to read as follows:

## ARTICLE VII.

### **§4. Eligibility**

~~None of~~ The executive officers mentioned in this article shall not hold any other office during the term of his or her service.

A person who has been elected or who has served as Governor during all or any part of two consecutive terms ~~shall not~~ is ineligible for the office of Governor during any part of the term immediately following the second of the two consecutive terms. ~~The person holding the office of governor when this section is ratified shall not be prevented from holding the office of governor during the term immediately following the term he is then serving.~~

After January 1, 2025, a person may not serve more than three consecutive terms as Secretary of State, State Auditor, State Treasurer, Attorney General, or Commissioner of Agriculture. Terms that begin prior to January 1, 2025, are not counted for the purposes of this limitation, but a partial term served after that date shall be considered a term for purposes of this section.

*Resolved further,* That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Constitutional Officer Term Limit

Amendment” and the purpose of the proposed amendment is summarized as follows: “To prevent any person from serving in the office of Secretary of State, Auditor, Treasurer, Commissioner of Agriculture, or Attorney General for more than three consecutive terms for terms beginning after January 1, 2025.”

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

**Eng. Com. Sub. for House Bill 2260**, Relating to procurement of child placing services.

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

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

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 401**, Relating to WV Consumer Credit and Protection Act.

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

**Senate Bill 488**, Relating to distributing hotel occupancy tax to convention and visitor’s bureaus.

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

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

On page two, section thirteen-a, lines seventeen through nineteen, by striking out all of subdivision (3) and inserting in lieu thereof a new subdivision (3), to read as follows:

“(3) The annual operating budget for the convention and visitor’s bureau allocates approximately 40 percent of annual revenues to advertising and marketing, approximately 40 percent to salaries and personnel, and approximately 20 percent to other operating expenses: *Provided*, That a convention and visitor’s bureau that allocates less than 40 percent of annual revenues to salaries and personnel shall be considered to have satisfied the budget allocation requirement;”.

The bill (S. B. 488), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 603**, Authorizing new market entrants to conduct remote sports wagering and remote interactive wagering.

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

**Com. Sub. for Senate Bill 634**, Requiring training of certain officers for persons with autism spectrum disorder.

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

**Com. Sub. for Senate Bill 660**, Providing for cooperation between law-enforcement agencies and military authorities.

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

**Com. Sub. for Senate Bill 668**, Creating Psychology Interjurisdictional Compact.

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

**Senate Bill 713**, Relating generally to inmate good time.

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

**Eng. Com. Sub. for House Bill 2290**, Initiating a State Employment First Policy to facilitate integrated employment of disabled persons.

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

At the request of Senator Roberts, as chair of the Committee on the Workforce, and by unanimous consent, the unreported Workforce committee amendment to the bill was withdrawn.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

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

## **ARTICLE 10Q. EMPLOYMENT FIRST POLICY.**

### **§18-10Q-1. Legislative findings.**

The Legislature finds a need to create a state initiative to promote competitive, integrated, and customized employment opportunities for disabled citizens using publicly funded services regardless of the individual's level of disability. The state Employment First Policy initiative is intended to promote the expectation that individuals with intellectual, developmental, and other disabilities are valued members of the workforce, and can often meet the same employment standards, responsibilities, and expectations as other working-age adults when provided the proper education, reasonable accommodations, and supports.

### **§18-10Q-2. Definitions.**

“Competitive Employment” means work that is performed on a full-time or part-time basis (including self-employment) for which an individual is compensated at a rate that is not less than

the rates specified in §21-5C-2 of this code, and for which the employee is eligible for the level of benefits provided to other employees and which presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities who have similar positions.

“Customized Employment” means those employment supports and services for an individual that are designed in a way to personalize the employment relationship between the person with a disability and employer in a way that meets the needs of both.

“Integrated employment” means employment at a location where the percentage of employees with disabilities relative to the employees without disabilities is consistent with the norms of the general workforce, and where the employees with disabilities interact with other persons, to the same extent as employees in comparable positions without disabilities.

**§18-10Q-3. Creation of Employment First Taskforce; membership; meeting requirements.**

(a) The Commissioner of the West Virginia Bureau for Behavioral Health shall establish a taskforce for the purpose of developing and implementing a state Employment First Policy.

(b) The commissioner shall appoint the membership of the taskforce, which shall include, at a minimum, the following members:

(1) The Commissioner of the West Virginia Bureau for Behavioral Health, or his or her representative, who shall chair the taskforce;

(2) An individual with a developmental disability;

(3) An individual with an intellectual disability;

(4) A family member of a person with a disability;

(5) A representative of the Department of Education;

(6) A representative of Workforce West Virginia;

(7) A representative of the Division of Rehabilitation Services;

(8) A representative of the Bureau for Medical Services (State Medicaid Agency);

(9) A representative of the West Virginia Developmental Disabilities Council;

(10) A representative of a provider of integrated and competitive employment services who does not also provide sheltered or otherwise segregated services for individuals with disabilities;

(11) A representative of West Virginia Center of Excellence in Disabilities;

(12) A representative of Disability Rights of West Virginia (the Governor-designated state protection and advocacy agency);

(13) A representative of the West Virginia Statewide Independent Living Council;

(14) A representative of the West Virginia Community and Technical College Systems;

(15) A representative of the West Virginia Behavioral Healthcare Providers Association;

(16) A representative of the West Virginia Association of Rehabilitation Facilities; and

(17) The State of West Virginia Americans with Disabilities Act Coordinator.

(c) The taskforce shall hold meetings at the call of the chairperson or upon written request of a majority of the members. The taskforce shall meet at least four times a year.

(d) The chairman of the taskforce shall appointment a member to act as secretary for the purposes of the taking of minutes. The minutes shall be approved by the taskforce at each meeting. The minutes and all other documentation shall be maintained by the chair.

**§18-10Q-4. Powers and duties of the taskforce; state Employment First Policy; required plan; reporting requirements.**

(a) The state Employment First Taskforce shall develop and implement a plan that includes the following:

(1) Describes time frames and proposals for aligning state policies, including eligibility and funding priorities, allocations for responsibility, and authority for ensuring implementation;

(2) Details cost projections for additional state funding needed over a five-year period to:

(A) Provide rate increases and incentives to providers that implement Employment First services; and

(B) Train or retrain the workforce;

(3) Describes strategies, timelines, and plans to increase investment in integrated employment services and may carefully consider plans to reduce sheltered work settings;

(4) Incorporates Employment First practices and methods in policy improvement plans providing customized, person-centered, and individually tailored employment supports to people with intellectual, developmental, and other disabilities, including people with complex support needs;

(5) Complies with federal policy and practice mandates regarding employment services design, settings, and coordination among stakeholders, including:

(A) The Centers for Medicare and Medicaid Services Home and Community-Based Services;

(B) Workforce Innovation and Opportunity Act; and

(C) The United States Department of Justice rulings that found that segregated work settings violate the “most integrated setting” rule of the Americans with Disabilities Act relative to the findings of the Supreme Court of the United States in the Olmstead court case;

(6) Describes minimal workforce competency-based training standards applicable for job coaches, case managers, and other relevant personnel;

(7) Establishes interagency agreements, as appropriate, to improve coordination of services, and collect and share data to inform long-term systems planning;

(8) Proposes initiatives to address the culture of low expectations, to which parents of young children with intellectual, developmental, and other disabilities are exposed;

(9) Provides the Governor and Legislature the State Employment First Policy within 12 months of the enactment of this bill;

(10) Ensures:

(A) That individuals, particularly secondary and post-secondary students with disabilities, understand the importance of, and are given the opportunity to explore, options for further training as a pathway to integrated employment;

(B) The availability and accessibility of individualized training and support in an individual’s preferred employment options;

(C) The availability and accessibility of resources necessary to enable an individual to understand possible effects of earned income and accumulation of assets on the individual’s eligibility

for public benefits and opportunities to properly manage and save income and assets without jeopardizing such benefits;

(D) That competitive integrated employment, while being the first and preferred outcome, is not required of an individual with a disability to secure and maintain necessary public benefits, health care, training, and support for individuals with disabilities and this statute may not be construed to limit or disallow any disability benefits to which a person with a disability who is unable to be employed as contemplated by this statute would otherwise be entitled; and

(E) That the staff of public schools, vocational service programs, and community providers are trained and supported to assist in achieving the goal of competitive integrated employment for all individuals with disabilities; and

(11) Promotes partnerships with employers to overcome barriers to meet workforce needs, including the creative use of technology and innovation

(b) The taskforce shall provide a written report annually to the Governor and the Joint Committee on Government and Finance on the findings and results of the efforts of the taskforce to accomplish the goals of the plan. These reports shall present data which reflects the number of people with disabilities who attained employment as a result of the implementation of the plan, as well as any barriers to implementation and strategies developed to address them.

(c) The plan as required by this section shall be updated biennially or more frequently as needed.

(d) The Bureau for Behavioral Health, Division of Rehabilitation Services, the Department of Education, Workforce West Virginia, and the Bureau for Medical Services shall, as recommended by the Employment First Taskforce as established in §18-10Q-3 of this code, adopt and implement a joint State Employment First Policy, which recognizes that earning a wage through competitive employment in the general workforce is the

first and preferred outcome of all publicly funded services provided to working-age individuals with disabilities.

**§18-10Q-5. Sunset date.**

The taskforce established in §18-10Q-3 of this code shall terminate and cease to exist on December 31, 2025, unless continued by act of the Legislature.

The bill (Eng. Com. Sub. for H. B. 2290), as amended, was then ordered to third reading.

**Eng. House Bill 2897**, Expiring funds to the balance of the Department of Commerce.

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

**Eng. House Bill 2899**, Making a supplementary appropriation to the Department of Commerce.

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

**Eng. House Bill 2920**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund.

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

The Senate proceeded to the tenth order of business.

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

**Senate Bill 307**, Relating generally to in-state tuition rates for certain persons.

**Com. Sub. for Senate Bill 360**, Allowing poll workers to work full and half days.

**Senate Bill 424**, Creating fixed income credit for low-income senior citizens.

**Com. Sub. for Senate Bill 508**, Relating to public records management and preservation.

**Com. Sub. for Senate Bill 543**, Establishing Chuck Yeager Mountain State Medal of Excellence.

**Com. Sub. for Senate Bill 635**, Requiring State Fire Commission propose rules for sprinkler protection in basements of certain buildings.

**Com. Sub. for Senate Bill 641**, Allowing counties to use severance tax proceeds for litter cleanup programs.

**Com. Sub. for Senate Bill 655**, Eliminating sunset and legislative audit provisions for certain PSC rules.

**Com. Sub. for Com. Sub. for Senate Bill 657**, Relating to free expression on state institution of higher education campuses.

**Com. Sub. for Senate Bill 671**, Appointing Director of Office of Emergency Medical Services.

**Senate Bill 714**, Relating to physician assistant practice act.

**Senate Bill 715**, Creating Recovery and Hope Act.

**Eng. Com. Sub. for House Bill 2026**, Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce.

**Eng. Com. Sub. for House Bill 2267**, Establishing an optional bus operator in residence program for school districts.

**Eng. Com. Sub. for House Bill 2499**, Tax reduction for arms and ammo manufacturing.

And,

**Eng. House Bill 2852**, Relating to distribution of the allowance for increased enrollment.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Unger and Woelfel.

Thereafter, at the request of Senator Lindsay, and by unanimous consent, the remarks by Senators Unger and Woelfel were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

At the request of Senator Takubo, unanimous consent being granted, a leave of absence for the day was granted Senator Maroney.

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was removed as a co-sponsor of the following bill on March 26, 2021:

**Senate Bill 671**: Senator Stollings.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolutions on March 26, 2021:

**Senate Bill 307**: Senators Romano and Plymale;

**Senate Bill 424**: Senator Unger;

**Senate Bill 543**: Senators Woodrum and Jeffries;

**Senate Bill 641**: Senator Woodrum;

**Com. Sub. for Senate Bill 657:** Senator Maynard;

**Senate Bill 671:** Senator Roberts;

**Senate Bill 674:** Senator Lindsay;

**Senate Joint Resolution 6:** Senator Unger;

And,

**Senate Concurrent Resolution 55:** Senator Sypolt.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 1:44 p.m., the Senate adjourned until Monday, March 29, 2021, at 11 a.m.

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## MONDAY, MARCH 29, 2021

The Senate met at 11:04 a.m.

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

Prayer was offered by Tanner Keen, Senate Intern for the Committee on Transportation and Infrastructure and the Committee on Banking and Insurance, Wheeling, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Patricia Puertas Rucker, a senator from the sixteenth district.

Pending the reading of the Journal of Saturday, March 27, 2021,

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

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

The Senate then proceeded to the third order of business.

### **Executive Communications**

The Clerk then presented the following communications from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

March 27, 2021

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for Senate Bill No. Two Hundred Ninety-Five (295), which was presented to me on March 22, 2012.

Senate Bill No. Four Hundred Four (404), which was presented to me on March 22, 2012.

You will note that I have approved these bills on March 27, 2021.

Sincerely,

A handwritten signature in blue ink that reads "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk



*Jim Justice*  
*Governor of West Virginia*

March 27, 2021

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for House Bill No. Two Thousand Six (2006), which was presented to me on March 22, 2021.

Committee Substitute for House Bill No. Two Thousand Eight (2008), which was presented to me on March 22, 2021.

Committee Substitute for House Bill No. Two Thousand Thirteen (2013), which was presented to me on March 22, 2012.

You will note that I have approved these bills on March 27, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Lee Cassis

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of March, 2021, 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 S. B. 517)**, Relating to sunset provisions of legislative rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 302**, Prohibiting gender-based price discrimination.

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

**Com. Sub. for Senate Bill 302** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §47-11A-15, relating to unfair trade practices; prohibiting pricing goods and services on the basis of gender; authorizing the Attorney General to bring civil action on behalf of residents of the state against offenders; and providing definitions.

**Senate Bill 677**, Relating generally to miners' safety, health, and training standards.

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

**Com. Sub. for Senate Bill 677** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §22A-1-2 and §22A-1-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-2-33, §22A-2-40, §22A-2-46, and §22A-2-70 of said code; and to amend and reenact §22A-9-1 of said code, all relating to miners' safety, health, and training standards; updating language regarding capacitors used for power correction, electrical work performed on low, medium, or high voltage circuits or equipment, and the use of gas-detecting devices; making technical corrections; authorizing the director to terminate tenured mine inspectors; providing for a hearing process related to a mine inspector's termination; and clarifying the hearing process related to a mine inspector's suspension.

And,

**Senate Bill 702**, Relating to involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes.

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

**Com. Sub. for Senate Bill 702** (originating in the Committee on the Judiciary)—A Bill to repeal §27-6A-12 of the Code of West Virginia, 1931, as amended; to amend and reenact §27-6A-1, §27-6A-2, §27-6A-3, §27-6A-4, §27-6A-5, §27-6A-6, §27-6A-8, and §27-6A-10 of said code; and to amend said code by adding thereto a new section, designated §27-6A-13, all relating generally to criminal competency and criminal responsibility of persons charged with, or found not guilty of, a crime by reason of mental illness; defining terms; allowing initial forensic evaluation of a defendant at a state mental health facility or state hospital under

certain circumstances; adding criteria for evaluation or report by a qualified forensic evaluator; use of outpatient competency restoration services or inpatient management to attain competency; providing for records to be made available to chief medical officer; modifying the time for the completion of proceedings; updating outdated language in the code; creating criteria for competency restoration treatment; establishing maximum time periods for competency restoration treatment of persons charged with crimes involving nonviolent misdemeanors, nonviolent felonies, and violent misdemeanors and violent felonies; providing procedure for a court to review commitment status of persons committed to an inpatient mental health facility or state hospital prior to effective date of current amendments; providing for evaluation and disposition of a person found not guilty by reason of mental illness; providing for conditional release; providing procedures relating to an acquittee who violates terms of conditional release; repealing section requiring study and reporting; requiring Department of Health and Human Resources to pay for competency restoration in certain circumstances; establishing the Dangerousness Assessment Review Board; specifying membership and duties of board; establishing internal effective dates; and authorizing the West Virginia Department of Health and Human Resources to propose legislative rules and emergency rules.

With the recommendation that the three committee substitutes do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Com. Sub. for S. B. 302, 677, and 702) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Bill 335** (originating in the Committee on Education), Making PROMISE scholarships available for students at accredited community and technical college.

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

**Com. Sub. for Com. Sub. for Senate Bill 335** (originating in the Committee on Finance)—A Bill to amend and reenact §18C-9-4 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Invests Grant Program; modifying the eligible costs for which the grants may be used; providing that program fees must be approved by Council for Community and Technical College Education; and providing that mandatory drug tests may be given at the beginning of the academic year or initial academic period.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 335) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Bill 464** (originating in the Committee on Economic Development), Developing and implementing program to regulate source-separated organic material waste.

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

**Com. Sub. for Com. Sub. for Senate Bill 464** (originating in the Committee on Finance)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-15-24, relating to composting; clarifying that the composting of all organic materials, including food waste, is permissible; and requiring compost products sold to comply with the West Virginia Fertilizer Law.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 464) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on Rules has had under consideration

**Eng. Senate Bill 486**, Relating to powers and duties of Chief Technology Officer.

Now on third reading, having been referred to the Committee on Rules on March 24, 2021;

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

Respectfully submitted,

Craig Blair,  
*Chair ex officio.*

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

Your Committee on the Judiciary has had under consideration

**Com. Sub. for Senate Bill 542** (originating in the Committee on Energy, Industry, and Mining), Relating to Public Energy Authority Act of WV.

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

**Com. Sub. for Com. Sub. for Senate Bill 542** (originating in the Committee on the Judiciary)—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-1-1c; and to amend said code by adding thereto two new sections, designated §24-2-1q and §24-2-21, all relating to the Public Service Commission; making legislative findings; requiring that all public electric utilities maintain a contract for a 30-day aggregate fuel supply for the remainder of the life of existing coal-fired plants; and requiring that public electric utilities provide advance notice of retirement, shutdown, or sale of electricity-generating units.

With the recommendation that the committee substitute for committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for Com. Sub. for S. B. 542) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Bill 550**, Providing counties with authority to impose county sales and use tax of up to one percent under certain circumstances.

**Com. Sub. for Senate Bill 613**, Adding classification and base salaries of certain civilian employees of State Police Forensic Laboratory.

And,

**Com. Sub. for Senate Bill 663**, Providing fee for processing of criminal bonds.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Com. Sub. for S. B. 550, 613, and 663) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 661**, Permitting retailers to assume sales or use tax assessed on tangible personal property.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (S. B. 661) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 718** (originating in the Committee on Finance)—A Bill to amend and reenact §11-13EE-2, §11-13EE-3, §11-13EE-5, and §11-13EE-16 of the Code of West Virginia, 1931, as amended, all relating generally to the Coal Severance Tax Rebate; 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; and providing that changes clarifying application of rebate are to be applied retroactive to capital investments placed into service after the original effective date of this article.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Takubo requested unanimous consent that the bill (S. B. 718) contained in the preceding report from the Committee on Finance be taken up for immediate consideration.

Which consent was not granted, Senator Unger objecting.

Thereafter, on motion of Senator Takubo, the bill (S. B. 718) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2014**, Relating to role of the Legislature in appropriating federal funds.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

The Senate proceeded to the sixth order of business.

Senator Takubo offered the following resolution:

**Senate Resolution 31**—Designating the month of March as National Social Work Month.

Whereas, The theme of Social Work Month 2021 is Social Workers Are Essential, which describes the heroic contributions of the social work profession to our state and nation; and

Whereas, The social work profession is among the fastest growing professions in the United States, with nearly 800,000 people expected to be employed as social workers by 2028; and

Whereas, Wherever they work, whether in mental health, child welfare, health care, private practice, schools, public service, businesses, religious or nonprofit organizations, or communities, social workers empower people to live to their fullest potential by improving human well-being and helping people achieve self-sufficiency, especially the most vulnerable among us; and

Whereas, Social workers are one of the largest groups of mental health care providers in the nation, applying evidence-based techniques to help people overcome substance use disorders and mental conditions such as depression and anxiety; and

Whereas, Social workers are always present in times of crisis, such as the current pandemic, to help people overcome deeply personal issues such as illness and grief, and helping communities recover from disasters such as fires and floods; and

Whereas, Social workers help society live up to its highest ideals by advocating for the rights for all people regardless of race, class, gender, identity, expression, culture, or religion; and

Whereas, Social workers stand ready to assist West Virginia and the nation to overcome present and future challenges, such as poverty, mental illness, substance abuse, racial injustice, and social and health inequities; therefore, be it

*Resolved by the Senate:*

That the Senate designates the month of March as National Social Work Month; and, be it

*Further Resolved*, That the Senate hereby recognizes West Virginia social workers for their dedication and commitment to promoting the well-being of all West Virginians; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia Chapter of the National Association of Social Workers and the Secretary of the West Virginia Department of Health and Human Resources.

Which, under the rules, lies over one day.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 401**, Relating to WV Consumer Credit and Protection Act.

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

Senators Trump and Nelson, respectively, requested rulings from the Chair as to whether they should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senators Trump and Nelson would be as members of a class of persons and that they would be required to vote.

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 401) passed.

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

**Eng. Com. Sub. for Senate Bill 401**—A Bill to amend and reenact §46A-6-105 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-8-101 of said code, all relating to the Consumer Credit and Protection Act; excluding time, savings, and demand accounts offered by a bank from general consumer protection claims; and providing for an effective date.

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

**Eng. Senate Bill 488**, Relating to distributing hotel occupancy tax to convention and visitor's bureaus.

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

Senator Woodrum requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate as he serves as member of the Board of Directors of the Convention and Visitors Bureau.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 488) passed with its title.

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

**Eng. Senate Bill 588**, Requiring county boards of education and county superintendents to comply with instructions of State Board of Education.

Having been read a third time on Saturday, March 27, 2021, and now coming up in regular order, was reported by the Clerk.

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

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

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

(b) If the Board of School Finance finds that the action of a county board or county superintendent does not comply with state law or state board policy, and that the noncompliance could adversely impact the delivery of a thorough and equitable education to all students in the county, the Board of School Finance may require the following action during the periods of noncompliance:

(1) Approval of meeting agendas by the Board of School Finance;

(2) Attendance by the Board of School Finance or designee at county board meetings; and

(3) Approval by the Board of School Finance of county level expenditures.

Following discussion,

The question being on the adoption of Senator Rucker's amendment to the bill, the same was put and prevailed.

The bill, as just amended, was again ordered to engrossment.

Engrossed Senate Bill 588 was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Senate Bill 588 pass?"

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—21.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Stover, Unger, and Woelfel—12.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 588) passed.

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

**Eng. Senate Bill 588**—A Bill to amend and reenact §18-9B-17, §18-9B-18, and §18-9B-19 of the Code of West Virginia, 1931, as amended, all relating to requiring county boards of education and county superintendents to comply with the instructions of the State Board of Education; expanding remedies that may be used to

enforce certain orders of the State Board of School Finance when a county board of education fails or refuses to comply; expanding circumstances under which the State Board of School Finance can withhold payment of state aid from a county board; allowing, under certain circumstances of noncompliance with state law or State Board of Education policy, the State Board of School Finance to require certain actions during the periods of noncompliance; and requiring the State Board of School Finance to report certain actions of enforcement against a county board to the State Board of Education at its next meeting.

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

**Eng. Com. Sub. for Senate Bill 603,** Authorizing new market entrants to conduct remote sports wagering and remote interactive wagering.

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

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules.

**Eng. Com. Sub. for Senate Bill 634,** Requiring training of certain officers for persons with autism spectrum disorder.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 634 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover,

Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 634) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 660**, Providing for cooperation between law-enforcement agencies and military authorities.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Karnes—1.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 660) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 668**, Creating Psychology Interjurisdictional Compact.

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

Pending discussion,

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

**Eng. Senate Bill 713**, Relating generally to inmate good time.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 713) passed with its title.

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

**Eng. Com. Sub. for House Bill 2260**, Relating to procurement of child placing services.

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

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

**Eng. Com. Sub. for House Bill 2290**, Initiating a State Employment First Policy to facilitate integrated employment of disabled persons.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2290) passed.

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

**Eng. Com. Sub. for House Bill 2290**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-10Q-1, §18-10Q-2, §18-10Q-3, §18-10Q-4, and §18-10Q-5; all relating to initiating a State Employment First Policy to facilitate integrated employment of disabled persons; providing legislative findings; establishing a taskforce to develop a State Employment First Policy; providing for implementation of the State Employment First Policy; providing definitions for “competitive employment”, “customized

employment”, and “integrated employment”; and incorporating a sunset provision.

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

**Eng. House Bill 2897**, Expiring funds to the balance of the Department of Commerce.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2897) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2897) takes effect from passage.

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

**Eng. House Bill 2899**, Making a supplementary appropriation to the Department of Commerce.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2899) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2899) takes effect from passage.

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

**Eng. House Bill 2920**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2920) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2920) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

**Senate Bill 307**, Relating generally to in-state tuition rates for certain persons.

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

**Com. Sub. for Senate Bill 360**, Allowing poll workers to work full and half days.

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

**Senate Bill 424**, Creating fixed income credit for low-income senior citizens.

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

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

**Com. Sub. for Com. Sub. for Senate Bill 470**, Limiting release of certain personal information maintained by state agencies.

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

**Com. Sub. for Senate Bill 492**, Establishing program for bonding to reclaim abandoned wind and solar generation facilities.

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

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

On page eight, section five, line one, after the word “the” by striking out the words “Office of the West Virginia Treasurer” and inserting in lieu thereof the words “State Treasury”.

The bill (Com. Sub. for S. B. 492), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 508**, Relating to public records management and preservation.

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

**Com. Sub. for Senate Bill 530**, Establishing causes for revocation, cancellation, or suspension of business registration certificate.

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

**Com. Sub. for Senate Bill 543**, Establishing Chuck Yeager Mountain State Medal of Excellence.

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

**Com. Sub. for Senate Bill 635**, Requiring State Fire Commission propose rules for sprinkler protection in basements of certain buildings.

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

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

**Com. Sub. for Senate Bill 641**, Allowing counties to use severance tax proceeds for litter cleanup programs.

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

**Com. Sub. for Senate Bill 655**, Eliminating sunset and legislative audit provisions for certain PSC rules.

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

**Com. Sub. for Com. Sub. for Senate Bill 657**, Relating to free expression on state institution of higher education campuses.

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

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

On page four, section seven, by striking out all of section seven and inserting in lieu thereof a new section seven, to read as follows:

**§18B-20- 7. Accountability to the public.**

(a) Each state institution of higher education shall publicly post on its website any policies it has enacted regarding protected expressive activity under the First Amendment to the United States Constitution.

(b) Each campus shall report to the Higher Education Policy Commission or the Council for Community and Technical College

Education, as applicable, a description of any barriers to, or incidents of disruption of, free expression occurring on campus, including, but not limited to, attempts to block or prohibit speakers and investigations into students or student organizations for their speech. The description shall include the nature of each barrier or incident, as well as what disciplinary action, if any, was taken against members of the campus community determined to be responsible for those specific barriers or incidents involving students and shall be reported without revealing those students' personally identifiable information. Annually, by August 1, the commission and council shall report to the Legislative Oversight Commission on Education Accountability any barriers or incidents reported to them pursuant to this subsection.

The bill (Com. Sub. for Com. Sub. for S. B. 657), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 671**, Appointing Director of Office of Emergency Medical Services.

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

**Senate Bill 674**, Clarifying that unpaid restitution does not preclude person from obtaining driver's license.

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

**Com. Sub. for Senate Bill 684**, Adding Curator of Division of Arts, Culture, and History as ex officio voting member to Library Commission.

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

**Senate Bill 714**, Relating to physician assistant practice act.

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

**Senate Bill 715, Creating Recovery and Hope Act.**

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

**Eng. Com. Sub. for House Bill 2026,** Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce.

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

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

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

**ARTICLE 21. PERSONAL INCOME TAX.**

**§11-21-31. Mobile employee exclusion from state source income.**

(a) As used in this section:

(1) “Professional athlete” means an athlete who performs services in a professional athletic event for compensation.

(2) “Professional entertainer” means a person who performs services in the professional performing arts for compensation on a per-event basis.

(3) “Public figure” means a person of prominence who performs services at discrete events, such as speeches, public appearances, or similar events, for compensation on a per-event basis.

(b) Compensation subject to withholding pursuant to §11-21-1 et seq. of this code, without regard to any withholding tax exception set forth in §11-21-71a of this code, paid to a nonresident

individual is exempt from the tax levied under §11-21-1 et seq. of this code if all of the following conditions apply:

(1) The compensation is paid for employment duties performed by the individual in this state on thirty or fewer days in the calendar year;

(2) The individual performed employment duties in more than one state during the calendar year;

(3) The compensation is not paid for employment duties performed by the individual in the individual's capacity as a professional athlete, professional entertainer, or public figure; and

(4) The nonresident individual's state of residence:

(A) Provides a substantially similar exclusion; or

(B) Does not impose an individual income tax; or

(C) The individual's income is exempt from taxation by this state under the United States Constitution or federal statute.

(c) Except as otherwise provided in this article, an employer is not required to withhold taxes under §11-21-1 et seq. from compensation that is paid to an employee described in subsection (b) of this section: *Provided*, That if, during the calendar year, the number of days an employee spends performing employment duties in this state exceeds the thirty-day threshold described in subsection (b) of this section, an employer shall withhold and remit tax to this state for every day in that calendar year, including the first thirty days, on which the employee performs employment duties in this state.

(d) Special rule for determining liability – For purposes of determining compensation paid and subject to withholding under this section:

(1) If an employer maintains a time and attendance system that tracks where employees perform services on a daily basis, then data

from the time and attendance system shall be used. For purposes of this section, time and attendance system means a system:

(A) In which the employee is required, on a contemporaneous basis, to record the work location for every day worked outside of the State where the employment duties are primarily performed; and

(B) That is designed to allow the employer to allocate the employee's wages for income tax purposes among all states in which the employee performs services.

(2) In all other cases, the employer shall obtain a written statement from the employee of the number of days reasonably expected to be spent performing services in this State during the taxable year. Absent the employer's actual knowledge of fraud or gross negligence by the employee in making the determination or collusion between the employer and the employee to evade tax, the certification so made by the employee and maintained in the employer's books and records shall be prima facie evidence and constitute a rebuttable presumption of the number of days spent performing services in this State.

(e) For purposes of this section, an employee shall be considered present and performing employment duties within this state for a day if the employee performs more of the employee's employment duties in this state than in any other state during that day. Any portion of the day during which the employee is in transit shall not be considered in determining the location of an employee's performance of employment duties.

(f) The provisions of this section shall be effective on January 1, 2022.

## **ARTICLE 24. CORPORATION NET INCOME TAX.**

### **§11-24-7. Allocation and apportionment.**

(a) General. — Any taxpayer having income from business activity which is taxable both in this state and in another state shall

allocate and apportion its net income as provided in this section. For purposes of this section, the term “net income” means the taxpayer’s federal taxable income adjusted as provided in section six of this article.

(b) “Taxable in another state” defined. — For purposes of allocation and apportionment of net income under this section, a taxpayer is taxable in another state if:

(1) In that state the taxpayer is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporation stock tax; or

(2) That state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether, in fact, that state does or does not subject the taxpayer to the tax.

(c) Business activities entirely within West Virginia. — If the business activities of a taxpayer take place entirely within this state, the entire net income of the taxpayer is subject to the tax imposed by this article. The business activities of a taxpayer are considered to have taken place in their entirety within this state if the taxpayer is not “taxable in another state”: *Provided*, That for tax years beginning before January 1, 2009, the business activities of a financial organization having its commercial domicile in this state are considered to take place entirely in this state, notwithstanding that the organization may be “taxable in another state”: *Provided, however*, That for tax years beginning on or after January 1, 2009, the income from the business activities of a financial organization that are taxable in another state shall be apportioned according to the applicable provisions of this article.

(d) Business activities partially within and partially without West Virginia; allocation of nonbusiness income. — If the business activities of a taxpayer take place partially within and partially without this state and the taxpayer is also taxable in another state, rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income of the taxpayer,

shall be allocated as provided in subdivisions (1) through (4), inclusive, of this subsection: *Provided*, That to the extent the items constitute business income of the taxpayer, they may not be so allocated but they shall be apportioned to this state according to the provisions of subsection (e) of this section and to the applicable provisions of section seven-b of this article.

(1) Net rents and royalties. —

(A) Net rents and royalties from real property located in this state are allocable to this state.

(B) Net rents and royalties from tangible personal property are allocable to this state:

(i) If and to the extent that the property is utilized in this state;  
or

(ii) In their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(C) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(2) Capital gains. —

(A) Capital gains and losses from sales of real property located in this state are allocable to this state.

(B) Capital gains and losses from sales of tangible personal property are allocable to this state if:

(i) The property had a situs in this state at the time of the sale;  
or

(ii) The taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(C) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

(D) Gains pursuant to Section 631 (a) and (b) of the Internal Revenue Code of 1986, as amended, from sales of natural resources severed in this state shall be allocated to this state if they are nonbusiness income.

(3) Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state. —

(4) Patent and copyright royalties. —

(A) Patent and copyright royalties are allocable to this state:

(i) If and to the extent that the patent or copyright is utilized by the payer in this state; or

(ii) If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(B) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(C) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(5) Corporate partner's distributive share. —

(A) Persons carrying on business as partners in a partnership, as defined in Section 761 of the Internal Revenue Code of 1986, as amended, are liable for income tax only in their separate or individual capacities.

(B) A corporate partner's distributive share of income, gain, loss, deduction or credit of a partnership shall be modified as provided in section six of this article for each partnership. For taxable years beginning on or after December 31, 1998, the distributive share shall then be allocated and apportioned as provided in this section using the partnership's property, payroll and sales factors. The sum of that portion of the distributive share allocated and apportioned to this state shall then be treated as distributive share allocated to this state; and that portion of distributive share allocated or apportioned outside this state shall be treated as distributive share allocated outside this state, unless the taxpayer requests or the Tax Commissioner, under subsection (h) of this section requires that the distributive share be treated differently.

(C) This subdivision shall be null and void and of no force or effect for tax years beginning on or after January 1, 2009.

(e) Business activities partially within and partially without this state; apportionment of business income. — All net income, after deducting those items specifically allocated under subsection (d) of this section, shall be apportioned to this state by multiplying the net income by a fraction, the numerator of which is the property factor plus the payroll factor plus two times the sales factor and the denominator of which is four, reduced by the number of factors, if

any, having no denominator: *Provided*, That for tax years beginning on or after January 1, 2022, all net income, after deducting those items specifically allocated under subsection (d) of this section, shall be apportioned to this state by multiplying the net income by the sales factor described in this subsection.

(1) Property factor. — The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used by it in this state during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used by the taxpayer during the taxable year, which is reported on Schedule L Federal Form 1120, plus the average value of all real and tangible personal property leased and used by the taxpayer during the taxable year.

(2) Value of property. — Property owned by the taxpayer shall be valued at its original cost, adjusted by subsequent capital additions or improvements thereto and partial disposition thereof, by reason of sale, exchange, abandonment, etc.: *Provided*, That where records of original cost are unavailable or cannot be obtained without unreasonable expense, property shall be valued at original cost as determined under rules of the Tax Commissioner. Property rented by the taxpayer from others shall be valued at eight times the annual rental rate. The term "net annual rental rate" is the annual rental paid, directly or indirectly, by the taxpayer, or for its benefit, in money or other consideration for the use of property and includes:

(A) Any amount payable for the use of real or tangible personal property, or any part of the property, whether designated as a fixed sum of money or as a percentage of sales, profits or otherwise.

(B) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges unsegregated, the amount of rent shall be determined

by consideration of the relative values of the rent and the other items.

(3) Movable property. — The value of movable tangible personal property used both within and without this state shall be included in the numerator to the extent of its utilization in this state. The extent of the utilization shall be determined by multiplying the original cost of the property by a fraction, the numerator of which is the number of days of physical location of the property in this state during the taxable period and the denominator of which is the number of days of physical location of the property everywhere during the taxable year. The number of days of physical location of the property may be determined on a statistical basis or by other reasonable method acceptable to the Tax Commissioner.

(4) Leasehold improvements. — Leasehold improvements shall, for purposes of the property factor, be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Leasehold improvements shall be included in the property factor at their original cost.

(5) Average value of property. — The average value of property shall be determined by averaging the values at the beginning and ending of the taxable year: *Provided*, That the Tax Commissioner may require the averaging of monthly values during the taxable year if substantial fluctuations in the values of the property exist during the taxable year, or where property is acquired after the beginning of the taxable year, or is disposed of, or whose rental contract ceases, before the end of the taxable year.

(6) Payroll factor. — The payroll factor is a fraction, the numerator of which is the total compensation paid in this state during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid by the taxpayer during the taxable year, as shown on the taxpayer's federal income tax return as filed with the Internal Revenue Service, as reflected in the schedule of wages and salaries and that

portion of cost of goods sold which reflects compensation or as shown on a pro forma return.

(7) Compensation. — The term “compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services. Payments made to an independent contractor or to any other person not properly classifiable as an employee shall be excluded. Only amounts paid directly to employees are included in the payroll factor. Amounts considered as paid directly to employees include the value of board, rent, housing, lodging and other benefits or services furnished to employees by the taxpayer in return for personal services, provided the amounts constitute income to the recipient for federal income tax purposes.

(8) Employee. — The term “employee” means:

(A) Any officer of a corporation; or

(B) Any individual who, under the usual common-law rule applicable in determining the employer-employee relationship, has the status of an employee.

(9) Compensation. — Compensation is paid or accrued in this state if:

(A) The employee’s service is performed entirely within this state; or

(B) The employee’s service is performed both within and without this state, but the service performed without the state is incidental to the individual’s service within this state. The word “incidental” means any service which is temporary or transitory in nature or which is rendered in connection with an isolated transaction; or

(C) Some of the service is performed in this state and:

(i) The employee's base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(ii) The base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the employee's residence is in this state.

The term "base of operations" is the place of more or less permanent nature from which the employee starts his or her work and to which he or she customarily returns in order to receive instructions from the taxpayer or communications from his or her customers or other persons or to replenish stock or other materials, repair equipment or perform any other functions necessary to the exercise of his or her trade or profession at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

(10) Sales factor. — The sales factor is a fraction, the numerator of which is the gross receipts of the taxpayer derived from transactions and activity in the regular course of its trade or business in this state during the taxable year (business income), less returns and allowances. The denominator of the fraction is the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business during the taxable year (business income) and reflected in its gross income reported and as appearing on the taxpayer's Federal Form 1120 and consisting of those certain pertinent portions of the (gross income) elements set forth: *Provided*, That if either the numerator or the denominator includes interest or dividends from obligations of the United States government which are exempt from taxation by this state, the amount of such interest and dividends, if any, shall be subtracted from the numerator or denominator in which it is included.

(11) Allocation of sales of tangible personal property. —

(A) Sales of tangible personal property are in this state if:

(i) The property is received in this state by the purchaser, other than the United States government, regardless of the f.o.b. point or other conditions of the sale. In the case of delivery by common carrier or other means of transportation, the place at which the property is ultimately received after all transportation has been completed is the place at which the property is received by the purchaser. Direct delivery in this state, other than for purposes of transportation, to a person or firm designated by the purchaser, is delivery to the purchaser in this state and direct delivery outside this state to a person or firm designated by the purchaser is not delivery to the purchaser in this state, regardless of where title passes or other conditions of sale; or

(ii) The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States government.

(B) All other sales of tangible personal property delivered or shipped to a purchaser within a state in which the taxpayer is not taxed, as defined in subsection (b) of this section, shall be excluded from the denominator of the sales factor.

(C) For sales made on or after January 1, 2022, the provisions of paragraph (B) of this subdivision shall no longer apply.

(12) Allocation of other sales. — Sales, other than sales of tangible personal property, made before January 1, 2022, are in this state if:

(A) The income-producing activity is performed in this state;  
or

(B) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance; or

(C) The sale constitutes business income to the taxpayer, or the taxpayer is a financial organization not having its commercial domicile in this state, and in either case the sale is a receipt described as attributable to this state in §11-24-7b of this code.

(13) Allocation of other sales beginning 2022 – market-based sourcing. – Sales, other than sales of tangible personal property, made on or after January 1, 2022, are in this state if:

(A) In the case of sale of a service, if and to the extent the service is delivered to a location in this state; and

(B) In the case of intangible property:

(i) That is rented, leased, or licensed, if and to the extent the property is used in this state, provided that intangible property utilized in marketing a good or service to a consumer is “used in this state” if that good or service is purchased by a consumer who is in this state; and

(ii) That is sold, if and to the extent the property is used in this state, provided that:

(I) A contract right, government license, or similar intangible property that authorizes the holder to conduct a business activity in a specific geographic area is “used in this state” if the geographic area includes all or part of this state;

(II) Receipts from intangible property sales that are contingent on the productivity, use, or disposition of the intangible property shall be treated as sales receipts from the rental, lease or licensing of such intangible property under subparagraph (i) of this paragraph; and

(III) All other receipts from a sale of intangible property shall be excluded from the numerator and denominator of the sales factor.

~~(13)~~ (14) Financial organizations and other taxpayers with business activities partially within and partially without this state. —

Notwithstanding anything contained in this section to the contrary, in the case of financial organizations and other taxpayers, not having their commercial domicile in this state, the rules of this subsection apply to the apportionment of income from their business activities except as expressly otherwise provided in §11-24-7b of this code.

(f) Income-producing activity. — The term “income-producing activity” applies to each separate item of income and means the transactions and activity directly engaged in by the taxpayer in the regular course of its trade or business for the ultimate purpose of obtaining gain or profit. The activity does not include transactions and activities performed on behalf of the taxpayer, such as those conducted on its behalf by an independent contractor. “Income-producing activity” includes, but is not limited to, the following:

(1) The rendering of personal services by employees with utilization of tangible and intangible property by the taxpayer in performing a service;

(2) The sale, rental, leasing, licensing or other use of real property;

(3) The sale, rental, leasing, licensing or other use of tangible personal property; or

(4) The sale, licensing or other use of intangible personal property.

The mere holding of intangible personal property is not, in itself, an income-producing activity: *Provided*, That the conduct of the business of a financial organization is an income-producing activity.

(g) Cost of performance. — The term “cost of performance” means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the trade or business of the taxpayer.

(h) Other methods of allocation and apportionment. —

(1) General. — If the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the taxpayer may petition for or the Tax Commissioner may require, in respect to all or any part of the taxpayer's business activities, if reasonable:

(A) Separate accounting;

(B) The exclusion of one or more of the factors;

(C) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(D) The employment of any other method to effectuate an equitable allocation or apportionment of the taxpayer's income. The petition shall be filed no later than the due date of the annual return for the taxable year for which the alternative method is requested, determined without regard to any extension of time for filing the return and the petition shall include a statement of the petitioner's objections and of the alternative method of allocation or apportionment as it believes to be proper under the circumstances with detail and proof as the Tax Commissioner requires.

(2) Alternative method for public utilities. — If the taxpayer is a public utility and if the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the taxpayer's business activities in this state, the taxpayer may petition for, or the Tax Commissioner may require, as an alternative to the other methods provided in subdivision (1) of this subsection, the allocation and apportionment of the taxpayer's net income in accordance with any system of accounts prescribed by the Public Service Commission of this state pursuant to the provisions of §24-2-8 of this code: *Provided*, That the allocation and apportionment provisions of the system of accounts fairly represent the extent of the taxpayer's business activities in this state for the purposes of the tax imposed by this article.

(3) Burden of proof. — In any proceeding before the Tax Commissioner or in any court in which employment of one of the methods of allocation or apportionment provided in subdivision (1) or (2) of this subsection is sought, on the grounds that the allocation and apportionment provisions of subsections (d) and (e) of this section do not fairly represent the extent of the taxpayer's business activities in this state, the burden of proof is:

(A) If the Tax Commissioner seeks employment of one of the methods, on the Tax Commissioner; or

(B) If the taxpayer seeks employment of one of the other methods, on the taxpayer.

**§ 11-24-13. Returns; time for filing.**

(a) On or before the fifteenth day of the third month following the close of a taxable year, an income tax return under this article shall be made and filed by or for every corporation subject to the tax imposed by this article: *Provided*, That for tax years beginning after December 31, 2015, an income tax return under this article shall be made and filed by or for every corporation subject to the tax imposed by this article on or before the fifteenth day of the fourth month following the close of a taxable year.

(b) Special rule for tax exempt corporations with unrelated business taxable income. — Notwithstanding the provisions of subsection (a) of this section, when an income tax return is required from a corporation generally exempt from tax under subsection (a), section five of this article, which has unrelated business taxable income, the annual return shall be filed on or before the fifteenth day of the fourth month following the close of the taxable year.

(c) The Tax Commissioner may combine into one form the annual return due under this article and the annual return due under article twenty-three of this chapter. When a combined business franchise tax and corporation net income tax annual return is filed by a taxpayer, the amount of tax remitted shall be applied first against any business franchise tax that may be due for the taxable

year under said article and then against any corporation net income tax that may be due for the taxable year. The Tax Commissioner may also combine the forms for filing declarations of estimated tax and the forms for making installment payments of estimated tax.

(d) Effective date. — The amendments to this section made in the year one thousand nine hundred ninety-three shall apply to tax returns that become due after the first day of that year.

(e) For tax years beginning on or after January 1, 2022 and ending on or before December 31, 2025, a corporation subject to the provisions of section seven of this article shall be required to file, at the same time the tax return under paragraph (a) is due, a full pro-form tax return, including all relevant schedules, with liability calculated as if the provisions of section seven of this article existed on March 1, 2021 were still in effect. This pro-forma return shall be subject to audit under all provisions of law governing actual returns, including all penalties for failure to file and inaccuracy. No later than March 1, 2023 and each March 1 through March 1, 2026, the Tax Commissioner shall provide a report to the Legislature reporting the difference between actual tax liabilities initially reported on the preceding tax year's tax returns and liability shown on the pro-forma returns. The report shall disaggregate the independent effects on liability of the adoption of a sales-only apportionment formula, the elimination of the throw-out provision, and the adoption of market sourcing for receipts from services and intangibles. The report shall further disaggregate this information by size of company, industry, and such other variables as the Tax Commissioner deems potentially useful to members of the Legislature in evaluating the impact on revenues of these provisions.

Following discussion,

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

The bill (Eng. Com. Sub. for H. B. 2026) was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2267**, Establishing an optional bus operator in residence program for school districts.

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

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

**Eng. Com. Sub. for House Bill 2499**, Tax reduction for arms and ammo manufacturing.

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

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

**Eng. House Bill 2852**, Relating to distribution of the allowance for increased enrollment.

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

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

(Senator Smith in the Chair.)

The Senate proceeded to the tenth order of business.

**Com. Sub. for Senate Bill 622**, Increasing compensation for elected county officials.

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

**Com. Sub. for Senate Bill 695**, Providing procedures for decreasing or increasing corporate limits by annexation.

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

**Senate Bill 717**, Supplemental appropriation from General Revenue to WV Community and Technical College Education, Control Account.

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

**Com. Sub. for Com. Sub. for Senate Joint Resolution 1**, Protection of the Right to Bear Arms Amendment.

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

**Com. Sub. for Senate Joint Resolution 7**, Motor Vehicle and Other Personal Property Tax Reduction Amendment.

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

**Com. Sub. for Senate Joint Resolution 9**, Disabled Veterans' Exemption from Ad Valorem Property Taxation Amendment.

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

**Com. Sub. for Senate Joint Resolution 10**, Limiting the Terms of Members of the House of Delegates and Senate Amendment.

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

**Eng. Com. Sub. for House Bill 2495**, Relating to the filing of asbestos and silica claims.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Caputo and Beach.

Thereafter, at the request of Senator Lindsay, and by unanimous consent, the remarks by Senators Caputo and Beach were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

On motion of Senator Takubo, a leave of absence for the day was granted Senator Maroney.

Pending announcement of meetings of standing committees of the Senate, including majority and minority party caucuses,

On motion of Senator Takubo, at 12:36 p.m., the Senate recessed until 4:30 p.m. today.

The Senate reconvened at 5:07 p.m. today.

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

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

### **Executive Communications**

The Clerk then presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

March 29, 2021

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for Senate Bill No. Five (5), which was presented to me on March 23, 2021.

Committee Substitute for Senate Bill No. Forty-Two (42), which was presented to me on March 23, 2021.

Senate Bill No. Five Hundred Twenty-Three (523), which was presented to me on March 23, 2021.

You will note that I have approved these bills on March 29, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk

The Senate again proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 29th day of March, 2021, 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. 9)**, Continuing Licensed Racetrack Modernization Fund.

**(S. B. 10)**, Modifying racetrack licensing due date.

And,

**(S. B. 305)**, Providing exemption from consumers sales and service tax for certain aircraft maintenance.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 231**, Relating generally to medical cannabis.

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

**Com. Sub. for Senate Bill 231** (originating in the Committee on the Judiciary)—A Bill to repeal §16A-4-2 of the Code of West

Virginia, 1931, as amended; to repeal §16A-6-4 of said code; to repeal §16A-13-1 of said code; to amend and reenact §16A-2-1 of said code; to amend and reenact §16A-3-1, §16A-3-2, §16A-3-3, and §16A-3-5 of said code; to amend and reenact §16A-4-3 and §16A-4-5 of said code; to amend said code by adding thereto a new section, designated §16A-4-6; to amend and reenact §16A-5-1 of said code; to amend and reenact §16A-6-2, §16A-6-3, §16A-6-6, §16A-6-12, and §16A-6-13 of said code; to amend said code by adding thereto a new section, designated §16A-6-14; to amend and reenact §16A-7-5 of said code; to amend and reenact §16A-8-2 of said code; to amend and reenact §16A-9-1 of said code; to amend and reenact §16A-12-2, §16A-12-7, and §16A-12-8 of said code; to amend and reenact §16A-13-2, §16A-13-3, §16A-13-4, §16A-13-5, §16A-13-6, and §16A-13-8 of said code; to amend and reenact §16A-14-1, §16A-14-2, and §16A-14-3 of said code; and to amend and reenact §16A-15-2 and §16A-15-4 of said code, all relating to medical cannabis generally; defining terms; increasing medical conditions which constitute a serious medical condition; modifying and expanding allowable forms of medical cannabis; authorizing the Commissioner of the Bureau for Public Health to approve additions to the forms of lawful medical cannabis which may be used and the conditions for which medical cannabis use is authorized pursuant to recommendations of the Medical Cannabis Advisory Board; clarifying the duties of practitioners; declaring practitioners immune from civil and criminal liability if acting in compliance with chapter; requiring employees of medical cannabis organizations and establishing a registration fee; authorizing the commissioner to enter into reciprocity agreements with other jurisdictions for terminally ill cancer patients; authorizing the commissioner to promulgate rules relating to 30-day supplies of medical cannabis; removing the residency requirement for medical cannabis organization owners, operators, shareholders, partners, and members; adding certain convictions which preclude participation as or in a medical cannabis organization; clarifying that the Tax Division of the Department of Revenue is charged with monitoring medical cannabis pricing; modifying and clarifying the distance a medical cannabis dispensary must be from certain educational facilities; modifying and clarifying entities engaged in medical cannabis research subject to nondisclosure provisions;

removing requirement that certain federal agencies must preapprove medical cannabis research projects; authorizing accredited colleges and medical schools to be eligible to engage in approved medical cannabis research; increasing the number of clinical registrants; clarifying that the governing body of an academic clinical research center must approve the institution's participation in a medical cannabis research project; clarifying that only those public officials directly involved in the administrations of the medical cannabis program are prohibited from having a monetary interest in a medical cannabis organization; and adding accredited educational institutions engaged in research to the list of persons, entities, and organizations exempt from licensure, discipline for lawful use, possession, or manufacture of medical cannabis.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 231) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Senate Bill 485**, Relating to use or presentation of firearm during commission of felony.

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

**Com. Sub. for Senate Bill 485** (originating in the Committee on the Judiciary)—A Bill to amend and reenact §61-7-15a of the Code of West Virginia, 1931, as amended, relating to use or presentation of a firearm during the commission of a felony; creating the offense of possessing a firearm on one’s person during the commission of certain qualifying felony offenses; and defining “qualifying felony”.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 485) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Com. Sub. for Senate Bill 642**, Requiring legal advertisements by State Auditor be posted to central website.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 642) contained in the

preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 711**, Relating to school aid formula and minimum student enrollment.

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

**Com. Sub. for Senate Bill 711** (originating in the Committee on Finance)—A Bill to amend and reenact §18-9A-2 of the Code of West Virginia, 1931, as amended, relating to the school aid formula; and changing the minimum enrollment to 1,200 students in each county.

With the recommendation that the committee substitute do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Com. Sub. for S. B. 711) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2003**, Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency.

With an amendment from the Committee on Government Organization pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2003) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 2808**, Remove salt from list and definition of “mineral” for severance tax purposes.

And,

**Eng. House Bill 3010**, To extend the special valuation method for cellular towers to towers owned by persons not subject to regulation by the Board of Public Works.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. H. B. 2808 and 3010) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate again proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was removed as a co-sponsor of the following bill on March 27, 2021:

**Com. Sub. for Senate Bill 668:** Senator Stollings.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolutions on March 27, 2021:

**Senate Bill 108:** Senator Woelfel;

**Com. Sub. for Senate Bill 335:** Senators Stollings and Baldwin;

**Com. Sub. for Senate Bill 464:** Senator Baldwin;

**Com. Sub. for Senate Bill 550:** Senator Stollings;

**Senate Bill 607:** Senator Caputo;

**Com. Sub. for Senate Bill 613:** Senators Baldwin and Stollings;

And,

**Senate Bill 702:** Senator Romano.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Takubo, at 5:13 p.m., the Senate adjourned until tomorrow, Tuesday, March 30, 2021, at 10 a.m.

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## TUESDAY, MARCH 30, 2021

The Senate met at 10:16 a.m.

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

Prayer was offered by Frank Collier, Senate Assistant Doorkeeper, Mill Creek, West Virginia.

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

Pending the reading of the Journal of Monday, March 29, 2021,

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

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

The Senate then proceeded to the third order of business.

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

**Senate Concurrent Resolution 6**, US Navy Seaman 2nd Class Wilbur ‘Webb’ Hahn and John W. Hahn Memorial Bridge.

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

**Senate Concurrent Resolution 8**, Fire Chief Kenneth Junior Russell Memorial Bridge.

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

**Com. Sub. for Senate Concurrent Resolution 14**, Creating WV Women's Suffrage Memorial.

A message from the Clerk of the House of Delegates announced the passage by that body, without amendment, to take effect from passage, and requested the concurrence of the Senate in the changed effective date, as to

**Eng. Senate Bill 67**, Relating to authority of Emergency Medical Services Advisory Council.

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

On further motion of Senator Takubo, the Senate concurred in the changed effective date of the bill, that being to take effect from passage, instead of ninety days from passage.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 67) takes effect from passage.

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

A message from the Clerk of the House of Delegates announced the passage by that body, without amendment, to take effect from passage, and requested the concurrence of the Senate in the changed effective date, as to

**Eng. Senate Bill 390**, Reorganizing Health Care Authority under DHHR and clarifying responsibilities for all-payer claims database.

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

On further motion of Senator Takubo, the Senate concurred in the changed effective date of the bill, that being to take effect from passage, instead of ninety days from passage.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 390) takes effect from passage.

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

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

**Eng. Com. Sub. for House Bill 2024**, Expand use of telemedicine to all medical personnel.

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

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

On page two, section seven-b, line thirty-eight, after the word “patient” by inserting a comma;

On page three, section twenty-eight, line six, after the word “patient” by inserting a comma;

On page four, section twenty-six, by striking out all of lines two and three and inserting in lieu thereof the following:

“Established patient” means a patient who has received professional services, face-to-face, from the physician, qualified health care professional, or another physician or qualified health care professional of the exact same specialty and subspecialty who belongs to the same group practice, within the past three years.

“Health care practitioner” means a person authorized to practice under §30-3-1 et seq., §30-3E-1 et seq., §30-4-1 et seq., §30-5-1 et seq., §30-7-1 et seq., §30-7A-1 et seq., §30-8-1 et seq., §30-10-1 et seq., §30-14-1 et seq., §30-16,1 et seq., §30-20-1 et seq., §30-20A-1 et seq., §30-21-1 et seq., §30-23-1 et seq., §30-26-1 et seq., §30-28-1 et seq., §30-30-1 et seq., §30-31-1 et seq., §30-32-1 et seq., §30-34-1 et seq., §30-35-1 et seq., §30-36-1 et seq., §30-37-1 et seq. and any other person licensed under this chapter that provides health care services.;

On page four, section twenty-six, line sixteen, by striking out the word “already”;

On page four, section twenty-six, line twenty-one, by striking out the words “telehealth technologies are used” and inserting in lieu thereof the words “telehealth services are provided”;

On page five, section twenty-six, lines twenty-four and twenty-five, by striking out all of paragraph (A) and inserting in lieu thereof a new paragraph, designated paragraph (A), to read as follows:

“(A) Licensed in good standing in all states in which he or she is licensed and not currently under investigation or subject to an administrative complaint; and”;

On page five, section twenty-six, lines twenty-nine through thirty-seven, by striking out all of subdivision (4) and inserting in lieu thereof a new subdivision, designated subdivision (4), to read as follows:

(4) The standard of care for the provision of telehealth services. The standard of care shall require that with respect to the established patient, the patient shall visit an in-person health care practitioner within 12 months of using the initial telemedicine service or the telemedicine service shall no longer be available to the patient until an in-person visit is obtained. This requirement may be suspended, in the discretion of the health care practitioner, on a case-by-case basis, and it does not to the following services: acute inpatient care, post-operative follow-up checks, behavioral medicine, addiction medicine, or palliative care.;

On page five, section twenty-six, lines forty-one and forty-two, by striking out the words “existing physician-patient relationship of at least one year” and inserting in lieu thereof the words “established patient”;

On page six, section twenty-six, line fifty-one, by striking out the words “accepting a registration” and inserting in lieu thereof the word “registering”;

On page ten, section thirteen-a, line ninety-five, by striking out the words “existing physician-patient relationship of at least one year” and inserting in lieu thereof the words “established patient”;

On page ten, section thirteen-a, lines one hundred twelve and one hundred thirteen, by striking out the words “existing physician-patient relationship of at least one year” and inserting in lieu thereof the words “established patient”;

On page fifteen, section twelve-d, line ninety-three, by striking out the words “existing physician-patient relationship of at least one year” and inserting in lieu thereof the words “established patient”;

On page sixteen, section thirteen-a, lines one hundred ten and one hundred eleven, by striking out the words “existing physician-patient relationship of at least one year” and inserting in lieu thereof the words “established patient”;

On page nineteen, section one, line forty-five, after the word “patient” by inserting a comma;

And,

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

**Eng. Com. Sub. for House Bill 2024**—A Bill to amend and reenact §5-16-7b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §9-5-28; to amend and reenact §30-1-26 of said code; to amend and reenact §30-3-13a of said code; to amend and reenact §30-14-12d of said code; and to amend and reenact §33-57-1 of said code, all relating to telehealth; defining terms; establishing reimbursement for telehealth services at a negotiated rate for virtual telehealth encounters; establishing reimbursement for a telehealth service on the same basis and at the same rate as if the service is provided in-person for established patients or for care rendered on a consulting basis to a patient located in an acute care facility; establishing a registration; permitting health care practitioners licensed in other

states to practice in West Virginia using telehealth services; providing emergency rule-making authority; setting forth requirements for registration; permitting a fee for registration; establishing that a registrant is subject to this jurisdiction; placing a cap on the fee; providing for when the physician-patient relationship is established; providing for how a physician-patient relationship is established; removing restrictions on prescriptive authority; providing exceptions to prescriptive authority; adding criteria to the standard of care related to telehealth services; providing exceptions; and providing for effective date.

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

Engrossed Committee Substitute for House Bill 2024, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2024) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover,

Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2024) takes effect from passage.

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

A message from the Clerk of the House of Delegates announced the adoption by that body of the committee of conference report, passage as amended by the conference report with its conference amended title, and requested the concurrence of the Senate in the adoption thereof, as to

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

Whereupon, Senator Maroney, from the committee of conference on matters of disagreement between the two houses, as to

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

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. Com. Sub. for House Bill 2263 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:

(l) A covered individual's defined cost sharing for each prescription drug shall be calculated at the point of sale based on a price that is reduced by an amount equal to at least 100% of all rebates received, or to be received, in connection with the dispensing or administration of the prescription drug. Any rebate over and above the defined cost sharing would then be passed on to the health plan to reduce premiums. Nothing precludes an insurer from decreasing a covered individual's defined cost sharing by an amount greater than what is previously stated. The Commissioner may propose a legislative rule or by policy effectuate the provisions of this subsection. Notwithstanding any other effective date to the contrary, the amendments to this article enacted during the 2021 regular legislative session shall apply to all policies, contracts, plans, or agreements subject to this section that are delivered, executed, amended, adjusted, or renewed on or after January 1, 2022.

And by amending the title by inserting a new title to read as follows:

**Eng. Com. Sub. for House Bill 2263—A Bill to amend and reenact §5-16-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-51-2, §33-51-3, §33-51-8, and §33-51-9 of said code; and to amend said code by adding thereto two new sections, designated §33-51-11 and §33-51-12, all relating to the regulation of pharmacy benefit managers; updating the reporting requirements related Public Employees Insurance Agency; expanding scope; defining terms; regulating the reimbursements of pharmacy benefit managers; requiring a adequate network; providing rulemaking authority; providing an effective date; requiring filing of certain methodologies utilized by pharmacy benefit managers; prohibiting certain practices by pharmacy benefits managers; providing consumer choice for pharmacies; setting guidelines for pharmacy benefit plans; requiring rebates to be passed down; requiring reporting; and requiring the commissioner to consider information in reviewing rates.**

Respectfully submitted,

Michael J. Maroney (*Chair*), Ryan W. Weld, Ron Stollings,  
*Conferees on the part of the Senate.*

Jeffrey Pack (*Chair*), Dean Jeffries, Ric Griffith, *Conferees on  
the part of the House of Delegates.*

On motions of Senator Maroney, severally made, the report of the committee of conference was taken up for immediate consideration and adopted.

Engrossed Committee Substitute for House Bill 2263, as amended by the conference report, was then put upon its passage.

On the passage of the bill, as amended, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2263) passed with its conference amended title.

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

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

**Eng. Com. Sub. for House Bill 2747**—A Bill to amend and reenact §15A-9-1 and §62-12-12 of the Code of West Virginia, 1931 as amended, relating to transferring the Parole Board to the

Office of Administrative Hearings; specifying that the Chief Hearing Examiner be a resident of the State for five years prior to appointment; removing limitations of practice for the Chief Hearing Examiner; requiring that the governor appoint the Chief Hearing Examiner; requiring that the Governor set the salary of the Chief Hearing Examiner; increasing the number of members of the Parole Board to ten; making the Chief Hearing Examiner a member of the Parole Board; clarifying that no more than five of the board members, appointed to full time positions on the board may at any one time belong to the same political party; removing the residency requirements pertaining to congressional districts; requiring that the Chief Hearing Officer shall be chair of the Board; clarifying that the remaining nine members of the Board serve after being appointed by the Governor, with the advice and consent of the Senate; specifying the powers and duties of the vice chairperson shall be limited to Parole Board duties; clarifying the authority of the chair to hire an administrative employee; authorizing the Chief Hearing Officer to sit on parole panels as necessary; clarifying that the qualifications for board members may include being a graduate of a federal or state law enforcement academy; clarifying that temporary members serve at the will and pleasure of the governor; exempting the Board from Open Meetings; and requiring that parole hearings be open to the public.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2773**—A Bill to amend and reenact §20-7-23 of the Code of West Virginia, 1931, as amended, all relating to boating operations with motors greater than 10 horsepower; and permitting the Division of Natural Resources to promulgate emergency legislative rules and legislative rules relating to the operation of boats with motors greater than 10 horsepower.

Referred to the Committee on Natural Resources.

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

**Eng. Com. Sub. for House Bill 2793**—A Bill to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to permitting nonresidents to obtain state licenses to carry a concealed deadly weapon; providing that concealed weapons licenses may only be issued for pistols and revolvers; establishing a fee; and providing how that fee is to be used.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2890**—A Bill to amend and reenact §24A-1-2 and §24A-1-3 of the Code of West Virginia, 1931, as amended, relating to clarifying the authority of the Public Service Commission of West Virginia over luxury limousine services; and creating an exemption from certain contract and common carrier laws for luxury limousine services.

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

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

**Eng. Com. Sub. for House Bill 2962**—A Bill to amend and reenact §30-4-8, §30-4-10, §30-4-13, §30-4-15, §30-4-16, §30-4-17, §30-4-19, §30-4-20, §30-4-22, §30-4-23, and §30-4-24 of the Code of West Virginia, 1931, as amended, all relating to the practice of dentistry; updating the requirements for a license to practice dentistry; updating the requirements for a license to practice as a dental hygienist; requiring a board authorization be present in the place of practice; making technical corrections to special volunteer dentists; requiring payment for certain

examinations; permitting the formation of a professional limited liability companies; updating the complaint process; updating the criteria used when considering disciplinary action; updating the types of disciplinary sanctions; requiring providing criminal penalties; clarifying that a student enrolled in an accredited dental program may, under the supervision of a licensed dentist or dental hygienist perform certain tasks under certain conditions without necessitating a license; and making technical changes.

Referred to the Committee on Health and Human Resources.

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

**Eng. Com. Sub. for House Bill 3002**—A Bill to amend and reenact §17-2A-8 of the Code of West Virginia, 1931, as amended, relating to requiring the commissioner of highways to post online any petition, notice, order, decision, or other record related to the abandonment or discontinuance of any state highway or road, or any part thereof; requiring notice as a Class I legal advertisement; and providing that any member of the public shall be allowed to participate in or attend a hearing relating to the abandonment or discontinuance of any state highway or road by virtual means.

Referred to the Committee on Transportation and Infrastructure.

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

**Eng. House Bill 3300**—A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-4g; and to amend said code by adding thereto a new section, designated §11B-2-33, all relating to reducing personal income tax rates generally; reducing rates by certain amounts after December 31, 2021; incrementally reducing rates thereafter to zero based upon annual calculations and actions

by the Tax Commissioner; creating, and providing funding for, personal income tax reduction fund; providing for deposits by Secretary of Revenue from income tax reduction fund into general revenue fund; and providing for investment and disposition of fund.

Referred to the Committee on Finance.

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

**Eng. House Bill 3303**—A Bill to amend and reenact §3-5-11 of the Code of West Virginia, 1931, as amended, and to amend and reenact §3-5-19 of said Code; all relating to clarifying the process of filling vacancies on ballots; and, providing that no appointment to an unfilled vacancy may be made after a primary election, save in the case of the subsequent death, withdrawal, incapacity, or disqualification of a candidate.

Referred to the Committee on the Judiciary.

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

**House Concurrent Resolution 20**—Requesting the Division of Highways to name Slab Fork Road, beginning near the Lester Highway and proceeding along County State Route 34 to its end at the Coalfield Expressway in Raleigh County, the ‘Bill Withers Memorial Road’.

Referred to the Committee on Transportation and Infrastructure.

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

**Com. Sub. for House Concurrent Resolution 43**—Requesting the Division of Highways name that portion of County Route 1, beginning at Toney Fork Road at the Clear Creek Presbyterian Church and ending at the intersection of Clear Fork Road and Workman’s Creek Road, in Raleigh County, the ‘U.S. Army CSM Hugh H. ‘Smokey’ Stover Memorial Road’.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 54**—Requesting the Division of Highways name a portion of Old Route 73 (39.659317, -79.772097 to 39.658476, -79.645041), in Preston County, West Virginia, the ‘Robin W. Ames Memorial Road’.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 62**—Requesting the Division of Highways name bridge number 23-044/00-011.44 () (23A309), locally known as Switzer Monty Bro Bridge, carrying West Virginia Route 44 over Island Creek in Logan County, the ‘U.S. Air Force Major Samuel Wilson Rogers, Jr. Memorial Bridge’.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 63**—Requesting the Division of Highways name bridge number: 02-009/56-000.25 () (02A166), (39.46467,-77.96611) locally known as Raleigh Street over Winchester and Western RR South, carrying CR 9/56 over Winchester & Western RR in Berkeley County, the ‘Mayor George Karos Bridge’.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 64**—Requesting the Division of Highways name bridge number: 02-032/00-001.22 () (02A152), (39.40678, -78.02421) locally known as TABLERS STATION OVERPASS, carrying CR 32 over I 81 (X) in Berkeley county, the ‘Deputy CPL Scott D. Myers Memorial Bridge’.

Referred to the Committee on Transportation and Infrastructure.

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

**House Concurrent Resolution 72**—Requesting the Division of Highways name the bridge bearing Identification Number 04A078, located in Frametown, Braxton County, West Virginia, on County-Route Map 04-021/00-008.14, Latitude 38.635, Longitude -80.86440, approximately 0.01 miles South of West Virginia Route 4 along Frametown Herold Road on County Route 21, ‘David Allen Drake, Sr. Memorial Bridge.

Referred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 30th day of March, 2021, 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. 2621)**, Mandating certification for certain members of fire departments, require certain types of training, allow specialized personnel who are not firefighters to be members of a department, and require the postings of fire department evaluations.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2253**, Relating to forgery and other crimes concerning lottery tickets.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2888**, Relating to when contentions can be revived based on forensic scientific evidence that was not available at time of conviction.

And,

**Eng. House Bill 3081**, Updating the West Virginia Business Corporations Act.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The Senate proceeded to the sixth order of business.

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

**By Senators Blair (Mr. President) and Baldwin (By Request of the Executive):**

**Senate Bill 719**—A Bill supplementing and amending chapter 11, Acts of the Legislature, regular session, 2020, known as the Budget Bill, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Homeland Security, West Virginia State Police, fund 0453, fiscal year 2021, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021, by adding new language.

Referred to the Committee on Finance.

**By Senators Blair (Mr. President) and Baldwin (By Request of the Executive):**

**Senate Bill 720**—A Bill supplementing, amending, and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2021, organization 0802, for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

**By Senators Blair (Mr. President) and Baldwin (By Request of the Executive):**

**Senate Bill 721**—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, 2021, to the Department of Environmental Protection, Division of Environmental Protection - Oil and Gas Reclamation Fund, fund 3322, fiscal year 2021, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

Senator Maynard offered the following resolution:

**Senate Concurrent Resolution 56**—Requesting the Joint Committee on Government and Finance study the effect of requiring certain municipalities to pay some of the costs for jailing inmates that were arrested by that municipality's police department.

Whereas, The cost of keeping inmates incarcerated is rising in the State of West Virginia for a number of reasons; and

Whereas, In instances where municipalities participate in a municipal home rule program and levy a local sales tax, it is natural that those municipalities be expected to share in the costs of housing inmates who were arrested by the police of that municipality; and

Whereas, The Legislature finds that it should take an active role in studying, formulating, and implementing a plan to require that, in cases where an inmate was arrested by the municipal police of a municipality who participates in municipal home rule program and who levies a local sales tax, the municipality shall pay for the costs of the first seven days of jail for that inmate; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the effect of requiring certain municipalities to pay some of the costs for jailing inmates that were arrested by that municipality's police department; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation 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.

Which, under the rules, lies over one day.

Senators Nelson and Takubo offered the following resolution:

**Senate Resolution 32**—Congratulating the George Washington High School Patriots boys' soccer team for winning the 2020 Class AAA State Championship.

Whereas, The George Washington High School Patriots boys' soccer team had another dominant year on the pitch, finishing with a record of 11-0 in a condensed COVID-19, shortened season, on their way to winning the 2020 Class AAA State Championship; and

Whereas, The George Washington High School Patriots boys' soccer team accomplished several benchmarks that have never been reached by any other school in boys high school soccer history: (1) Advancing to the state soccer tournament for the 10th consecutive year; (2) winning a state championship with a perfect record with no losses or ties; (3) winning its seventh state championship; and (4) winning its third state championship in a row; and

Whereas, The George Washington High School Patriots boys' soccer team was led by team captains: Senior, Max Threthewey; senior, Bryce Coleman; senior, Isaac Carney; and senior, Xavier Bohn. Additional team members include: Seniors—Grant Fenwick, Julian Westfall, Bakar Boustany, Tarrek Jarrouj, Wilson Fife, Charlie Adkins, and Mason Pinkett; juniors—Alec Ellis, Gabe Sadorra, Conner Stricklen, Nick Ihnat, and Danny Shammaa; sophomores—Jack Williams, Sam Clark, and Brady Stafford; and freshman—Michael Luechauer and Wes Goodwin; and

Whereas, The George Washington High School Patriots boys' soccer team was coached by head coach Erik Engle, and assistant coaches Brad McGee, David Nelson, Evan Pauley, Peter Nelson, and Noah Shaak; and

Whereas, The 2020 George Washington High School Patriots boys' soccer team displayed its strong will and fierce determination, during a world health pandemic, for an entire season that included practice stoppages, practice limitations, reorganized schedules, last minute canceled games, and the uncertainty week to week as to what their season would be, and will go down in history as one of the all-time great teams in West Virginia; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the George Washington High School Patriots boys' soccer team for winning the 2020 Class AAA State Championship; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the George Washington High School Patriots boys' soccer team.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Resolution 31**, Designating March as National Social Work Month.

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

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

The Senate proceeded to the eighth order of business.

**Eng. Senate Bill 307**, Relating generally to in-state tuition rates for certain persons.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 307) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 360**, Allowing poll workers to work full and half days.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 360) passed with its title.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 470**, Limiting release of certain personal information maintained by state agencies.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Bill 470 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 470) passed.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 470**—A Bill to amend and reenact §5A-8-21 and §5A-8-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5A-8-24, all relating certain disclosures of certain personal information; clarifying that certain personal information which is maintained by state agencies regarding persons in their capacity as state officers, employees, retirees, or legal dependents thereof is confidential and exempt from disclosure to non-governmental entities as an unreasonable invasion of privacy; protecting confidentiality of the former legal name of certain individuals associated with state agencies; clarifying that certain personal information which is maintained by state executive branch agencies regarding individuals and their dependents is exempted from disclosure as an unreasonable invasion of privacy; creating Daniel's Law; providing for liberal construction to accomplish certain purposes and public policies; defining terms; prohibiting certain disclosures regarding certain judicial officers, prosecutors, or law-enforcement officers; authorizing a civil action against certain private persons and entities; authorizing relief to be granted by the court; providing for certain individuals to request that certain persons or entities refrain

from disclosing certain information and that the disclosed information be removed; requiring immediate removal of certain disclosed information; authorizing a civil action for failure to comply with request to refrain from and remove certain disclosed information; providing for misdemeanor crime for willful refusal to remove certain disclosed information and establishing penalties therefor; and clarifying that Daniel's Law does not prohibit disclosures required by state or federal law.

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

**Eng. Senate Bill 486**, Relating to powers and duties of Chief Technology Officer.

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

Pending discussion,

The question being "Shall Engrossed Senate Bill 486 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 486) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 492**, Establishing program for bonding to reclaim abandoned wind and solar generation facilities.

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

Pending discussion,

(Senator Rucker in the Chair.)

Pending discussion,

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 492 pass?”

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woodrum, and Blair (Mr. President)—30.

The nays were: Baldwin, Ihlenfeld, Romano, and Woelfel—4.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 492) passed.

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

**Eng. Com. Sub. for Senate Bill 492**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-32-1, §22-32-2, §22-32-3, §22-32-4, §22-

32-5, §22-32-6, and §22-32-7, all relating generally to establishing and implementing a program to decommission and reclaim wind and solar electrical generation facilities upon closure; making legislative findings; stating legislative purpose; providing a short title; defining terms; requiring the owners of wind generation facilities and solar generation facilities to notify and provide certain information to the Department of Environmental Protection (DEP), including dates when operations began and plans with cost estimates for decommissioning facilities; establishing fees for new and modified applications; requiring DEP to determine and assess a reclamation bond based on a facility's total disturbed acreage; establishing a minimum bond value; requiring the owners of said facilities to submit bonds payable to the state in a form and in a sum determined by the DEP, conditioned on the satisfactory decommissioning; providing that owners of said facilities may enter into alternative reclamation agreements after approval by the DEP; providing that the DEP may modify said plans after proper notification and appeals; providing exemptions from bond requirements for facilities with nameplate capacities of less than 0.5 megawatts and facilities operated by regulated public utilities who can successfully demonstrate to the Public Service Commission and DEP financial integrity and long-term stability; providing for administrative penalties for failure to submit decommissioning bonds; providing appellate rights to the Environmental Quality Board; providing transfer of ownership provisions; providing for amended plans for allowing reductions in bond amounts; providing that bond submission does not absolve owners from complying with other applicable regulations and requirements; establishing a Wind and Solar Decommissioning Account within the State Treasury into which fees, assessed penalties, and accrued interest must be paid and held; providing that the account may only be used by the DEP to implement this article and adopted rules; providing that DEP shall administer this act using existing resources and the account; requiring the DEP to maintain and hold bonds or other surety received; providing for the release of bonds after the DEP is satisfied property has been properly decommissioned in accordance with the plan; providing for bond forfeiture when a facility is not properly decommissioned, if the deficiencies are not rectified; providing that the Office of

Environmental Remediation or a private entity by contract may decommission facilities; providing that DEP may file suit to enforce permit and plan conditions and to recoup costs of reclamation; authorizing rulemaking; and providing effective dates.

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

**Eng. Com. Sub. for Senate Bill 508**, Relating to public records management and preservation.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 508) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 530**, Establishing causes for revocation, cancellation, or suspension of business registration certificate.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 530) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 530) takes effect July 1, 2021.

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

**Eng. Com. Sub. for Senate Bill 543**, Establishing Chuck Yeager Mountain State Medal of Excellence.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 543 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 543) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 543) takes effect July 1, 2021.

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

**Eng. Com. Sub. for Senate Bill 641**, Allowing counties to use severance tax proceeds for litter cleanup programs.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 641 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 641) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 641) takes effect July 1, 2021.

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

**Eng. Com. Sub. for Senate Bill 655**, Eliminating sunset and legislative audit provisions for certain PSC rules.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 655) passed with its title.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 657**, Relating to free expression on state institution of higher education campuses.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld,

Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 657) passed.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 657**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18B-20-1, §18B-20-2, §18B-20-3, §18B-20-4, §18B-20-5, §18B-20-6, §18B-20-7, §18B-20-8, and §18B-20-9, all relating to free expression on state institution of higher education campuses; providing for definitions; defining protected expressive activities; defining public forums and prohibiting “free speech zones”; permitting expressive activity on campus under certain conditions; allowing state institutions of higher education to maintain and enforce reasonable time, place, and manner restrictions under certain parameters; requiring state institutions of higher education to treat student organizations which are open to all students equally; requiring state institutions of higher education to develop materials to educate the campus community on its free speech policies; requiring posting of policies on website; requiring campus to report a description of any barriers to, or incidents of disruption of, free expression occurring on campus; allowing a person or student organization who believes a violation of this article has occurred to bring an action for relief against the state institution of higher education and certain of its employees; establishing the relief available for a violation of the article; and enacting a one-year statute of limitations for alleged violations under the article.

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

**Eng. Com. Sub. for Senate Bill 668**, Creating Psychology Interjurisdictional Compact.

Having been read a third time on yesterday, Monday, March 29, 2021, and now coming up in regular order, was reported by the Clerk.

The question being “Shall Engrossed Committee Substitute for Senate Bill 668 pass?”

Pending discussion,

The question again being “Shall Engrossed Committee Substitute for Senate Bill 668 pass?”

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

The nays were: Woelfel—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 668) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 671**, Appointing Director of Office of Emergency Medical Services.

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

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

The nays were: Unger—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 671) passed with its title.

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

**Eng. Senate Bill 674**, Clarifying that unpaid restitution does not preclude person from obtaining driver's license.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 674) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 684**, Adding Curator of Division of Arts, Culture, and History as ex officio voting member to Library Commission.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 684) passed with its title.

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

**Eng. Senate Bill 714**, Relating to physician assistant practice act.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill 714 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 714) passed with its title.

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

**Eng. Senate Bill 715**, Creating Recovery and Hope Act.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill 715 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 715) passed with its title.

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

**Eng. Com. Sub. for House Bill 2026**, Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce.

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

Pending extended discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2026 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—29.

The nays were: Ihlenfeld, Lindsay, Martin, Romano, and Stover—5.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2026) passed with its title.

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

**Eng. Com. Sub. for House Bill 2260**, Relating to procurement of child placing services.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2260) passed with its title.

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

On motion of Senator Takubo, at 12:25 p.m., the Senate recessed until 1 p.m.

The Senate reconvened at 1:02 p.m. today and proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 231**, Relating generally to medical cannabis.

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

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

On page twelve, section two, line nineteen, after the word “beverage” by changing the semicolon to a colon and inserting the following proviso: *Provided*, That no edible cannabis product produced or sold in this state may be shaped or designed to entice

children to consume it, including but not limited to the shape of people, animals or fruits;

The bill (Com. Sub. for S. B. 231), as amended, was then ordered to engrossment and third reading.

**Com. Sub. for Senate Bill 302**, Prohibiting gender-based price discrimination.

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

**Com. Sub. for Com. Sub. for Senate Bill 335**, Relating to WV Invests Grant Program for students at accredited community and technical college.

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

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

On page four, section five, lines nineteen through twenty-two, by striking out all of subdivision (11) and inserting in lieu thereof a new subdivision, designated subdivision (11), to read as follows:

(11) Have, prior to the start of each academic year or prior to the initial academic period for which the student is enrolled if that period for which the student is enrolled is not the beginning of the academic year, taken a drug test administered by the eligible institution. If the individual tests positive, he or she shall take another drug test prior to the beginning of the next academic period. If the results of the second test are positive, the individual shall complete a drug rehabilitation program as prescribed by the Vice Chancellor for Administration as a condition of continued eligibility for a WV Invests Grant. The applicant shall be responsible for the actual cost of any drug tests required by this subdivision.

The bill (Com. Sub. for Com. Sub. for S. B. 335), as amended, was then ordered to engrossment and third reading.

**Senate Bill 424**, Creating fixed income credit for low-income senior citizens.

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

**Com. Sub. for Com. Sub. for Senate Bill 464**, Requiring composting of organic materials and commercial composting products comply with WV Fertilizer Law.

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

**Com. Sub. for Senate Bill 485**, Relating to use or presentation of firearm during commission of felony.

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

**Com. Sub. for Com. Sub. for Senate Bill 542**, Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants.

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

**Com. Sub. for Senate Bill 550**, Providing counties with authority to impose county sales and use tax of up to one percent under certain circumstances.

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

**Com. Sub. for Senate Bill 613**, Adding classification and base salaries of certain civilian employees of State Police Forensic Laboratory.

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

**Com. Sub. for Senate Bill 622**, Increasing compensation for elected county officials.

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

**Com. Sub. for Senate Bill 635**, Requiring State Fire Commission propose rules for sprinkler protection in basements of certain buildings.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

**Com. Sub. for Senate Bill 642**, Requiring legal advertisements by State Auditor be posted to central website.

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

**Senate Bill 661**, Permitting retailers to assume sales or use tax assessed on tangible personal property.

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

**Com. Sub. for Senate Bill 663**, Providing fee for processing of criminal bonds.

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

**Com. Sub. for Senate Bill 677**, Relating generally to miners' safety, health, and training standards.

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

**Com. Sub. for Senate Bill 695**, Providing procedures for decreasing or increasing corporate limits by annexation.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

**Com. Sub. for Senate Bill 702**, Relating to involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes.

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

**Com. Sub. for Senate Bill 711**, Relating to school aid formula and minimum student enrollment.

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

**Senate Bill 717**, Supplemental appropriation from General Revenue to WV Community and Technical College Education, Control Account.

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

**Senate Bill 718**, Relating generally to Coal Severance Tax Rebate.

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

**Com. Sub. for Com. Sub. for Senate Joint Resolution 1,**  
Protection of the Right to Bear Arms Amendment.

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

At the request of Senator Takubo, and by unanimous consent, the resolution was advanced to third reading with the right for amendments to be considered on that reading.

**Com. Sub. for Senate Joint Resolution 7,** Motor Vehicle and Other Personal Property Tax Reduction Amendment.

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

At the request of Senator Takubo, and by unanimous consent, the resolution was advanced to third reading with the right for amendments to be considered on that reading.

**Com. Sub. for Senate Joint Resolution 9,** Disabled Veterans' Exemption from Ad Valorem Property Taxation Amendment.

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

**Com. Sub. for Senate Joint Resolution 10,** Limiting the Terms of Members of the House of Delegates and Senate Amendment.

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

**Eng. Com. Sub. for House Bill 2003,** Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported committee amendments pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2267**, Establishing an optional bus operator in residence program for school districts.

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

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

On page two, section fifteen, after line thirty-four, by adding thereto a new section, designated section fifteen-a, to read as follows:

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

##### **§18A-4-15a. Employment of retired bus operators as substitutes in areas of critical need and shortage.**

(a) The Legislature hereby finds and declares that due to a shortage of qualified substitute bus operators, a compelling state interest exists in expanding the use of retired bus operators to provide service as substitute bus operators in an area of critical need and shortage.

(b) The Legislature further finds and declares that this shortage is significant and overarching, and in order to comply with §18-5-13(f)(1) of this code, this need supersedes any preclusion of modification of rights codified in §18-7A-28(e) of this code.

(1) For the purposes of this subsection: “Area of critical need and shortage for substitute bus operators” means that the number of available qualified substitute bus operators in the county who are not retired and are available and willing to accept substitute bus operator assignments is insufficient to meet the projected need for qualified substitute bus operators.

(2) A person receiving retirement benefits under article seven-a, chapter eighteen of this code, or who is entitled to retirement benefits during the fiscal year in which that person retired, may accept employment as a critical need substitute bus operator for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled, subject to satisfaction of the following conditions:

(A) The county board adopts a policy recommended by the superintendent to address a critical need and shortage for substitute bus operators;

(B) The superintendent of the county board submits the policy to the State Board of Education for approval in the first year of its utilization. After initial approval by the State Board of Education, the county board must annually renew the policy at the local level and provide confirmation to the State Board of Education of its intent to utilize the policy in the subsequent year;

(C) The policy sets forth the critical need and shortage for substitute bus operators in the county in accordance with the definition of area of critical need and shortage for substitute bus operators as provided in subdivision (1) of this subsection;

(D) The policy provides for the employment of retired bus operators as critical need substitute bus operators during the school year on an expanded basis in areas of critical need and shortage for substitute bus operators as provided in this subsection;

(E) The policy provides that a retired bus operator may be employed as a substitute bus operator in an area of critical need and shortage for substitute bus operators on an expanded basis as provided in this subsection only when no other qualified bus operator who is not retired is available and accepts the substitute assignment; and

(F) Prior to employment of a retired bus operator as a critical need substitute bus operator beyond the post-retirement employment limitations established by the Consolidated Public

Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired bus operators as substitutes to address its critical need and shortage, the name or names of the person or persons to be employed as a critical need substitute pursuant to the policy, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical need substitute bus operator for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical need substitute bus operator within the same fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical need substitute bus operator in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical need substitute bus operator.

(4) Retired bus operators employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(5) A retired bus operator is eligible to be employed as a critical need substitute bus operator to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired bus operator's retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical need substitute bus operator.

(6) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the county board shall continue

to post the vacant position until it is filled with a regularly employed bus operator who is fully qualified for the position.

(7) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board.

(8) The provisions of this subsection shall expire on June 30, 2026.

Following discussion,

The question being on the adoption of Senator Weld's amendment to the bill, the same was put and prevailed.

The following amendments to the bill (Eng. Com. Sub. for H. B. 2267), from the Committee on Education, were next reported by the Clerk, considered simultaneously, and adopted:

On page two, section fifteen, line twenty-two, after the word "any;" by inserting the word "and";

And,

On page two, section fifteen, line twenty-four, after the word "qualifications" by changing the semicolon to a period.

The bill (Eng. Com. Sub. for H. B. 2267), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2495**, Relating to the filing of asbestos and silica claims.

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

**Eng. Com. Sub. for House Bill 2499**, Tax reduction for arms and ammo manufacturing.

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

The following amendments to the bill, from the Committee on Finance, were reported by the Clerk, considered simultaneously, and adopted:

On page twelve, section two, line six, after the word “meaning” by inserting the word “of”;

And,

On page twelve, section two, line eight, after the words “section 1504 of” by inserting the word “the”.

On motion of Senator Baldwin, the following amendment to the bill (Eng. Com. Sub. for H. B. 2499) was next reported by the Clerk:

On page twenty-nine, section nine-t, after line seven, by adding thereto a new section, designated section nine-u, to read as follows:

**§11-15-9u. Exemption for sales of safety storage equipment.**

Notwithstanding any provision of this code to the contrary, the sales of tangible personal property to safely store firearms, including, but not limited to, safes and trigger locks are exempted from the taxes imposed by this article and by §11-15A-1 et seq. of this code.

Following discussion,

The question being on the adoption of Senator Baldwin’s amendment to the bill, and on this question, Senator Lindsay demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Nelson, Plymale, Romano, Stollings, Takubo, Trump, Unger, Weld, and Woelfel—16.

The nays were: Azinger, Boley, Clements, Grady, Karnes, Maroney, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Tarr, Woodrum, and Blair (Mr. President)—18.

Absent: None.

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

The bill (Eng. Com. Sub. for H. B. 2499), as amended by the Committee on Finance, was then ordered to third reading.

**Eng. House Bill 2808**, Remove salt from list and definition of "mineral" for severance tax purposes.

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

**Eng. House Bill 2852**, Relating to distribution of the allowance for increased enrollment.

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

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

On page two, section fifteen, lines twenty-nine through thirty-five, by striking out the words "Nothing in this subsection prohibits, however, the state superintendent, at the request of a school district, before the actual increase in net enrollment is available, from advancing a partial distribution to the school district of up to 60 percent of its estimated share based on its projected increased enrollment: *Provided*, That if the amount of the advanced partial distribution to a school district is greater than the total amount to which a district is entitled to receive for the year, the district shall refund the difference to the Department of

Education prior to June 30 of the fiscal year in which the excess distribution is made.” and inserting in lieu thereof the following:

Nothing in this subsection prohibits, however, the state superintendent, at the request of a school district, before the actual increase in net enrollment is available, from advancing a partial distribution to the school district of up to 60 percent of its estimated share based on its projected increased enrollment, subject to the following:

(A) If the amount of the advanced partial distribution to a school district is greater than the total amount to which a district is entitled to receive for the year, the district shall refund the difference to the Department of Education prior to June 30 of the fiscal year in which the excess distribution is made; and

(B) The Department of Education shall notify the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability whenever an advanced partial distribution is made.

The bill (Eng. H. B. 2852), as amended, was then ordered to third reading.

**Eng. House Bill 3010**, To extend the special valuation method for cellular towers to towers owned by persons not subject to regulation by the Board of Public Works.

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

The Senate proceeded to the tenth order of business.

**Eng. Com. Sub. for House Bill 2014**, Relating to role of the Legislature in appropriating federal funds.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Smith, Romano, and Hamilton.

At the request of Senator Romano, unanimous consent being granted, the Senate stood in observance of National Doctors' Day.

Thereafter, at the request of Senator Woelfel, and by unanimous consent, the remarks by Senators Smith, Romano, and Hamilton were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were removed as co-sponsors of the following bills on March 29, 2021:

**Senate Bill 77:** Senator Grady;

And,

**Senate Bill 716:** Senator Stover.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bills and resolution on March 29, 2021:

**Senate Bill 485:** Senator Woodrum;

**Com. Sub. for Senate Bill 542:** Senator Woodrum;

**Senate Bill 677:** Senator Woodrum;

**Senate Bill 709:** Senator Rucker;

And,

**Senate Resolution 31:** Senators Romano, Lindsay, Baldwin, and Rucker.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 1:45 p.m., the Senate adjourned until tomorrow, Wednesday, March 31, 2021, at 10 a.m.

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## WEDNESDAY, MARCH 31, 2021

The Senate met at 10:03 a.m.

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

Prayer was offered by Dave Lavender, Senate Assistant Doorkeeper, Hurricane, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Patricia Puertas Rucker, a senator from the sixteenth district.

Pending the reading of the Journal of Tuesday, March 30, 2021,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for House Bill 2266**—A Bill to amend and reenact §9-5-12 of the Code of West Virginia, 1931, as amended, relating to expanding certain insurance coverages for pregnant women; and providing an effective date.

Referred to the Committee on Health and Human Resources; and then to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 2290**, Initiating a State Employment First Policy to facilitate integrated employment of disabled persons.

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

**Eng. House Bill 2493**—A Bill to amend and reenact §11-6K-1 and §11-6K-3 of the Code of West Virginia, 1931, as amended, all generally relating to the assessment and valuation of industrial property and natural resource property; for assessments made on or after July 1, 2022, providing that the arithmetic means for annual production and average coal price to value coal properties shall be based upon the full calendar year immediately preceding the July 1st assessment date; providing that the Tax Commissioner shall utilize an average coal density of 1800 tons per acre foot, unless clear and convincing evidence is submitted by a tax payer establishing a lower density value; providing that density information reported on returns, due on or before May 1 of each year, shall be used to determine values for the immediately following July 1 assessments; providing that the Tax Commissioner shall take into consideration economic viability and engineering considerations when establishing values for coal properties; providing that coal beds which are of a thickness of less than thirty-five inches shall not be classified as mineable coal for valuation for property tax purposes unless there is clear and convincing evidence to the contrary; providing that no permitted coal seam may be classified for taxation as active until actual depletion of coal commences under a permit; providing that for any owner, operator, or producer which fails to make a return within the time required, any and all penalties imposed shall be equally

and uniformly applied across all forms of industrial property and natural resources property; and specifying an effective date.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 2581**—A Bill to repeal §11-3-24b and §11-3-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-1C-10 of said code, to amend said code by adding thereto a new section, designated §11-1C-10a; and to amend and reenact §11-3-15c, §11-3-15f, §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a, §11-3-24, §11-3-24a, §11-3-25a, and §11-3-32 of said code, and to amend and reenact §11-10A-1, §11-10A-7, §11-10A-8, §11-10A-10, and §11-10A-19 of said code, all generally relating to the valuation, assessment, review, and appellate rights of property owners regarding valuation, classification, and taxability of real estate and personal property taxation; providing for revised methodology to value property producing oil, natural gas, and natural gas liquids by the Tax Commissioner for property tax assessments; providing for methods, calculation requirements, and definitions, all used to determine fair market value, net proceeds, weighted average prices from regional markets, actual receipts, actual annual operating costs, a statewide capitalization rate, average industry production decline rates; a yield capitalization model for each property, and a discounted net cash flow series income; providing for reporting by the Tax Commissioner to the Joint Committee on Government and Finance by the Tax Commissioner of certain data, explanations, and methodologies; providing that residential property owners may not be required to furnish a formal appraisal to establish the value of their primary residence; providing that an assessor's review is to be an informal process and defining the standard of proof which a taxpayer must meet to be no greater than a preponderance of the evidence; expanding the jurisdiction of the Office of Tax Appeals to include property tax valuation, classification, and taxability; providing that if an assessor rejects a petition, the petitioner may

appeal to the county Board of Equalization and Review or the Office of Tax Appeals; allowing for certain appeals from decisions of the Tax Commissioner and Board of Equalization and Review to the Office of Tax Appeals; repealing and eliminating the Board of Assessment Appeals; providing for an increase in the number of administrative law judges and staff attorneys within the Office of Tax Appeals; providing for effective dates; and making technical changes.

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

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

**Eng. Com. Sub. for House Bill 2667**—A Bill to amend and reenact §5A-3B-2 and §5B-2F-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §5B-2F-3, §5B-2F-4, and §5B-2F-5; all relating to promoting cost savings for state taxpayers by implementing an energy savings program for assessment and implementation of energy savings goals for state buildings; requiring energy-savings contracts to include provisions relating to energy cost savings guarantees and deficiency payments; providing for the auditing and potential removal of energy metering devices installed at state buildings; establishing an energy savings program and contracting program within Division of Energy for state buildings; and establishing benchmarking and energy efficiency goals for state buildings.

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

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

**Eng. Com. Sub. for House Bill 2720**—A Bill to repeal §17-2A-24 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §5F-2-8; all relating to establishing a merit-based system for personnel administration for the agencies, authorities, boards, and commissions within the Department of Transportation; authorizing the Secretary of Transportation to establish a merit-based system; preserving existing due process protections in state law; requiring compliance with state law regarding nepotism, favoritism, discrimination, and ethics in the employment process; prohibiting actions with a negative effect on federal funding; requiring inter-agency cooperation; authorizing rule-making; setting an implementation date; and removing duplicative functions within the agency.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on Finance.

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

**Eng. House Bill 2768**—A Bill supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2021, organization 0803, for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 2769**—A Bill supplementing, amending, and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2021, organization 0802, for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. House Bill 2790**—A Bill supplementing, amending, decreasing, and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2021, organization 0803, for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect July 1, 2021, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 2915**—A Bill to amend and reenact §5A-8-15 of the Code of West Virginia, 1931, as amended, relating to public records management and preservation; to increase available funds in the Public Records and Preservation Revenue Account to administer a system of records management and preservation for county governments and for grants to counties for records management, access, and preservation purposes.

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

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

**Eng. House Bill 3082**—A Bill to amend and reenact §22-5-2 and §22-5-4 of the Code of West Virginia, 1931, as amended, relating to air pollution control; providing the West Virginia Department of Environmental Protection, Division of Air Quality, the authority to invest and reinvest funds held in the Air Pollution Control Fund and the Air Pollution Education and Environment

Fund and to receive interest thereon from lawful investments of public funds to offset decreasing permit fee collections; providing that at the end of each fiscal year, unexpended balances, including accrued interest, shall not be transferred to the General Revenue Fund, but remain in the two funds for expenditure by the West Virginia Department of Environmental Protection, Division of Air Quality, in furtherance of its mission; and updating code language.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 3106**—A Bill to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating to bail; increasing the time for a secured bond hearing to 5 days; and allowing for release of a defendant on a personal recognizance bond if the hearing is not held unless the defendant is charged with a crime against the person.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 3298**—A Bill supplementing and amending Chapter eleven, Acts of the Legislature, Regular Session, 2020, known as the budget bill, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Commerce, West Virginia Development Office, fund 0256, fiscal year 2021, organization 0307; the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2021, organization 0402 and the Bureau of Senior Services, Bureau of Senior Services, fund 0420, fiscal year 2021, organization 0508; and to Executive, Governor’s Office – Civil Contingent Fund, fund 0105, fiscal year 2021, organization 0100 by supplementing and

amending the appropriations for the fiscal year ending June 30, 2021; therefore

Referred to the Committee on Finance.

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

**Eng. House Bill 3304**—A Bill to amend the Code of West Virginia, 1931, as amended by adding thereto a new article, designated §25-8-1, §25-8-2, §25-8-3, §25-8-4, §25-8-5, §25-8-6, §25-8-7, §25-8-8 and §25-8-9, all relating to establishing a Reentry and Transitional Housing Programs, providing reentry and transitional service centers for the delivery of reentry residences and programs for criminal offenders; providing the purpose and legislative findings; authorizing the commissioner of the Division of Corrections and Rehabilitation to establish the program; defining terms; providing eligibility criteria for offenders to participate in the program; authorizes the commissioner to promulgate legislative rules; placing conditions and limitations on eligibility for referrals to the programs and exceptions thereto; providing criteria for the division to develop policies and procedures providing for reporting, performance review and recommendations to assess and improve the program; providing for financial costs to be held by the state for the cost of the program, and placing limitations thereto; to administer the program; offering transitional programs to provide structured release and proper supervision, providing for and partnering with private and nonprofit facilities to provide transitional services.

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

### **Executive Communications**

The Clerk then presented the following communications from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

March 30, 2021

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Committee Substitute for Senate Bill No. Four Hundred Sixty-Nine (469), which was presented to me on March 24, 2021.

You will note that I have approved this bill on March 30, 2021.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk



*Jim Justice*  
*Governor of West Virginia*

March 30, 2021

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for House Bill No. Two Thousand Nine (2009), which was presented to me on March 24, 2021.

Committee Substitute for House Bill No. Two Thousand Three Hundred Seventy-Two (2372), which was presented to me on March 24, 2021.

Committee Substitute for House Bill No. Two Thousand Six Hundred Sixteen (2616), which was presented to me on March 24, 2021.

Committee Substitute for House Bill No. Two Thousand Six Hundred Eighty-Two (2682), which was presented to me on March 24, 2021.

House Bill No. Two Thousand Seven Hundred Nine (2709), which was presented to me on March 24, 2021.

House Bill No. Two Thousand Seven Hundred Sixty-Four (2764), which was presented to me on March 24, 2021.

You will note that I have approved these bills on March 30, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh  
cc: The Honorable Lee Cassis

State Capitol | 1900 Kanawha Blvd., East, Charleston, WV 25305 | (304) 558-2000

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 30th day of March, 2021, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for H. B. 2797)**, Declaring certain claims to be moral obligations of the State.

**(H. B. 2854)**, Relating to the West Virginia Municipal Police Officers and Firefighters Retirement System.

**(Com. Sub. for H. B. 2855)**, Relating to the Natural Resources Police Officers Retirement System.

And,

**(H. B. 2905)**, Relating to repealing the prohibition against the use of certain words.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 30**, William Gregory “Greg” White, PE, Memorial Bridge.

**Senate Concurrent Resolution 42**, Firefighter Marvin Layton Hughes Memorial Bridge.

**Senate Concurrent Resolution 46**, Stanley W. and Evelyn C. See Memorial Bridge.

And,

**House Concurrent Resolution 13**, TEC 5 U. S. Army Donald “Tiny” Lucas Memorial Bridge.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (S. C. R. 30, 42, and 46 and H. C. R. 13) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 43**, US Army PVT Joseph Stanley McKinney Memorial Bridge.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 43** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name the bridge at coordinates 37.501667, -81.336111, carrying WV 10 over Noseman Branch in Wyoming County, the “U.S. Army PFC Joseph Stanley McKinney Memorial Bridge”.

Whereas, Joseph Stanley McKinney was born July 20, 1947, in Herndon, Wyoming County, West Virginia; and

Whereas, Joseph Stanley McKinney graduated from Herndon High School in 1966; and

Whereas, Joseph Stanley McKinney entered the U.S. Army during the Vietnam War as a member of the 4th Infantry Division, 3rd Battalion, 12th Infantry, C Company; and

Whereas, PFC Joseph Stanley McKinney began his tour on November 8, 1967, with a Light Weapons Infantry specialty; and

Whereas, PFC Joseph Stanley McKinney was killed due to hostile action on January 23, 1968, in the Kontum Province of Vietnam during the Tet Offensive; and

Whereas, It is fitting that an enduring memorial be established to commemorate U.S. Army PFC Joseph Stanley McKinney and his ultimate sacrifice 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 the bridge at coordinates 37.501667, -81.336111, carrying WV 10 over Noseman Branch in Wyoming County, the “U.S. Army PFC Joseph Stanley McKinney 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 Joseph Stanley McKinney 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.

And,

**Senate Concurrent Resolution 50**, USMC SGT MAJ Herman H. Brawner and Fayma Brawner Memorial Bridge.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 50** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name bridge number 49-033/00-015.38 (EB-WB) (49A122-49A123), locally known as MIDDLE FK CON I BM, carrying APD 33 over Middle Fk Rv. & CR 10/10 in Upshur County, the “U.S.M.C. SGT MAJ Herman H. Brawner Memorial Bridge”.

Whereas, Herman H. Brawner was enlisted in the United States Marine Corps at the age of 17 during WWII, fighting in the Pacific Theater for the duration of the war; and

Whereas, He went on to have a 30-year military career. SGT MAJ Herman H. Brawner fought in combat in three wars: WWII, Korea, and Vietnam, serving two tours in Vietnam; and

Whereas, During the Korean War, SGT MAJ Herman H. Brawner and his fellow Marines dug in for an extremely bloody battle on the shore of the Chosin Reservoir with Red Chinese soldiers, in temperatures that dropped as low as 35 degrees below zero, using sandbags and frozen bodies for protection because it was too cold to dig foxholes, for which he and his fellow troops were dubbed the “Frozen Chosin”; and

Whereas, One of SGT MAJ Herman H. Brawner’s tours in Vietnam included an urban battle in the City of Hue, where he led

out-numbered Marines into the besieged city, but still managed to kill nearly three times as many Communist North Vietnamese, and helped raise an American flag on Hue's provincial headquarters. Brawner's notebook showed that the Marine battalion, which he led, suffered some 250 casualties in battle with many more wounded in what is considered by many the bloodiest battle of the Vietnam War; and

Whereas, During his career, SGT MAJ Herman H. Brawner was wounded multiple times, earning numerous service awards including a Purple Heart with two gold stars, an Asiatic-Pacific Campaign Medal with two stars, an American Campaign Medal, a Combat Action Ribbon with a Bronze Star and "V" for Valor, a Republic of Korea Presidential Unit Citation with two stars, a United Nations Service Medal, two Republic of Vietnam Gallantry Cross Medals, one with a Silver Star and one with a Palm Ribbon, a Vietnam Campaign Medal with 1960 Device, plus a good conduct medal with many other citations and awards; and

Whereas, SGT MAJ Herman H. Brawner also received recognition with a special Navy Commendation Medal including a combat "V" for Valor during WWII; and

Whereas, SGT MAJ Herman H. Brawner retired as the head Noncom Military Police Marine in South East Asia overseeing U.S. Embassy security in five countries and, upon his retirement, finished his work career with Louisiana Pacific Lumber; and

Whereas, SGT MAJ Herman H. Brawner and his wife, Fayma, chose West Virginia following his retirement, where he spent the remainder of his life on his farm in Upshur County, providing counsel and help to all who knew him; and

Whereas, It is fitting that an enduring memorial be established to commemorate U.S.M.C SGT MAJ Herman H. Brawner for his service 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 49-033/00-015.38 (EB-WB) (49A122-49A123), locally known as MIDDLE FK CON I BM, carrying APD 33 over Middle Fk Rv. & CR 10/10 in Upshur County, the “U.S.M.C. SGT MAJ Herman H. Brawner 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.M.C. SGT MAJ Herman H. Brawner 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 and to SGT MAJ Herman H. Brawner’s widow, Fayma Brawner.

With the recommendation that the two committee substitutes be adopted.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (Com. Sub. for S. C. R. 43 and 50) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Concurrent Resolution 57** (originating in the Committee on Government Organization)—Requesting the Joint Committee on Government and Finance study electronic database publication of legal notices in lieu of newspaper publication.

Whereas, Electronic publication of legal notices and advertisements is efficient, cost-effective, and will likely save significant money for the State of West Virginia, its agencies, and its political subdivisions; and

Whereas, A substantial number of West Virginians lack broadband Internet service; and

Whereas, The inability to access electronic legal notices and advertisements may result in adverse legal consequences to West Virginia citizens; and

Whereas, Discontinuing print publication of legal notices and advertisements will result in significant loss of revenues for newspapers across the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study electronic database publication of legal notices in lieu of newspaper publication; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Maynard, unanimous consent being granted, the resolution (S. C. R. 57) contained in the foregoing report from the Committee on Government Organization was then referred to the Committee on Rules.

Senator Maroney, from 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

**Eng. House Bill 2028**, Exempting veterinarians from the requirements of controlled substance monitoring.

**Eng. Com. Sub. for House Bill 2877**, Expand direct health care agreements beyond primary care to include more medical care services.

And,

**Eng. House Bill 3045**, Relating to firefighter disability claims.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 2366**, Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note.

**Eng. House Bill 2957**, Relating to the repeal of outdated code sections.

And,

**Eng. House Bill 2958**, Relating to repealing outdated sections of state code.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2427**, Authorizing the Department of Health and Human Resources to promulgate legislative rules.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 2529**, Prohibiting West Virginia institutions of higher education from discriminating against graduates of private, nonpublic or home schools by requiring them to submit to alternative testing.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 2785**, Relating to public school enrollment for students from out of state.

And has amended same.

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

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2633**, Creating the 2021 Farm Bill.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2694**, Create the 2nd Amendment Preservation Act.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2763**, Creating WV Cyber Incident Reporting.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 2916**, Creating the Semiquincentennial Commission for the celebration of the 250th anniversary of the founding of the United States of America.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. Com. Sub. for House Bill 2765**, Relating to allowing emergency management and operations' vehicles operated by airports to use red flashing warning lights.

And has amended same.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. House Bill 2791**, Relating to enrollment and costs of homeschooled or private school students at vocational schools.

And,

**Eng. House Bill 2906**, Relating to the School Building Authority's allocation of money.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

Senator Maroney, from 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

**House Concurrent Resolution 15**, Rare Disease Day.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Maroney, from 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

**House Concurrent Resolution 35**, Requesting the Department of Health and Human Resources to continuously evaluate the child welfare system.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

The Senate proceeded to the sixth order of business.

Senator Sybolt offered the following resolution:

**Senate Resolution 33**—Recognizing senior center personnel as essential workers and commending them for their dedicated public service through the COVID-19 pandemic.

Whereas, Senior citizens are 20.5 percent of the population of West Virginia; and

Whereas, The worldwide coronavirus pandemic inflicts its most deadly threat on senior citizens and has prompted measures to help senior citizens to remain safer at home; and

Whereas, Multi-purpose senior centers, the community focal point for comprehensive in-home and community-based services, information, and advocacy, restructured a normally high-touch service model to safely address the surge of dramatically increased demand; and

Whereas, Senior centers prepare and deliver 2,500,000 nutritious meals proven to maintain health, improve independent living, and reduce health care costs; and

Whereas, Senior centers provide safe, reliable transportation proven to improve access to food, shelter, medical care, and life-sustaining treatments; and

Whereas, Senior centers provide 3,574,994 hours of personal care assistance proven to improve independent living in safe and healthy homes; and

Whereas, Senior centers make weekly telephone calls and/or home visits to assess the well-being of the thousands of West Virginia seniors; and

Whereas, Senior centers employ a trained workforce of more than 3,000 dedicated adults who diligently devote their days to serve and protect our most vulnerable elderly; and

Whereas, Senior center employees have faithfully performed their jobs each day, doing their very best to assist seniors throughout the COVID-19 pandemic; and

Whereas, Senior center employees are essential to the daily health and well-being of our treasured senior citizens; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes senior center personnel as essential workers and commending them for their dedicated public service through the COVID-19 pandemic; and, be it

*Further Resolved,* That the Senate extends its sincere gratitude and appreciation to senior center employees for their commitment to senior citizens in West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of senior centers throughout West Virginia.

Which, under the rules, lies over one day.

Senators Plymale, Woelfel, Stollings, and Phillips offered the following resolution:

**Senate Resolution 34**—Recognizing Coalfield Health Center’s contributions to rural health care.

Whereas, Coalfield Health Center was founded as a rural, nonprofit health center in 2009 in Chapmanville, West Virginia; and

Whereas, Coalfield Health Center is committed to ensuring all residents receive quality health care, regardless of income, insurance, or residency; and

Whereas, Coalfield Health Center offers primary health care with dignity and respect to one of the communities with the worst health outcomes in the nation; and

Whereas, Coalfield Health Center has served not only as a primary health center, but also as an educational, research, and community outreach hub for more than 10 years; and

Whereas, Coalfield Health Center works closely with the Joan C. Edwards School of Medicine and Center for Rural Health at Marshall University, which is likewise committed to rural health access; and

Whereas, The executive director, providers, and staff of Coalfield Health Center are uniquely committed to the mission of quality rural health care services and the community Board of Directors provides excellent governance and oversight to the center; and

Whereas, The National Rural Health Association selected Coalfield Health Center as the Outstanding Rural Health Organization in the nation for 2021; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes Coalfield Health Center's contributions to rural health care; and, be it

*Further Resolved*, That the Senate extends its sincere gratitude and appreciation to Coalfield Health Center for its outstanding contributions to rural health care and dedication to providing care for all residents without barriers; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to Coalfield Health Center.

Which, under the rules, lies over one day.

Senators Nelson, Caputo, Hamilton, Jeffries, Phillips, Plymale, Roberts, Romano, Smith, Stollings, Stover, Swope, and Sypolt offered the following resolution:

**Senate Resolution 35**—Recognizing clean energy's importance to West Virginia's energy future.

Whereas, West Virginia has a rich history cultivating domestic energy; and

Whereas, West Virginia can continue to expand in-state energy production by taking advantage of opportunities in clean energy, thereby expanding and diversifying our economic base; and

Whereas, Clean energy, including generation from renewable sources such as wind, solar, and hydro sources as well as nuclear, clean coal technology, natural gas, and energy storage, is part of our state's energy future; and

Whereas, West Virginia can invest in our energy infrastructure to include affordable, efficient battery storage technologies, and clean coal technology; and

Whereas, Over 10,000 clean energy jobs were here in West Virginia by the end of 2019; and

Whereas, Growing our clean energy workforce will also help grow employment and economic opportunities elsewhere in our state; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes clean energy's importance to West Virginia's energy future; and, be it

*Further Resolved,* That the Senate recognizes the value of clean energy, including abundant job opportunities, economic growth, energy independence, consumer choice, lower energy prices, and a cleaner environment; and, be it

*Further Resolved,* That clean energy—including generation from renewable sources such as wind, solar, and hydro power as well as nuclear, clean coal technology, natural gas, and energy storage—plays an important role in West Virginia's diverse energy portfolio; and, be it

*Further Resolved,* That investing in an all-of-the-above energy approach to in-state production and development can help build a stronger, more diversified, and more resilient economy in the Mountain State.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 56,** Requesting study on costs of inmate incarceration paid by municipalities.

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

**Senate Resolution 32,** Congratulating George Washington High School Patriots boys' soccer team.

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

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

The question being on the adoption of the resolution, and on this question, Senator Nelson demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 32) adopted.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 231**, Relating generally to medical cannabis.

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

On the passage of the bill, the yeas were: Baldwin, Beach, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—29.

The nays were: Azinger, Boley, Martin, Maynard, and Tarr—5.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 231) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 302**, Prohibiting gender-based price discrimination.

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

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules.

**Eng. Com. Sub. for Com. Sub. for Senate Bill 335**, Relating to WV Invests Grant Program for students at accredited community and technical college.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 335) passed.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 335**—A Bill to amend and reenact §18C-9-3, §18C-9-4, and §18C-9-5 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Invests Grant Program; defining terms; modifying the eligible costs for which the grants may be used; providing program fees must be approved by Council for Community and Technical College Education; and revising requirement for drug testing as a condition of West Virginia Invests Grant eligibility.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 335) takes effect July 1, 2021.

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

**Eng. Senate Bill 424**, Creating fixed income credit for low-income senior citizens.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 424) passed with its title.

Senator Takubo moved that the bill take effect January 1, 2022.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 424) takes effect January 1, 2022.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 464**, Requiring composting of organic materials and commercial composting products comply with WV Fertilizer Law.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 464) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 485**, Relating to use or presentation of firearm during commission of felony.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 485) passed with its title.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 542**, Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 542) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 550**, Providing counties with authority to impose county sales and use tax of up to one percent under certain circumstances.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 550 pass?”

On the passage of the bill, the yeas were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Nelson, Phillips, Plymale, Roberts, Romano, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—28.

The nays were: Azinger, Karnes, Martin, Maynard, and Rucker—5.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 550) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Nelson, Phillips, Plymale, Roberts, Romano, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—28.

The nays were: Azinger, Karnes, Martin, Maynard, and Rucker—5.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 550) takes effect July 1, 2021.

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

**Eng. Com. Sub. for Senate Bill 613**, Adding classification and base salaries of certain civilian employees of State Police Forensic Laboratory.

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

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

The nays were: None.

Absent: Maroney—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 613) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2021.

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

The nays were: None.

Absent: Maroney—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 613) takes effect July 1, 2021.

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

**Eng. Com. Sub. for Senate Bill 622**, Increasing compensation for elected county officials.

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

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Senate Bill 622 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Karnes and Sypolt—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 622) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Karnes and Sypolt—2.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 622) takes effect July 1, 2021.

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

At the request of Senator Woelfel, and by unanimous consent, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Com. Sub. for Senate Bill 635**, Requiring State Fire Commission propose rules for sprinkler protection in basements of certain buildings.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 30, 2021, for amendments to be received on third reading, was reported by the Clerk.

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

On page three, section five, lines forty-six through fifty-six, by striking out all of subsection (h) and inserting in lieu thereof a new subsection, designated subsection (h), to read as follows:

(h) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code relating to sprinkler protection, specifically providing that buildings commencing construction after July 1, 2021, housing emergency fire, rescue, or ambulance services shall be protected throughout by approved automatic sprinkler systems: *Provided*, That emergency services buildings that house only equipment and do not have designated sleeping areas or quarters

within them, regardless when constructed or commencing construction, are exempt from this requirement.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 635 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 635) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 635) takes effect from passage.

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

**Eng. Com. Sub. for Senate Bill 642**, Requiring legal advertisements by State Auditor be posted to central website.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 642) passed with its title.

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

**Eng. Senate Bill 661**, Permitting retailers to assume sales or use tax assessed on tangible personal property.

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

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

Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 661) passed.

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

**Eng. Senate Bill 661**—A Bill to repeal §11-9-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-3, §11-15-4, §11-15-4a, §11-15-4b, and §11-15-13 of said code; and to amend and reenact §11-15A-5, §11-15A-6, and §11-15A-8 of said code, all relating to permitting retailers to assume or absorb any sales or use tax assessed on tangible personal property; and eliminating criminal penalties.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 661) takes effect July 1, 2021.

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

**Eng. Com. Sub. for Senate Bill 663**, Providing fee for processing of criminal bonds.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 663) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 677**, Relating generally to miners' safety, health, and training standards.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 677) passed with its title.

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

**Com. Sub. for Senate Bill 695,** Providing procedures for decreasing or increasing corporate limits by annexation.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 30, 2021, for amendments to be received on third reading, was reported by the Clerk.

There being no amendments offered,

The bill was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 695 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 695) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 695) takes effect from passage.

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

**Eng. Com. Sub. for Senate Bill 702**, Relating to involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 702) passed with its title.

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

**Eng. Com. Sub. for Senate Bill 711**, Relating to school aid formula and minimum student enrollment.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 711) passed with its title.

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

**Eng. Senate Bill 717**, Supplemental appropriation from General Revenue to WV Community and Technical College Education, Control Account.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld,

Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 717) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 717) takes effect from passage.

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

**Eng. Senate Bill 718**, Relating generally to Coal Severance Tax Rebate.

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

Pending discussion,

The question being “Shall Engrossed Senate Bill 718 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. S. B. 718) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 718) takes effect from passage.

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

At the request of Senator Takubo, and by unanimous consent, the Senate returned to the sixth order of business, which agenda includes the making of main motions.

At the further request of Senator Takubo, unanimous consent being granted, the Senate requested the return from the House of Delegates of

**Eng. Com. Sub. for House Bill 2260**, Relating to procurement of child placing services.

Passed by the Senate on yesterday, Tuesday, March 30, 2021; for the purpose of subsequently moving to make the bill effective from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence as to the recall of Engrossed Committee Substitute for House Bill 2260.

The Senate again proceeded to the eighth order of business, the next resolution coming up in numerical sequence being

**Com. Sub. for Com. Sub. for Senate Joint Resolution 1**, Protection of the Right to Bear Arms Amendment.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 30, 2021, for amendments to be received on third reading, was reported by the Clerk.

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

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

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 22, article III thereof, be amended to read as follows:

**ARTICLE III. BILL OF RIGHTS.****§22. Right to keep and bear arms.**

A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use.

A county or municipality of this state may not adopt any ordinance, act, resolution, or rule, that is contrary to or more restrictive than state law governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or firearm accessories.

*Resolved further*, That in accordance with the provisions of §3-11-1 *et seq.* of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Protection of the Right to Bear Arms Amendment” and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to prohibit counties and municipalities of the state from regulating firearms, ammunition, and firearms accessories more restrictively than state law.”

There being no further amendments offered,

The resolution, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Committee Substitute for Senate Joint Resolution 1 was then read a third time and put upon its adoption.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for Committee Substitute for Senate Joint Resolution 1 be adopted?”

On the adoption of the resolution, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson,

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

The nays were: Ihlenfeld—1.

Absent: None.

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

**Eng. Com. Sub. for Com. Sub. for Senate Joint Resolution**

**1**—Proposing an amendment to the Constitution of the State of West Virginia, amending section 22, article III thereof, relating to the right to keep and bear arms; prohibiting county or municipal governments from enacting ordinances, acts, resolutions, or rules that are contrary to, or more restrictive than, state law governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or firearm accessories; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. Com. Sub. for Com. Sub. for S. J. R. 1) adopted, as follows:

**Eng. Com. Sub. for Com. Sub. for Senate Joint Resolution**

**1**—Proposing an amendment to the Constitution of the State of West Virginia, amending section 22, article III thereof, relating to the right to keep and bear arms; prohibiting county or municipal governments from enacting ordinances, acts, resolutions, or rules that are contrary to, or more restrictive than, state law governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or firearm accessories; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 22, article III thereof, be amended to read as follows:

### **ARTICLE III. BILL OF RIGHTS.**

#### **§22. Right to Keep and Bear Arms.**

A person has the right to keep and bear arms for the defense of self, family, home, and state, and for lawful hunting and recreational use.

A county or municipality of this state may not adopt any ordinance, act, resolution, or rule, that is contrary to or more restrictive than state law governing the sale, transfer, possession, use, storage, taxation, registration, licensing, or carrying of firearms, ammunition, or firearm accessories.

*Resolved further,* That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Protection of the Right to Bear Arms Amendment” and the purpose of the proposed amendment is summarized as follows: “To amend the State Constitution to prohibit counties and municipalities of the state from regulating firearms, ammunition, and firearms accessories more restrictively than state law.”

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

**Com. Sub. for Senate Joint Resolution 7, Motor Vehicle and Other Personal Property Tax Reduction Amendment.**

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, March 30, 2021, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was referred to the Committee on Rules.

**Eng. Com. Sub. for Senate Joint Resolution 9**, Disabled Veterans' Exemption from Ad Valorem Property Taxation Amendment.

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

On the adoption of the resolution, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. Com. Sub. for S. J. R. 9) adopted, as follows:

**Eng. Com. Sub. for Senate Joint Resolution 9**—Proposing an amendment to the Constitution of the State of West Virginia, amending section one-b, article X thereof, relating to authorizing the Legislature by general law to exempt veterans who are awarded 100 percent service-connected disability from paying all or part of the ad valorem real property taxes on the property comprising their residences; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section one-b, article X thereof, be amended to read as follows:

## **ARTICLE X. TAXATION AND FINANCE.**

### **§1b. Property tax limitation and homestead exemption. ~~amendment of 1982~~**

Ad valorem property taxation shall be in accordance with this section and other applicable provisions of this article not inconsistent with this section.

#### *Subsection A—Value; Rate of Assessment; Exceptions.*

Notwithstanding any other provisions of this Constitution and except as otherwise provided in this section, all property subject to ad valorem taxation shall be assessed at 60 percent of its value, as directed to be ascertained in this section, except that the Legislature may from time to time, by general law agreed to by two thirds of the members elected to each house, establish a higher percentage for the purposes of this paragraph, which percentage shall be uniform as to all classes of property defined in section one of this article, but not more than 100 percent of such value.

Notwithstanding the foregoing, for July 1, 1982, and July 1 of each year thereafter until the values may be fixed as a result of the first statewide reappraisal hereinafter required, assessments shall be made under the provisions of current statutory law, which is hereby validated for such purpose until and unless amended by the Legislature. Assessment and taxation in accord with this section shall be deemed to be equal and uniform for all purposes.

*Subsection B—Determination of Value.*

The Legislature shall provide by general law for periodic statewide reappraisal of all property, which reappraisal shall be related for all property to a specified base year which, as to each such reappraisal, shall be uniform for each appraisal for all classes of property and all counties. In such law, the Legislature shall provide for consideration of: (1) Trends in market values over a fixed period of years prior to the base year, (2) the location of the property, and (3) such other factors and methods as it may determine: *Provided*, That with respect to reappraisal of all property upon the base year of 1980, such reappraisals are deemed to be valid and in compliance with this section: *Provided, however*, That with respect to farm property, as defined from time to time by the Legislature by general law, the determination of value shall be according to its fair and reasonable value for farming purposes, as may be defined by general law.

The results of each statewide appraisal shall upon completion be certified and published and errors therein may be corrected, all as provided by general law. The first such statewide appraisal shall be completed, certified, and published on or before March 1, 1985, for use when directed by the Legislature.

The Legislature shall further prescribe by general law the manner in which each statewide reappraisal shall be employed to establish the value of the various separately assessed parcels or interests in parcels of real property and various items of personal property subject to ad valorem property taxation, the methods by which increases and reductions in value subsequent to the base year of each statewide reappraisal shall be ascertained, and require the enforcement thereof.

*Subsection C—General Homestead Exemption.*

Notwithstanding any other provisions of this Constitution to the contrary, the first \$20,000 of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the

owner, or one of the owners thereof, as his or her residence who is a citizen of this state and who is 65 years of age or older, or is permanently and totally disabled as that term may be defined by the Legislature, shall be exempt from ad valorem property taxation, subject to such requirements, limitations, and conditions as shall be prescribed by general law: Provided, That the Legislature may, by general law, exempt such additional amounts up to the entire assessed value of real property or personal property in the form of a mobile home used exclusively for residential purposes and occupied by an owner thereof from ad valorem taxation where the owner or partial owner is a veteran of the United States military and has been determined by the United States Department of Veterans Affairs or its successor to have a 100 percent service connected disability. Notwithstanding any other provision of this Constitution to the contrary, the Legislature shall have the authority to provide by general law for an exemption from ad valorem property taxation in an amount not to exceed the first \$20,000 of value of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner, or one of the owners thereof, as his or her residence who is a citizen of this state, and who is under 65 years of age and not totally and permanently disabled: Provided, however, That upon enactment of such general law, this exemption shall only apply to such property in any county in which the property was appraised at its value as of January 1, 1980, or thereafter, as determined by the Legislature, and this exemption shall be phased in over such period of time not to exceed five years from the date such property was so appraised, or such longer time as the Legislature may determine by general law: Provided however further, That in no event shall any one person and his or her spouse, or one homestead be entitled to more than one exemption under these provisions: And provided further, That these provisions are subject to such requirements, limitations, and conditions as shall be prescribed by general law.

The Legislature shall have the authority to provide by general law for property tax relief to citizens of this state who are tenants of residential or farm property.

*Subsection D—Additional Limitations on Value.*

With respect to the first statewide reappraisal, pursuant to this section, the resulting increase in value in each and every parcel of land or interest therein and various items of personal property subject to ad valorem property taxation over and above the previously assessed value shall be allocated over a period of 10 years in equal amounts annually.

The Legislature may by general law also provide for the phasing in of any subsequent statewide reappraisal of property.

*Subsection E—Levies for Free Schools.*

In equalizing the support of free schools provided by state and local taxes, the Legislature may require that the local school districts levy all or any portion of the maximum levies allowed under section one of this article which has been allocated to such local school districts.

Within the limits of the maximum levies permitted for excess levies for schools or better schools in sections one and 10 of this article, the Legislature may, in lieu of the exercise of such powers by the local school districts as heretofore provided, submit to the voters, by general law, a statewide excess levy, and if it be approved by the required number of voters, impose such levy, subject however to all the limitations and requirements for the approval of such levies as in the case of a district levy. The law submitting the question to the voters shall provide, upon approval of the levy by the voters, for the assumption of the obligation of any local excess levies for schools then in force theretofore authorized by the voters of a local taxing unit to the extent of such excess levies imposed by the state and so as to avoid double taxation of those local districts. The Legislature may also by general law reserve to the school districts such portions of the power to lay authorized excess levies as it may deem appropriate to enable local school districts to provide educational services which are not required to be furnished or supported by the state. If a statewide excess levy for the support of free schools is approved

by the required majority, the revenue from such a statewide excess levy shall be deposited in the state treasury and be allocated first for the local obligations assumed and thereafter for such part of the state effort to support free schools, by appropriation or as the law submitting the levy to the voters shall require, as the case may be.

The defeat of any such proposed statewide excess levy for school purposes shall not in any way abrogate or impair any local existing excess levy for such purpose nor prevent the adoption of any future local excess levy for such purpose.

*Subsection F—Implementation.*

In the event of any inconsistency between any of the provisions of this section and other provisions of this Constitution, the provisions of this section shall prevail. The Legislature shall have plenary power to provide by general law for the equitable application of this article and, as to taxes to be assessed prior to the first statewide reappraisal, to make such laws retroactive to July 1, 1982, or thereafter.

*Resolved further,* That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Disabled Veterans’ Exemption from Ad Valorem Property Taxation Amendment” and the purpose of the proposed amendment is summarized as follows: “The purpose of this amendment is to authorize the Legislature to exempt veterans who have a 100 percent service-connected disability from paying all or part of the ad valorem real property taxes levied against their personal residences.”

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

**Eng. Com. Sub. for Senate Joint Resolution 10, Limiting the Terms of Members of the House of Delegates and Senate Amendment.**

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

On the adoption of the resolution, the yeas were: Azinger, Baldwin, Beach, Boley, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Caputo and Stollings—2.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. Com. Sub. for S. J. R. 10) adopted, as follows:

**Eng. Com. Sub. for Senate Joint Resolution 10**—Proposing an amendment to the Constitution of the State of West Virginia, amending section three, article VI thereof, relating generally to limiting the number of terms delegates and senators may serve; limiting delegates to six consecutive terms; limiting senators to three consecutive terms; establishing beginning date of limitation; declaring partial terms count as full terms; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section three, article VI thereof, be amended to read as follows:

**ARTICLE VI. THE LEGISLATURE.****§3. Senators and delegates—Terms of office.**

Senators shall be elected for the term of four years, and delegates for the term of two years. The senators first elected, shall divide themselves into two classes, one senator from every district being assigned to each class; and of these classes, the first to be designated by lot in such manner as the Senate may determine, shall hold their seats for two years and the second for four years, so that after the first election, one half of the senators shall be elected biennially. After January 1, 2025, a person may not serve more than three consecutive terms as a senator or six consecutive terms as a delegate. Terms that begin prior to January 1, 2025, are not counted for purposes of this limitation, but a partial term served after January 1, 2025, shall be considered a term for purposes of this section.

*Resolved further,* That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Limiting the Terms of Members of the House of Delegates and Senate Amendment” and the purpose of the proposed amendment is summarized as follows: “To limit the number of ~~years~~ consecutive terms a member of the House of Delegates or Senate may serve.”

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

**Eng. Com. Sub. for House Bill 2003,** Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency.

On third reading, coming up in regular order, with the unreported committee amendments pending, and with the right having been granted on yesterday, Tuesday, March 30, 2021, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Maynard, as chair of the Committee on Government Organization, and by unanimous consent, the unreported Government Organization committee amendment to the bill was withdrawn.

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

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

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

**§15-5-2. Definitions.**

As used in this article:

(1) “Board” means the West Virginia Disaster Recovery Board created by this article;

(2) “Code” means the Code of West Virginia, 1931, as amended;

(3) “Community facilities” means a specific work, or improvement within this state or a specific item of equipment or tangible personal property owned or operated by any political subdivision or nonprofit corporation and used within this state to provide any essential service to the general public;

(4) “Disaster” means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural, or terrorist or man-made cause, including weapons of mass destruction, fire, flood, earthquake, wind, snow, storm, chemical or oil spill or other water or soil contamination, epidemic, air contamination, blight, drought, infestation, or other public calamity requiring emergency action;

(5) “Disaster recovery activities” means activities undertaken prior to, during, or following a disaster to provide, or to participate

in the provision of, emergency services, temporary housing, residential housing, essential business activities, and community facilities;

(6) “Emergency services” means the preparation for and the carrying out of all emergency functions, other than functions for which military forces are primarily responsible, to protect, respond, and recover, to prevent, detect, deter, and mitigate, to minimize and repair injury and damage resulting from disasters or other event caused by flooding, terrorism, enemy attack, sabotage, or other natural or other man-made causes. These functions include, without limitation, firefighting services, police services, medical and health services, communications, emergency telecommunications, radiological, chemical, and other special weapons defense, evacuation of persons from stricken areas, emergency welfare services, emergency transportation, existing or properly assigned functions of plant protection, temporary restoration of public utility services and other functions related to the health, safety, and welfare of the citizens of this state, together with all other activities necessary or incidental to the preparation for and carrying out of these functions. Disaster includes the imminent threat of disaster as well as its occurrence and any power or authority exercisable on account of a disaster that may be exercised during the period when there is an imminent threat;

(7) “Essential business activities” means a specific work or improvement within this state or a specific item of equipment or tangible personal property used within this state by any person to provide any essential goods or service determined by the authority to be necessary for recovery from a disaster;

(8) “Local organization for emergency services” means an organization created in accordance with the provisions of this article by state or local authority to perform local emergency services function;

(9) “Mobile support unit” means an organization for emergency services created in accordance with the provisions of this article by state or local authority to be dispatched by the

Governor to supplement local organizations for emergency services in a stricken area;

(10) “Person” means any individual, corporation, voluntary organization or entity, partnership, firm, or other association, organization, or entity organized or existing under the laws of this or any other state or country;

(11) “Political subdivision” means any county or municipal corporation in this state;

(12) “Recovery fund” means the West Virginia Disaster Recovery Trust Fund created by this article;

(13) “Residential housing” means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction or rehabilitation of land, buildings and improvements thereto, for residential housing, including, but not limited to, facilities for temporary housing and emergency housing, and any other nonhousing facilities that are incidental or appurtenant thereto;

(14) “State of emergency” means the duly proclaimed existence of conditions of disaster or other serious threat to the health or safety of persons and property within West Virginia, or a specific geographic area thereof, including but not limited to an attack upon the state or the United States, a natural or man-made disaster of major proportions, a pandemic, or other large-scale threat beyond the capacity of local control.

(15) “State of preparedness” means the duly proclaimed authorization for:

(A) Specialized planning and preparation activities intended to minimize any anticipated impact of conditions of a state of emergency, as defined in this section, which, in the judgment of the Governor, are expected to commence within the next 30 days, or within a period of longer than 30 days if necessary to obtain funding or maintain compliance with federal or interjurisdictional requirements; Provided, That a state of preparedness which is duly

proclaimed under such circumstances shall be referred to as a “Class I state of preparedness”; or

(B) Specialized planning and preparation activities intended to minimize, by use of any available and appropriate federal or state governmental resources, any anticipated impact of or anticipated threats with respect to a planned or anticipated event of such large size or scope or both that it is beyond the capacity of local control, and which is scheduled to commence within the next 30 days, or longer if necessary to obtain funding or maintain compliance with federal or interjurisdictional requirements: *Provided*, That a state of preparedness which is duly proclaimed under such circumstances shall be referred to as a “Class II state of preparedness”.

(16) “Secretary” means the Secretary of the West Virginia Department of ~~Military Affairs and Public Safety~~ Homeland Security; and

(17) “Temporary housing” means a specific work or improvement within this state undertaken primarily to provide dwelling accommodations, including the acquisition, construction, or rehabilitation of land, buildings and improvements thereto, for temporary residential shelters or housing for victims of a disaster and such other nonhousing facilities that are incidental or appurtenant thereto.

**§15-5-6. ~~Emergency powers of~~ Proclamation of a state of emergency or state of preparedness by the Governor and or the Legislature; additional powers of the Governor during a state of emergency or state of preparedness.**

(a) The Legislature finds that:

(1) The global coronavirus (COVID-19) pandemic of 2020, which is continuing at the time of the enactment of the amendments to this article in the regular session of the Legislature in 2021, has presented unprecedented challenges for the citizens of West

Virginia, which have required response of the government of the State of West Virginia;

(2) Exercising the authority and power provided by the Act, the Governor of West Virginia has marshalled the resources of the state and the full authority and response of the government of West Virginia to address the COVID-19 pandemic;

(3) West Virginia has been recognized nationally for its success in many aspects of its response, including vaccination rates and lower infection rates than exist in many other states; and

(4) It is the intent of the Legislature to codify some of the decisions that have been made by the Governor of West Virginia during the current COVID-19 pandemic, protecting individual liberties of the citizens of West Virginia, so that they have application to future states of preparedness or states of emergency in the State of West Virginia or any part thereof.

(b) The provisions of this section, and any executive order issued pursuant to the provisions of this section, are operative only during the existence of a state of emergency or state of preparedness: *Provided*, That nothing in this section may be construed to suspend or supersede any provision of the Constitution.

(c) The existence of a state of emergency ~~or state of preparedness~~ may be proclaimed by the Governor by executive order or by concurrent resolution of the Legislature if the Governor in the proclamation, or the Legislature in the resolution, finds that ~~an attack upon the United States has occurred or is anticipated in the immediate future, or that a natural or man-made disaster of major proportions has actually occurred or is imminent within the state, or that an emergency exists or may be imminent due to a large scale threat beyond local control~~ conditions warranting the proclamation of a state of emergency, as defined in this article, exist, and that the health, safety, and welfare of the inhabitants of this state require an invocation of the provisions of this section: *Provided*, That a gubernatorially proclaimed state of emergency

expires after 60 days from issuance of the executive order, unless prior to the 60th day the Governor provides written notice to the President of the Senate, the Speaker of the House of Delegates and the Joint Committee on Government and Finance that in his or her opinion it is necessary to extend the state of emergency. If the Governor extends the state of emergency beyond 60 days, he or she shall thereafter, no less frequently than every 30 days, provide the President of the Senate, the Speaker of the House of Delegates and the Joint Committee on Government and Finance with a written statement of his or her reasons to believe that the conditions warrant any continuation of the state of emergency. The Governor shall provide a timely written response to any written inquiry from the President of the Senate, the Speaker of the House of Delegates or the Joint Committee on Government and Finance regarding the need for continuing the state of emergency and the facts supporting the continuation. A state of emergency, whether proclaimed by the Governor or by the Legislature, terminates upon the issuance of a proclamation of termination by the Governor, or the passage by the Legislature of a concurrent resolution terminating the state of emergency.

~~(b) Any state of emergency or state of preparedness, whether proclaimed by the Governor or by the Legislature, terminates upon the proclamation of the termination by the Governor, or the passage by the Legislature of a concurrent resolution terminating the state of emergency or state of preparedness: *Provided*, That in no case shall a state of preparedness last longer than thirty days.~~

(d) The existence of a state of preparedness may be proclaimed by the Governor by executive order or by concurrent resolution of the Legislature, if the Governor in the proclamation or the Legislature in the resolution, finds that conditions warranting the proclamation of a state of preparedness, as defined in this article, exist, and that the health, safety, and welfare of the inhabitants of this state require the invocation of the provisions of this section: *Provided*, That the Governor or the Legislature shall proclaim a state of preparedness as a “Class I state of preparedness” or a “Class II state of preparedness”, as defined in this article by law: *Provided however*, That a gubernatorially proclaimed declared

state of preparedness expires after 30 days unless, prior to the 30th day, following the issuance of the executive order the Governor provides written notice to the President of the Senate, the Speaker of the House of Delegates and the Joint Committee on Government and Finance that, in his or her opinion, it is necessary to extend the state of preparedness. If the Governor extends the state of preparedness beyond 30 days he or she shall thereafter, no less frequently than every 30 days, provide the President of the Senate, the Speaker of the House of Delegates and the Joint Committee on Government and Finance with a written statement of his or her reasons to believe that the conditions warrant any continuation of the state of preparedness. The Governor shall provide a timely written response to any written inquiry from the President of the Senate, the Speaker of the House of Delegates or the Joint Committee on Government and Finance regarding the need for continuing the state of preparedness and the circumstances and facts supporting the continuation. A state of preparedness, whether proclaimed by the Governor or by the Legislature, terminates upon the issuance of a proclamation of termination by the Governor, or the passage by the Legislature of a concurrent resolution terminating the state of preparedness.

(e) When a state of emergency follows a state of preparedness involving the same or substantially similar circumstances, the total time allotted for the duration of the two combined shall be no more than 90 days, unless the Governor follows the requirements for extending the state of emergency under subsection (c) of this section.

(f) Any proclamation or resolution issued under this section must include, in general terms:

(1) A description of the facts and circumstances warranting the proclamation or resolution; and

(2) A designation of the geographic area threatened;

Provided, That any proclamation or resolution shall be disseminated as soon as practicable to the media and any other

means which are calculated to bring its contents to the attention of the general public: *Provided however, That for a gubernatorial proclamation of a state of emergency or state of preparedness, the Governor shall provide a copy of the executive order to the President of the Senate, the Speaker of the House of Delegates and the Joint Committee on Government and Finance.*

~~(e) (g) So long as a~~ Under a duly proclaimed state of emergency or state of preparedness exists, the Governor has and may exercise has the following additional ~~emergency~~ powers which are intended to be construed to authorize actions which are consistent with constitutional or statutory law, or with final orders of those courts of competent jurisdiction to which the Governor is subject:

(1) To enforce all laws and rules relating to the provision of emergency services and to assume direct operational control of any or all emergency service forces and helpers in the state;

(2) To sell, lend, lease, give, or transfer property, to make purchases, or deliver materials or perform functions relating to emergency services on terms and conditions he or she prescribes and without regard to the limitations of any existing law and to account to the State Treasurer for any funds received for the property;

(3) To procure materials and facilities for emergency services by purchase, condemnation under the provisions of §54-1-1 *et seq.* of this code, or seizure pending institution of condemnation proceedings within 30 days from the seizing thereof and to construct, lease, transport, store, maintain, renovate, or distribute the materials and facilities. Compensation for the procured property ~~so procured~~ shall be made in the manner provided in §54-1-1 *et seq.* of this code;

(4) To obtain the services of necessary personnel, required during the emergency or to prepare for the emergency, and to compensate them for their services from his or her contingent funds or other funds available to him or her;

(5) To provide and compel the evacuation of all or part of the population from any stricken or threatened area within the state and to take steps that are necessary for the receipt and care of the evacuees;

(6) To control ingress and egress ~~to and from~~ into or out of a disaster area or ~~an area where large scale threat exists,~~ other area subject to a state of emergency or state of preparedness, as well as the movement of persons ~~within the area~~ and the occupancy of premises ~~therein~~ within the area;

(7) To suspend the provisions of any ~~regulatory~~ statute prescribing the procedures for the conduct of state business or the orders, or rules of any state agency, if strict compliance therewith would in any way prevent, hinder, or delay necessary action in coping with the emergency;

(8) To use available resources of the state and of its political subdivisions that are reasonably necessary to cope with the emergency or to prepare for the emergency;

(9) To suspend or limit the sale, dispensing, or transportation of alcoholic beverages, explosives, and combustibles: Provided, That explosives and combustibles do not include firearms, ammunition, components of ammunition, or ammunition-reloading equipment and supplies;

(10) To make provision for the availability and use of temporary emergency housing; and

(11) To perform and exercise other functions, powers and duties that are necessary to promote and secure the safety and protection of the civilian population.

~~(d)~~ (e) The declaration of a state of preparedness has the same effect as a declaration of a state of emergency for the purposes of the Emergency Management Assistance Compact established in §15-5-22 of this code, and the Statewide Mutual Aid Systems set forth in §15-5-28 of this code.

(e) (h) The powers granted under this section do not authorize any action that would violate the prohibitions of §15-5-19a of this code.

(i) During any state of preparedness or state of emergency proclaimed at any time, an executive order of the Governor may not:

(1) Close churches or other houses of worship or prevent their operation in any manner that is more restrictive than the least restrictive rules in place for the operation of the most essential facilities of government or private enterprise;

(2) Suspend or limit the sale, lawful transfer, or transportation of firearms, ammunition, components of ammunition, or ammunition-reloading equipment and supplies; or

(3) Interfere with or impair the operation of the news media.

(j) Unless expressly authorized by an executive order of the Governor, a municipal, county, or state health officer shall not take any enforcement action which is not authorized by statute under color of a duly proclaimed state of emergency or state of preparedness.

(k) Any suit filed challenging an executive order issued relating to a state of preparedness or emergency pursuant to the authority granted in this section shall be limited to a petition for prohibition or mandamus pursuant to Rule 16 of the Rules of the West Virginia Supreme Court of Appeals. The provisions of §55-17-3 of this code are not applicable to any suit filed challenging an executive order issued pursuant to this section.

(l) The amendments to this section and §15-5-2 of this code enacted during the 2021 regular session of the legislature are applicable to circumstances constituting a state of emergency or state of preparedness initially proclaimed after the effective date of the amendments. It is the express intention of the Legislature not to interfere with the executive branch's handling of the COVID-19 caused state of emergency originally proclaimed on March 16,

2020, and executive orders entered under the proclamation. Provided, That nothing in this subsection may be construed to limit the authority of the Governor as to the state of emergency caused by COVID-19 in effect as of April 1, 2021.

On motion of Senator Ihlenfeld, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2003) was reported by the Clerk:

On page ten, section six, lines one hundred forty-four through one hundred fifty-one, by striking out all of subsection (1) and inserting in lieu thereof a new subsection (1), to read as follows:

(1) The amendments to this section and §15-5-2 of this code enacted during the 2021 regular session of the legislature are effective upon passage and are applicable to circumstances constituting a state of emergency or state of preparedness currently in effect as well as any state of emergency or state of preparedness proclaimed after the effective date of the amendments.

Following discussion,

At the request of Senator Ihlenfeld, and by unanimous consent, Senator Ihlenfeld's amendment to the Judiciary committee amendment to the bill was withdrawn.

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

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2003), as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 2003 pass?"

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

The nays were: Ihlenfeld—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2003) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: Ihlenfeld—1.

Absent: None.

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

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

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

A message from the Clerk of the House of Delegates announced that that body had acceded to the return of

**Eng. Com. Sub. for House Bill 2260**, Relating to procurement of child placing services.

Passed by the Senate on yesterday, Tuesday, March 30, 2021,

The bill now being in the possession of the Senate,

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2260) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence in the changed effective date.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 2267**, Establishing an optional bus operator in residence program for school districts.

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

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

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

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2267) passed.

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

**Eng. Com. Sub. for House Bill 2267**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-2-15; and to amend said code by adding thereto a new section, designated §18A-4-15a; all relating to bus operators; allowing retired bus operators to provide service as substitute bus operators in an area of critical need and shortage subject to certain conditions; providing that such substitute bus operators are considered day-to-day, temporary, part-time employees; allowing such substitute bus operators to fill a vacant position without loss of retirement benefits in certain circumstances; requiring the county board to post a vacant position until it is filled with a regularly employed bus operator; requiring the state board to post a vacant position electronically and easily accessible to prospective employees; establishing an optional bus operator in residence program for school districts; requiring certain steps in an application; establishing no entitlement to employment upon completion of the program; establishing wages or salaries paid to persons completing the program; establishing employment requirements after completing the program; and not permitting seniority to accrue during completion of the program.

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

**Eng. Com. Sub. for House Bill 2495**, Relating to the filing of asbestos and silica claims.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2495) passed with its title.

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

**Eng. Com. Sub. for House Bill 2499**, Tax reduction for arms and ammo manufacturing.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2499) passed with its title.

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

**Eng. House Bill 2808**, Remove salt from list and definition of “mineral” for severance tax purposes.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2808) passed with its title.

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

**Eng. House Bill 2852**, Relating to distribution of the allowance for increased enrollment.

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

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

Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2852) passed.

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

**Eng. House Bill 2852**—A Bill to amend and reenact §18-9A-15 of the Code of West Virginia, 1931, as amended, relating to distribution of the allowance for increased enrollment; removing mandated distribution of 60 percent of allowance based on projected increased enrollment prior to September 1; authorizing advance at district request prior to availability of actual increased enrollment of partial distribution of up to 60 percent of school districts estimated share; providing for refund of excess distribution; and requiring notification of the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability whenever an advanced partial distribution is made.

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

**Eng. House Bill 3010**, To extend the special valuation method for cellular towers to towers owned by persons not subject to regulation by the Board of Public Works.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld,

Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3010) passed with its title.

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

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2014**, Relating to role of the Legislature in appropriating federal funds.

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

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

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

#### **CHAPTER 4. THE LEGISLATURE.**

#### **ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.**

##### **§4-11-1. Legislative findings and purpose.**

The Legislature finds and declares that in order to carry out its responsibility for the enactment of all appropriations needed for the operation of state government, the Legislature needs continuous

and accurate accounts of the amounts and purposes of all federal funds being requested, received or expended by the various agencies and departments of the state. The Legislature further finds and declares that the increased availability of and reliance on federal financial assistance has a substantial impact upon the programs, priorities and fiscal affairs of the state. "It is the purpose of this article to clarify and specify the role of the Legislature in appropriating federal funds received by the state in all events, including public emergencies, and in prescribing, by general law, the required form and detail of the itemization and classification of proposed appropriations to assure that state purposes are served and legislative priorities are adhered to by the acceptance and use of such funds.

#### **§4-11-2. Definitions.**

As used in this article:

(1) "Federal funds" means any financial assistance made to a spending unit by the United States government, whether a loan, grant, block grant, subsidy, augmentation, reimbursement or any other form of such assistance, including "federal-matching funds";

(2) "Federal-matching funds" means federal funds of a specified amount or proportion for which a specified outlay of state contributions, including funds, property or services, are required as a condition for receipt or expenditure;

(3) "Spending unit" means the State of West Virginia and all agencies, offices, departments, divisions, boards, commissions, councils, committees or other entities of the state government for which an appropriation is requested or to which an appropriation is made by the Legislature. "Spending unit" does not mean any county, city, township, public service district or other political subdivision of the state; and

(4) "State-matching funds" means state contributions, including funds, property or services that are required by the

federal government, by law or regulation, as a condition for receipt or expenditure of federal funds.

#### **§4-11-3. Receipt of federal funds and required deposit in state treasury.**

Unless contrary to federal law, all federal funds received by a spending unit shall be deposited in and credited to special fund accounts as provided by ~~section two, article two, chapter twelve~~ §12-2-2 of this code and shall be available for appropriation by the Legislature as part of the state budget in accordance with Article X of the Constitution of this state.

#### **§4-11-4. Inclusion of federal funds in state budget and the budget bill.**

Pursuant to article ~~one-a, chapter five~~ §5-1A-1 et seq., and ~~chapter five-a~~ §11B-2-1 et seq. of this code, the Governor shall itemize in the state budget and in the budget bill, on a line-item basis, separately, for each spending unit, the amount and purpose of all federal funds received or anticipated for expenditure, with a reference to the account number, line item and amount of any state funds required for such purpose: *Provided*, That all federal ~~revenue sharing~~ block grant funds shall be so itemized in a separate section of the state budget and the budget bill devoted exclusively to proposed appropriations from the ~~revenue sharing trust fund~~ block grant funds.

#### **§4-11-5. Legislative appropriation authority.**

(a) No spending unit may make expenditures of any federal funds, whether such funds are advanced prior to expenditure or as reimbursement, unless such expenditures are made pursuant to specific appropriations by the Legislature, except as may be hereinafter provided.

(b) To the extent not precluded by the terms and conditions under which federal funds are made available to the spending unit by the United States government, the spending unit shall use federal funds in accordance with any purposes, policies or priorities

the Legislature may have established for the activity being assisted or for the use of state, federal and other fiscal resources in a particular fiscal year.

(c) If the federal funds received by a spending unit for a specific purpose are greater than the amount of such funds contained in the appropriation by the Legislature for such purpose, the total appropriation of federal funds and any state matching funds for such purpose shall remain at the level appropriated, except as hereinafter provided.

(d) If federal funds become available to the spending unit for expenditure while the Legislature is not in session and the availability of such funds could not reasonably have been anticipated and included in the budget approved by the Legislature for the next fiscal year, the treasurer may accept such funds on behalf of the spending unit and the Governor may authorize, in writing, the expenditure of such funds by the spending unit during that fiscal year as authorized by federal law and pursuant to the provisions of ~~article two, chapter five a of the code~~ §11B-2-1 et seq. of this code and, ~~which permits expenditure of amounts in excess of the appropriation~~ upon the filing of a proper expenditure schedule: *Provided*, That the Governor may not authorize the expenditure of such funds received for the creation of a new program or for a significant alteration of an existing program. For purposes of this article, a mere new source of funding of federal moneys for a program which has been prior approved by legislative appropriation ~~will not be deemed to be~~ is not a “new program” or a “significant alteration of an existing program” and the Governor may authorize the expenditure of such funds as herein provided, subject to the limitations under subsection (e) of this section. Should a question arise concerning whether such expenditures would constitute a new program or significant alteration of an existing program, while the Legislature is not in session, the Governor shall seek the recommendation of the council of finance and administration, as created and existing pursuant to the provisions of ~~section three, article one, chapter five a of the code~~ §5A-1-4 of this code. Upon application to the federal government

for such funds and upon receipt of such funds, the Governor shall submit to the Legislative Auditor two copies of a statement:

(1) Describing the proposed expenditure of such funds in the same manner as it would be described in the state budget; and

(2) Explaining why the availability of such federal funds and why the necessity of their expenditure could not have been anticipated in time for such expenditures to have been approved as part of the adopted budget for that particular fiscal year.

(e) Notwithstanding the provisions of subsection (d) of this section, no amount of such unanticipated federal funds for an existing program, for a significant alteration of an existing program, or for the creation of a new program made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency in excess of \$150 million for any part or the whole of the declared emergency may be expended without appropriation by the Legislature enacted following receipt of the funds. No provision of this code or any appropriations act in effect upon the receipt of unanticipated federal funds made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency may be construed to authorize the appropriation of those funds, except as provided in this subsection.

(f)(1) If federal funds become available to a spending unit and the funds were not included in the budget approved by the Legislature for the next fiscal year but are authorized to be expended while the Legislature is not in session under subsection

(d) of this section, the Governor shall submit reports in writing to the President of the Senate, the Speaker of the House of Delegates, the chairs of the respective committees on finance of the two houses of the Legislature, and the Legislative Auditor as follows:

(A) On or before the first day of each month following the receipt of the funds until the funds are expended in their entirety, the reports shall include the following:

(i) The purposes for which funds were made available, the identification of any federal and state laws governing the expenditure of the funds and a general itemization of the Governor's plan of expenditure for the whole of the funds;

(ii) A detailed schedule setting forth the Governor's proposed expenditures of the funds for the month, including, but not limited to, as to each proposed expenditure, the amount and purpose of the expenditure; the spending unit responsible for making the expenditure; and the anticipated recipient or recipients of the expenditure; and

(iii) An explanation of any changes made from the prior month's general itemization of the Governor's plan of expenditure for the whole of the funds and of any changes the prior month's schedule of proposed expenditures made by the actual expenditures made during that month;

(B) On or before the 15th day of the month following month in which the funds were expended in their entirety, the report shall set forth a complete itemized report of each expenditure of the funds; and

(C) The Governor shall also include in each report such additional information as may be requested the Legislative Auditor.

(2) The Legislative Auditor shall provide a copy of each report to the Joint Committee on Government and Finance.

**§4-11-6. Exclusions.**

The following are excluded from the provisions of this article:

(1) Federal funds received by state institutions of higher education or by students or faculty members of such institutions for instructional or research purposes and federal funds received for student scholarships or grants-in-aid;

(2) Federal nondiscretionary pass-through funds which are earmarked in specified amounts or proportions for transmittal to local political subdivisions or to designated classes of organizations and individuals which do not require state-matching funds and do not permit discretion in their distribution by the receiving state spending unit;

~~(3) Federal funds made available to the state for costs and damages resulting from natural disasters, civil disobedience or other occurrences declared by the Governor as a state of emergency; and~~

~~(4)~~(3) All federal funds received by the West Virginia department of highways or the West Virginia commissioner of highways.

**§4-11-7. Conflict with other statutory provisions.**

If there is any conflict between the provisions of this article and any other provision of law, including this code, relating to receiving or expending federal funds, the provisions of this article shall govern and control.

**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 1A. ITEMIZATION OF PROPOSED APPROPRIATIONS IN BUDGET BILL SUBMITTED BY GOVERNOR TO LEGISLATURE.**

**§5-1A-1. Legislative findings and purposes.**

The Legislature finds and declares that section fifty-one, article six of the Constitution, known as the “modern budget amendment,” authorizes the Legislature to prescribe by law the form and detail of the itemization and classification of the proposed appropriations of the budget bill submitted to it by the Governor, and that said section further authorizes the Legislature to enact such laws, not inconsistent with said section, as may be necessary and proper to carry out its provisions. The Legislature further finds and declares that said section makes the Legislature solely responsible for enacting all appropriations needed for the operation of state government, and that in carrying out such responsibility, the Legislature requires a continuous and timely flow of accurate information relative to the financial condition of the state, the needs and operations of the various agencies and departments of the state, and the amounts and purposes of all funds, including federal funds, being requested, received or expended by such agencies and departments from sources other than the revenues of the state.

Therefore, it is the purpose of this article to implement the aforementioned provisions of the Constitution, to enable the Legislature to carry out its Constitutional responsibility by prescribing the form and detail of the itemization and classification of the proposed appropriations of the budget bill submitted to the Legislature by the Governor, and in conjunction with ~~the provisions of this act amending certain sections of articles one and two, chapter five a, §5-1A-1 et seq. and §11B-2-1 et seq. of this code and section three, article four, chapter twelve §12-4-3 of this code,~~ to ensure that the Legislature will be furnished the information needed to discharge such responsibility.

**CHAPTER 11B. DEPARTMENT OF REVENUE.**

**ARTICLE 1. DEPARTMENT OF REVENUE.**

**§11B-1-1. ~~Department of tax and revenue renamed~~  
~~Department of Revenue; office of secretary of tax and~~  
~~revenue renamed~~ Office of Secretary of Revenue; Director  
of Budget; federal funds.**

(a) ~~The Department of Tax and Revenue and the office of secretary of tax and revenue are hereby renamed, respectively, the~~ The Department of Revenue and the office of secretary of revenue ~~and are~~ continued in the executive branch of state government. Wherever in this code the words “office of secretary of tax and revenue” or “secretary of tax and revenue” are used, such words shall ~~now~~ mean the office of secretary of revenue or the secretary of revenue. Wherever in this code the words “department of tax and revenue” are used, such words shall mean the Department of Revenue.

(b) The secretary of revenue shall be the chief executive officer of the department and director of the budget. The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term not exceeding the term of the Governor.

(c) The Department of Revenue is hereby authorized to receive federal funds for deposit in compliance with §12-2-2 of this code and for expenditure only upon appropriation by the Legislature of this state and in accordance with §4-11-1 et seq. of this code.

(d) The secretary shall serve at the will and pleasure of the Governor. The annual compensation of the secretary shall be as specified in ~~section two a, article seven, chapter six~~ §6-7-2a of this code.

**§11B-1-4. Reports by secretary.**

The secretary shall make an annual report to the Governor concerning the conduct of the department and the administration of the budget. The secretary shall also make other reports as the Governor may require. Copies of any such reports shall be submitted to the Legislature in the manner required by §5-1-20 of this code.

**ARTICLE 2. STATE BUDGET OFFICE.****§11B-2-11. Estimates of revenue; reports on revenue collections; withholding department funds on noncompliance.**

(a) Prior to the beginning of each fiscal year, the secretary shall estimate the revenue to be collected month by month by each classification of tax for that fiscal year as it relates to the official estimate of revenue for each tax for that fiscal year and the secretary shall certify this estimate to the Governor and the Legislative Auditor and the West Virginia Investment Management Board by July 1, for that fiscal year.

(1) The secretary shall ascertain the collection of the revenue of the state and shall determine for each month of the fiscal year the proportion which the amount actually collected during a month bears to the collection estimated by him or her for that month. The secretary shall certify to the Governor, the Legislative Auditor and the Investment Management Board, as soon as possible after the close of each month, and not later than the 15th day of each month, and at other times as the Governor, the Legislative Auditor or the Investment Management Board may request, the condition of the state revenues and of the several funds of the state and the proportion which the amount actually collected during the preceding month bears to the collection estimated by him or her for that month. The secretary shall include in this certification the same information previously certified for prior months in each fiscal year. The certification for the final month of a fiscal year shall also include the proportion which the amount actually collected during the preceding fiscal year bears to the appropriations made for that year. For the purposes of this section, the secretary shall have the authority to require all necessary estimates and reports from any spending unit of the state government.

(2) If the secretary fails to certify to the Governor, the Legislative Auditor and the Investment Management Board the information required by this subsection within the time specified herein, the Legislative Auditor shall notify the Auditor and Treasurer of the failure and thereafter no funds appropriated to the

Department of Revenue may be expended until the secretary has certified the information required by this subsection.

(b) Prior to July 1, of each fiscal year, the secretary shall estimate daily revenue flows for the General Revenue Fund for the next fiscal year as it relates to the official estimate of revenue. Subsequent to the end of each fiscal year, the secretary shall compare the projected daily revenue flows with the actual daily revenue flows from the previous year. The secretary may for any month or months, at his or her discretion, revise the annual projections of the daily revenue flows. The secretary shall certify to the Governor, the Legislative Auditor and the Investment Management Board, as soon as possible after the close of each month and not later than the 15th day of each month, and at other times as the Governor, the Legislative Auditor or the Investment Management Board may request, the condition of the General Revenue Fund and the comparison of the projected daily revenue flows with the actual daily revenue flows. If the secretary fails to certify to the Governor, the Legislative Auditor and the Investment Management Board the information required by this subsection within the time specified herein, the Legislative Auditor shall notify the Auditor and treasurer of the failure and thereafter no funds appropriated to the Department of Revenue may be expended until the secretary has certified the information required by this subsection.

**§11B-2-21. Reduction of appropriations — Reduction of appropriations from general revenue.**

If the Governor determines that the amounts, or parts thereof, appropriated from the general revenue cannot be expended without creating an overdraft or deficit in the General Fund, he or she may, before the end of the fiscal year, instruct the secretary to reduce all appropriations out of general revenue in a degree as necessary to prevent an overdraft or a deficit in the General Fund. No reduction of appropriations may be made after June 30 of the fiscal year.

**§11B-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary; ~~and~~ consolidated report of federal funds; central agency for receipt of federal funds; unlawful acts.**

(a) Every agency of the state government when making requests or preparing budgets to be submitted to the federal government for funds, equipment, material or services, the grant or allocation of which is conditioned upon the use of state matching funds, shall have the request or budget approved in writing by the secretary before submitting it to the proper federal authority. When the federal authority has approved the request or budget, the agency of the state government shall resubmit it to the secretary for recording before any allotment or encumbrance of the federal funds can be made. Whenever any agency of the state government receives from any agency of the federal government a grant or allocation of funds which do not require state matching, the state agency shall report to the secretary the amount of the federal funds granted or allocated.

(b) Unless contrary to federal law, any agency of state government, when making requests or preparing budgets to be submitted to the federal government for funds for personal services, shall include in the request or budget the amount of funds necessary to pay for the costs of any fringe benefits related to the personal service. For the purposes of this section, “fringe benefits” means any employment benefit granted by the state which involves state funds, including, but not limited to, contributions to insurance, retirement and social security and which does not affect the basic rate of pay of an employee.

(c) In addition to the other requirements of this section, the secretary shall, as soon as possible after the end of each fiscal year but no later than December 31, of each year, submit to the Governor a consolidated report which shall contain a detailed itemization of all federal funds received by the state during the

preceding and current fiscal years, as well as those scheduled or anticipated to be received during the remainder of the current fiscal year and the next ensuing fiscal year. The itemization shall show:

(1) Each spending unit which has received or is scheduled or expected to receive federal funds in either of the fiscal years;

(2) The amount of each separate grant or distribution received or to be received; and

(3) A brief description of the purpose of every grant or other distribution, with the name of the federal agency, bureau or department making the grant or distribution: *Provided*, That it is not necessary to include in the report an itemization of federal ~~revenue sharing funds deposited in and appropriated from the revenue sharing trust fund~~ block grants, or federal funds received for the benefit of the Division of Highways of the Department of Transportation.

(d) The secretary may obtain from the spending units any and all information necessary to prepare a report.

(e) Notwithstanding the other provisions of this section and in supplementation of the provisions of this section, the Legislature hereby determines that the Department of Revenue and its secretary need to be the single and central agency for receipt of information and documents in respect of applications for, and changes, receipt and expenditure of, federal funds by state agencies. Every agency of state government, when making application for federal funds in the nature of a grant, allocation or otherwise; when amending the applications or requests; when in receipt of federal funds; or when undertaking any expenditure of federal funds, in all respective instances, shall provide to the secretary of revenue document copies or sufficient summary information in respect of the federal funds to enable the secretary to provide approval in writing for any activity in respect to the federal funds.

**CHAPTER 12. PUBLIC MONEYS AND SECURITIES.****ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER AMOUNTS DUE THE STATE OR ANY POLITICAL SUBDIVISION.****§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.**

(a) All officials and employees of the state authorized by statute to accept moneys on behalf of the State of West Virginia shall keep a daily itemized record of moneys received for deposit in the State Treasury and shall deposit within one business day with the State Treasurer all moneys received or collected by them for or on behalf of the state for any purpose whatsoever. The State Treasurer may grant an exception to the one business day rule when circumstances make compliance difficult or expensive. The State Treasurer may review the procedures and methods used by officials and employees authorized to accept moneys due the state and change the procedures and methods if he or she determines it is in the best interest of the state: *Provided*, That the State Treasurer may not review or amend the procedures by which the Department of Revenue accepts moneys due the state. The State Treasurer shall propose rules for legislative approval, in accordance with the provisions of ~~article three, chapter twenty nine~~ a §29A-3-1 et seq. of this code governing the procedure for deposits. The official or employee making deposits with the State Treasurer shall prepare deposit lists in the manner and upon report forms prescribed by the State Treasurer in the state accounting system. The State Treasurer shall review the deposits in the state accounting system and forward the information to the State Auditor and to the Secretary of Revenue.

(b) All moneys received by the state from appropriations made by the Congress of the United States shall be recorded in special fund accounts, in the State Treasury apart from the general revenues of the state, and shall be expended only upon appropriation of the Legislature in accordance with the provisions

of ~~article eleven, chapter four~~ §4-11-1 et seq. of this code. All moneys, other than federal funds, defined in ~~section two, article eleven, chapter four~~ §4-11-2 of this code, shall be credited to the state fund and treated by the State Auditor and State Treasurer as part of the general revenue of the state except the following funds which shall be recorded in separate accounts:

(1) All funds excluded by the provisions of ~~section six, article eleven, chapter four~~ §4-11-6 of this code;

(2) All funds derived from the sale of farm and dairy products from farms operated by any spending unit of the state;

(3) All endowment funds, bequests, donations, executive emergency funds and death and disability funds;

(4) All fees and funds collected at state educational institutions for student activities;

(5) All funds derived from collections from dormitories, boardinghouses, cafeterias and road camps;

(6) All moneys received from counties by institutions for the deaf and blind on account of clothing for indigent pupils;

(7) All insurance collected on account of losses by fire and refunds;

(8) All funds derived from bookstores and sales of blank paper and stationery, and collections by the chief inspector of public offices;

(9) All moneys collected and belonging to the capitol building fund, state road fund, state road sinking fund, general school fund, school fund, state fund (moneys belonging to counties, districts and municipalities), state interest and sinking funds, state compensation funds, the fund maintained by the Public Service Commission for the investigation and supervision of applications and all fees, money, interest or funds arising from the sales of all permits and licenses to hunt, trap, fish or otherwise hold or capture

fish and wildlife resources and money reimbursed and granted by the federal government for fish and wildlife conservation; and

(10) All moneys collected or received under any act of the Legislature providing that funds collected or received under the act shall be used for specific purposes.

(c) All moneys, except as provided in subdivisions (1) through (9), inclusive, subsection (b) of this section, shall be paid into the State Treasury in the same manner as collections not excepted and recorded in separate accounts for receipt and expenditure for the purposes for which the moneys are authorized to be collected by law: *Provided*, That amounts collected pursuant to subdivisions (1) through (10), subsection (b) of this section, which are found, from time to time, to exceed funds needed for the purposes set forth in general law may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature. The gross amount collected in all cases shall be paid into the State Treasury. Commissions, costs and expenses, including, without limitation, amounts charged for use of bank, charge, credit or debit cards, incurred in the collection process shall be paid from the gross amount collected in the same manner as other payments are made from the State Treasury.

(d) The State Treasurer may establish an imprest fund or funds in the office of any state spending unit upon receipt of a proper application. To implement this authority, the State Treasurer shall propose rules for legislative approval in accordance with the provisions of ~~article three, chapter twenty nine~~ a §29A-3-1 et seq. of this code. The State Treasurer or his or her designee shall annually audit all imprest funds and prepare a list of the funds showing the location and amount as of fiscal year end, retaining the list as a permanent record of the State Treasurer until the Legislative Auditor has completed an audit of the imprest funds of all agencies and institutions involved.

(e) The State Treasurer may develop and implement a centralized receipts processing center. The State Treasurer may request the transfer of equipment and personnel from appropriate

state agencies to the centralized receipts processing center in order to implement the provisions of this section: *Provided*, That the Governor or appropriate constitutional officer has authority to authorize the transfer of equipment or personnel to the centralized receipts processing center from the respective agency.

### **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS.**

#### **§12-3-12. Expiration of unexpended appropriations; reappropriations.**

(a) Every Except as provided in subsection (b) of this section, every appropriation which that is payable out of the general revenue, or so much thereof as may remain undrawn at the end of the year for which made, shall be deemed to have expired at the end of the year for which it is made, and no warrant shall thereafter be issued upon it: *Provided*, That warrants may be drawn through the 31st day of July after the end of the year for which the appropriation is made if the warrants are in payment of bills for such year and have been encumbered by the budget office prior to July first: ~~but appropriations for buildings and land or capital outlay shall remain in effect, and shall not be deemed to have expired until the end of three years after the passage of the act by which such appropriations are made~~ *Provided, however*, That if such 31st day of July is on Saturday, then warrants may only be drawn through the Friday immediately preceding such Saturday, but if such 31st day of July is on Sunday, the warrants may be drawn through the Monday immediately following such Sunday.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary:

(1) Appropriations that are payable out of the general revenue, or so much thereof as may remain undrawn at the end of the year for which made, for buildings and land or capital outlay shall remain in effect, and shall not be deemed to have expired until the end of three years after the passage of the act by which such appropriations are made; and

(2) Appropriations that are payable out of the general revenue, or so much thereof as may remain undrawn at the end of the fiscal year for which made, that are reappropriated by the budget act for the ensuing fiscal year shall not be deemed to have expired unless, at the end of the fiscal year just ended, the total general revenue collections for the fiscal year just ended did not equal or exceed total general revenue appropriations for that fiscal year. If the total general revenue collections for the fiscal year just ended did not equal or exceed total general revenue appropriations for that fiscal year, all such reappropriations shall be deemed to have expired at the end of the fiscal year as provided in subsection (a) of this section.

(c) The Legislature may expire or provide for the expiration of any appropriation prior to the end of the fiscal year for which it is made.

**§12-3-17. Liabilities incurred by state boards, commissions, officers or employees which cannot be paid out of current appropriations.**

Except as provided in this section, it shall be unlawful for any state board, commission, officer or employee: (1) To incur any liability during any fiscal year which cannot be paid out of the then current appropriation for such year or out of funds received from an emergency appropriation; or (2) to authorize or to pay any account or bill incurred during any fiscal year out of the appropriation for the following year: *Provided*, That nothing contained herein shall prohibit entering into a contract or lease for buildings, land and space, the cost of which exceeds the current year's appropriation, even though the amount is not available during the then current year, if the aggregate cost does not exceed the amount then authorized by the Legislature. Nothing contained herein shall ~~repeat~~ abrogate the provisions of the general law relating to the expiration of appropriations for buildings and land.

Any member of a state board or commission or any officer or employee violating any provision of this section shall be personally

liable for any debt unlawfully incurred or for any payment unlawfully made.

#### **ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.**

##### **§12-4-2. Accounts of Treasurer and Auditor; Auditor to certify condition of revenues and funds of the state.**

The Treasurer shall keep in his or her office separate accounts with each depository, and also a summary account for the state, and when money is paid into the treasury, it shall be charged to the proper depository and credited to a summary account. The Auditor shall keep in his or her office separate accounts of the particular heads or sources of revenue, and a summary account with the Treasurer, beside such individual accounts with officers and persons as may be necessary, and shall charge every sum of money received for the state as aforesaid to the Treasurer's account, and credit it under the particular head of revenue to which it properly belongs, distinguishing especially in distinct accounts the receipts on account of the capital of the school fund and those on account of the income of said fund subject to annual distribution. The Auditor shall certify annually to the ~~commissioner of finance and administration~~ Secretary of Revenue the condition of the state revenues and the several funds of the state. The certification shall be used by the ~~commissioner~~ Secretary in the preparation of a tentative state budget as required of him or her by ~~article two, chapter five a~~ §5-1A-1 et seq., and §11B-2-1 et seq. of this code.

##### **§12-4-3. Accounts of appropriations.**

The Auditor and Secretary of ~~administration~~ Revenue shall each keep an account of every appropriation made by law, and of the several sums drawn thereon, so that the accounts may show at all times the balance undrawn on each appropriation. The account so kept shall be compared every month and errors, if any, corrected.

The bill (Eng. Com. Sub. for H. B. 2014), as amended, was then ordered to third reading.

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

On suspending the constitutional rule, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2014) was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2014) passed.

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

**Eng. Com. Sub. for House Bill 2014**—A Bill to amend and reenact §4-11-1, §4-11-2, §4-11-3, §4-11-4, §4-11-5, §4-11-6, and §4-11-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-1A-1 of said code; to amend and reenact §11B-1-1

and §11B-1-4 of said code; to amend and reenact §11B-2-11, §11B-2-21, and §11B-2-23 of said code; to amend and reenact §12-2-2 of said code; to amend and reenact §12-3-12 and §12-3-17 of said code; and to amend and reenact §12-4-2 and §12-4-3 of said code, all relating to disposition of moneys received by the state generally; specifying the role of the Legislature in appropriating federal funds; updating references to types of federal funds; providing for appropriation of federal funds in accordance with the state constitution; updating and clarifying statutory cross-references; limiting gubernatorial authority to spend federal funds without appropriation of the Legislature; continuing and limiting spending of certain emergency funds for certain emergencies without additional enactment; requiring reports to the Legislature on proposed and actual spending of those funds; removing certain emergency federal fund exclusion language from the provisions governing appropriations of federal funds; establishing controlling provisions in case of conflict of law; clarifying statutes applicable to preparation of state budget; clarifying meaning of certain terms; conditioning the Secretary of Revenue's receipt and expenditure of federal funds; providing copy of certain reports to the Legislature; enlarging matters to be reported to the Legislature regarding revenue estimates, collections and appropriations; requiring any budget reductions be made before end of fiscal year; enlarging matters to be reported in the annual Consolidated Federal Funds report; authorizing funds to be reappropriated from one fiscal year to the next, and providing circumstances under which those funds expire to the general revenue fund instead of being reappropriated; modifying certain terms; and updating references to public officers.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2014) takes effect from passage.

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

The Senate proceeded to the tenth order of business.

**Eng. House Bill 2253**, Relating to forgery and other crimes concerning lottery tickets.

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

**Eng. House Bill 2888**, Relating to when contentions can be revived based on forensic scientific evidence that was not available at time of conviction.

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

And,

**Eng. House Bill 3081**, Updating the West Virginia Business Corporations Act.

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

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was removed as a co-sponsor of the following bill on March 30, 2021:

**Senate Bill 716:** Senator Nelson.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following bill and resolutions on March 30, 2021:

**Com. Sub. for Senate Bill 554:** Senator Karnes;

**Senate Concurrent Resolution 56:** Senators Hamilton and Woelfel;

And,

**Senate Resolution 32:** Senators Hamilton, Woelfel, and Stollings.

Pending announcement of meetings of standing committees of Senate,

On motion of Senator Takubo, at 12:50 p.m., the Senate adjourned until tomorrow, Thursday, April 1, 2021, at 10 a.m.

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## THURSDAY, APRIL 1, 2021

The Senate met at 11:03 a.m.

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

Prayer was offered by First Sergeant Jay Powers, West Virginia State Police, Milton, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Eric J. Tarr, a senator from the fourth district.

Pending the reading of the Journal of Wednesday, March 31, 2021,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 275**, Relating generally to WV Appellate Reorganization Act of 2021.

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

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

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

### **CHAPTER 3. ELECTIONS.**

#### **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

##### **§3-1-16. Election of state officers.**

(a) At the general election to be held in 1968, and every fourth year thereafter, there shall be elected a Governor, Secretary of State, Treasurer, Auditor, Attorney General and Commissioner of Agriculture. At the general election in 1968, and every second year thereafter, there shall be elected a member of the State Senate for each senatorial district, and a member or members of the House of Delegates of the state from each county or each delegate district.

(b) At the time of the primary election to be held in the year 2016, and every twelfth year thereafter, there shall be elected one justice of the Supreme Court of Appeals, and at the time of the primary election to be held in 2020, and every twelfth year thereafter, two justices of the Supreme Court of Appeals and at the time of the primary election to be held in 2024, and every twelfth year thereafter, two justices of the Supreme Court of Appeals. Effective with the primary election held in the year 2016, the election of justices of the Supreme Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in article five of this chapter.

(c) At the time of the primary election to be held in the year 2024, and every tenth year thereafter, there shall be elected one judge to a seat of the Intermediate Court of Appeals; at the time of the primary election to be held in 2026, and every tenth year thereafter, one judge to a seat of the Intermediate Court of Appeals; and at the time of the primary election to be held in 2028, and every tenth year thereafter, one judge to a seat of the Intermediate Court of Appeals. Effective with the primary election held in the year 2024, the election of Judges of the Intermediate Court of Appeals shall be on a nonpartisan basis and by division as set forth more fully in §3-5-1 et seq. of this code.

#### **ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

##### **§3-4A-11a. Ballots tabulated electronically; arrangement, quantity to be printed, ballot stub numbers.**

(a) The board of ballot commissioners in counties using ballots upon which votes may be recorded by means of marking with electronically sensible ink or pencil and which marks are tabulated electronically shall cause the ballots to be printed or displayed upon the screens of the electronic voting system for use in elections.

(b) (1) For the primary election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and arrangement of candidates within each office are to conform as nearly as possible to §3-5-13 and §3-5-13a of this code.

(2) For the general election, the heading of the ballot, the type faces, the names and arrangement of offices and the printing of names and the arrangement of candidates within each office are to conform as nearly as possible to §3-6-2 of this code.

(3) Effective with the primary election held in 2016 and thereafter, the following nonpartisan elections are to be separated from the partisan ballot and separately headed in display type with a title clearly identifying the purpose of the election and constituting a separate ballot wherever a separate ballot is required under this chapter:

(A) Nonpartisan elections for judicial offices, by division, of:

(i) Justice of the Supreme Court of Appeals;

(ii) Judge of the Intermediate Court of Appeals;

~~(ii)~~ (iii) Judge of the circuit court;

~~(iii)~~ (iv) Family court judge; and

~~(iv)~~ (v) Magistrate;

(B) Nonpartisan elections for Board of Education; and

(C) Any question to be voted upon.

(4) Beginning in the primary election to be held in the year 2020 and in each election thereafter, the nonpartisan judicial elections described in subparagraphs (i) through (iv), paragraph (A), subdivision (3), of this subsection shall appear immediately after the state ticket and shall immediately precede the county ticket, in the same manner prescribed in §3-5-13a of this code.

(5) Both the face and the reverse side of the ballot may contain the names of candidates only if means to ensure the secrecy of the ballot are provided and lines for the signatures of the poll clerks on the ballot are printed on a portion of the ballot which is deposited

in the ballot box and upon which marks do not interfere with the proper tabulation of the votes.

(6) The arrangement of candidates within each office is to be determined in the same manner as for other electronic voting systems, as prescribed in this chapter. On the general election ballot for all offices, and on the primary election ballot only for those offices to be filled by election, except delegate to national convention, lines for entering write-in votes are to be provided below the names of candidates for each office, and the number of lines provided for any office shall equal the number of persons to be elected, or three, whichever is fewer. The words “WRITE-IN, IF ANY” are to be printed, where applicable, directly under each line for write-ins. The lines are to be opposite a position to mark the vote.

(c) Except for electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary election ballots are to be printed in the color of ink specified by the Secretary of State for the various political parties, and the general election ballot is to be printed in black ink. For electronic voting systems that utilize screens upon which votes may be recorded by means of a stylus or by means of touch, the primary ballots and the general election ballot are to be printed in black ink. All ballots are to be printed, where applicable, on white paper suitable for automatic tabulation and are to contain a perforated stub at the top or bottom of the ballot, which is to be numbered sequentially in the same manner as provided in §3-5-13 of this code, or are to be displayed on the screens of the electronic voting system upon which votes are recorded by means of a stylus or touch. The number of ballots printed and the packaging of ballots for the precincts are to conform to the requirements for paper ballots provided in this chapter.

(d) In addition to the official ballots, the ballot commissioners shall provide all other materials and equipment necessary to the proper conduct of the election.

**ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.****§3-5-6e. Election of Judges of the Intermediate Court of Appeals.**

(a) An election for the purpose of electing a Judge or Judges of the Intermediate Court of Appeals shall be held on the same date as the primary election, as provided by law, upon a nonpartisan ballot by division printed for this purpose.

(b) In case of a tie vote under this section, §3-6-12 of this code controls in breaking the tie vote.

**§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.**

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit judge or family court judge, shall file a certificate of announcement with the clerk of the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the County Clerk in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until 12:00 p.m.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in §3-5-13 of this code;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state, and zip code;

(6) For partisan elections, the name of the candidate's political party and a statement that the candidate: (A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party; and (B) has not been registered as a voter affiliated with any other political party for a period of sixty days before the date of filing the announcement;

(7) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

(8) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

(9) The words "subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_" and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the sixty days immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than ten days following the close of the filing period, the candidate may not be refused certification for this reason.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of

false swearing and shall be punished in accordance with §3-9-3 of this code.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

### **§3-5-13. Form and contents of ballots.**

The following provisions apply to the form and contents of election ballots:

(1) The face of every primary election ballot shall conform as nearly as practicable to that used at the general election.

(2) The heading of every ballot is to be printed in display type. The heading is to contain a ballot title, the name of the county, the state, the words “Primary Election” and the month, day and year of the election. The ballot title of the political party ballots is to contain the words “Official Ballot of the (Name) Party” and the official symbol of the political party may be included in the heading.

(A) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judicial officers shall commence with the words “Nonpartisan Ballot of Election of Judicial Officers” and each such office shall be listed in the following order:

(i) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all justices of the Supreme Court of Appeals shall contain the words “Nonpartisan Ballot of Election of Justice(s) of the Supreme Court of Appeals of West Virginia”. The names of the candidates for the Supreme Court of Appeals shall be printed by division without references to political party affiliation or registration.

(ii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all judges of the Intermediate Court of Appeals shall contain the words “Nonpartisan Ballot of Election of Judge(s) of the Intermediate Court of Appeals”. The names of the candidates for the Intermediate Court of Appeals shall be printed by division without references to political party affiliation or registration.

(iii) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all circuit court judges in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Circuit Court Judge(s)”. The names of the candidates for the respective circuit court judge office shall be

printed by division without references to political party affiliation or registration.

~~(iii)~~ (iv) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all family court judges in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Family Court Judge(s)”. The names of the candidates for the respective family court judge office shall be printed by division without references to political party affiliation or registration.

~~(iv)~~ (v) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for all magistrates in the respective circuits shall contain the words “Nonpartisan Ballot of Election of Magistrate(s)”. The names of the candidates for the respective magistrate office shall be printed by division without references to political party affiliation or registration.

(B) The ballot title of any separate paper ballot or portion of any electronic or voting machine ballot for the Board of Education is to contain the words “Nonpartisan Ballot of Election of Members of the \_\_\_\_\_ County Board of Education”. The districts for which fewer than two candidates may be elected and the number of available seats are to be specified and the names of the candidates are to be printed without reference to political party affiliation and without designation as to a particular term of office.

(C) Any other ballot or portion of a ballot on a question is to have a heading which clearly states the purpose of the election according to the statutory requirements for that question.

(3) (A) For paper ballots, the heading of the ballot is to be separated from the rest of the ballot by heavy lines and the offices shall be arranged in columns with the following headings, from left to right across the ballot: “National Ticket”, “State Ticket”, “Nonpartisan Judicial Ballot”, “County Ticket”, “Nonpartisan Ballot” in a nonpresidential election year, “District Ticket” or, in a presidential election year, “National Convention”. The columns are

to be separated by heavy lines. Within the columns, the offices are to be arranged in the order prescribed in §3-5-13a of this code.

(B) For voting machines, electronic voting devices and any ballot tabulated by electronic means, the offices are to appear in the same sequence as prescribed in §3-5-13a of this code and under the same headings as prescribed in paragraph (A) of this subdivision. The number of pages, columns or rows, where applicable, may be modified to meet the limitations of ballot size and composition requirements subject to approval by the Secretary of State.

(C) The title of each office is to be separated from preceding offices or candidates by a line and is to be printed in bold type no smaller than eight point. Below the office is to be printed the number of the district, if any, the number of the division, if any, and the words "Vote for \_\_\_\_\_" with the number to be nominated or elected or "Vote For Not More Than \_\_\_\_\_" in multicandidate elections. For offices in which there are limitations relating to the number of candidates which may be nominated, elected or appointed to or hold office at one time from a political subdivision within the district or county in which they are elected, there is to be a clear explanation of the limitation, as prescribed by the Secretary of State, printed in bold type immediately preceding the names of the candidates for those offices on the ballot in every voting system. For counties in which the number of county commissioners exceeds three and the total number of members of the county commission is equal to the number of magisterial districts within the county, the office of county commission is to be listed separately for each district to be filled with the name of the magisterial district and the words "Vote for One" printed below the name of the office: *Provided*, That the office title and applicable instructions may span the width of the ballot so as it is centered among the respective columns.

(D) The location for indicating the voter's choices on the ballot is to be clearly shown. For paper ballots, other than those tabulated electronically, the official primary ballot is to contain a square formed in dark lines at the left of each name on the ballot, arranged in a perpendicular column of squares before each column of names.

(4) (A) The name of every candidate certified by the Secretary of State or the board of ballot commissioners is to be printed in capital letters in no smaller than eight point type on the ballot for the appropriate precincts. Subject to the rules promulgated by the Secretary of State, the name of each candidate is to appear in the form set out by the candidate on the certificate of announcement, but in no case may the name misrepresent the identity of the candidate nor may the name include any title, position, rank, degree or nickname implying or inferring any status as a member of a class or group or affiliation with any system of belief.

(B) The city of residence of every candidate, the state of residence of every candidate residing outside the state, the county of residence of every candidate for an office on the ballot in more than one county and the magisterial district of residence of every candidate for an office subject to magisterial district limitations are to be printed in lower case letters beneath the names of the candidates.

(C) The arrangement of names within each office must be determined as prescribed in §3-5-13a of this code.

(D) If the number of candidates for an office exceeds the space available on a column or ballot page and requires that candidates for a single office be separated, to the extent possible, the number of candidates for the office on separate columns or pages are to be nearly equal and clear instructions given the voter that the candidates for the office are continued on the following column or page.

(5) When an insufficient number of candidates has filed for a party to make the number of nominations allowed for the office or for the voters to elect sufficient members to the Board of Education or to executive committees, the vacant positions on the ballot shall be filled with the words "No Candidate Filed": *Provided*, That in paper ballot systems which allow for write-ins to be made directly on the ballot, a blank line shall be placed in any vacant position in the office of Board of Education or for election to any party executive committee. A line shall separate each candidate from

every other candidate for the same office. Notwithstanding any other provision of this code, if there are multiple vacant positions on a ballot for one office, the multiple vacant positions which would otherwise be filled with the words “No Candidate Filed” may be replaced with a brief detailed description, approved by the Secretary of State, indicating that there are no candidates listed for the vacant positions.

(6) In presidential election years, the words “For election in accordance with the plan adopted by the party and filed with the Secretary of State” is to be printed following the names of all candidates for delegate to national convention.

(7) All paper ballots are to be printed in black ink on paper sufficiently thick so that the printing or marking cannot be discernible from the back: *Provided*, That no paper ballot voted pursuant to the provisions of 42 U. S. C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, or federal write-in absentee ballot may be rejected due to paper type, envelope type, or notarization requirement. Ballot cards and paper for printing ballots using electronically sensible ink are to meet minimum requirements of the tabulating systems and are to conform in size and weight to ensure ease in tabulation.

(8) Ballots are to contain perforated tabs at the top of the ballots and are to be printed with unique sequential numbers from one to the highest number representing the total number of ballots printed. On paper ballots, the ballot is to be bordered by a solid line at least one sixteenth of an inch wide and the ballot is to be trimmed to within one-half inch of that border.

(9) On the back of every official ballot or ballot card the words “Official Ballot” with the name of the county and the date of the election are to be printed. Beneath the date of the election there are to be two blank lines followed by the words “Poll Clerks”.

(10) The face of sample paper ballots and sample ballot labels are to be like other official ballots or ballot labels except that the word “sample” is to be prominently printed across the front of the

ballot in a manner that ensures the names of candidates are not obscured and the word “sample” may be printed in red ink. No printing may be placed on the back of the sample.

## **ARTICLE 10. FILLING VACANCIES.**

### **§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.**

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under §3-10-3(d) of this code,

the Governor, circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by §3-10-1 of this code.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code.

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general election, and the affected term of office ends on December 31 following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than 84 days before the general election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election, according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family court, or

magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than 77 days before the general election.

**§3-10-3a. Judicial Vacancy Advisory Commission.**

(a) The Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy, or the formal announcement of the justice or judge by letter to the Governor of an upcoming resignation or retirement that will result in the occurrence of a vacancy, in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court. The Governor shall make the appointment to fill the vacancy, as required by this article, within 30 days following the receipt of the list of qualified candidates or within 30 days following the vacancy, whichever occurs later.

(b) The commission shall consist of eight appointed members appointed by the Governor for six-year terms, including four public members and four attorney members. The Governor shall appoint attorney members from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than 20 nor less than 10 of the most qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. All members of the commission shall be citizens of this state. Public members of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

(c) (1) No more than two appointed members of the commission may be residents of the same state senatorial district, as provided in §1-2-1 of this code, at the time of appointment:

*Provided*, That the members appointed to, and serving on, the commission prior to the enactment of this subdivision are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(2) No more than three appointed members of the commission may be residents of the same congressional district: *Provided*, That, if the number of congressional districts in the state is reduced to two, then no more than four appointed members of the commission may be residents of the same congressional district: *Provided, however*, That the members appointed to, and serving on, the commission prior to the date on which the number of congressional districts in the state is reduced to two are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(d) The Governor, or his or her designee, the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law shall serve as ex officio members of the commission.

(e) Members of the commission shall serve without compensation, except that commission members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in official commission activities in accordance with the guidelines of the Travel Management Office of the Department of Administration, or its successor entity. The Governor's Office shall cooperate with the commission to ensure that all resources necessary to carrying out the official duties of the commission are provided, including staff assistance, equipment, and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members, including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local

groups and organizations of judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter 29A of this code but shall be filed with the Secretary of State.

(g) A majority of the commission ~~plus one~~ shall constitute a quorum to do business.

(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of §6-9A-1 *et seq.* of this code. An “organizational meeting” means an initial meeting to discuss the commission’s procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from §6-9A-1 *et seq.* of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter 29B of this code, except for the list of the most qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of the most qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of the most qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of the most qualified persons and accompanying memoranda it submits to the Governor available for public inspection.

## **CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.**

### **ARTICLE 5. TERMS OF OFFICE; MATTERS AFFECTING THE RIGHT TO HOLD OFFICE.**

#### **§6-5-1. When terms of office to begin.**

The terms of officers, except when elected or appointed to fill vacancies, shall begin respectively as follows: That of Governor, Secretary of State, State Superintendent of Free Schools, Treasurer, Auditor, Attorney General and Commissioner of Agriculture, on the first Monday after the second Wednesday of January next after their election; that of a member of the Legislature, on December 1, next after his or her election; and that of the justices of the Supreme Court of Appeals, the judges of the Intermediate Court of Appeals, the judges of the several circuit courts, the judges of the family and other inferior courts, the county commissioners, prosecuting attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, or other inferior courts, clerks of the county commissions, magistrates, on January 1, next after their election.

Whenever a person is elected or appointed to fill a vacancy, his or her term shall be as prescribed by chapter three of this code.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 2D. CERTIFICATE OF NEED.**

#### **§16-2D-16a. Transfer of appellate jurisdiction to Intermediate Court of Appeals.**

(a) Notwithstanding any other provision of this article, effective July 1, 2022:

(1) The Office of Judges may not review a decision of the authority, issued after June 30, 2022, in a certificate of need review. On or before September 30, 2022, the Office of Judges shall issue a final decision in, or otherwise dispose of, each and every appeal,

pending before the Office of Judges, of a decision by the authority in a certificate of need review.

(2) An appeal of a final decision in a certificate of need review, issued by the authority after June 30, 2022, shall be made to the West Virginia Intermediate Court of Appeals, pursuant to the provisions governing the judicial review of contested administrative cases in §29A-5-1 et seq. of this code.

(b) If the Office of Judges does not issue a final decision or otherwise dispose of any appeal of a decision of the authority in a certificate of need review on or before September 30, 2022, the appeal shall be transferred to the Intermediate Court of Appeals, as provided in §29A-5-4 of this code. For any appeal transferred pursuant to this subsection, the Intermediate Court of Appeals shall adopt any existing records of evidence and proceedings in the Office of Judges, conduct further proceedings as it considers necessary, and issue a final decision or otherwise dispose of the case pursuant to the provisions governing the judicial review of contested administrative cases in §29A-5-1 et seq. of this code.

## CHAPTER 23. WORKERS' COMPENSATION.

### ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

#### **§23-1-1h. Powers and duties of Office of Judges transferred to Board of Review; definition of certain terms effective July 1, 2022.**

(a) Notwithstanding any other provision of this code, with regard to an objection, protest, or any other decision issued after June 30, 2022, all powers and duties of the Workers' Compensation Office of Judges, as provided in this chapter, shall be transferred to the Workers' Compensation Board of Review.

(b) Notwithstanding any other provision of this code, the West Virginia Intermediate Court of Appeals has exclusive appellate jurisdiction over the following matters:

(1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its termination; and

(2) Decisions of the Workers' Compensation Board of Review, issued after June 30, 2022, as provided in §23-5-8a and §51-11-1 et seq. of this code.

(c) Unless the context clearly indicates a different meaning, effective July 1, 2022, the following terms shall have the following meanings for the purposes of this chapter, except when used in §23-5-1 et seq. of this code:

(1) "Administrative law judge" means a member of the Workers' Compensation Board of Review, or a hearing examiner designated by the Board of Review as authorized in §23-5-1 et seq. of this code;

(2) "Office of judges" means the "Workers' Compensation Board of Review"; and

(3) "Workers' Compensation Board of Review" or "Board of Review" when used in reference to an appeal of a Board of Review decision, means the West Virginia Intermediate Court of Appeals, created by §51-11-1 et seq. of this code.

## **ARTICLE 5. REVIEW.**

### **§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective until June 30, 2022.**

(a) The Insurance Commissioner, private carriers, and self-insured employers may determine all questions within their jurisdiction. In matters arising under §23-2C-8(c) of this code, and under §23-3-1 et seq. and §23-4-1 et seq. of this code, the Insurance Commissioner, private carriers, and self-insured employers shall promptly review and investigate all claims. The parties to a claim are the claimant and, if applicable, the claimant's dependents, and the employer, and with respect to claims involving funds created in §23-2C-1 et seq. of this code for which he or she has been

designated the administrator, the Insurance Commissioner. In claims in which the employer had coverage on the date of the injury or last exposure, the employer's carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all parties, including the basis of its decision. As soon as practicable after receipt of any occupational pneumoconiosis or occupational disease claim, or any injury claim in which temporary total benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall send the claimant a brochure approved by the Insurance Commissioner setting forth the claims process.

(b) (1) Except with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award, or upon making any modification or change with respect to former findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. The notice shall state the time allowed for filing a protest to the finding. The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final unless the decision is protested within 60 days after the receipt of such decision unless a protest is filed within the 60-day period, the finding or action is final. This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. Any protest shall be filed with the Office of Judges with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-8-1 *et seq.* and §23-9-1 *et seq.* of this code. An employer may protest decisions incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in §23-2C-1 *et seq.* of this code or decisions entered pursuant to §23-4-7A(c)(1) of this code.

(2) (A) With respect to every application for benefits filed on or after July 1, 2008, in which a decision to deny benefits is protested and the matter involves an issue as to whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the Office of Judges that another identifiable person may be liable. The Office of Judges shall promptly order the appropriate persons be joined as parties to the proceeding: *Provided*, That at any time during a proceeding in which conditional payments are being made in accordance with the provisions of this subsection, the Office of Judges may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the administrative law judge has made a determination as to the party properly liable for payment of the claim, he or she shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers, and self-insured employers as is necessary.

(c) The Office of Judges may direct that:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(2) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(3) An application for benefits or petition to reopen filed with the Insurance Commissioner, private carrier, or self-insured employer be designated as an application or petition to reopen filed with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the original date of filing.

(d) Where an employer protests a written decision entered pursuant to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7A(c)(1) of this code, and the employer does not prevail in its protest, and in the event the claimant is required to attend a hearing by subpoena or agreement of counsel, or at the express direction of the Office of Judges, then the claimant, in addition to reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the claimant in attending the hearing.

(e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may amend, correct, or set aside any order or decision on any issue entered by it, which, at the time of issuance or any time after that, is discovered to be defective or clearly erroneous or the result of mistake, clerical error, or fraud, or with respect to any order or decision denying benefits, otherwise not supported by the evidence, but any protest filed prior to entry of the amended decision is a protest from the amended decision unless and until the administrative law judge before whom the matter is pending enters an order dismissing the protest as moot in light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection continues until the expiration of two years from the date of a decision to which the amendment is made unless the decision is sooner affected by an action of an administrative law judge or other judicial officer or body: *Provided*, That corrective actions in the case of fraud may be taken at any time.

(f) This section is of no force and effect after June 30, 2022.

**§23-5-1a. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective July 1, 2022.**

(a) The Insurance Commissioner, private carriers, and self-insured employers may determine all questions within their jurisdiction. In matters arising under §23-2C-8(c), and under

§23-3-1 et seq. and §23-4-1 et seq. of this code, the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, shall promptly review and investigate all claims. The parties to a claim are the claimant and, if applicable, the claimant's dependents, the employer, and, with respect to claims involving funds created in §23-2C-1 et seq. of this code for which he or she has been designated the administrator, the Insurance Commissioner. In claims in which the employer had coverage on the date of the injury or last exposure, the employer's carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all parties, including the basis of its decision. As soon as practicable after receipt of any occupational pneumoconiosis or occupational disease claim or any injury claim in which temporary total benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall send the claimant a brochure approved by the Insurance Commissioner setting forth the claims process.

(b) (1) Except with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award, or upon making any modification or change with respect to former findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. The notice shall state the time allowed for filing an objection to the finding. The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final unless an objection to the decision is properly filed within 60 days after the receipt of such decision. This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. Any objection shall be filed with the Workers' Compensation Board of Review, as provided in §23-5-8a and §23-5-8b of this code, with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-5-8a and §23-5-9a of this code. An

employer may file an objection to a decision incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in §23-2C-1 et seq. of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code.

(2) (A) With respect to every application for benefits in which an objection to a decision to deny benefits is filed and the matter involves an issue as to whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the Workers' Compensation Board of Review that another identifiable person may be liable. The Workers' Compensation Board of Review shall promptly order the appropriate persons be joined as parties to the proceeding: *Provided*, That at any time during a proceeding in which conditional payments are being made in accordance with the provisions of this subsection, the Workers' Compensation Board of Review may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the Workers' Compensation Board of Review has made a determination as to the party properly liable for payment of the claim, the Board of Review shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers, and self-insured employers as is necessary.

(c) The member of the Workers' Compensation Board of Review assigned to an objection, as provided in §23-5-9a(b) of this code, may direct that:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(2) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(3) An application for benefits or petition to reopen filed with the Insurance Commissioner, private carrier, or self-insured employer be designated as an application or petition to reopen filed with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the original date of filing.

(d) Where an employer files an objection to a written decision entered pursuant to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code, and the employer does not prevail in its objection, and in the event the claimant is required to attend a hearing by subpoena, or agreement of counsel, or at the express direction of Workers' Compensation Board of Review, then the claimant, in addition to reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the claimant in attending the hearing.

(e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may amend, correct, or set aside any order or decision on any issue entered by it which, at the time of issuance or any time after that, is discovered to be defective, or clearly erroneous, or the result of mistake, clerical error, or fraud, or with respect to any order or decision denying benefits, otherwise not supported by the evidence: *Provided*, That any objection filed prior to entry of the amended decision is an objection to the amended decision unless and until the Workers' Compensation Board of Review enters an order dismissing the objection as moot in light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection continues until the expiration of two years from the date of a decision to which the amendment is made unless the decision is sooner affected by an action of the Workers' Compensation Board of Review or a judicial officer or body: *Provided, however*, That corrective actions in the case of fraud may be taken at any time.

(f) This section becomes effective on July 1, 2022.

**§23-5-3. Refusal to reopen claim; notice; objection; effective until June 30, 2022.**

(a) If it appears to the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, that an application filed under §23-2-1 *et seq.* of this code fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within 60 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the Office of Judges shall afford the claimant an evidentiary hearing as provided in §23-9-1 *et seq.* of this code.

(b) This section is of no force and effect after June 30, 2022.

**§23-5-3a. Refusal to reopen claim; notice; objection; effective July 1, 2022.**

(a) If it appears to the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, that an application filed under §23-5-2a of this code fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings, and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers, and

self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within 60 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the Workers' Compensation Board of Review shall afford the claimant an evidentiary hearing as provided in §23-5-9a of this code.

(b) This section becomes effective on July 1, 2022.

**§23-5-4. Application by employer for modification of award; objection to modification; hearing.**

In any case in which an employer makes application in writing for a modification of any award previously made to an employee of the employer, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall make a decision upon the application. If the application discloses cause for a further adjustment, the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall, after due notice to the employee, make the modifications or changes with respect to former findings or orders that are justified. Any party dissatisfied with any modification or change made or by the denial of an application for modification is, upon proper and timely objection, entitled to a hearing as provided in either section nine or nine-a of this article.

**§23-5-5. Refusal of modification; notice; objection; effective until June 30, 2022.**

If in any case it appears to the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, that the application filed

pursuant to §23-4-1 *et seq.* of this code fails to disclose some fact or facts which were not previously considered by the commission in its former findings, and which would entitle the employer to any modification of the previous award, the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, shall, within 60 days from the receipt of the application, notify the claimant and employer that the application fails to establish a just cause for modification of the award. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable. The employer may, within 30 days after receipt of the notice, object in writing to the decision. Unless the objection is filed within the 30-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the office of judges shall afford the employer an evidentiary hearing as provided in §23-9-1 *et seq.* of this code.

(b) This section is of no force and effect after June 30, 2022.

**§23-5-5a. Refusal of modification; notice; objection; effective July 1, 2022.**

(a) If in any case it appears to the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, that the application filed pursuant to §23-5-4 of this code fails to disclose some fact or facts which were not previously considered in former findings, and which would entitle the employer to any modification of the previous award, the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall, within 60 days from the receipt of the application, notify the claimant and employer that the application fails to establish a just cause for modification of the award. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable. The employer

may, within 30 days after receipt of the notice, object in writing to the decision. Unless the objection is filed within the 30-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the Workers' Compensation Board of Review shall afford the employer an evidentiary hearing as provided in §23-5-9 of this code.

(b) This section becomes effective on July 1, 2022.

**§23-5-6. Time periods for objections and appeals; extensions; effective until June 30, 2022.**

(a) Notwithstanding the fact that the time periods set forth for objections, protests and appeals to or from the workers' compensation Office of Judges are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion, the administrative law judge, appeal board, or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

(b) This section is of no force and effect after June 30, 2022.

**§23-5-6a. Time periods for objections and appeals; extensions; effective July 1, 2022.**

(a) Notwithstanding the fact that the time periods set forth for objections, protests, and appeals to or from the Workers' Compensation Board of Review are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion, the Workers' Compensation Board of

Review or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

(b) This section becomes effective on July 1, 2022.

**§23-5-8. Designation of Office of Administrative Law Judges; powers of chief administrative law judge; effective until June 30, 2022.**

(a) The workers' compensation office of administrative law judges previously created pursuant to chapter twelve, acts of the Legislature, 1990, second extraordinary session, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The Office of Judges shall be under the supervision of a chief administrative law judge who shall be appointed by the Governor with the advice and consent of the Senate.

(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the workers' compensation board of managers. The salary shall be within the salary range for comparable chief administrative law judges as determined by the state Personnel Board created by §29-6-6 of this code. The chief administrative law judge may only be removed by a vote of two-thirds of the members of the Workers' Compensation Board of managers. Upon transfer of the Office of Judges to the Insurance Commissioner, the chief administrative law judge shall continue to serve as chief administrative law judge until December 31, 2007. Thereafter, appointments of the chief administrative law judge shall be for terms of four years beginning January 1, 2008, and the chief administrative law judge may be removed only for cause by the vote of four members of the Industrial Council. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of

any appointed official or employee is applicable to the chief administrative law judge.

(c) The chief administrative law judge shall employ administrative law judges and other personnel that are necessary for the proper conduct of a system of administrative review of orders issued by the Workers' Compensation Commission which orders have been objected to by a party. The employees shall be in the classified service of the state. Qualifications, compensation, and personnel practice relating to the employees of the office of judges, other than the chief administrative law judge, shall be governed by the provisions of this code and rules of the classified service pursuant to §29-6-1 of this code. All additional administrative law judges shall be persons who have been admitted to the practice of law in this state and shall also have had at least two years of experience as an attorney. The chief administrative law judge shall supervise the other administrative law judges and other personnel which collectively shall be referred to in this chapter as the Office of Judges.

(d) The administrative expense of the Office of Judges shall be included within the annual budget of the Workers' Compensation Commission and, upon termination of the commission, the Insurance Commissioner.

(e) The Office of Judges shall, from time to time, promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the Workers' Compensation Commission. The Office of Judges shall not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq.* of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to §29A-3-9 through §29A-3-16 of this code. The Office of Judges shall follow the remaining provisions of said chapter for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(f) The chief administrative law judge has the power to hear and determine all disputed claims in accordance with the

provisions of this article, establish a procedure for the hearing of disputed claims, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records, and make reports that are necessary for disputed claims and exercise any additional powers, including the delegation of powers to administrative law judges or hearing examiners that are necessary for the proper conduct of a system of administrative review of disputed claims. The chief administrative law judge shall make reports that are requested of him or her by the workers' compensation board of managers.

(g) Effective upon termination of the commission, the Office of Judges and the Board of Review shall be transferred to the Insurance Commissioner, which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

(h) This section is of no force and effect after June 30, 2022.

**§23-5-8a. Transfer of powers and duties of the Office of Administrative Law Judges to the Workers' Compensation Board of Review; powers of the Workers' Compensation Board of Review in relation to review of objections; effective July 1, 2022.**

(a) The Workers' Compensation Office of Administrative Law Judges, referred to as the Office of Judges, shall terminate on or before October 1, 2022, as provided in §23-5-8b of this code. All powers and duties of the Office of Judges to review objections, protests, or any other matter authorized by this chapter, shall be transferred to the Workers' Compensation Board of Review on July 1, 2022: *Provided*, That any objection or other matter filed pursuant to this chapter and pending before the Office of Judges upon its termination, in which a final decision has not been issued, shall also be transferred to the Workers' Compensation Board of Review as provided in §23-5-8b of this code.

(b) Pursuant to §23-5-11a(n) of this code, the Workers' Compensation Board of Review shall employ hearing examiners and other personnel that are necessary for the proper conduct of a

system of administrative review of objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code and issued after June 30, 2022. All hearing examiners hired by the Workers' Compensation Board of Review shall be persons who have been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chair of the Workers' Compensation Board of Review shall supervise hearing examiners and other personnel of the board, which collectively shall be referred to in this chapter as the Workers' Compensation Board of Review.

(c) The Workers' Compensation Board of Review has the power to hear and determine all objections in accordance with the provisions of this article, establish a procedure for the hearing of objections, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records, and make reports that are necessary for reviewing objections, and exercise any additional powers, including the delegation of powers to hearing examiners that are necessary for the proper conduct of a system of administrative review of objections. The chair of the Workers' Compensation Board of Review shall make reports that are requested of him or her by the Insurance Commissioner.

(d) Effective upon termination of the Office of Judges, the Insurance Commissioner shall have oversight and administrative authority over the Workers' Compensation Board of Review as heretofore provided to the Insurance Commissioner over the Office of Judges.

(e) This section becomes effective on July 1, 2022.

**§23-5-8b. Transfer of jurisdiction to review objections to Workers' Compensation Board of Review; termination of Office of Judges; appeals of board decisions to Intermediate Court of Appeals; effective July 1, 2022.**

(a) The Office of Judges has no jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of this chapter and issued after June 30,

2022. The Workers' Compensation Board of Review has exclusive jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of this chapter and issued after June 30, 2022.

(b) On or before September 30, 2022, the Office of Judges shall issue a final decision in, or otherwise dispose of, each and every objection or other matter pending before the Office of Judges. If the Office of Judges does not issue a final decision or otherwise dispose of any objection or other matter pending before the Office of Judges on or before September 30, 2022, the objection or other matter shall be transferred to the Workers' Compensation Board of Review. For any objections transferred from the Office of Judges to the Workers' Compensation Board of Review, the Board of Review shall adopt any existing records of proceedings in the Office of Judges, conduct further proceedings, and collect evidence as it determines to be necessary, and issue a final decision or otherwise dispose of the case according to the procedural rules promulgated pursuant to §23-5-11a(m) of this code.

(c) Upon the Office of Judges' disposition of every matter pending before the office, or on October 1, 2022, whichever occurs earlier, the Office of Judges is terminated.

(d) The West Virginia Intermediate Court of Appeals, created in §51-11-1 *et seq.* of this code, has exclusive appellate jurisdiction over the following:

(1) Decisions or orders issued by the Office of Judges after June 30, 2022, and prior to its termination; and

(2) All final orders or decisions issued by the Workers' Compensation Board of Review after June 30, 2022.

(e) Notwithstanding the requirements of this section, the Workers' Compensation Board of Review shall review and decide all remaining appeals filed with the Board of Review, of Office of Judges' decisions issued prior to June 30, 2022, according to the

procedure and requirements for such appeals heretofore provided in this article.

(f) This section becomes effective on July 1, 2022.

**§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured employer decisions; mediation; remand; effective until June 30, 2022.**

(a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of §23-5-1 *et seq.* of this code shall be filed with the Office of Judges. Upon receipt of an objection, the Office of Judges shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and all other parties of the filing of the objection. The Office of Judges shall establish by rule promulgated in accordance with the provisions of §23-5-8(e) of this code an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner, private carrier, or self-insured employer, whichever are applicable, shall be notified of any hearing at least 10 days in advance. The Office of Judges shall review and amend, or modify, as necessary, its procedural rules by July 1, 2007.

(b) The Office of Judges shall establish a program for mediation to be conducted in accordance with the requirements of rule twenty-five of the West Virginia Trial Court Rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the administrative law judge on his or her own motion, on motion of a party or by agreement of the parties. Upon issuance of an order for mediation, the Office of Judges shall assign a mediator from a list of qualified mediators maintained by the West Virginia State Bar.

(c) The Office of Judges shall keep full and complete records of all proceedings concerning a disputed claim. Subject to the rules of practice and procedure promulgated pursuant to §23-5-8 of this

code, the record upon which the matter shall be decided shall include any evidence submitted by a party to the Office of Judges and evidence taken at hearings conducted by the Office of Judges. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The Office of Judges is not bound by the usual common law or statutory rules of evidence.

(d) All hearings shall be conducted as determined by the chief administrative law judge pursuant to the rules of practice and procedure promulgated pursuant to §23-5-8 of this code. Upon consideration of the designated record, the chief administrative law judge or other authorized adjudicator within the office of judges shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing, or modifying the action protested. The decision shall contain findings of fact and conclusions of law and shall be mailed to all parties.

(e) The Office of Judges may remand a claim to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for further development of the facts or administrative matters as, in the opinion of the administrative law judge, may be necessary for a full and complete disposition of the case. The administrative law judge shall establish a time within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, must report back to the administrative law judge.

(f) The decision of the Office of Judges regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by the Workers' Compensation Board of Review created in §23-5-11 of this code or by the administrative law judge who granted the benefits. No stay with respect to any medical treatment or rehabilitation authorized by the Office of Judges may be granted. If the decision is subsequently appealed and reversed in accordance with the procedures set forth in this

article, and any overpayment of benefits occurs as a result of such reversal, any such overpayment may be recovered pursuant to the provisions of §23-4-1C(h) and §23-4-1D(d) of this code, as applicable.

(h) This section is of no force and effect after June 30, 2022.

**§23-5-9a. Hearings on objections to Insurance Commissioner; private carrier, or self-insured employer decisions; mediation; remand; effective July 1, 2022.**

(a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of §23-5-1a of this code, shall be filed with the Workers' Compensation Board of Review. Upon receipt of an objection, the Workers' Compensation Board of Review shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and all other parties of the filing of the objection. The Workers' Compensation Board of Review shall establish by rule, promulgated in accordance with the provisions of §23-5-11a(m) of this code, an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner, the private carrier, or the self-insured employer, whichever is applicable, shall be notified of any hearing at least 10 days in advance.

(b) The chair of the Workers' Compensation Board of Review shall assign, on a rotating basis, a member of the Board of Review to preside over the review process and issue a decision in each objection that is properly filed with the board of review. The member of the Workers' Compensation Board of Review assigned to an objection shall review evidence, conduct proceedings, and develop a record as is necessary for a full and thorough review of the objection: *Provided*, That the board member may delegate such duties to a hearing examiner employed by the board of review, pursuant to §23-5-8a and §23-5-11a(n) of this code: *Provided*, *however*, That any order or decision of the Board of Review must

be issued and signed by the member of the Board assigned to the objection, as provided in subsection (e) of this section: *Provided further*, That a time frame order, continuance order, show cause order, failure to prosecute order, or other interlocutory order as permitted by the Workers' Compensation Board of Review's procedural rules may be issued and signed by a hearing examiner only, and is not subject to the general requirement that orders be issued and signed by a member of the board.

(c) The Workers' Compensation Board of Review shall establish a program for mediation to be conducted in accordance with the requirements of Rule 25 of the West Virginia Trial Court Rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the Board of Review member assigned to the objection on his or her own motion, on motion of a party, or by agreement of the parties. Upon issuance of an order for mediation, the Workers' Compensation Board of Review shall assign a mediator from a list of qualified mediators maintained by the West Virginia State Bar.

(d) The Workers' Compensation Board of Review shall keep full and complete records of all proceedings concerning an objection. Subject to the rules of practice and procedure promulgated pursuant to §23-5-11a(m) of this code, the record upon which the matter shall be decided shall include any evidence submitted by a party to the Workers' Compensation Board of Review and evidence taken at hearings conducted by the Board of Review. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The Workers' Compensation Board of Review is not bound by the usual common law or statutory rules of evidence.

(e) All hearings shall be conducted as determined by the Workers' Compensation Board of Review according to the rules of practice and procedure promulgated pursuant to §23-5-11a(m) of this code. If a hearing examiner reviews an objection, the hearing examiner shall, at the conclusion of the review process, submit the designated record to the member of the Workers' Compensation

Board of Review to whom the objection is assigned, along with the hearing examiner's recommendation of a decision affirming, reversing, or modifying the action that was subject to the objection. Upon consideration of the designated record and, if applicable, the recommendation of the hearing examiner, the member of the Workers' Compensation Board of Review assigned to the objection shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing, or modifying the action that was subject to the objection. The decision shall contain findings of fact and conclusions of law, shall be signed by the member of the Workers' Compensation Board of Review rendering the decision, and shall be mailed to all parties.

(f) The Workers' Compensation Board of Review may remand a claim to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for further development of the facts or administrative matters as, in the opinion of the member of the board of review assigned to the objection, may be necessary for a full and complete disposition of the case. The member of the Workers' Compensation Board of Review assigned to the objection shall establish a time within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, must report back to the board of review.

(g) The decision of the Workers' Compensation Board of Review regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final, and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by a court with appellate jurisdiction over the decision or by the member of the Office of Judges who granted the benefits. A stay with respect to any medical treatment or rehabilitation authorized by the Workers' Compensation Board of Review may not be granted. If the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article, and any overpayment of benefits occurs as a result of the reversal, the overpayment may be

recovered pursuant to the provisions of §23-4-1c(h) or §23-4-1d(d) of this code, as applicable.

(h) This section becomes effective on July 1, 2022.

**§23-5-10. Appeal from administrative law judge decision to appeal board; effective until June 30, 2022.**

(a) The employer, claimant, Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, may appeal to the appeal board created in §23-11-1 *et seq.* of this code for a review of a decision by an administrative law judge. No appeal or review shall lie unless application therefor be made within thirty days of receipt of notice of the administrative law judge's final action or in any event within sixty days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.

(b) This section is of no force and effect after June 30, 2022.

**§23-5-10a. Appeal from a Workers' Compensation Board of Review decision to the Intermediate Court of Appeals; effective July 1, 2022.**

(a) The employer, claimant, Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, may appeal to the West Virginia Intermediate Court of Appeals, created by §51-11-1 *et seq.* of this code, for a review of a decision by the Workers' Compensation Board of Review. No appeal or review shall lie unless application is made within 30 days of receipt of notice of the Workers' Compensation Board of Review's final action or in any event within 60 days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being

hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.

(b) This section becomes effective on July 1, 2022.

**§23-5-11. Workers' Compensation Board of Review generally; administrative powers and duties of the board; effective until June 30, 2022.**

(a) On January 31, 2004, the Workers' Compensation Appeal Board heretofore established in this section is hereby abolished.

(b) There is created the "Workers' Compensation Board of Review", which may also be referred to as "the Board of Review" or "the board". Effective February 1, 2004, the board of Review shall exercise exclusive jurisdiction over all appeals from the Workers' Compensation Office of Judges including any and all appeals pending with the board of Appeals on January 31, 2004.

(c) The board consists of three members.

(d) The Governor shall appoint, from names submitted by the "Workers' Compensation Board of Review Nominating Committee", with the advice and consent of the Senate, three qualified attorneys to serve as members of the Board of Review. If the Governor does not select a nominee for any vacant position from the names provided by the nominating committee, he or she shall notify the nominating committee of that circumstance and the committee shall provide additional names for consideration by the Governor. A member of the Board of Review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance, and then only after notice and opportunity to respond and present evidence. No more than two of the members of the board may be of the same political party. The members of the Board of Review shall be paid an annual salary of \$85,000: *Provided*, That on and after July 1, 2008, the Governor shall set the salary of the members of the board: *Provided, however*, That the annual salary of a member of the Board of Review shall not exceed \$110,000. Members are entitled to be

reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(e) The nominating committee consists of the following members: (1) The President of the West Virginia State Bar who serves as the chairperson of the committee; (2) an active member of the West Virginia State Bar Workers' Compensation Committee selected by the major trade association representing employers in this state; (3) an active member of the West Virginia State Bar Workers' Compensation Committee selected by the highest ranking officer of the major employee organization representing workers in this state; (4) the Dean of the West Virginia University School of Law; and (5) the Chairman of the Judicial Investigation Committee.

(f) The nominating committee is responsible for reviewing and evaluating candidates for possible appointment to the Board of Review by the Governor. In reviewing candidates, the nominating committee may accept comments from and request information from any person or source.

(g) Each member of the nominating committee may submit up to three names of qualified candidates for each position on the Board of Review: *Provided*, That the member of the nominating committee selected by the major trade organization representing employers of this state shall submit at least one name of a qualified candidate for each position on the board who either is, or who represents, small business employers of this state. After careful review of the candidates, the committee shall select a minimum of one candidate for each position on the board.

(h) Of the initial appointments, one member shall be appointed for a term ending December 31, 2006; one member shall be appointed for a term ending December 31, 2008; and one member shall be appointed for a term ending December 31, 2010. Thereafter, the appointments shall be for six-year terms.

(i) A member of the Board of Review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies, or courts of record at the federal, state, or local level.

(j) No member of the Board of Review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

(k) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(l) The board shall designate one of its members in rotation to be chairman of the board for as long as the board may determine by order made and entered of record. In the absence of the chairman, any other member designated by the members present shall act as chairman.

(m) The Board of Review shall meet as often as necessary to hold review hearings, at such times and places as the chairman may determine. Two members shall be present in order to conduct review hearings or other business. All decisions of the board shall be determined by a majority of the members of the board.

(n) The Board of Review shall make general rules regarding the pleading, including the form of the petition and any responsive pleadings, practice, and procedure to be used by the board.

(o) The Board of Review may hire a clerk and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board, and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel. All personnel of the Board of Review are under the supervision of the chairman of the Board of Review.

(p) If considered necessary by the board, the board may, through staffing or other resources, procure assistance in review of medical portions of decisions.

(q) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the board shall promptly determine the matter and make an award in accordance with its determination.

(r) The award shall become a part of the commission file. A copy of the award shall be sent forthwith by mail to all parties in interest.

(s) The award is final when entered. The award shall contain a statement explaining the rights of the parties to an appeal to the Board of Review and the applicable time limitations involved.

(t) The board shall submit to the Insurance Commissioner a budget sufficient to adequately provide for the administrative and other operating expenses of the board.

(u) The board shall report monthly to the Industrial Council on the status of all claims on appeal.

(v) Effective upon termination of the commission, the Board of Review shall be transferred to the Insurance Commissioner which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.

(w) This section is of no force and effect after June 30, 2022.

**§23-5-11a. Workers' Compensation Board of Review generally; administrative powers and duties of the board; effective July 1, 2022.**

(a) The "Workers' Compensation Board of Review", which may also be referred to as "the Board of Review" or "the board" is hereby continued and granted exclusive jurisdiction over all objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, including any and all matters pending before the Office of Judges after September 30, 2022.

(b) The board consists of five members.

(c) The Governor shall appoint, with the advice and consent of the Senate, five attorneys qualified in accordance with subsection (f) of this section to serve as members of the Board of Review. A member of the Board of Review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance and then only after notice and opportunity to respond and present evidence. No more than three of the members of the board may be of the same political party. The Governor shall set the salary of the members of the board: *Provided, however,* That the annual salary of a member of the Board of Review shall not exceed \$125,000. Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) Of the initial appointments of the two additional seats created during the 2021 Regular Session, one member shall be appointed for a term ending December 31, 2025; one member shall be appointed for a term ending December 31, 2027. Thereafter, The appointments shall be for six-year terms.

(e) A member of the Board of Review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted to practice law in this state prior to appointment and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies or courts of record at the federal, state or local level.

(f) No member of the Board of Review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

(g) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(h) The board shall designate one of its members in rotation to be chair of the board for as long as the board may determine by order made and entered of record. In the absence of the chair, any other member designated by the members present shall act as chair.

(i) The Board of Review shall meet as often as necessary to conduct the board's administrative business and make rules of practice and procedure, at such times and places as the chair may determine. Two members shall be present in order to conduct administrative business and make rules of practice and procedure. All decisions of the board upon administrative matters, pursuant to this section, shall be determined by a majority of the members of the board.

(j) The Board of Review shall, from time to time, promulgate rules of practice and procedure for the review and determination of all objections filed with the board. The board does not have the power to initiate or to promulgate legislative rules as that phrase is

defined in §29A-3-1 et seq. of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to §29A-3-9 through §29A-3-16 of this code. The board shall follow the remaining provisions of chapter 29A of this code for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(k) The Board of Review may hire a clerk, hearing examiners, and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel: *Provided*, That for the purpose of any applicable Division of Personnel Class Specifications, hearing examiners must be classified under a class with "attorney" in the class title. All personnel of the Board of Review are under the supervision of the chair of the Board of Review.

(l) The administrative expenses of the Board of Review shall be included within the annual budget of the Insurance Commissioner, and the Insurance Commissioner shall have administrative authority and oversight over the Board of Review.

(m) The amendments to this section made during the 2021 Regular Session of the Legislature shall become effective on July 1, 2022: *Provided*, That the board is authorized to promulgate rules and hire staff, pursuant to subsection (k) and (l) of this section respectively, prior to July 1, 2022, to the extent necessary to comply with the requirements of this article that shall become effective on that date.

**§23-5-12. Appeal to board; procedure; remand and supplemental hearing; effective until June 30, 2022.**

(a) Any employer, employee, claimant, or dependent who shall feel aggrieved at any final action of the administrative law judge

taken after a hearing held in accordance with the provisions of §23-5-9 of this code shall have the right to appeal to the board created in §23-11-1 of this code for a review of such action. The Workers' Compensation Commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the board any final action taken by the administrative law judge. The aggrieved party shall file a written notice of appeal with the board of review, with a copy to the office of judges, within thirty days after receipt of notice of the action complained of or, in any event, regardless of notice, within sixty days after the date of the action complained of, and unless the notice of appeal is filed within the time specified, no appeal shall be allowed, the time limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the ground for review and whether oral argument is requested. The Office of Judges, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of the proceedings before the Office of Judges and certify and transmit it to the board. The certificate shall incorporate a brief recital of the proceedings in the case and recite each order entered and the date thereof.

(b) The board shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board shall be based upon the record submitted to it and such oral argument as may be requested and received. The board may affirm, reverse, modify, or supplement the decision of the administrative law judge and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the board. The board may affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the administrative law judge if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative law judge's findings are:

(1) In violation of statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the administrative law judge; or

(3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

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

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

(c) After a review of the case, the board shall issue a written decision and send a copy by mail to the parties.

(1) All decisions, findings of fact and conclusions of law of the Board of Review shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse, or modify the administrative law judge's decision.

(2) Decisions of the Board of Review shall be made by a majority vote of the board of review.

(3) A decision of the Board of Review is binding upon the executive director and the commission and the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The executive director, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a board of review decision irrespective of whether or not he or she appeared or participated in the appeal to the Board of Review.

(d) Instead of affirming, reversing, or modifying the decision of the administrative law judge, the board may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the board, remand the case to the chief administrative law judge for the taking of such new, additional, or

further evidence as in the opinion of the board may be necessary for a full and complete development of the facts of the case. In the event the board shall remand the case to the chief administrative law judge for the taking of further evidence, the administrative law judge shall proceed to take new, additional, or further evidence in accordance with any instruction given by the board within 30 days after receipt of the order remanding the case. The chief administrative law judge shall give to the interested parties at least 10 days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the administrative law judge for good cause. After the completion of a supplemental hearing, the administrative law judge shall, within 60 days, render his or her decision affirming, reversing, or modifying the former action of the administrative law judge. The decision shall be appealable to and proceeded with by the Board of Review in the same manner as other appeals. In addition, upon a finding of good cause, the board may remand the case to the Workers' Compensation Commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, for further development. Any decision made by the commission, the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, following a remand shall be subject to objection to the Office of Judges and not to the board. The board may remand any case as often as in its opinion is necessary for a full development and just decision of the case.

(e) All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record.

(f) In all proceedings before the board, any party may be represented by counsel.

(g) This section is of no force and effect after June 30, 2022.

**§23-5-12a. Appeal of board decisions to the Intermediate Court of Appeals; procedure; remand and supplemental hearing; effective July 1, 2022.**

(a) Any employer, employee, claimant, or dependent who shall feel aggrieved by a decision of the Workers' Compensation Board of Review shall have the right to appeal to the West Virginia Intermediate Court of Appeals, created by §51-11-1 et seq. of this code, for a review of such action. The Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the Intermediate Court of Appeals any final action taken by the Workers' Compensation Board of Review. The aggrieved party shall file a written notice of appeal with the Intermediate Court of Appeals, with a copy to the Workers' Compensation Board of Review, within 30 days after receipt of notice of the action complained of or, in any event, regardless of notice, within 60 days after the date of the action complained of: *Provided*, That unless the notice of appeal is filed within the time specified, no appeal shall be allowed: *Provided, however*, That the time limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the grounds for review and whether oral argument is requested. The Workers' Compensation Board of Review, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of any proceedings before the board of review and certify and transmit it to the Intermediate Court of Appeals. The certificate shall incorporate a brief recital of the proceedings in the matter and recite each order entered or decision issued and the date thereof.

(b) The Intermediate Court of Appeals shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the court shall be based upon the record submitted to it and such oral argument as may be requested and received. The Intermediate Court of Appeals may affirm, reverse, modify, or supplement the decision of the Workers' Compensation Board of Review and make such disposition of the case as it determines to be appropriate. Briefs

may be filed by the interested parties in accordance with the rules of procedure prescribed by the court. The Intermediate Court of Appeals may affirm the order or decision of the Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the Workers' Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the Board of Review's findings are:

(1) In violation of statutory provisions;

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

(3) Made upon unlawful procedures;

(4) Affected by other error of law;

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

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

(c) After a review of the case, the Intermediate Court of Appeals shall issue a written decision and send a copy by mail to the parties.

(1) All decisions, findings of fact, and conclusions of law of the Intermediate Court of Appeals shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse, or modify the Board of Review's decision.

(2) A decision of the Intermediate Court of Appeals is binding upon the Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall have the right to seek judicial review of a final decision of the Intermediate Court of

Appeals, pursuant to §51-11-13 of this code, irrespective of whether the party appeared or participated in the appeal to the Intermediate Court of Appeals.

(d) Instead of affirming, reversing, or modifying the decision of the Workers' Compensation Board of Review, the Intermediate Court of Appeals may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the court, remand the case to the Board of Review for the taking of such new, additional, or further evidence as in the opinion of the court considers necessary for a full and complete development of the facts of the case. In the event the Intermediate Court of Appeals shall remand the case to the Board of Review for the taking of further evidence, the Board of Review shall proceed to take new, additional, or further evidence in accordance with any instruction given by the court within 30 days after receipt of the order remanding the case. The Workers' Compensation Board of Review shall give to the interested parties at least 10 days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the Board of Review for good cause. After the completion of a supplemental hearing, the Workers' Compensation Board of Review shall, within 60 days, render its decision affirming, reversing, or modifying the former action of the Workers' Compensation Board of Review. The decision shall be appealable to, and proceeded with, by the Intermediate Court of Appeals in the same manner as other appeals. In addition, upon a finding of good cause, the court may remand the case to the Insurance Commissioner, other private insurance carriers, or self-insured employers, whichever is applicable, for further development. Any decision made by the Insurance Commissioner, other private insurance carriers, or self-insured employers, whichever is applicable, following a remand, shall be subject to objection to the Workers' Compensation Board of Review and not to the Intermediate Court of Appeals. The Intermediate Court of Appeals may remand any case as often as, in its opinion, is necessary for a full development and just decision of the case.

(e) In all proceedings before the Intermediate Court of Appeals, any party may be represented by counsel.

(f) This section becomes effective on July 1, 2022.

**§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities; effective until June 30, 2022.**

(a) It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive benefits as quickly as possible in view of the severe economic hardships which immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good cause shown" are to be strictly construed by the chief administrative law judge and his or her authorized representatives to prevent delay when granting or denying continuances and supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on technicalities.

(b) This section is of no force and effect after June 30, 2022.

**§23-5-13a. Continuances and supplemental hearings; claims not to be denied on technicalities; effective July 1, 2022.**

(a) It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive benefits as quickly as possible in view of the severe economic hardships which immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good cause shown" are to be strictly construed by the Workers' Compensation Board of Review and its authorized representatives to prevent delay when granting or denying continuances and supplemental hearings. It is also the

policy of this chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on technicalities.

(b) This section becomes effective on July 1, 2022.

**§23-5-15. Appeals from final decisions of board to Supreme Court of Appeals prior to July 1, 2022; procedure; costs.**

a) As provided in §23-5-8b of this code, the provisions of this section do not apply to any decision issued by the Workers' Compensation Board of Review after June 30, 2022.

(a) (b) Review of any final decision of the board, including any order of remand, may be prosecuted by either party or by the ~~Workers' Compensation Commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, to the Supreme Court of Appeals within 30 days from the date of the final order by filing a petition therefor with the court against the board and the adverse party or parties as respondents. Unless the petition for review is filed within the 30-day period, no appeal or review shall be allowed, such time limitation is a condition of the right to such appeal or review and hence jurisdictional. The clerk of the Supreme Court of Appeals shall notify each of the respondents and the ~~Workers' Compensation Commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, of the filing of such petition. The board shall, within 10 days after receipt of the notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. If review is granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before an order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the

certified question, or until notice that the court has declined to docket the same. If a review is granted or the certified question is docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the ~~Workers' Compensation Commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, of that fact by mail. If a review is granted or the certified question docketed, the case shall be heard by the court in the same manner as in other cases, except that neither the record nor briefs need be printed. Every review granted or certified question docketed prior to 30 days before the beginning of the term, shall be placed upon the docket for that term. The Attorney General shall, without extra compensation, represent the board in such cases. The court shall determine the matter brought before it and certify its decision to the board and to the commission. The cost of the proceedings on petition, including a reasonable attorney's fee, not exceeding \$30 to the claimant's attorney, shall be fixed by the court and taxed against the employer if the latter is unsuccessful. If the claimant, or the commission (in case the latter is the applicant for review) is unsuccessful, the costs, not including attorney's fees, shall be taxed against the commission, payable out of the Workers' Compensation Fund, or shall be taxed against the claimant, in the discretion of the court: But there shall be no cost taxed upon a certified question.

~~(b)~~ (c) In reviewing a decision of the Board of Review, the Supreme Court of Appeals shall consider the record provided by the board and give deference to the board's findings, reasoning, and conclusions, in accordance with subsections ~~(e)~~, (d) and (e) of this section.

~~(e)~~ (d) If the decision of the board represents an affirmation of a prior ruling by both the commission and the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary

record. The court may not conduct a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record.

~~(d)~~ (e) If the decision of the board effectively represents a reversal of a prior ruling of either the commission or the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision.

**§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees; effective until June 30, 2022.**

(a) An attorney's fee in excess of 20 percent of any award granted may not be charged or received by an attorney for a claimant or dependent. In no case may the fee received by the attorney of the claimant or dependent be in excess of 20 percent of the benefits to be paid during a period of 208 weeks. The interest on disability or dependent benefits as provided in this chapter may

not be considered as part of the award in determining the attorney's fee. However, any contract entered into in excess of 20 percent of the benefits to be paid during a period of 208 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this state and any fee charged or received by an attorney in violation thereof is an unlawful practice and renders the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the total value of the medical and indemnity benefits: *Provided*, That this attorney's fee, when combined with any fees previously charged or received by the attorney for permanent partial disability or permanent total disability benefits may not exceed 20 percent of an award of benefits to be paid during a period of 208 weeks.

(c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code, an attorney's fee for successful recovery of denied medical benefits may be charged or received by an attorney, and paid by the private carrier or self-insured employer, for a claimant or dependent under this section. In no event may attorney's fees and costs be awarded pursuant to both this section and §23-2C-21(c) of this code.

(1) If a claimant successfully prevails in a proceeding relating to a denial of medical benefits brought before the commission, successor to the commission, other private carrier, or self-insured employer, whichever is applicable, as a result of utilization review, arbitration, mediation, or other proceedings, or a combination thereof, relating to denial of medical benefits before the Office of Judges, Board of Review, or court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of Review, or court, whichever enters a final decision on the issue. An attorney representing a claimant

must submit a claim for attorney fees and costs within 30 days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, mediator, the Office of Judges, the Board of Review, or court shall enter an order within 30 days awarding reasonable attorney fees not to exceed \$125 per hour and reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant's attorney's fees under this subsection exceed \$500 per litigated medical issue, not to exceed \$2,500 in a claim.

(3) In determining the reasonableness of the attorney fees to be awarded, the Insurance Commission, arbitrator, mediator, Office of Judges, Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

(d) This section is of no force and effect after June 30, 2022.

**§23-5-16a. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.**

(a) An attorney's fee in excess of 20 percent of any award granted may not be charged or received by an attorney for a claimant or dependent. In no case may the fee received by the attorney of the claimant or dependent be in excess of 20 percent of the benefits, to be paid during a period of 208 weeks. The interest on disability or dependent benefits, as provided in this chapter, may not be considered as part of the award in determining the attorney's fee. However, any contract entered into in excess of 20 percent of the benefits to be paid during a period of 208 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this state and any fee charged or received by an attorney in violation thereof is an unlawful practice and renders the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the total value of the medical and indemnity benefits: *Provided*, That this attorney's fee, when combined with any fees previously charged or received by the attorney for permanent partial disability or permanent total disability benefits may not exceed 20 percent of an award of benefits to be paid during a period of 208 weeks.

(c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code, an attorney's fee for successful recovery of denied medical benefits may be charged or received by an attorney and paid by the private carrier or self-insured employer, for a claimant or dependent under this section. In no event may attorney's fees and costs be awarded pursuant to both this section and §23-2C-21(c) of this code.

(1) If a claimant successfully prevails in a proceeding relating to a denial of medical benefits brought before the Insurance Commissioner, other private carrier, or self-insured employer, whichever is applicable, as a result of utilization review, arbitration, mediation, or other proceedings, or a combination thereof, relating to denial of medical benefits before the Workers' Compensation Board of Review, or a court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney's fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the Workers' Compensation Board of Review, or a court, whichever enters a final decision on the issue. An attorney representing a claimant must submit a claim for attorney's fees and costs within 30 days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, mediators, the Workers' Compensation Board of Review, or a court shall enter an order within 30 days awarding reasonable attorney's fees not to exceed \$125 per hour and

reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant's attorney's fees under this subsection exceed \$500 per litigated medical issue, not to exceed \$2,500 in a claim.

(3) In determining the reasonableness of the attorney's fees to be awarded, the Insurance Commissioner, arbitrator, mediator, Workers' Compensation Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

(d) This section becomes effective on July 1, 2022.

## **CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.**

### **ARTICLE 5. CONTESTED CASES.**

#### **§29A-5-4. Judicial review of contested cases.**

(a) Any party adversely affected by a final order or decision in a contested case is entitled to judicial review thereof under this chapter, but nothing in this chapter shall be deemed to prevent other means of review, redress, or relief provided by law.

(b) Proceedings for review of any final order or decision issued on or before June 30, 2022, shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit Court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within 30 days after the date upon which such party received notice of the final order or decision of the agency. Notwithstanding any provision of this code to the contrary, proceedings for judicial review of any final order or decision issued after June 30, 2022, must be instituted by filing an appeal to the Intermediate Court of Appeals as provided in §51-11-1 et seq. of this code. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state

whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to affect any such appeal.

(c) The filing of the petition shall not stay enforcement of the agency order or decision or act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at any time after the filing of his or her petition, may apply to such ~~circuit~~ court for a stay of or supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or supersedeas upon such terms as it deems proper.

(d) Within 15 days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall transmit to such ~~circuit~~ court the original or a certified copy of the entire record of the proceeding under review, including a transcript of all testimony and all papers, motions, documents, evidence, and records as were before the agency, all agency staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceeding, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed, and the court shall order such record filed.

(e) Appeals taken on questions of law, fact, or both, shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued. The court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than 10 days after

the filing of the petition, and notice of such date and time shall be forthwith given to the agency.

(f) The review shall be conducted by the court without a jury and shall be upon the record made before the agency, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:

(1) In violation of constitutional or statutory provisions; ~~or~~

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

(3) Made upon unlawful procedures; ~~or~~

(4) Affected by other error of law; ~~or~~

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

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

(h) The judgment of the circuit court or the Intermediate Court of Appeals, whichever is applicable, shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

**ARTICLE 6. APPEALS.****§29A-6-1. Supreme Court of Appeals.**

(a) Any party adversely affected by the final judgment of the circuit court under this chapter may seek review thereof by appeal to the Supreme Court of Appeals of this state, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally: *Provided*, That a circuit court has no jurisdiction to review a final order or decision in a contested case issued after June 30, 2022.

(b) Any party adversely affected by the final order, decision, or judgment of the Intermediate Court of Appeals under this chapter may seek review thereof by petition to the Supreme Court of Appeals, pursuant to the requirements of §51-11-1 *et seq.* of this code.

**CHAPTER 51. COURTS AND THEIR OFFICERS.****ARTICLE 2A. FAMILY COURTS.****§51-2A-24. Review by Intermediate Court of Appeals; transfer of jurisdiction from circuit court.**

a) Notwithstanding any provision of this code to the contrary, an appeal of a final order or decision entered by a family court after June 30, 2022, must be made to the Intermediate Court of Appeals, as provided in §51-11-1 *et seq.* of this code.

(b) Notwithstanding any provision of this code to the contrary, a circuit court has no jurisdiction to review a final order or decision entered by a family court after June 30, 2022, if review of the final order or decision is within the jurisdiction of the Intermediate Court of Appeals, as provided in §51-11-5 of this code.

**ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.**

**§51-9-1a. Definitions.**

(a) As used in this article, the term “judge”, “judge of any court of record”, or “judge of any court of record of this state” means, refers to, and includes judges of the several circuit courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For purposes of this article, the terms do not mean, refer to, or include family court judges.

(b) “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.

(c) “Beneficiary” means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

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

(e) “Final average salary” means the average of the highest 36 consecutive months’ compensation received by the member as a judge of any court of record of this state.

(f) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

(g) “Member” means a judge participating in this system.

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

(i) “Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the

member attains age 70 and one-half; or (2) the calendar year in which the member retires or otherwise separates from covered employment.

(j) “Retirement system” or “system” means the Judges’ Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the Judges’ Retirement System or used in any manner as credit toward eligibility for retirement benefits under the Judges’ Retirement System.

## **ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.**

### **§51-11-1. Short title**

This article is known and may be cited as the West Virginia Appellate Reorganization Act of 2021.

### **§51-11-2. Definitions.**

For the purpose of this article:

“Circuit court” means a circuit court of this state, as provided in §51-2-1 of this code.

“Clerk” means the Clerk of the Supreme Court of Appeals of West Virginia.

“Intermediate Court of Appeals” means the Intermediate Court of Appeals of West Virginia created by this article.

“Judge” means a person appointed or elected to serve as a Judge for the Intermediate Court of Appeals, pursuant to this article.

“Supreme Court of Appeals” means the Supreme Court of Appeals of West Virginia.

**§51-11-3. West Virginia Intermediate Court of Appeals; constitutional authority; Court created; judges; qualifications of judges; location; clerk.**

(a) The Legislature finds that:

(1) Section one, article VIII of the Constitution of West Virginia explicitly recognizes the power of the Legislature to establish an intermediate court of appeals.

(2) Section six, article VIII of the Constitution of West Virginia acknowledges that appellate jurisdiction “may be conferred by law exclusively upon an intermediate appellate court” and numerous additional references to the potential creation of an intermediate appellate court by the Legislature appear throughout the Constitution.

(b) In accordance with Section One, Article VIII of the West Virginia Constitution, the West Virginia Intermediate Court of Appeals is created. The Intermediate Court is a court of record and shall issue, as appropriate in each appeal, written opinions, orders, and decisions. The court shall be established and operable on or before July 1, 2022.

(c) The Intermediate Court of Appeals shall convene, conduct proceedings, and issue decisions, rulings, and opinions of the court.

(d) The Intermediate Court of Appeals shall consist of three judges, initially appointed by the Governor in accordance with §51-11-6 of this code.

(1) An Intermediate Court of Appeals Judge must be a member in good standing of the West Virginia State Bar and admitted to practice law in this state for at least ten years prior to appointment or election to the Intermediate Court of Appeals.

(2) An Intermediate Court of Appeals Judge must have been a resident of the State of West Virginia for five years prior to election to the Intermediate Court of Appeals.

(3) An Intermediate Court of Appeals Judge may not engage in any other business, occupation or employment inconsistent with the expeditious, proper and impartial performance of his or her duties as a judicial officer. An Intermediate Court of Appeals Judge is not permitted to engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer.

(4) A person sitting as an Intermediate Court of Appeals Judge may not retain his or her position as judge upon becoming a pre-candidate or candidate for any other elected public office, judicial or nonjudicial.

(e) The Intermediate Court of Appeals may be located in any seat of county government within the state, or in any other place which is convenient to litigants designated by the Intermediate Court of Appeals for the purpose of hearing oral argument, or may be located in a fixed location, in a facility provided by the Clerk pursuant to §51-11-8 of this code.

(f) The Clerk of the Supreme Court shall act as clerk of the Intermediate Court of Appeals. The Clerk shall keep a complete record of the cases and proceedings of the Intermediate Court of Appeals. The Clerk, subject to the approval of the Supreme Court, may employ additional staff for the performance of duties relating to the court of appeals and designate a deputy clerk to oversee the administration of the Intermediate Court of Appeal

**§23-5-15. Appeals from final decisions of board to Supreme Court of Appeals prior to July 1, 2022; procedure; costs.**

**§51-11-4. Jurisdiction; limitations.**

(a) The Intermediate Court of Appeals has no original jurisdiction.

(b) Unless specifically provided otherwise in this article, appeals of the following matters shall be made to the Intermediate Court of Appeals, which has appellate jurisdiction over such matters:

(1) Final judgments or orders of a circuit court in civil cases, entered after June 30, 2022; *Provided*, that the Supreme Court of Appeals may, on its own accord, obtain jurisdiction over any civil case filed in the Intermediate Court;

(2) Final judgments or orders of a family court, entered after June 30, 2022;

(3) Final judgments or orders of a circuit court concerning guardianship or conservatorship matters, entered after June 30, 2022, pursuant to §44A-1-1 *et seq.* of this code;

(4) Final judgments, orders, or decisions of an agency or an administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code;

(5) Final orders or decisions of the Health Care Authority issued prior to June 30, 2022, in a certificate of need review, but transferred to the jurisdiction of the Intermediate Court of Appeals upon termination of the Office of Judges pursuant to §16-2D-16a of this code;

(6) Final orders or decisions issued by the Office of Judges after June 30, 2022, and prior to its termination, as provided in §16-2D-16 and §23-5-8a of this code; and

(7) Final orders or decisions of the Workers' Compensation Board of Review pursuant to §23-5-1 *et seq.* of this code, entered after June 30, 2022.

(c) In appeals properly filed pursuant to subsection (b) of this section, the parties shall be afforded a full and meaningful review on the record of the lower tribunal and an opportunity to be heard.

(d) The Intermediate Court of Appeals does not have appellate jurisdiction over the following matters:

(1) Judgments or final orders issued in any criminal proceeding in this state: *Provided*, that if the West Virginia Supreme Court of Appeals should adopt a policy of discretionary review of criminal appeals then the Intermediate Court of Appeals shall have appellate jurisdiction of such judgments or final orders;

(2) Judgments or final orders issued in any juvenile proceeding pursuant to §49-4-701 *et seq.* of this code;

(3) Judgments or final orders issued in child abuse and neglect proceedings pursuant to §49-4-601 *et seq.* of this code;

(4) Orders of commitment, issued pursuant to §27-5-1 *et seq.* of this code;

(5) Any proceedings of the Lawyer Disciplinary Board;

(6) Any proceedings of the Judicial Investigation Commission;

(7) Final decisions of the Public Service Commission, issued pursuant to §24-5-1 of this code;

(8) Interlocutory appeals;

(9) Certified questions of law; and

(10) Extraordinary remedies, as provided in §53-1-1 *et seq.* of this code, and any appeal of a decision or order of another court regarding an extraordinary remedy.

**§51-11-5. Motion for direct review by Supreme Court of Appeals.**

(a) Within 20 days after a petition for appeal is filed in the Intermediate Court of Appeals, a party may file a motion in the Supreme Court of Appeals for direct review of a final judgment or

order that is otherwise within the appellate jurisdiction of the Intermediate Court of Appeals pursuant to §51-11-5 of this code.

(b) The Supreme Court of Appeals may grant a motion filed pursuant to this section if both of the following extraordinary circumstances exist:

(1) The appeal involves a question of fundamental public importance; and

(2) The appeal involves exigencies, in which time is of the essence, necessitating direct review of the appeal by the Supreme Court of Appeals.

(c) Notwithstanding any other provision of this code, if the Supreme Court of Appeals grants a motion filed pursuant to this section within 20 days after such motion is filed, jurisdiction over the appeal is transferred to the Supreme Court of Appeals according to all applicable rules of the court:

**§51-11-6. Election of judges; initial appointment and election; vacancies; length and conditions of judicial terms.**

(a) The three Judges of the Intermediate Court of Appeals shall be elected on a nonpartisan basis to serve 10-year terms, subject to the exceptions for initial appointments and elections contained in subsection (b) and subsection (c) of this section.

(b) *Nomination and election to fill initial vacancies.* —The Judges shall be nominated and appointed according to the following procedure:

(1) (A) On or before January 1, 2022, the Judicial Vacancy Advisory Commission, established pursuant to §3-10-3a of this code, shall publish notice of the judicial vacancies for the Intermediate Court of Appeals and begin accepting applications from qualified individuals for the position of Judge of the Intermediate Court of Appeals. The Commission is responsible for reviewing and evaluating candidates for possible appointment to the Intermediate Court of Appeals by the Governor. In reviewing

candidates, the Commission may accept applications from any attorney who believes he or she to be qualified for the judgeships. The Commission may accept comments from and request information from any person or source.

(B) The Commission shall recommend three qualified nominees for each position for Intermediate Court of Appeals Judge: *Provided*, That each person on the list must meet the requirements of §51-11-3(d) of this code at the time such person will begin his or her term on the court.

(2) The Governor shall review the list certified by the Judicial Vacancy Advisory Commission and nominate three qualified candidates to serve as judge. The Governor shall make his or her nominations without regard to political partisanship or affiliation. If the Governor does not select a nominee for the position of judge from the names provided by the Commission, he or she shall notify the committee of that circumstance and the Commission shall provide additional names for consideration by the Governor.

(3) The initial appointment term for each of the judges, at the discretion of the Governor, shall be as follows: one judge shall be selected to serve a two and one-half year term set to expire on December 31, 2024, one judge shall be selected to serve a four and one-half year term set to expire on December 31, 2026, and one judge shall be elected to serve a six and one-half year term set to expire on December 31, 2028.

(4) Upon confirmation by the West Virginia Senate, an individual appointed to serve as a Judge of the Intermediate Court of Appeals pursuant to this subsection shall take an oath of office and commence his or her duties on July 1, 2022.

(c) After the initial appointment, the Judges of the Intermediate Court of Appeals shall be elected on a nonpartisan basis by division during the primary election in every year during which a sitting judge's term will expire for a ten-year term of office, and the judge's term shall commence on January 1 of the year following, as set forth in §3-5-1 *et seq.* of this code.

(d) If a vacancy occurs in the office of Intermediate Court Judge, the Governor shall fill the vacancy by appointment as provided in §3-10-3 and §3-10-3a of this code.

(e) No person sitting as a judge of the Intermediate Court of Appeals may retain his or her position as judge upon becoming a candidate for any elected public office, judicial or nonjudicial.

(f) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court of Appeals has authority to temporarily assign judges to the Intermediate Court of Appeals pursuant to section eight, article VIII of the Constitution of West Virginia, in the event that a judge is temporarily unable to serve on the court.

**§51-11-7. Rules of practice and procedure; fees; deadlines.**

(a) Section three, article VIII of the Constitution of West Virginia grants the Supreme Court of Appeals of West Virginia supervisory control over all intermediate appellate courts in the state, including the power to promulgate rules for the procedures of an intermediate appellate court created by statute. In accordance with those provisions, the Intermediate Court of Appeals is therefore subject to the administrative control, supervision, and oversight of the Supreme Court of Appeals and unless specifically provided otherwise in this article, the pleadings, practice, and procedure in all matters before the Intermediate Court of Appeals are governed by rules promulgated by the Supreme Court of Appeals.

(b) *Filing; records.* — All notices of appeals, petitions, documents, and records in connection with an appeal to the Intermediate Court of Appeals shall be filed in accordance with rules promulgated by the Supreme Court of Appeals. Appeals to the Intermediate Court of Appeals shall be filed with the Clerk of the Supreme Court of Appeals. All appeals and other related documents shall be filed by electronic means, when available.

(c) *Fees.* —

(1) The Clerk of the Supreme Court of Appeals may charge a party appealing to the Intermediate Court of Appeals a filing fee in the amount of \$200.

(2) All moneys collected pursuant to this subsection shall be deposited in the Ryan Brown Addiction Prevention and Recovery Fund, created by §16-53-2 of this code, and all expenditures from the fund shall comply with the requirements of that section.

(d) Appeal bonds. — The court may order the payment of an appeal bond before an appeal to the Intermediate Court of Appeals may commence, pursuant to rules promulgated by the Supreme Court of Appeals, and when applicable, the requirements of §58-5-14 of this code.

(e) Oral argument. — The Intermediate Court of Appeals has discretion to determine whether appellate review of a case before the court requires oral argument.

#### **§51-11-8. Administration of court.**

(a) In accordance with section three, article VIII of the Constitution of West Virginia, the Intermediate Court of Appeals is subject to the administrative control, supervision, and oversight of the Supreme Court of Appeals. Under that same provisions, the Chief Justice of the Supreme Court of Appeals is the “administrative head” of all West Virginia courts, empowering the chief justice to exercise supervisory control over an intermediate court of appeals.

(b) The Administrative Director of the Supreme Court shall provide for the requisite physical facilities, furniture, fixtures and equipment necessary for the efficient operation of the Intermediate Court of Appeals.

(c) (1) In order to minimize any costs associated with the necessary facilities for the Intermediate Court of Appeals, the Administrative Director of the Supreme Court shall make existing courtrooms throughout the state, including the courtroom of the Supreme Court of Appeals, available for use by the Intermediate

Court of Appeals at times convenient both to the Intermediate Court of Appeals and the local court.

(2) The Administrative Director of the Supreme Court may also contract with the Department of Administration, county commissions and private parties to provide for space that is suitable for the Intermediate Court of Appeals. Facilities may include, but are not limited to, courtrooms in county courthouses, courtrooms in federal courthouses, county commission rooms in county courthouses, rooms or facilities at institutions of higher education, and other suitable spaces in federal, state, county, or municipal buildings throughout the state.

(d) Chief Judge. — One Judge of the Intermediate Court of Appeals shall be chosen Chief Judge. The manner of choosing the Chief Judge and providing for periodic rotation of the position of Chief Judge shall be determined by rules to be established by the Supreme Court.

(e) Staff. — The Administrative Director of the Supreme Court of Appeals shall provide administrative support and may employ additional staff, as necessary, for the efficient operation of the Intermediate Court of Appeals. The budget for the payment of compensation and expenses of the Intermediate Court of Appeals staff shall be included in the appropriation to the Supreme Court of Appeals.

(f) The budget for the payment of the salaries and benefits for the Intermediate Court of Appeals Judges and staff, facilities, furniture, fixtures and equipment shall be included in the appropriation for the Supreme Court. To the extent possible, the Supreme Court shall designate existing facilities and existing staff members for use by the Intermediate Court of Appeals to minimize the costs for establishing and operating the Intermediate Court of Appeals.

#### **§51-11-9. Written opinions; precedential effect.**

(a) The Intermediate Court of Appeals shall issue, as appropriate in each appeal, written opinions, orders, and decisions: *Provided*, That a written decision on the merits shall be issued as a

matter of right in each appeal that is properly filed and within the jurisdiction of the Intermediate Court of Appeals.

(b) A written opinion, order, or decision of the Intermediate Court of Appeals is binding precedent for the decisions of all circuit courts, family courts, magistrate courts, and agencies unless the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals.

**§51-11-10. Discretionary review by Supreme Court of Appeals by petition**

(a) A party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.

(b) Upon the proper filing of a notice of appeal in the Supreme Court of Appeals, the order or judgment of the Intermediate Court of Appeals may be stayed pending the appeal, in accordance with rules promulgated by the Supreme Court of Appeals.

(c) The Supreme Court of Appeals has discretion to grant or deny the petition for appeal or certiorari of a decision by the Intermediate Court of Appeals.

**§51-11-11. Judicial compensation and benefits; expenses.**

(a) The annual salary of a Judge of the Intermediate Court of Appeals is \$142,500. The budget for the payment of compensation and expenses of Intermediate Court of Appeals judges shall be included in the appropriation for the Supreme Court of Appeals.

(b) Judges of the Intermediate Court of Appeals and staff shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties under the guidelines prescribed by the Administrative Director of the Supreme Court of Appeals.

**§51-11-12. Attorney General as counsel for state.**

The Attorney General shall appear as counsel for the state in all cases pending in the Intermediate Court of Appeals, subject to the same requirements and restrictions provided in §5-3-2 of this code that apply to the Attorney General's representation of the state in cases pending in the Supreme Court of Appeals.

**§51-11-13. Severability.**

The provisions of this article are severable. If any portion of this article is declared unconstitutional or the application of any part of this article is held invalid, the remaining portions of this article and their applicability shall remain valid and enforceable.

**CHAPTER 58. APPEAL AND ERROR.****ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE COURT OF APPEALS AND THE SUPREME COURT OF APPEALS.****§58-5-1. When appeal lies.**

(a) A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties: Provided, That an appeal of a final order or judgment of a circuit court entered after June 30, 2022, shall be to the Intermediate Court of Appeals, as required by §51-11-1 et seq. of this code.

(b) As provided in §51-11-13 of this code, a party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.

(c) The defendant in a criminal action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court in which there has been a conviction, or which affirms a conviction obtained in an inferior court.;

And,

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

**Eng. Com. Sub. for Com. Sub. for Senate Bill 275**—A Bill to amend and reenact §3-1-16 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-4A-11a of said Code; to amend said code by adding thereto a new section, designated §3-5-6e; to amend and reenact §3-5-7, and §3-5-13 of said Code; to amend and reenact §3-10-3 and §3-10-3a of said Code; to amend and reenact §6-5-1 of said Code; to amend said code by adding thereto a new section, designated §16-2D-16a; to amend said code by adding thereto a new section, designated §23-1-1h; to amend and reenact §23-5-1, §23-5-3, §23-5-4; §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12, §23-5-13, §23-5-15, and §23-5-16 of said code; to amend said code by adding thereto twelve new sections, designated §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-5-8a, §23-5-8b, §23-5-9a, §23-5-10a, §23-5-11a, §23-5-12a, §23-5-13a, and §23-5-16a; to amend and reenact §29A-5-4 of said code; to amend and reenact §29A-6-1 of said code; to amend said code by adding thereto a new section, designated §51-2A-24; 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 creating an Intermediate Court of Appeals; requiring the election of judges of the Intermediate Court of Appeals be on a nonpartisan basis; requiring that elections to certain offices be on a division basis when more than one judge of the Intermediate Court of Appeals is to be elected; providing for the timing, day and frequency of election; providing for the commencement of terms of office; establishing ballot design and printing; providing that election for

Judge of the Intermediate Court of Appeals is to be held on the same date as the primary election; requiring nonpartisan ballots be used; establishing filing announcement of candidacies, including the timing, location and information necessary thereto; providing for the order of appearance of offices on the ballot; establishing ballot content; providing for the filling of vacancies on the Intermediate Court of Appeals; defining terms; providing that the Judicial Vacancy Advisory Commission assist initial and subsequent vacancies on the Intermediate Court of Appeals; clarifying meaning of quorum for Judicial Vacancy Advisory Commission; transferring jurisdiction over appeals of decisions of the Health Care Authority in certificate-of-need reviews from the Workers' Compensation Office of Administrative Law Judges and Circuit Court of Kanawha County to the Intermediate Court of Appeals; establishing procedures and time frames for transfer or disposition of unresolved appeals pending with the Office of Judges; transferring jurisdiction over all workers' compensation claims and transferring all powers and duties related thereto from the Office of Judges to the Workers' Compensation Board of Review by a date certain; providing for additional two members to Workers' Compensation Board of Review; providing for modified procedure to appoint members to Workers' Compensation Board of Review; conferring appellate jurisdiction over Office of Judges decisions and Board of Review decisions to the Intermediate Court of Appeals after a date certain; sunseting certain provisions relating to duties and procedures of the Office of Judges with respect to workers' compensation claims; modifying duties and procedures of Board of Review with respect to workers' compensation claims; terminating the Office of Judges by a date certain; authorizing the Board of Review to employ hearing examiners and other necessary personnel; establishing qualifications for hearing examiners hired by the Board of Review; setting forth powers of the Board of Review relating to workers' compensation claims; providing for reports requested by the Insurance Commissioner to be made by the chair of the Board of Review; providing for oversight and administrative authority of the Insurance Commissioner over the Board of Review; authorizing the Board of Review to promulgate procedural rules; granting due consideration and an interview to employees of the Office of

Judges who apply for positions with the Board of Review on or before a date certain and directing the Board of Review that such consideration and interview prior to considering any other applicant; authorizing the Board of Review to hire attorneys as hearing examiners; requiring that all orders and decisions of the Board of Review pertaining to an objection be issued and signed by a single member of the Board of Review, with certain exceptions; permitting the board of review member assigned to an objection to delegate certain duties to a hearing examiner; establishing the administrative powers and duties of the Board of Review; increasing the limit on the annual salary of a Board of Review member; authorizing the Board Of Review to promulgate rules of practice and procedure, and establishing a process therefor; establishing duties of the chair of the Board of Review; providing that the administrative expenses of the Board of Review shall be included in annual budget of the Insurance Commissioner; providing that petitions for review of final decisions of the Workers' Compensation Board of Review must be made to the Intermediate Court of Appeals; establishing certain procedures and other requirements for appeals of Board of Review decisions made to the Intermediate Court of Appeals; providing that the Supreme Court of Appeals has discretion to review final decisions of the Intermediate Court of Appeals in workers' compensation claims; requiring that appeal of contested cases under the State Administrative Procedures Act be made to the Intermediate Court of Appeals; transferring jurisdiction to review family court final orders from circuit courts to the Intermediate Court of Appeals; creating an Intermediate Court of Appeals in West Virginia to be established and operable by a date certain; providing a short title; providing legislative findings; defining terms; establishing and defining an Intermediate Court of Appeals of three judges; providing eligibility criteria for judges of the Intermediate Court of Appeals; providing that judges of the Intermediate Court of Appeals may not be candidates for any elected public office during the judicial term; providing for the location of proceedings of the Intermediate Court of Appeals; providing for a Clerk of the Intermediate Court of Appeals; authorizing jurisdiction of the Intermediate Court of Appeals over certain matters; excluding certain matters from jurisdiction of the Intermediate Court of

Appeals; providing that parties to an appeal in the Intermediate Court of Appeals shall have an opportunity for a full and meaningful review on the record of the lower tribunal and an opportunity to be heard; forbidding jurisdiction of the Intermediate Court of Appeals over certain matters; establishing a procedure by which parties to an appeal in the Intermediate Court of Appeals may file a motion for direct review of an appeal by the Supreme Court of Appeals in certain extraordinary circumstances; providing a process for initial appointment of judges to the Intermediate Court of Appeals to fill vacancies in the Intermediate Court of Appeals upon its creation; providing for the regular election of a judge of the Intermediate Court of Appeals upon the expiration of a sitting judge's term; establishing a procedures for the filling of vacancies in unexpired judicial terms by appointment and, in certain circumstances, subsequent election; providing that the Governor's judicial appointments must be made from a list of candidates submitted by the Judicial Vacancy Advisory Commission and are subject to advice and consent of the Senate; 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 and related filings be filed with the Clerk of the Supreme Court of Appeals; 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; authorizing filing fees; providing for deposit of filing fees in a special revenue account to fund the Ryan Brown Addiction Prevention and Recovery Fund; granting the Intermediate Court of Appeals discretion to require oral argument; recognizing the constitutional authority of the Supreme Court of Appeals to exercise administrative authority over the Intermediate 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; authorizing the Administrative Director of the Supreme Court of Appeals to employ staff for Intermediate Court of Appeals operations; providing for a Chief Judge of the Intermediate Court of Appeals; 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 that the Intermediate Court of Appeals shall issue written decisions as a matter of right; 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; authorizing the Attorney General to appear as Counsel for the State before the Intermediate Court of Appeals; providing for severability of any unconstitutional provisions; clarifying when appeal lies before the Intermediate Court of Appeals and the Supreme Court of Appeals; providing internal effective dates; removing obsolete language from the code; and making technical corrections to the code.

Senator Takubo moved that the Senate concur in the House of Delegates amendments to the bill.

Following discussion,

The question being on the adoption of Senator Takubo's aforesated motion, the same was put and prevailed.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 275, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Karnes, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—21.

The nays were: Baldwin, Caputo, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Martin, Romano, Stollings, Stover, and Unger—12.

Absent: Beach—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for S. B. 275) passed with its House of Delegates amended title.

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

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

**Senate Concurrent Resolution 20,** Supporting and celebrating centennial anniversary of Jones Act.

A message from the Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendment to, and requested the Senate to recede therefrom, as to

**Eng. Com. Sub. for House Bill 2003,** Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency.

On motion of Senator Takubo, the Senate refused to recede from its amendment to the bill and requested the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses.

Whereupon, Senator Blair (Mr. President) appointed the following conferees on the part of the Senate:

Senators Trump, Clements, and Baldwin.

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

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

**Eng. Com. Sub. for House Bill 2014**, Relating to role of the Legislature in appropriating federal funds.

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

**Eng. Com. Sub. for House Bill 2017**—A Bill to repeal the following sections: §55-9-1, §55-9-2, §55-9-3, §61-1-4, §61-1-5, §61-1-7, §61-1-8, §61-1-9, §61-2-5a, §61-2-9a, §61-2-9b, §61-2-9c, §61-2-9d, §612-10, §61-2-10a, §61-2-10b, §61-2-14a, §61-2-14b, §61-2-14c, §61-2-14d, §61-2-14e, §61-2-14f, §61-2-14g, §61-2-14h, §61-2-15a, §61-2-16a, §61-2-26, §61-2-27, §61-2-27a, §61-2-28, §61-2-29, §61-2-29a, §61-2-29b, §61-2-30, §61-3-20a, §61-3-22a, §61-3-24a, §61-3-24b, §61-3-24c, §61-3-24d, §61-3-24e, §61-3-24f, §61-3-24g, §61-3-24h, §61-3-39, §61-3-39a, §61-3-39b, §61-3-39c, §61-3-39d, §61-3-39e, §61-3-39f, §61-3-39g, §61-3-39h, §61-3-39i, §61-3-39j, §61-3-39k, §61-3-39m, §61-3-39n, §61-3-39o, §61-3-39p, §61-3-39q, §61-3-40, §61-3-41, §61-3-42, §61-3-43, §61-3-44, §61-3-45, §61-3-45a, §61-3-46, §61-3-47, §61-3-48, §61-3-48a, §61-3-49, §61-3-49a, §61-3-49b, §61-3-50, §61-3-51, §61-3-52, §61-3-53, §61-3-54, §61-3-55, §61-3-56, §61-3-57, §61-3-58, §61-3-59, §61-3A-4a, §61-3C-14a, §61-3C-14b, §61-3C-14c, §61-3E-13, §61-5-12a, §61-5-12b, §61-5-25a, §61-5-27a, §61-5-28, §61-5-29, §61-6-2, §61-6-3, §61-6-14a, §61-6-18, §61-6-19, §61-6-20, §61-6-21, §61-6-22, §61-6-23, §61-6-24, §61-6-25; §61-7-9, §61-8-2, §61-8-9a, §61-8-10, §61-8-20, §61-8-25, §61-8-26, §61-8B-18, §61-8D-6, §61-8E-1, §61-8E-2, §61-8E-3, §61-9-9, §61-9-10, §61-9-11, §61-10-7, §61-10-8, §61-10-13, §61-10-14, §61-10-19, §61-10-34, §61-11-1, §61-11-3, and §61-11A-7 of the code of West Virginia 1931, as amended; to amend and reenact §15-12-8 of said code; to amend and reenact §61-1-1, §61-1-2, §61-1-3 said code; to amend and reenact §61-2-1, §61-2-2, §61-2-3, §61-2-4, §61-2-5, §61-2-6, §61-2-7, §61-2-8, §61-2-9, §61-2-11, §61-2-12, §61-2-13, §61-2-14, §61-2-15, and §61-2-16 said code; to amend and reenact §61-3-1, §61-3-2, §61-3-3, §61-3-4, §61-3-5, §61-3-6, §61-3-7, §61-3-8, §61-3-11, §61-3-12, §61-3-13, §61-3-14, §61-3-15, §61-3-16, §61-3-18, §61-3-19, §61-3-20, §61-3-21, §61-3-22, §61-3-23, §61-3-24, §61-3-25, §61-3-26, §61-

3-27, §61-3-28, §61-3-29, §61-3-30, §61-3-31, §61-3-32, §61-3-33, §61-3-34, §61-3-35, §61-3-36, §61-3-37, and §61-3-38 said code; to amend and reenact §61-3A-3 and §61-3A-7 said code; to amend and reenact §61-3B-2, §61-3B-3, §61-3B-4, §61-3B-5, §61-3B-6, and §61-3B-7 said code; to amend and reenact §61-3C-2, §61-3C-3, §61-3C-4, §61-3C-5, §61-3C-6, §61-3C-7, §61-3C-8, §61-3C-9, §61-3C-10, §61-3C-11, §61-3C-12, §61-3C-13, §61-3C-14, §61-3C-15, §61-3C-16, §61-3C-17, §61-3C-18, §61-3C-19, §61-3C-20, §61-3C-21; to amend and reenact §61-3D-2 and §61-3D-3 said code; to amend and reenact §61-3E-1, §61-3E-3, §61-3E-4, §61-3E-5, §61-3E-6, §61-3E-7, §61-3E-8, §61-3E-9, §61-3E-10, and §61-3E-12 said code; to amend and reenact §61-4-1, §61-4-2, §61-4-3, §61-4-4, §61-4-5, §61-4-6, §61-4-7, §61-4-8, and §61-4-9 said code; to amend and reenact §61-5-1, §61-5-2, §61-5-3, §61-5-4, §61-5-5, §61-5-6, §61-5-7, §61-5-8, §61-5-9, §61-5-10, §61-5-11, §61-5-12, §61-5-13, §61-5-14, §61-5-15, §61-5-16, §61-5-17, §61-5-18, §61-5-19, §61-5-20, §61-5-21, §61-5-22, §61-5-23, §61-5-24, §61-5-25, §61-5-26, and §61-5-27 said code; to amend and reenact §61-5A-9 said code; to amend and reenact §61-6-6, §61-6-7, §61-6-11, §61-6-12, §61-6-13, §61-6-14, §61-6-15, §61-6-16, and §61-6-17; §61-6-1, §61-6-1a, and §61-6-1b of said code; to amend and reenact §61-7-3, §61-7-4, §61-7-4a, §61-7-7, §61-7-10, §61-7-11, §61-7-11a, §61-7-12, §61-7-14, §61-7-15, and §61-7-15a said code; to amend and reenact §61-8-1, §61-8-5, §61-8-6, §61-8-7, §61-8-8, §61-8-9, §61-8-11, §61-8-12, §61-8-14, §61-8-15, §61-8-16, §61-8-19, §61-8-19a, §61-8-19b, §61-8-19c, §61-8-21, §61-8-22, §61-8-23, §61-8-27, §61-8-27a, §61-8-28, §61-8-28a, §61-8-29, §61-8-30, and §61-8-31 said code; to amend and reenact §61-8A-1, §61-8A-2, §61-8A-4, and §61-8A-5 said code; to amend and reenact §61-8B-3, §61-8B-4, §61-8B-5, §61-8B-7, §61-8B-8, §61-8B-9, §61-8B-9b, §61-8B-10 and §61-8B-12 of said code; to amend and reenact §61-8C-1, §61-8C-2, §61-8C-3, §61-8C-3a, and §61-8C-3b said code; to amend and reenact §61-8D-1, §61-8D-2, §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4, §61-8D-4a, §61-8D-5, §61-8D-5a, §61-8D-7, §61-8D-8, and §61-8D-10 said code; to amend and reenact §61-9-1, §61-9-2, §61-9-3, §61-9-4, §61-9-5, §61-9-6, §61-9-7, and §61-9-8 said code; to amend and reenact §61-10-1, §61-10-2, §61-10-3, §61-10-4, §61-10-5, §61-10-6, §61-10-9, §61-10-10, §61-10-11, §61-10-11a,

§61-10-11b, §61-10-15, §61-10-16, §61-10-17, §61-10-20, §61-10-21, §61-10-22, §61-10-23, §61-10-30, §61-10-31, §61-10-32, and §61-10-33, said code; to amend and reenact §61-11-1a, §61-11-6, §61-11-8, and §61-11-8a of said code; to amend and reenact §61-12-8, §61-12-9, and §61-12-13 of said code; to amend and reenact §61-13-3 of said code; to amend and reenact §61-14-2, §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, and §61-14-8 of said code; to amend and reenact §61-15-2 and §61-16-2 of said code; to amend said code by adding thereto a new article designated as §23-5B-1, §23-5B-2, §23-5B-3, and §23-5B-4; to amend said code by adding thereto a new section, designated §30-29-9a; to amend said code by adding thereto two new sections, designated §30-1-27 and §30-1-28; to amend said code by adding a new section, designated §55-2-23; to amend said code by adding a new section, designated §60A-4-418; to amend said code by adding thereto nine new sections, designated §61-2-17, §61-2-18, §61-2-19, §61-2-20, §61-2-21, §61-2-22, §61-2-23, §61-2-24, and §61-2-25; to amend said code by adding thereto two new sections, §61-3-9, §61-3-10, and §61-3-17; to amend said code by adding thereto three new sections, designated §61-3B-8, §61-3B-9, and §61-3B-10; to amend said code by adding thereto two new sections, §61-3C-22 and §61-3C-23; to amend said code by adding thereto a new article, designated §61-3F-1, §61-3F-2, §61-3F-3, §61-3F-4, §61-3F-5, §61-3F-6, §61-3F-7, §61-3F-8, §61-3F-9, §61-3F-10, §61-3F-11, §61-3F-12, §61-3F-13, §61-3F-14, §61-3F-15, §61-3F-16, and §61-3F-17; to amend said code by adding thereto a new section designated §61-4-10; to amend said code by adding thereto following five new sections, designated §61-8-5a, §61-8-6a, §61-8-8a, and §61-8-8b, to amend said code by adding thereto six new sections, designated §61-8B-4a, §61-9-6a, §61-10-1a, §61-10-9a, §61-10-9b, and §61-10-10a; to amend said code by adding thereto a new article designated §61-17-1, §61-17-2, §61-17-3, §61-17-4, §61-17-5, and §61-17-6; and to amend said code by adding a new article designated §61-18-1, §61-18-2, §61-18-3, and §61-18-4; all relating to revising the criminal code generally; relating to the failure of a sex offender to register or provide notice of registration changes and the penalty for the same; crimes against the worker's compensation system generally; the crime of omission to subscribe for workers' compensation insurance; the

crime of failure to file a premium tax report or pay premium taxes; crimes relating to false testimony or statements concerning such; the crime of failure to file reports; criminal penalties for such actions or inactions; provisions for asset forfeiture; venue for trial of such crimes; the crime of wrongfully seeking workers' compensation; criminalizing false testimony or statements given in support of the same; criminal penalties for these offenses; venue for the trial of such crimes; workers' compensation health care offenses; fraud; theft or embezzlement; false statements; criminal penalties for the above offenses; notice requirements; prohibition against providing future services; penalties for the same; provisions for asset forfeiture; venue for the trial of such crimes; defining the crime of providing false documentation to workers' compensation, to the Insurance Commissioner or a private carrier of workers' compensation insurance; criminalizing altering documents or certificates from workers' compensation; criminal penalties for such offenses; venue for the trial of such crimes; the required reporting of gunshot and other wounds; the required reporting of burns; penalty for aiding and abetting; railroad employees being conservators of the peace; special railroad policemen; and the powers and duties of the same; relating to shooting ranges; limitations on nuisance actions; and noise ordinances; relating generally to criminal activity and the punishment thereof; wanton endangerment involving the use of fire; and the criminal penalty for the same; relating to crimes against the government, treason, the definition of the crime of treason, and penalties therefor, the crime of failure to give information of treason and its penalty, and the crime of desecration of the flag, and its penalty; relating to crimes against the person, first and second degree murder defined, and punishment for the same; delineating provisions for allegations in indictment for homicide; defining voluntary manslaughter and the penalty thereof; defining involuntary manslaughter, and specifying the penalty for the same; defining concealment of a deceased human body, and specifying the penalty for the same; clarifying that Homicide is punishable within the state if injury occurs within and death without, or vice versa; defining an attempt to kill or injure by poison, and specifying the penalty for the same; defining the crime of abortion and the penalty for the same; defining malicious or

unlawful assault, assault, and battery, and specifying the penalties for each and aggravated factors and enhanced penalties; explaining provisions of sentencing for such acts committed by incarcerated persons; defining assault during the commission of or attempt to commit a felony, and specifying the penalty for the same; delineating that for violent crimes against the elderly a sentence is not subject to suspension or probation; defining harassment, and providing penalties, and certain definitions for the same; defining strangulation, suffocation, and asphyxiation and providing definitions and penalties for the same; defining robbery or attempted robbery and specifying the penalties for the same; defining extortion, and attempted extortion by threat, and specifying the penalty for these; defining kidnapping and specifying penalties for the same; defining concealment or removal of a minor child from custodian or from person entitled to visitation; and setting forth penalties and defenses for the same; providing that one aiding or abetting in kidnapping or in concealing or removing a minor child is guilty as a principal, and explaining venue for those offenses; defining unlawful restraint and providing penalties for the same; prohibiting the purchase or sale of a child, setting the criminal penalty for the same, and providing definitions and exceptions; the failure to remove doors from abandoned refrigerators, freezers and other appliances, and providing penalties for the same; providing definitions for various forms of domestic violence and criminal penalties; providing definitions and criminal penalties for the abuse or neglect of an incapacitated adult; providing criminal penalties for the death of an incapacitated adult by a caregiver; defining and providing criminal penalties for the financial exploitation of an elderly person, protected person or incapacitated adult; recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person; relating to crimes against property; arson; the degrees of arson, and definitions and criminal penalties for the same; burning, or attempting to burn, insured property and the criminal penalty for the same; causing injuries during an arson-related crime, and the criminal penalties for the same; recovery of costs incurred in fighting fires caused by arson; defining burglary, the entry of dwelling house or outbuilding, and providing criminal penalties for the same; defining entry of a house, building, vehicle, or enclosed

property, the criminal penalties for the same, and specifying counts in indictment for the same; manufacture or possession of burglary tools, and the criminal penalties for the same; setting forth criminal offenses involving theft detection shielding devices, their criminal penalties and providing for detention of persons suspected of this offense; grand larceny, aggravated grand larceny, and petit larceny distinguished, setting forth the criminal penalties for each, defining larceny of bank notes, checks, writings of value and book accounts, and delineating the determination of value in larceny; explaining receiving or transferring stolen goods and providing a criminal penalty; providing a criminal penalty for bringing into this state, receiving or disposing of property stolen in another state; embezzlement, and the criminal penalties for the same; falsifying accounts, and the criminal penalties for the same; Possession or use of automated sales suppression devices, and the criminal penalties for the same; the offenses of destroying or concealing a will, and embezzlement by fiduciary, and the criminal penalties for the same; obtaining money, property and services by false pretenses, disposing of property to defraud creditors, and the criminal penalties for each of these; the offenses of attempted or fraudulent use, forgery, traffic of credit cards, possession and transfer of credit cards and credit card making equipment, the false or fraudulent use of telephonic services, and the criminal penalties for these offenses; intercepting or monitoring customer telephone calls, and the criminal penalties for the same; requirements for finding fraudulent schemes and provisions for the cumulation of amounts where a common scheme exists, and the criminal penalties for the same; the casting away, destroying, or interfering with floating craft or material, and the criminal penalties for the same; interference with or destruction of buoys, signal lights or other aids to navigation, and the criminal penalties for the same; the offense of malicious killing of animals by poison or otherwise, and the criminal penalties for the same; the removal out of a county of property securing a claim, and the criminal penalties for such offense; the fraudulent disposition of personal property in possession by virtue of lease, notice to return, failure to return, and penalties where such property is not returned; noting a right to immediate possession in such instances; making a false statement as to financial condition of person, firm or corporation, and the criminal penalty for the

same; publication of false advertisements, and the criminal penalty for the same; fraudulently obtaining food or lodging, and the criminal penalty for the same; intoxication of a person in charge of locomotive engine or car, and the criminal penalty for the same; the offenses of jumping on or off car or train in motion; driving vehicle upon track or bridge except at crossings, and the criminal penalty for the same; procuring gas, water or electricity, by device, with intent to defraud, and the criminal penalty for the same; placing a dam or obstructions in watercourses, and the criminal penalty for the same; setting forth requirements for the purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; requiring certificates, records, and reports of such purchases; providing criminal penalties for violations of these provisions; setting forth requirements for the purchase of items by precious metals and gem dealers, records to be kept by them, and delineating prohibited acts, and the criminal penalty for the same; criminalizing the unauthorized use of dumpsters and setting forth penalties; defining the offense of identity theft and providing a penalty; criminalizing the failure to pay for gasoline and providing a penalty; the offense of scanning device or re-encoder fraud, delineating when it is a felony; providing definitions; and setting forth criminal penalties for the same; the offense of possession of bogus receipts or universal product codes with intent to defraud, and the criminal penalties for the same; the offense of misrepresentation of past or present military status or military awards to obtain anything of value, and delineating criminal penalties for the same; relating to shoplifting; prescribing penalties; defining the crime of organized retail theft, and providing penalties for that offence, all relating to trespass; trespass in a structure or conveyance and penalties for the same; trespass on property other than a structure or conveyance, removal, injury to or destruction of property, monuments designating land boundaries and of certain no trespassing signs and penalties for the same; trespass on student residence premises or student facility premises of an institution of higher education and penalties for the same; trespass on state government property; aiding and abetting; penalties for each of those offenses; defining the offense of mine trespass, and penalties for the same; defining animal or crop facilities trespass; providing penalties for the same; allowing for

injunctive relief in such instances; offenses involving damage to shrubbery, flowers, trees and timber; providing for a limitation of application of the relevant subsection, and providing penalties; prohibiting cutting, damaging, or carrying away without written permission, any timber, trees, growing plants or the products thereof; treble damages provided for the same; creating the Critical Infrastructure Protection Act; defining terms relevant to the same; prohibiting certain acts, including trespass and conspiracy to trespass against property designated a critical infrastructure facility; providing criminal penalties; and, allowing for certain forms of civil action in such instances; relating to the West Virginia Computer Crime And Abuse Act, defining terms; computer fraud; access to legislative or state-owned computer; criminal penalties for the same; unauthorized access to computer services and criminal penalties for the same; unauthorized possession of computer data or programs and criminal penalties for the same; unauthorized possession of computer data or programs and criminal penalties for the same; alteration, destruction, etc., of computer equipment, and criminal penalties for the same; unauthorized possession of computer information, and criminal penalties for the same; disclosure of computer security information and criminal penalties for the same; computer invasion of privacy and criminal penalties for the same; fraud and related activity in connection with access devices, and criminal penalties for the same; endangering public safety, and criminal penalties for the same; obscene, anonymous, harassing and threatening communications by computer, cell phones and electronic communication devices, and criminal penalties for the same; soliciting, etc. a minor via computer; soliciting a minor and traveling to engage the minor in prohibited sexual activity; cyberbullying or specific acts of electronic harassment of minors; definitions; criminal penalties for the same; exceptions; use of a computer as an instrument of forgery; civil relief and damages available; defenses to criminal prosecution; venue; prosecution under other criminal statutes not prohibited; personal jurisdiction; and, severability; relating to the theft of cable television services, the acquisition of cable television services, and penalties for wrongfully acquitting the same; sale or transfer of a device or plan intended for acquisition or diversion, and criminal penalties for the

same; Illegal possession of destructive devices, explosive materials or incendiary devices; and the criminal penalty for the same; criminal use of destructive device, explosive material or incendiary device; and the criminal penalty for the same; causing accidental or intentional death or injury; penalties; causing death or injury to an explosives detection animal; and the penalty for the same; manufacture, purchase, sale, advertising for sale, transporting or possession or use of a hoax bomb; possession or use in commission of a felony; and the penalty for the same; theft of explosive material from storage magazines or buildings; and the penalty for the same; receipt, possession, storage, sale or transportation of stolen explosive material; and the criminal penalty; wanton endangerment involving destructive devices, explosive materials or incendiary devices; and the criminal penalty; contraband, seizure, forfeiture of explosive devices; relating to crimes involving worthless checks; obtaining property in return for worthless check, and the criminal penalties for the same; making, issuing, etc., worthless checks on a preexisting debt, and the criminal penalties for the same; payment as a defense to such offenses; requiring making a statement for the reason for dishonor a duty of the drawee; defining what constitutes prima facie evidence of knowledge, setting forth requirements for identity, and providing a criminal penalty for providing false information; requiring a notice of dishonor by payee, and providing for a service charge; prescribing manner of filing complaint for warrant and the form thereof; providing guidance for a complaint, what constitutes notice of complaint, and the issuance of a warrant; delineating payment procedures, and imposing costs; providing for the payment of costs in worthless check cases, and the disposition of certain costs; requiring the preparation of a list of worthless check warrants; the use of that worthless check list upon receipt of complaint for warrant; delineating the duties of a prosecuting attorney upon receipt of notice of multiple worthless check warrants; requiring the magistrate court clerk to advise complainant; providing for the creation and operation of a program for worthless check offenders, and requirements for acceptance of a person in that program; requiring certain notice to persons accepted to the worthless check restitution program; agreement to suspend prosecution of a person accepted into the restitution program; providing for fees for participation in the worthless check

restitution program; and, providing that statements by individuals referred to or participating in the worthless check restitution program are criminally inadmissible; relating to forgery, crimes against the currency, the forgery of public records, certificates, returns or attestation of a court or officer; and the criminal penalty for the same; forgery of official seals; keeping or concealing instrument for forging same; and the criminal penalty for the same; counterfeiting, and the criminal penalty for the same; making plates, etc., for forgery; possession of same; and the criminal penalty for that offense; forging or uttering other writing and the criminal penalty for the same; creation of unauthorized demand draft. possession of counterfeit currency with intent to utter; and the criminal penalty for the same; unauthorized currency, and the criminal penalty for the same; passing or receiving unauthorized currency knowingly, and the criminal penalty for the same; and, the unauthorized use, transfer, acquisition, alteration or possession of certain benefits and the criminal penalty for the same; payment cards and falsely making or lading the same, and the criminal penalty therefore; relating to crimes against public justice generally; perjury and subornation of perjury defined; false swearing defined, and the criminal penalties for perjury, subornation of perjury, and false swearing; aiding escape and other offenses relating to adults and juveniles in custody or confinement; and criminal penalties for the same; permitting escape; refusal of custody of prisoner; and criminal penalties for the same; persons in custody of institutions or officers. escapes and aiding in escapes; and criminal penalties for the same; terms of confinement in addition to previous sentence; escapes from, and other offenses relating to, state benevolent and correctional institution, or private prison or mental health facilities and criminal penalties for the same; escape from custody of the commissioner of corrections and criminal penalties for the same; escape from custody of the director of juvenile services; refusal of officer to make, or delay in making, arrest; and criminal penalties for the same; refusal of person to aid officer and criminal penalties for the same; refusal of officer to execute act or process of legislature or order of governor; and criminal penalty for the same; obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; criminal penalties for the same;

definition; officer not liable for act done under statute or executive order afterward declared unconstitutional; compounding offenses and misprision and criminal penalties for the same; exacting excessive fees and criminal penalties for the same; issuing fraudulent fee bills and criminal penalties for the same. alteration, concealment or destruction of public record by officer and criminal penalty for the same; larceny, concealment or destruction of public record by person not officer; and criminal penalty for the same; corrupt summoning of jurors to find biased verdict; and criminal penalty for the same; procuring the summoning of biased juror by party other than officer; and criminal penalty for the same; discrimination against employee summoned for jury duty; and criminal penalty for the same; contempt of court; what constitutes contempt; jury trial; presence of defendant; criminal penalty for the same; fraudulent official proceedings; causing a public employee or official to file a fraudulent legal process and criminal penalty for the same; impersonation of a public official, employee or tribunal; and criminal penalties for the same; impersonation of a public official or tribunal; impersonation of a law-enforcement officer; and criminal penalties for the same; subsequent offense; failure to perform official duties and criminal penalty for the same; the failure to meet an obligation to pay support to a minor and criminal penalties for the same; relating to bribery and corrupt practices, and the criminal penalties for such offenses; relating to crimes against the peace generally; mobs and lynching, and the criminal penalties for the same; liability of county or city in such instances; disturbance of religious worship and the criminal penalty for the same; disturbance of schools, societies, and other assemblies and the criminal penalty for the same; loitering on school property and the criminal penalty for the same; exceptions. camping upon governmental grounds or lawns and the criminal penalty for the same; public nuisance. false reports concerning bombs or other explosive devices and the criminal penalty for the same. falsely reporting an emergency incident and the criminal penalty for the same. willful disruption of governmental processes; offenses occurring at State Capitol Complex; and the criminal penalties for the same; threats of terrorist acts, conveying false information concerning terrorist acts and committing terrorist hoaxes prohibited; and the criminal penalties for the same prohibiting

violations of an individual's civil rights; and the criminal penalties for the same; wearing masks, hoods or face coverings and the criminal penalty for the same; and falsely reporting child abuse and the criminal penalty for the same; classifying criminal penalties for failing to register as a sex offender, failure to provide information change, and providing false information to the sex offender registry; deleting requirement that a person be deemed a rioter if they failed to provide required assistance at a riot; classify the penalty for crime of failure to obey an order given at a riot or unlawful assembly; providing that the crime of disorderly conduct is a petty offense; defining the crime of bigamy; providing a misdemeanor penalty for bigamy; providing definitions related to the crimes of pimping, prostitution and pandering; defining the crime of prostitution; providing the penalty for prostitution; providing that a medical report certifying no sexually transmitted disease reduces penalty for prostitution; providing criminal penalty for solicitation of prostitute; providing enhanced criminal penalty for solicitation of an individual for prostitution who is less than 18 years of age, mentally defective or incapacitated; providing fines for soliciting prostitution be paid to the Crime Victims Compensation Fund in designated circumstances; clarifying the crime pandering; providing that a second offense of pandering, recruitment involving coercion or force, and recruitment of persons under the age of 18 are felony offenses; establishing that parents consenting to using a minor or mentally defective person for prostitution is guilty of a felony; establishing that causing a person to engage in prostitution because of debt or to receive value is subject to misdemeanor penalty; establishing that a person who forces, intimidates or threatens a spouse to engage in prostitution commits a felony offense; providing respective criminal penalties; establishing the criminal offense of abducting, enticing or harboring a child for prostitution; providing a criminal penalty; establishing the crime of promoting and advancing prostitution; defining a house of prostitution in context of promoting prostitution; permitting character evidence; providing criminal penalty, including additional fine; establishing the offense of sexual solicitation; providing a criminal penalty including additional fine; providing an affirmative defense to sexual solicitation for victims of trafficking; providing affirmative

defenses to prostitution relating to human trafficking, abduction and mental defect or incapacitation; establishing aggravating circumstances, restitution and eligibility for Compensation Award to Victims of Crimes; providing that law enforcement notify DHHR of child victims; providing that any property used for or derived from prostitution is subject to forfeiture; providing that persons convicted be debarred from state or local contracts; clarifying that criminal indecent exposure cannot occur if victim grants permission; classifies criminal penalties for indecent exposure; classifies criminal penalties for inhaling or drinking certain intoxicating compounds; defines “step-relative” in context of the crime of incest; establishes that intercourse between two consenting adult step-relatives is not incest; classifies criminal penalty for incest; defines desecration and classifies criminal penalties for unlawful disinterment, desecration, injury to a grave marker or damage to cemetery; prohibits certain demonstrations at a funeral; classifies criminal penalty for prohibited funeral demonstrations; classifies criminal penalty for obscene, anonymous and threatening phone calls; classifies criminal penalties for cruelty to animals; classifies criminal penalty for animal fighting; classifies criminal penalty for attending an animal fighting venture; classifies criminal penalty for wagering at an animal fighting venture; establishes circumstances, sufficiency and application of a search warrant related to animal cruelty; extends search warrant authority for birds or animals kept for fighting to natural resources police; clarifies extent of searches without a warrant for fighting animals or birds; classifying criminal penalty for unlawful admission of children to places injurious to health or morals; classifying criminal penalty for under age false identification; classifying criminal penalty for criminal invasion of privacy; classifying criminal penalty for nonconsensual public disclosure of private intimate images; classifying criminal penalty for criminal loitering within certain distances of minor victims of sexually violent offenses or offenses; classifying penalties for disclosing or making photographs of accident or emergent situations public; classifying penalties for therapeutic deception; classifying penalties for therapeutic deception; expanding definition of computer applied to obscene matter and minors; classifying criminal penalties for distribution and display to minor

of obscene matter; classifying criminal penalties for use of obscene matter with intent to seduce minor; classifying criminal penalties for use of minor to produce obscene matter or assist in doing sexually explicit conduct; classifying criminal penalties for sexual assault in the first degree; classifying criminal penalties for sexual assault in the second degree; providing definitions of terms related to the criminal offense of sexual extortion; establishing the elements of the crime of sexual extortion; classifying criminal penalties for sexual assault in the third degree; classifying criminal penalties for sexual abuse in the first degree; classifying criminal penalties for sexual abuse in the second degree; classifying criminal penalties for sexual abuse in the third degree; classifying criminal penalties for imposition of sexual acts on persons incarcerated or under supervision; providing a definitions of “coerce” and “visually portray” in the context of the crime of filming sexually explicit conduct of minors; classifying criminal penalty for producing a visual portrayal of a minor in sexually explicit conduct; providing for enhanced penalty when parent distributes material displaying a child under their care in sexually explicit conduct; classifying penalties when any person distributes or exhibits material displaying a minor in sexually explicit conduct; classifying penalties for production, display or distribution of visual portrayals of partially clothed minors; defining “visual portrayal” in context of prohibited possession, manufacture or distribution of inappropriate sexual portrayals by a minor; clarifying the definition of “parent” in context of child abuse to include step or foster parent; classifying criminal penalties for murder of custodial child for failure or refusal to supply necessities; clarifying definition of “recognized method of religious healing” in context of murder of custodial child for failure or refusal to supply necessities; classifying criminal penalties for death of a child by child abuse; classifying criminal penalties for child abuse causing or creating a risk of injury; classifying the criminal penalty for female genital mutilation; classifying the criminal penalty for child neglect resulting in death; in context of the crime of child neglect resulting in death, clarifying that care through recognized method of religious healing in lieu of medical treatment may not constitute neglect; defining recognized method of religious healing; classifying the criminal penalty for sexual abuse by a

parent, guardian, custodian or person in a position of trust to a child; classifying the criminal penalty for procuring, authorizing or inducing another to engage in sexual acts with a child under their care or custody; sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian, or person in a position of trust procuring, authorizing, inducing a to a child sixteen or older; definition of terms related to nuisances; designated elements for maintaining a nuisance; providing standing to bring an action to abate a nuisance; venue for a nuisance action; evidence and proof related to an action to abate nuisance; provisions and procedures related to an action to enjoin a nuisance; prima facie evidence of a nuisance; prosecution of a nuisance complaint; provisions for dismissal of a nuisance action; award of costs related to a nuisance action; when existence of nuisance established permanent injunction required; order of abatement for a nuisance; elements of a nuisance abatement order; removal and sale of movable property from a nuisance; liability of officers disposing of property from a nuisance proceeding; criminal offense of contempt related to nuisance proceedings; definitions related to gaming and gambling; criminal offense for possessing or dealing in unlicensed gaming devices; seizure of unlicensed gaming or gambling devices; criminal offense for permitting a gambling device on premises under unauthorized ownership, leasehold, occupation or possession; criminal offense of acting as a guard or interfering with lawful intervention for gambling premises; criminal offense of unauthorized wagering on outcomes of uncertain events or prohibited games; criminal offense for a unauthorized commercial gambling at a hotel or tavern; criminal offense for cheating at gambling; criminal offense of unauthorized dealing in gambling device; criminal offense of unauthorized installation of a gaming device; criminal offense for unauthorized sale of a voucher or certificate for gambling on outcome of sporting events, games of skill or other sport or contest; declaring premises for unauthorized commercial gambling a nuisance; defining lottery and raffle; criminal offense for unauthorized operation of a lottery or raffle; criminal offense of keeping policy or numbers slips; seizure of designated gambling devices and equipment; provides seizure authority for gambling articles or apparatuses; classifying criminal penalties for crime of certain public officials with

pecuniary interest in certain public contracts; classifying the criminal offense of unlawful showing of pictures, advertisement or theatrical productions calculated to arouse prejudicial ire or feelings; classifying the criminal offense of lobbying on the floor of the legislature; classifying the crime of employers who fail or refuse to pay contracted employment benefits or contributions; classifying the crime of unlawful use of the prefix of Doctor; classifying the criminal penalty for bribery; clarifying the elements of the crime of bribery; classifying the criminal penalty for debt pooling; clarifying the elements of the crime of debt pooling; classifying the criminal penalty for failure to maintain and affix a cover for a water well; classify the penalty for the crime of conspiracy; classify the penalty for the crime of unlawful contact with a corrections employee or a member of the parole board; classify the penalty for prohibited sale of certain caffeine products; classify the criminal penalties in the Critical Infrastructure Protection Act; classify the criminal penalties for punishment of principals in the second degree and designated accessories; classify the criminal penalties for attempted crimes; classify the criminal penalties for solicitation to commit certain crimes; classify the criminal penalties for crimes related to post mortem examinations; classify the criminal penalties for failing to secure a cremation permit; clarify evidentiary admissibility of autopsy reports an investigations; classify the penalties for organized criminal enterprise offenses; classify the criminal penalties for the offense of human trafficking; classify the criminal penalties for the offense of forced labor; classify the criminal penalties for the offense of using adults or minors in debt bondage; classify the criminal penalties for the offense of coercing or compelling an individual to engage in commercial sexual; classify the criminal penalties for the offense of patronizing a victim of sexual servitude; establishing that an individual convicted of a human trafficking offense who is sentenced to life without mercy is not eligible for parole; classify the criminal penalty for money laundering; classify the criminal penalty for prohibited use of unmanned aircraft systems; classify criminal offenses and respective sentencing dispositions; establishing that felonies are classified into six categories and misdemeanors are classified into three categories; providing that petty offenses are not classified; establishing that criminal

classification is derived from the defining criminal section or chapter; establishing that petty offenses are specifically designated to include any crime without specified designation or classification; providing that offenses noted outside Chapter 61 which are not designated as a felony, misdemeanor or petty offense, are punished under the prescribed statutory penalty; unless provided otherwise felony imprisonment sentence is a term of definite years; establishes respective range of felony terms of imprisonment into six classifications; establishes respective range of misdemeanor terms of imprisonment within three classifications; providing discretion to the sentencing court to treat a class 6 felony as a class 1 misdemeanor with noted exceptions; providing the trial court impose its sentence within designated range of maximum and minimum terms; requiring the court to consider aggravating and mitigating circumstances as well as the pre-sentence report; providing potential increased sentence for crimes near a school which may exceed maximum sentencing limits; provides that a felony sentence must be a definite term of years served in the state department of corrections; establishes requirements for transfer of custody; provides a range of imprisonment term for all six felony classes; providing that misdemeanor sentences are for a definite term to be served at somewhere other than the state department of corrections; establishes respective limitations of imprisonment for the three classes of misdemeanors; provides discretion to the court in certain circumstances, to treat a class 6 felony as a class 1 misdemeanor; provides for reimbursement of incarceration costs for misdemeanor offenses; provides court with discretion to increase sentence by one year for offenses near a school; establishes that school vicinity sentence enhancement may exceed statutory limit; further providing that if the victim offense is a child but is not within the designated range of a school the court may consider relevant circumstances and increase the sentence two years; establishing fines for felony offenses; establishing fines for misdemeanor offenses; for purposes of sentencing, defines an "enterprise" as any entity other than a person; provides graduated penalty of fines imposed upon enterprise for criminal offenses; establishes that a judgment of fine against an enterprise constitutes a lien; establishes relevant factors for the court to consider when sentencing an

enterprise for criminal conduct; requires the court to order a person incarcerated for a criminal offense to pay incarceration costs; and, establishes factors for the court to consider when assessing payment of incarceration costs.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2095**—A Bill to amend and reenact §7-1-14 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto two new sections, designated §7-10-1a and §7-10-6; to amend and reenact §7-10-2 and §7-10-4 of said code; to amend said code by adding thereto two new sections, designated §19-20-12a and §19-20-27; to amend and reenact §19-20-22 and §19-20-26; to amend and reenact §61-8-19 of said code; and to amend said code by adding thereto two new sections, designated §61-8-19d and §61-8-19e, all relating generally to providing increased protections for the welfare of domestic animals; requiring facilities for the care of stray, abandoned, and surrendered animals and providing for access by the public; defining terms; updating the duties of humane officers; specifying standards for the operation of animal shelters; requiring inspections; establishing sanctions for violation of the standards of operation; defining an owner's duty of care for companion animals; requiring an owner to confine unspayed female dogs in estrus; requiring dog breeders to provide written disclosures to purchasers; specifying minimum levels of care to be provided by dog breeders; defining when a dog is unfit for sale by a dog breeder and providing remedies therefor; increasing the penalty for a second offence of cruelty to animals; defining the criminal offenses of unlawful confinement of domestic animals and hoarding of animals; establishing criminal penalties; and providing for mental health treatment in certain circumstances involving hoarding of animals.

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

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

**Eng. Com. Sub. for House Bill 2260**, Relating to procurement of child placing services.

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

**Eng. Com. Sub. for House Bill 2370**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-13A-9b, relating to exempting sewer charges for swimming pools; requiring the owner of the pool to provide the dimensions of a pool that is being filled with water; requiring the waste water utility to calculate the volume of the pool and allow an individual to use that amount of water for filling the pool without being charged for the corresponding sewer charges, as the water does not go to the sewer; and allowing the waste water utility to inspect the pool in order to verify the dimensions.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2488**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17B-2-10a, relating to an occupational limited license.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2592**—A Bill to amend and reenact §3-1-31 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-8-16 and §11-8-17 of said Code; and, to amend and reenact §18-9-1, §18-9-2, and §18-9-2a of said code, all relating to bringing uniformity to local elections by ensuring that all counties and municipalities have their local elections held on a date that a statewide election is already taking place, on a primary or general election date; requiring that local elections and any elections to increase levies coincide with a primary or a general election; removing references to special elections for levies; providing a saving clause for the terms of existing local elected officials by providing for a vote of local bodies to schedule their elections in a manner which brings them into conformity with the new structure; providing a saving clause for the renewal of existing levies by providing for levying bodies and boards of education to vote in order to schedule such elections to renew or extend these levies in a manner which brings them into conformity with the new structure.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 2730**—A Bill to amend and reenact §38-10-4 of the Code of West Virginia, 1931, as amended, relating to allowing a debtor in bankruptcy to use the federal law exemptions under 11 U.S.C. §522(d).

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2751**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §6-9C-1, §6-9C-2, §6-9C-2A, §6-9C-3, §6-9C-

4, §6-9C-5, §6-9C-6, §6-9C-7, §6-9C-8, §6-9C-9, §6-9C-10, and §6-9C-11; to amend and reenact §8-35-1 and §8-35-2 of said code; and to amend said code by adding thereto new sections, designated §8-35-3, §8-35-4, §8-35-5 and §8-35-6; all relating generally to fiscal emergencies of local governments and dissolution of municipalities; establishing a system to remediate those fiscal emergencies; providing legislative findings; defining terms; allowing State Auditor or his or her designee to determine whether local governments are keeping accounts, records, files, or reports in compliance with §6-9-2 of this code; providing conditions constituting grounds for fiscal watch; providing for rulemaking; allowing for State Auditor or his or her designee to declare a local government is under fiscal watch; allowing the State Auditor or his or her designee to visit, inspect, and provide technical assistance to a local government under fiscal watch; allowing State Auditor or his or her designee to declare a local government to be in a state of fiscal emergency; providing process for initiating a fiscal watch review; providing a process for declaring and lifting a fiscal watch or elevating a fiscal watch to a fiscal emergency; establishing conditions that constitute a fiscal emergency; providing for rulemaking; establishing a process for determining whether fiscal emergency conditions exist and appeal process of such determination; providing that a local government for which a fiscal emergency is declared establish a financial planning and supervision committee; providing for rulemaking; mandating compliance by local government officials with recommendations of State Auditor or his or her designee and certain provisions of the article and providing appropriate State Auditor or his or her designee with recourse for failure to comply; providing for severability; providing a process for forfeiture of charter or certificate of incorporation, notice, and dissolution of municipality; providing that the State Auditor or his or her designee shall promptly conduct an exam under §6-9-1, *et seq.* of this code; providing a process for voluntary dissolution of a municipality; providing that the State Auditor or his or her designee shall promptly conduct an exam under §6-9-1, *et seq.* of this code; providing a process for involuntary dissolution of a municipality; requiring that the State Auditor become special receiver of a dissolved municipality and establishing powers and authority of

State Auditor as special receiver; establishing the “Municipal Dissolution Account”; providing for disposition of property belonging to a dissolved municipal corporation; and providing for sale and liquidation of dissolved municipal assets.

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

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

**Eng. Com. Sub. for House Bill 2876**—A Bill to amend and reenact §33-16-1a and §33-16-2 of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §33-16-2a, all relating to modify group accident and sickness insurance requirements.

Referred to the Committee on Banking and Insurance.

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

**Eng. Com. Sub. for House Bill 2884**—A Bill to amend and reenact §29B-1-2 and §29B-1-4 of the Code of West Virginia, 1931, as amended, all relating to exempting customer records of publicly-administered utility enterprises from production under the Freedom of Information Act; defining “publicly-administered utility enterprise”; establishing exemption from production; and allowing certain uses and disclosures of information under certain circumstances.

Referred to the Committee on Government Organization.

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

**Eng. House Bill 2908**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §46A-9-1, relating to requiring high-volume third-party sellers to provide information to online marketplaces; requiring ongoing verification of information; requiring high-volume third-party sellers to disclose certain information to consumers; providing for Attorney General enforcement of act; authorizing rulemaking by Attorney General; establishing preemption of municipal requirements; defining terms; and providing effective date.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 2918**—A Bill to amend and reenact §62-15B-1 and §61-15B-2 of the Code of West Virginia, 1931, relating to family drug treatment court; making permanent the pilot program; eliminating a report to the Legislative Oversight Commission on Health and Human Resources Accountability; and eliminating the ineligibility barrier for parents with a prior involuntary termination of parental rights of another child.

Referred to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 2927**—A Bill to amend and reenact §3-8-1a and §3-8-9 of the Code of West Virginia, 1931, as amended, relating to campaign finance expenses; adding caregiving services as a defined term; and adding caregiving services as a lawful campaign expense.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 2997**—A Bill to amend and reenact §11-14C-34 of the Code of West Virginia, as amended, relating to adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 3030**—A Bill to authorize the Commissioner of the Division of Highways to allow an increase of gross weight limitations and dimensional restrictions on certain roads in Greenbrier and Pocahontas Counties; specifying roadway location; and providing for permit application, restrictions, requirements, fees, and limitations.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on the Judiciary.

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

**Eng. Com. Sub. for House Bill 3036**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-17-20, relating to sunsetting the Board of Sanitarians by June 30, 2022.

Referred to the Committee on Health and Human Resources.

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

**Eng. Com. Sub. for House Bill 3072**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-1A-7, and to amend said code by adding thereto a new section designated §30-19-18, both relating to permitting the Director of the Division of Forestry to maintain a list of foresters in the state of West Virginia; defining the educational criteria for a person to be considered a forester or forestry technician; allowing for rulemaking; and establishing a sunset provision.

Referred to the Committee on Government Organization.

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

**Eng. Com. Sub. for House Bill 3074**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-19-24, relating to information on organ and tissue donations; requiring the state’s Department of Education to develop information to be made available to students in grades nine through 12; allowing parents of children to opt out of receiving instruction or materials relating to anatomical donation; and authorizing public and private institutions of higher education to provide information to its students.

Referred to the Committee on Education.

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

**Eng. House Bill 3089**—A Bill to amend and reenact §15-5-2 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-5-30, all relating to defining, as “essential workers”, employees or contractors who work for companies that fall under the definition of essential business activities during a state of emergency or state

of preparedness to ensure that utility services can continue to operate or be restored.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 3286**—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, 2021, to the Division of Human Services – Child Care and Development, fund 8817, fiscal year 2021, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. House Bill 3287**—A Bill making a supplementary appropriation of public monies out of the Treasury from the balance of monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Homeland Security, Department of Homeland Security – Office of the Secretary – Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund, fund 6003, fiscal year 2021, organization 0601, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. House Bill 3288**—A Bill supplementing and amending appropriations of public moneys out of the Treasury in the State Fund, General Revenue, by decreasing existing items of appropriation from the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2021, organization 0511 and from the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2021, organization 0506 and increasing an existing item of appropriation to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2021, organization 0511, by supplementing and amending appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. House Bill 3289**—A Bill making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Commerce, Geological and Economic Survey, fund 8704, fiscal year 2021, organization 0306, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. House Bill 3291**—A Bill making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Homeland Security, Division of Administrative Services, fund 8803, fiscal year 2021,

organization 0623, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. House Bill 3292**—A Bill making a supplementary appropriation of federal funds out of the Treasury from the balance of federal monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Health and Human Resources, Division of Health – Central Office, fund 8802, fiscal year 2021, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 3295**—A Bill supplementing and amending appropriations of public moneys out of the Treasury in the State Fund, General Revenue, by decreasing and increasing existing items of appropriation to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2021, organization 0511 and increasing existing items of appropriation to the Department of Health and Human Resources, Division of Health – Central Office, fund 0407, fiscal year 2021, organization 0506, by supplementing and amending appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 3297**—A Bill expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2021 in the amount of \$550,000 from the Department of Veterans' Assistance, Department of Veterans' Assistance, fund 0456, fiscal year 2012, organization 0613, appropriation 34400 and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Veterans' Assistance – Department of Veterans' Assistance - Veterans' Home, fund 0460, fiscal year 2021, organization 0618, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

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

**Eng. Com. Sub. for House Bill 3307**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §3-8-12a; and, to amend said Code by adding thereto a new section designated as §55-7-32; all relating to limiting abuses by social media corporations; creating the Social Media Integrity and Anti-Corruption in Elections Act; defining terms; providing requirements for social media companies to prevent corruption and provide transparency of election-related content made available on social media websites; providing equal opportunities for all candidates and political parties to speak without policy or partisan-based censorship; propounding legislative findings; setting forth definitions; providing for the protection of the integrity of election; setting forth limitations on what social media platform can publish concerning elections without approval; ensuring election-related content hosted, posted, and made available on social media websites is not monetized or otherwise used or manipulated for nefarious purposes; requiring social media platform disseminate election content uniformly, report and retain certain information; requiring social media

platform timely approve service requests by political entities; requiring social media platform equitably charge for election advertising; prohibiting certain actions by social media platform; including prohibiting the modifying visibility of election information based on type of content; listing due process requirements for restriction of access to social media platforms; setting forth certain instances in which service can be terminated by social media platform; providing limitations on information collected by social media platform; providing certain enumerated rights to candidates in their dealings with a social media platform; providing civil penalties for violations of these provisions, including asset seizure; establishing rulemaking authority; creating the Stop Social Media Censorship Act; defining terms; setting forth criminal and civil penalties for a social media provider who, without good cause, deletes or censor a user's religious or political speech; or uses an algorithm to disfavor or censure the user's religious or political speech; providing for right of enforcement by the Attorney General; and providing exceptions and limitations.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 3308**—A Bill to amend and reenact §29-22B-1101 of the Code of West Virginia, 1931, as amended; relating to increasing number of limited video lottery terminals allowed at certain licensed limited video lottery retailer locations; providing a bidding process for permits for additional terminals; and establishing an effective date.

Referred to the Committee on Finance.

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

**Eng. House Bill 3310**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-1-1c; to amend and reenact §24-1-2 of said code; and to amend and reenact §24-2-1 of said code; all generally relating to jurisdiction of the Public Service Commission; making legislative findings; modifying definition of public utility; providing limits to the jurisdiction of the Public Service Commission; and providing for rulemaking.

Referred to the Committee on the Judiciary.

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

**Eng. House Bill 3311**—A Bill to amend and reenact §16-29-2 of the Code of West Virginia, 1931, as amended, relating to the cost of medical records; requiring that the cost of obtaining a medical record may not exceed a fee consistent with HIPAA; and providing clarifying technical changes.

Referred to the Committee on Health and Human Resources.

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

**Eng. House Bill 3312**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §10-3A-1, §10-3A-2, §10-3A-3, §10-3A-4, §10-3A-5, §10-3A-6, and §10-3A-7, all relating to the establishment of a mom to child labor; providing for legislative findings; establishing a short title; creating a commission to oversee the siting, design, construction, and dedication of the monument; establishing membership of the commission; outlining the goals of the commission regarding location of the monument; providing for a funding mechanism from existing revenue sources for construction and maintenance of the monument; creating an inscription or plaque to be used in the dedication of the monument; disbanding

the commission upon meeting certain conditions; granting the City of Fairmont the ownership of the monument; providing funds for the City of Fairmont to maintain the monument; and establishing a mechanism for maintenance and ownership of the monument under certain conditions.

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

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

**Eng. Com. Sub. for House Joint Resolution 3**—Proposing an amendment to the Constitution of the State of West Virginia amending section one, article X thereof, relating to authorizing the Legislature to exempt tangible machinery and equipment personal property directly used in business activity and personal property tax on motor vehicles and tangible inventory personal property directly used in business activity from ad valorem property taxation by general law; providing that the question of ratification or rejection of the amendment be submitted to the voters of the state at the next general election to be held in the year 2022; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

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

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

**House Concurrent Resolution 21**—Requesting the Division of Highways name bridge number 24-005/02-004.51 (24A031), (37.41379, -81.78366), locally known as Avondale Bridge, carrying CR 5/2 over Dry Fork in McDowell County, the ‘U. S. Army SP4 Dennis Harvey Roberts Memorial Bridge’.

Referred to the Committee on Transportation and Infrastructure.

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

**Com. Sub. for House Concurrent Resolution 55**—Requesting that a Special Interim Committee on Higher Education be established to study the viability of creating an accredited school of veterinary medicine in West Virginia.

Referred to the Committee on Health and Human Resources; and then to the Committee on Rules.

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

**House Concurrent Resolution 78**—Requesting the West Virginia Department of Health and Human Resources, the West Virginia Department of Education and the West Virginia Supreme Court of Appeals to examine, jointly, the multidisciplinary treatment team process for advising the court on the types of services and placement, if any, it determines will best serve the needs of a child subject to juvenile proceedings under the law and to report the results of their examination to the Joint Committee on Government and Finance prior to the 2022 legislative session.

Referred to the Committee on Health and Human Resources; and then to the Committee on Rules.

### **Executive Communications**

The Clerk then presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

March 31, 2021

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for Senate Bill No. One Hundred Fifty-Six (156), which was presented to me on March 25, 2021.

Committee Substitute for Senate Bill No. One Hundred Sixty (160), which was presented to me on March 25, 2021.

Committee Substitute for Senate Bill No. One Hundred Eighty-Two (182), which was presented to me on March 25, 2021.

You will note that I have approved these bills on March 31, 2021.

Sincerely,

A handwritten signature in blue ink that reads "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 1st day of April, 2021, 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. 356)**, Allowing for written part of drivers' exam given in high school drivers' education course.

**(Com. Sub. for S. B. 431)**, Relating to school attendance notification requirements to DMV.

And,

**(Com. Sub. for S. B. 435)**, Requiring county superintendents to authorize certain school principals or administrators at nonpublic schools to issue work permits for enrolled students.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 125**, Budget Bill.

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

**Com. Sub. for Senate Bill 125** (originating in the Committee on Finance)—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.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2379**, Make criminal invasion of privacy a felony.

And has amended same.

And,

**Eng. House Bill 3175**, Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Sypolt, from the Committee on Agriculture and Rural Development, submitted the following report, which was received:

Your Committee on Agriculture and Rural Development has had under consideration

**Eng. Com. Sub. for House Bill 2823**, Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code.

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

Respectfully submitted,

Dave Sypolt,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 3130**, Relating to elimination of sunset provisions concerning towing rates.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 3300**, Relating to reducing personal income tax rates generally.

And has amended same.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

The Senate proceeded to the sixth order of business.

Senator Rucker offered the following resolution:

**Senate Concurrent Resolution 58**—Requesting the Joint Committee on Government and Finance study the possible incentives and rewards to be given to county boards of education who show academic growth and success on a consistent basis.

Whereas, Success in academic performance across the state can be varied and inconsistent; and

Whereas, Flexibilities and incentives could incentivize county boards of education to perform at a higher and more consistent rate and give them a clear goal for improving their performance overall; and

Whereas, A study by the Michigan State University found that incentives are an effective means of improving student achievement, specifically those that are linked to student performances in the classroom; and

Whereas, A study from the University of Chicago found that non-financial rewards for student achievement were more effective in improving performance than financial rewards overall; and

Whereas, There are many ways to possibly incentivize a county board of education to improve performances beyond giving financial incentives, such as recognitions, rewards, or extended privileges; therefore, be it

*Resolved by the Legislature of West Virginia:*

Requesting the Joint Committee on Government and Finance study the possible incentives and rewards to be given to county boards of education who show academic growth and success on a consistent basis; and, be it

*Further Resolved,* That the study survey the county boards of education to gain an insight into what kinds of flexibilities, streamlining, or other means which may incentivize and reward positive academic outcomes; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance consider all possible incentives for county boards of education beyond financial incentives, such as rewards, recognitions, or expanded privileges; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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 the legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Plymale and Woelfel offered the following resolution:

**Senate Resolution 36**—Recognizing the Cabell County Public Library for being named as a finalist for the 2021 National Medal for Museum and Library Service.

Whereas, The National Medal for Museum and Library Service is the nation's highest honor for institutions that make significant and exceptional contributions to their communities; and

Whereas, The Cabell County Public Library is one of only 30 finalists, and one of only 15 libraries, announced for the 2021 National Medal for Museum and Library Service; and

Whereas, The Cabell County Public Library was the only library in West Virginia to be named as a finalist for the national honor; and

Whereas, The Cabell County Public Library staff goes above and beyond to serve their community; and

Whereas, The Cabell County Public Library has served and enriched its community diligently since its humble beginnings as a single-room library in 1902; and

Whereas, The Cabell County Public Library was the first to offer an automated circulation system and online catalog in West Virginia; and

Whereas, The Cabell County Public Library has become a beacon of hope and excellence to the communities it serves and with this recognition, the country; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the Cabell County Public Library for being named as a finalist for the 2021 National Medal for Museum and Library Service; and, be it

*Further Resolved,* That the Senate commends the Cabell County Public Library and extends it congratulations for its outstanding achievement and contributions to the county and the State of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Cabell County Public Library.

Which, under the rules, lies over one day.

Senator Blair (Mr. President) offered the following resolution:

**Senate Resolution 37**—Memorializing the life of Gilbert Benton “Gib” Miller, Sr., outstanding athlete, teacher, award-winning coach, athletic director, radio commentator, mentor, dedicated husband, father, and grandfather.

Whereas, Gilbert Benton Miller, Sr., was born in 1926, the third son of Kathleen and Paul Miller of Kearneysville, West Virginia; and

Whereas, Gilbert Benton Miller, Sr., was the product of a family that ran a small farm and orchard during and after the great depression, which instilled in him an incredible work ethic; and

Whereas, Gilbert Benton Miller, Sr., was an outstanding athlete and signed a professional baseball contract with the legendary Connie Mack of the Philadelphia Athletics while a junior at Shepherd College. However, he did not begin his professional baseball career until after graduation per his mother’s orders. Unfortunately, Gib’s professional baseball career ended after three years of Triple A baseball when he suffered a career-ending knee injury. This did not end Gib’s love for the game, and he returned home and played for an additional 15 years for the Charles Town American Legion baseball team where his 15-year batting average was .400; and

Whereas, Gilbert Benton Miller, Sr., began his teaching and coaching career at his beloved Hedgesville High School in 1956. Gib taught the principles of democratic government in the classroom, and after class, he coached. Frustrated that the kids did not have a decent ball field of their own, he worked with his friends to build and equip Hedgesville’s first baseball diamond. Gib never had a losing season in baseball and was named West Virginia Baseball Coach of the Year in 1975 and District Baseball Coach of the Year in 1977 by the National High School Athletic Coaches Association; and

Whereas, Gilbert Benton Miller, Sr., loved baseball, but he may have loved coaching basketball even more. In 11 years as the freshmen coach, the boys won eight championships. Gib then

coached varsity basketball for 15 years, and his teams posted an astounding cumulative record of 243 wins to just 79 losses and won 10 bi-state titles and seven sectional championships. In 1970, Gib and the Hedgesville boys beat Bramwell High School, winning the state championship game. Following that win, Gib was named the West Virginia Basketball Coach of the Year; and

Whereas, Although winning games was great, it was not the most important thing to Gilbert Benton Miller, Sr. Gib was focused on building qualities in young men that would serve them for life. He wanted to instill in his players that hard work had its rewards and that playing as a team was more powerful than playing as individuals. Gib was loyal to his players and encouraged every one of them. He taught his teams that mediocrity could be had for cheap, but excellence in life came with a cost. To Gib, his greatest accomplishment was being able to touch a kid's life and get them headed in the right direction; and

Whereas, Gilbert Benton Miller, Sr., eventually stepped away from coaching, but remained involved with Hedgesville sports by becoming the athletic director, and was recognized as the West Virginia Athletic Director of the Year in 1988; and

Whereas, Gilbert Benton Miller, Sr., retired from teaching and coaching only to begin a 15-year career working for local radio stations, providing commentary on area games during his Coaches Corner show. Gib also became active in the Berkeley County community by joining the Martinsburg Rotary, becoming its president in 1998 and 1999, and serving on its board of directors for six years. In addition, Gib was a director for the Berkeley 2000 Foundation and helped raise the funds needed to build the Berkeley 2000 Recreation Center, which opened in March 2002; and

Whereas, In 2013, Gilbert Benton Miller, Sr., was named the Honored West Virginian for the Mountain State Apple Harvest Festival. That same year, Gib received one of his most treasured honors when the health and physical education addition to his beloved Hedgesville High School was opened and dedicated to

him. Later that same year, Gilbert Benton Miller, Sr., was inducted into the Hedgesville High School Hall of Fame; and

Whereas, Gilbert Benton Miller, Sr., was a dedicated, one-of-a-kind husband to his wife of over 40 years, Carolyn, and provided a sterling example for his children, Gilbert, Jr., Gary, Allen, Kim, Sally, and Harley, and grandchildren, Chris, Josh, Hope, Grant, Kathleen, Sarah, Taylor, Sarah, Carly, Miller, William, and Wesley, on the meaning of integrity, hard work, and faithfulness as a dad and grandfather; and

Whereas, Gilbert Benton Miller, Sr., finally retired for good and received what he would say was one of the greatest honors of his life when some former students started a Saturday morning breakfast group and saw to it that Gib got to that meeting each week; and

Whereas, Sadly, Gilbert Benton “Gib” Miller, Sr., passed away on March 24, 2021, ending a distinguished life of dedicated service to his school, players, community, and family; and

Whereas, It is fitting that the Senate pay tribute to the life and legacy of Gilbert Benton “Gib” Miller, Sr., for his many accomplishments and contributions to his community and state; therefore, be it

*Resolved by the Senate:*

That the Senate hereby memorializes the life of Gilbert Benton Gib” Miller, Sr., outstanding athlete, teacher, award-winning coach, athletic director, radio commentator, mentor, dedicated husband, father, and grandfather; and, be it

*Further Resolved,* That the Senate extends its most sincere condolences to the family of Gilbert Benton “Gib” Miller, Sr., on his passing; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the family of Gilbert Benton Miller, Sr.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Resolution 33**, Recognizing senior center personnel for their dedication throughout COVID-19 pandemic.

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

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

**Senate Resolution 34**, Recognizing Coalfield Health Center's contributions to rural health care.

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

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

**Senate Resolution 35**, Recognizing clean energy's importance to WV's energy future.

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

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

**House Concurrent Resolution 15**, Rare Disease Day.

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

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

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

**House Concurrent Resolution 35**, Requesting the Department of Health and Human Resources to continuously evaluate the child welfare system.

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

The following amendments to the resolution, from the Committee on Health and Human Resources, were reported by the Clerk, considered simultaneously, and adopted:

On page one, in the first Whereas clause, line five, by striking out the word “identity” and inserting in lieu thereof the word “identify”;

On page one, in the fourth Whereas clause, line fourteen, by striking out the word “for” and inserting in lieu thereof the word “from”;

On page two, in the fourth Whereas clause, line sixteen, by striking out the word “and”;

And,

On page two, in the fourth Whereas clause, line seventeen, after the word “care” by inserting the words “and other workforce issues”.

The question now being on the adoption of the resolution (H. C. R. 35), as amended, the same was put and prevailed.

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

The Senate proceeded to the ninth order of business.

**Eng. House Bill 2253**, Relating to forgery and other crimes concerning lottery tickets.

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

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

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

**ARTICLE 22. STATE LOTTERY ACT.**

**§29-22-12. Crimes; forgery, counterfeiting, etc. of lottery tickets; penalties.**

Any person who, with intent to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a lottery ticket is guilty of a ~~felony~~ misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000, or be ~~imprisoned~~ confined in the ~~penitentiary~~ a state correctional facility for ~~not less~~ not more than one year, or both fined and ~~imprisoned~~ confined.

The bill (Eng. H. B. 2253), as amended, was then ordered to third reading.

**Eng. House Bill 2888**, Relating to when contentions can be revived based on forensic scientific evidence that was not available at time of conviction.

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

**Eng. House Bill 3081**, Updating the West Virginia Business Corporations Act.

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

The Senate proceeded to the tenth order of business.

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

**Eng. House Bill 2028**, Exempting veterinarians from the requirements of controlled substance monitoring.

**Eng. House Bill 2366**, Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note.

**Eng. Com. Sub. for House Bill 2427**, Authorizing the Department of Health and Human Resources to promulgate legislative rules.

**Eng. Com. Sub. for House Bill 2529**, Prohibiting West Virginia institutions of higher education from discriminating against graduates of private, nonpublic or home schools by requiring them to submit to alternative testing.

**Eng. Com. Sub. for House Bill 2633**, Creating the 2021 Farm Bill.

**Eng. Com. Sub. for House Bill 2763**, Creating WV Cyber Incident Reporting.

**Eng. Com. Sub. for House Bill 2765**, Relating to allowing emergency management and operations' vehicles operated by airports to use red flashing warning lights.

**Eng. Com. Sub. for House Bill 2785**, Relating to public school enrollment for students from out of state.

**Eng. House Bill 2791**, Relating to enrollment and costs of homeschooled or private school students at vocational schools.

**Eng. Com. Sub. for House Bill 2877**, Expand direct health care agreements beyond primary care to include more medical care services.

**Eng. House Bill 2906**, Relating to the School Building Authority's allocation of money.

**Eng. House Bill 2915**, Relating to public records management and preservation.

**Eng. Com. Sub. for House Bill 2916**, Creating the Semiquincentennial Commission for the celebration of the 250th anniversary of the founding of the United States of America.

**Eng. House Bill 2957**, Relating to the repeal of outdated code sections.

**Eng. House Bill 2958**, Relating to repealing outdated sections of state code.

And,

**Eng. House Bill 3045**, Relating to firefighter disability claims.

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

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senators Maroney and Weld.

At the request of Senator Weld, and by unanimous consent, the Senate stood in observance of a moment of silence in recognition of the passing of Sue Simonetti, mayor of the City of Wellsburg.

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

At the request of Senator Takubo, and by unanimous consent, a leave of absence for the day was granted Senator Beach.

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

On motion of Senator Takubo, at 11:41 a.m., the Senate recessed until 5 p.m.

The Senate reconvened at 6:39 p.m. today and, without objection, returned to the third order of business.

### **Executive Communications**

Senator Blair (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, which was read by the Clerk:



*Jim Justice*  
*Governor of West Virginia*

March 26, 2021

**VIA HAND DELIVERY**

The Honorable Craig Blair  
President, West Virginia Senate  
Room 229M, Building 1  
State Capitol  
Charleston, West Virginia 25305

Re: **Enrolled Committee Substitute for Senate Bill 89**

Dear President Blair:

Pursuant to the provisions of section fourteen, article VII of the Constitution of West Virginia, I hereby disapprove and return Enrolled Committee Substitute for Senate Bill 89, but welcome a bill correcting the deficiencies identified below. This bill exempts from licensure requirements certain education programs, including, among others, certain school programs operated under 42 USC § 9801 et seq., the federal Head Start Program.

Although under the current form of the bill the Head Start programs are required to perform initial background checks on employees, the exemption will make access and use of a criminal background check with a rap back system impracticable. A rap back system is a system that continuously checks employees' existing records against incoming arrest or conviction information. Without being regulated, the State is unable to provide Head Start programs access to the rap back system. Without that system, an employee may pass an initial background check but later commit a crime, and the employer would not be made aware. This is a vital part of background checks for programs such as Head Start, which serves thousands of children for long periods of time on an ongoing basis.

For this reason, I disapprove and return Enrolled Committee Substitute for Senate Bill 89, but welcome a bill that would not exempt the Head Start program, thereby retaining the ability to utilize the rap back system for employees of the Head Start program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Justice".

Jim Justice  
Governor

cc: The Hon. Roger Hanshaw  
Speaker of the House of Delegates  
The Hon. Mac Warner  
Secretary of State

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Senator Takubo moved that in accordance with Section 14, Article VII of the Constitution of the State of West Virginia, the Senate proceed to reconsider

**Enr. Senate Bill 89**, Exempting certain kindergarten and preschool programs offered by private schools from registration requirements.

Heretofore disapproved and returned by His Excellency, the Governor, with his objections.

The question being on the adoption of Senator Takubo's motion that the Senate reconsider Enrolled Senate Bill 89, the same was put and prevailed.

On motion of Senator Takubo, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

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

**ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

**§49-2-113. Residential child-care centers; licensure, certification, approval and registration; requirements.**

(a) Any person, corporation, or child welfare agency, other than a state agency, which operates a residential child-care center shall obtain a license from the department.

(b) Any residential child-care facility, day-care center, or any child-placing agency operated by the state shall obtain approval of its operations from the secretary.

(c) Any family day-care facility which operates in this state, including family day-care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

(d) Every family day-care home which operates in this state, including family day-care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers, or placing agencies of the same category.

(e) This section does not apply to:

(1) A kindergarten, preschool, or school education program which is operated by a public school or which is accredited by the West Virginia Department of Education or any other kindergarten, preschool, or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services, or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding 30 days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence, or testing;

(5) Persons providing family day care solely for children related to them;

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody;

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through 12th grade students when the program is monitored by the West Virginia Department of Education;

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national congressionally chartered organization or is an out-of-school time, summer recreation camp, or day camp program operated by a county parks and recreation commission, boards, and municipalities and meets all of the following requirements:

(A) The program is located in a facility that meets all fire and health codes;

(B) The program performs state and federal background checks on all volunteers and staff;

(C) The program's primary source of funding is not from fees for service except for programs operated by county parks and recreation commissions, boards, and municipalities; and

(D) The program has a formalized monitoring system in place;  
or

(9) Any kindergarten, preschool, or school education program which is operated by a private, parochial, or church school that is recognized by the West Virginia Department of Education under Policy 2330.

(f) The secretary is authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child-care home or relative family child-care home may voluntarily register and obtain a certificate of registration from the department.

(h) All facilities or programs that provide out-of-school time care shall register with the department upon commencement of

operations and on an annual basis thereafter. The department shall obtain information such as the name of the facility or program, the description of the services provided, and any other information relevant to the determination by the department as to whether the facility or program meets the criteria for exemption under this section.

(i) Any child-care service that is licensed or receives a certificate of registration shall have a written plan for evacuation in the event of fire, natural disaster, or other threatening situation that may pose a health or safety hazard to the children in the child-care service.

(1) The plan shall include, but not be limited to:

(A) A designated relocation site and evacuation;

(B) Procedures for notifying parents of the relocation and ensuring family reunification;

(C) Procedures to address the needs of individual children including children with special needs;

(D) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

(E) Coordination with local emergency management officials; and

(F) A program to ensure that appropriate staff are familiar with the components of the plan.

(2) A child-care service shall update the evacuation plan by December 31 of each year. If a child-care service fails to update the plan, no action shall be taken against the child-care services license or registration until notice is provided and the child-care service is given 30 days after the receipt of notice to provide an updated plan.

(3) A child-care service shall retain an updated copy of the plan for evacuation and shall provide notice of the plan and notification that a copy of the plan will be provided upon request to any parent, custodian, or guardian of each child at the time of the child's enrollment in the child-care service and when the plan is updated.

(4) All child-care centers and family child-care facilities shall provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

(j) A residential child care center which has entered into a contract with the department to provide services to a certain number of foster children, shall accept any foster child who meets the residential child care center's program criteria, if the residential child care center has not met its maximum capacity as provided for in the contract. Any residential child-care center who has entered into a contract with the department may not discharge any child in its program, except as provided in the contract, including that if the youth does not meet the residential treatment level and target population, the provider shall request a MDT and work toward an alternative placement.;

And,

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

**Enr. Senate Bill 89**—An Act to amend and reenact §49-2-113 of the Code of West Virginia, 1931, as amended, relating to clarifying what programs operated by a county parks and recreation commission, boards, and municipalities can be exempt from licensure requirements; and exempting from licensure requirements certain education programs operated by nonpublic schools recognized as accredited by the West Virginia Department of Education.

The question now being on the passage of the bill, disapproved by the Governor and amended by the Senate.

On the passage of the bill, the yeas were: Azinger, Baldwin, Caputo, Clements, Grady, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—27.

The nays were: None.

Absent: Beach, Boley, Hamilton, Ihlenfeld, Plymale, Unger, and Woelfel—7.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Enr. S. B. 89) passed with its title, as amended, as a result of the objections of the Governor.

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

The Senate again proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 1st day of April, 2021, 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. 67)**, Relating to authority of Emergency Medical Services Advisory Council.

**(S. B. 390)**, Reorganizing Health Care Authority under DHHR and clarifying responsibilities for all-payer claims database.

**(Com. Sub. for H. B. 2014)**, Relating to role of the Legislature in appropriating federal funds.

(**Com. Sub. for H. B. 2290**), Initiating a State Employment First Policy to facilitate integrated employment of disabled persons.

(**Com. Sub. for H. B. 2382**), Authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards.

(**Com. Sub. for H. B. 2896**), Making a supplementary appropriation to the Department of Health and Human Resources, Division of Human Services.

(**H. B. 2897**), Expiring funds to the balance of the Department of Commerce.

(**H. B. 2899**), Making a supplementary appropriation to the Department of Commerce.

(**H. B. 2901**), Making a supplementary appropriation to the Department of Health and Human Resources, Division of Human Services.

(**H. B. 2903**), Making a supplementary appropriation to the Department of Homeland Security, West Virginia State Police.

(**H. B. 2920**), Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health – Laboratory Services Fund.

And,

(**H. B. 2940**), Making a supplementary appropriation to the Department of Education, State Board of Education – State Department of Education.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Senate Bill 490**, Supplemental appropriation from General Revenue to Department of Veterans' Assistance.

**Eng. House Bill 2768**, Supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways.

**Eng. Com. Sub. for House Bill 2769**, Supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles.

**Eng. House Bill 2790**, Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways.

And,

**Eng. House Bill 3298**, Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 17**, USMC Captain Dempsey Stowers Memorial Bridge.

**Senate Concurrent Resolution 18**, Curtis “Pap” and Millie “Mammie” Asbury Memorial Bridge.

**Senate Concurrent Resolution 19**, US Army SSG Elson M. Kuhn Memorial Bridge.

**Senate Concurrent Resolution 21**, US Army SGT Charles L. Toppings Memorial Road.

**Senate Concurrent Resolution 27**, Walker Brothers Veterans Memorial Bridge.

**Senate Concurrent Resolution 31**, Frye Brothers Veteran Memorial Bridge.

**Senate Concurrent Resolution 32**, Cox Brothers Veteran Memorial Bridge.

**Senate Concurrent Resolution 44**, Harrison County Veterans Memorial Bridge.

And,

**Senate Concurrent Resolution 48**, US Army PFC Billy Keith Ford Memorial Bridge.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (S. C. R. 17, 18, 19, 21, 27, 31, 32, 44, and 48) contained in the preceding report from the Committee on

Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 34**, US Air Force TSGT Franklin A. Bradford Bridge.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 34** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name bridge number 55-010/00-031.60 (55A035), locally known as Jesse Bridge, carrying WV 10 over Laurel Fork in Wyoming County, the “U.S. Air Force TSGT Franklin A. Bradford Memorial Bridge”.

Whereas, Franklin Abb Bradford was born at the Stevens Hospital in Welch, West Virginia, on March 21, 1950. He was the son of a coal miner and grew up in a coal camp house where he graduated from Pineville High School in 1969. With the Vietnam War underway, Franklin A. Bradford voluntarily enlisted in the United States Air Force in the fall of 1969; and

Whereas, TSGT Franklin A. Bradford spent his basic training at Lackland Air Force Base in San Antonio, Texas. He served a first tour of duty in the Southeast Asian theater of conflict. TSGT Franklin A. Bradford served with the civil engineering unit called Prime Base Engineer Emergency Force (BEEF), where he served as a machine gunner. Prime BEEF was a rapidly deployable

squadron of specialized civil engineering unit members who provided a full range of engineering support for command operations; and

Whereas, TSGT Franklin A. Bradford was stationed at Beale Air Force Base in California where he helped assemble the SR-71 Blackbird, an Air Force reconnaissance aircraft intended to operate at extreme velocities, altitudes, and temperatures that played a key role in gathering intelligence during the Cold War; and

Whereas, TSGT Franklin A. Bradford was stationed at the Ramstein Air Force Base in Germany and flew on international missions. After Shah Mohammad Reza Pahlavi was ousted from Iran on February 11, 1979, at the start of the Iranian Revolution, the Shah was welcomed into the United States for cancer treatments. In protest, Iranian students took over the U.S. Embassy in Tehran, holding Americans hostage for more than 440 days. TSGT Franklin A. Bradford took part in one of the airlift rescue missions for embassy members during what would become known as the Iranian hostage crisis; and

Whereas, TSGT Franklin A. Bradford transferred to Charleston Air Force Base in South Carolina where he served as a quality control specialist for the mechanical air command, and then he transferred to the strategic air command at Randolph Air Force Base in San Antonio, Texas. Following his service in Texas, TSGT Franklin A. Bradford was sent to Kunsan Air Force Base in South Korea to a combat readiness unit, the 8th Fighter Wing, known as The Wolf Pack. This was a strategic unit trained and prepared to execute immediate air combat against any aggressors threatening the United States or South Korea. His final duty station was at Maxwell Air Force Base in Alabama where he worked as a manpower management technician; and

Whereas, TSGT Franklin A. Bradford always made time to volunteer with local schools, the Special Olympics, and the Red Cross wherever he was stationed. While stationed in San Antonio, Pope John Paul II visited the city in September 1987 and conducted an outdoor mass with several thousand attendees, some of whom

suffered the effects of the hot Texas sun. He served with the Red Cross during the event, brought water and refreshments to attendees, and helped many who succumbed to the heat to shelter for assistance. The heart of a West Virginian is one of servitude and TSGT Franklin A. Bradford displayed this quality whenever presented with the opportunity; and

Whereas, Upon retirement from the Air Force in 1991, TSGT Franklin A. Bradford went back to school at Bluefield State College and earned a bachelor's degree, which allowed him to begin a career with the United States Department of Defense as a contract specialist with the Naval Sea Command and NASA. His duty station was at the Wright Patterson Air Force Base in Ohio. When a transfer opportunity opened for the Department of Defense in Blacksburg, Virginia, TSGT Franklin A. Bradford seized the chance to return home and moved to Princeton, West Virginia. He eventually worked with the Veterans Administration Hospital in Beckley, West Virginia, as a contract specialist, and enjoyed his time serving the needs of fellow veterans; and

Whereas, TSGT Franklin A. Bradford passed away on October 18, 2020; and

Whereas, It is fitting that an enduring memorial be established to commemorate U.S. Air force TSGT Franklin A. Bradford for his honorable service 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 55-010/00-031.60 (55A035), locally known as Jesse Bridge, carrying WV 10 over Laurel Fork in Wyoming County, the "U.S. Air Force TSGT Franklin A. Bradford 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. Air Force TSGT Franklin A. Bradford 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.

**Senate Concurrent Resolution 37**, Nitro WW I Living Memorial Bridge.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 37** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways name, upon construction of the new bridges that will replace the Donald M. Legg Memorial Bridge, carrying WV 64 over the Kanawha River, locally known as the Nitro/St. Albans Bridge in Kanawha County, the new Westbound Lane/Bridge, the “Nitro WW I Memorial Bridge”.

Whereas, On August 29, 1916, the United States Congress authorized the building of the Naval Ordnance Plant between U.S. 60 and the railroad in South Charleston, West Virginia. The plant took two years to build, spanned 900,000 square feet, and began operating in May of 1918. According to the Secretary of the Navy, Josephus Daniels, this naval base was the first in U.S. history to be placed away from seawaters. The U.S. Navy was drawn to the location by West Virginia’s natural resources, as well as its “moral environment and splendid citizenship”. The plant manufactured military equipment such as armor plates, gun forgings, and projectiles for battleships and cruisers which were used by the U.S. Navy in World War I; and

Whereas, Nitro was a World War I boom town believed to be named after nitrocellulose, which was used to manufacture smokeless gunpowder and other explosive devices. The plant was one of three selected by the U.S. government under the Deficiency Appropriations Act to relieve a severe shortage of gunpowder. Nitro’s location, 14 miles from Charleston, was chosen because it was secure from coastal attacks and climatic conditions while having access to railroads, waterways, and raw materials. The ordnance plant complex was known as Explosive Plant C. It was

built in just 11 months and thousands of workers, supplies, and materials arrived practically overnight; and

Whereas, During the 11 months that the Explosive Plant C was in operation, the town was 90 percent complete and housed 23,951 people associated with the plant. There was a high turnover of people coming and going from the plant, with workers from each state and representing 41 different nationalities. Some who arrived for work in 1918 suffered from Spanish influenza and army barracks and other buildings had to be converted into hospitals to care for the sick; and

Whereas, By the end of the war on November 11, 1918, Explosive Plant C had produced 350 tons of smokeless gun powder per day. On Armistice Day, Nitro celebrated with a parade of cars, military tanks, and a band. Within two weeks after the Armistice, 12,000 people left Nitro and there were not enough workers to sustain plant production. The director of the plant turned its operation over to the Ordnance Department on January 15, 1919, and the plant was declared surplus as the U.S. government prepared to liquidate the property. Workers were laid off in October of 1919 and, a month later, the facilities were sold at auction to the Charleston Industrial Corporation; and

Whereas, In November of 1919, a state charter was granted to the Charleston Industrial Corporation which was organized for the specific purpose of purchasing and redeveloping the surplus government property at Nitro. The Charleston Industrial Corporation launched a sales promotion campaign to attract new industries and businesses to the area, focusing on manufacturing and chemical industries. By 1921, the future of Nitro was beginning to take shape with many wartime holdovers calling it home and relying on their friends and neighbors for fellowship, common interests, and help in time of need. This early community spirit remains strong; and

Whereas, Remnants of Nitro's gunpowder production history can be seen throughout the town and many special events associated with both World War I and World War II are held each

year. The town proudly celebrates its wartime history and being known as a “living memorial to World War I”; and

Whereas, It is fitting that an enduring memorial be established to commemorate Nitro’s rich past and significance to our country during World War I; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name the new Westbound Lane/Bridge, upon construction of the new bridges that will replace the Donald M. Legg Memorial Bridge, carrying WV 64 over the Kanawha River, locally known as the Nitro/St. Albans Bridge in Kanawha County, the “Nitro WW I Memorial Bridge”; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the Westbound lane or bridge as the “Nitro WW I 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.

And,

**Senate Concurrent Resolution 39**, Birthplace of Alabama Coach Nick Saban.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 39** (originating in the Committee on Transportation and Infrastructure)—Requesting the Division of Highways erect signs on U.S. Route 19 at both ends of Monongah, Marion County, West Virginia, stating “Home of Nick Saban”.

Whereas, Nicholas Lou Saban Jr., was born on October 31, 1951, in Fairmont, West Virginia, to Nicholas and Mary Saban; and

Whereas, Nicholas Lou Saban Jr., known throughout his life as “Nick”, attended Monongah High School where he won the 1967 2A State Championship in football as a quarterback alongside United States Senator Joe Manchin; and

Whereas, Upon graduation from Monongah High School, Nick Saban attended Kent State University on a football scholarship as a starting defensive back for the Golden Flashes from 1970 to 1973; and

Whereas, After completing his bachelor’s degree in business, Nick Saban went on to complete his master’s degree in sports administration from Kent State, while working as an assistant coach for the Golden Flashes; and

Whereas, Upon graduation, Nick Saban was hired as a graduate assistant for Kent State, later serving as an assistant coach at Syracuse in 1977, West Virginia from 1978 to 1979, Ohio State from 1980 to 1981, Navy in 1982, Michigan State from 1983 to 1987, and the Houston Oilers of the National Football League (NFL) in 1988; and

Whereas, Nick Saban was head coach at Toledo in 1988 where he found quick success that would lead to an offer from the Cleveland Browns of the NFL to become a defensive coordinator for the 1990 season; and

Whereas, After four years in Cleveland, Michigan State chose Nick Saban as their head coach from 1990 to 1999; starting the 1999 season, Nick Saban became the head coach of Louisiana State University where he would win his first National Championship in the 2003 season and two South Eastern Conference Championships; and

Whereas, in 2004, Nick Saban left Louisiana State University to become the head coach of the Miami Dolphins for the 2005

season, and after a 15-17 record, Nick Saban was released from Miami; and

Whereas, Nick Saban was hired by the Alabama Crimson Tide on January 3, 2007, which would lead to six National Championships (2009, 2011, 2012, 2015, 2017, 2020) and seven Eastern Conference Championships (2009, 2012, 2014, 2015, 2016, 2018, 2020); and

Whereas, Nick Saban has a wife, Kristen Saban of 49 years who first saw Nick at a Pop Warner game in Fairmont, and two adopted children, Nicholas and Kristen Saban; and

Whereas, Nick Saban called on Alabama high schools to help West Virginia schools affected by the 2016 West Virginia floods that took place on June 23-24; and

Whereas, Nick Saban's representation of West Virginia on a national stage should be commemorated by signage near his home; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to erect signs on U.S. Route 19 at both ends of Monongah, Marion County, West Virginia, stating "Home of Nick Saban"; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs on U.S. Route 19 at both ends of Monongah, Marion County, West Virginia, stating "Home of Nick Saban"; 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.

With the recommendation that the three committee substitutes be adopted.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (Com. Sub. for S. C. R. 34, 37, and 39) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

Senator Nelson, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

**Senate Concurrent Resolution 59** (originating in the Committee on Pensions)—Requesting the Joint Committee on Government and Finance study the benefits of creating a third tier within the PERS retirement program for public safety employees, including 911 operators; determine the most appropriate and fair method of implementing this new tier; consider any potential unintended consequences of this creation of the tier; determine how the new tier should be used to provide enhanced benefits to public safety employees within PERS; determine whether return to work provisions should be modified for any or all retirement systems administered by the West Virginia Consolidated Public Retirement Board (CPRB); and determine whether employer contribution caps for certain retirement plans administered by the CPRB should be modified or eliminated.

Whereas, Public safety employees within PERS are at greater risk due to the inherent danger of the duty obligations required by their occupations; and

Whereas, The open positions for correctional officers, police officers, firefighters, and 911 operators may be more easily filled if such occupations were entitled to participate in a separate tier of the PERS system with enhanced benefits; and

Whereas, The CPRB would have a greater administrative burden if a new tier is created within PERS, and this resolution will aid in quantifying that burden; and

Whereas, Certain retirement systems administered by the CPRB have employer contributions that are capped at certain levels and could have a detrimental impact on the actuarial funding of the system; and

Whereas, Certain return to work provisions for retirants of the retirement systems administered by the CPRB may be outdated and no longer sustainable for retirants who return to work on a part-time or temporary basis; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study the benefits of creating a third tier within the PERS retirement program for public safety employees, including 911 operators; determine the most appropriate and fair method of implementing this new tier; consider any potential unintended consequences of this creation of the tier; determine how the new tier should be used to provide enhanced benefits to public safety employees within PERS; determine whether return to work provisions should be modified for any or all retirement systems administered by the West Virginia Consolidated Public Retirement Board (CPRB); and determine whether employer contribution caps for certain retirement plans administered by the CPRB should be modified or eliminated; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance study the potential necessity of altering or amending certain outdated return to work provisions for retirants of the retirement systems administered by the CPRB; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance study the potential benefits and detriments that would be involved in eliminating the employer contribution cap in certain retirement systems administered by the CPRB; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance enlist the assistance of all ranks, organizations, groups, and departments of the CPRB as is necessary to conduct the study; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance conclude its study and final report on its findings, conclusions, and recommendations on or before December 1, 2021; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Eric Nelson, Jr.,  
*Chair.*

Senator Maroney, from 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

**Eng. Com. Sub. for House Bill 2005**, Relating to health care costs.

And has amended same.

And,

**Eng. Com. Sub. for House Bill 2093**, Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Maroney, from 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

**Eng. Com. Sub. for House Bill 2266**, Relating to expanding certain insurance coverages for pregnant women.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Health and Human Resources pending.

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

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2496**, Relating to assessments of real property.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2760**, Relating to economic development incentive tax credits.

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

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2770**, Including home confinement officers in definition of law-enforcement officers.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Nelson, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

**Eng. House Bill 2829**, Providing for the amortization of annual funding deficiencies for municipal police or firefighter pension and relief funds.

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

Respectfully submitted,

Eric Nelson, Jr.,  
*Chair.*

Senator Smith, from the Committee on Energy, Industry, and Mining, submitted the following report, which was received:

Your Committee on Energy, Industry, and Mining has had under consideration

**Eng. Com. Sub. for House Bill 2842**, Preventing cities from banning utility companies in city limits.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Randy E. Smith,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with amendments from the Committee on Energy, Industry, and Mining pending.

Senator Nelson, from the Committee on Pensions, submitted the following report, which was received:

Your Committee on Pensions has had under consideration

**Eng. House Bill 3191**, Requiring employers to send certain notifications when retirants are hired as temporary, part-time employees.

And has amended same.

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

Respectfully submitted,

Eric Nelson, Jr.,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Joint Resolution 1**, Education Accountability Amendment.

With amendments from the Committee on the Judiciary pending;

And reports the same back with the recommendation that it be adopted as amended by the Committee on the Judiciary to which the bill was first referred.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Joint Resolution 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**House Concurrent Resolution 8**, U.S. Army SFC Guy Hively Memorial Bridge.

**House Concurrent Resolution 16**, PFC Franklin D. Frazier Memorial Road.

**Com. Sub. for House Concurrent Resolution 22**, Bill O'Dell Memorial Bridge.

**House Concurrent Resolution 25**, William Edward Friese Memorial Bridge.

**House Concurrent Resolution 27**, Harvey Lemasters Memorial Bridge.

**House Concurrent Resolution 32**, To name Gatewood Road in Fayette County as the "Senator Shirley Love Memorial Road."

**House Concurrent Resolution 33**, Norman A. and Carrie G. Silver Memorial Bridge.

And,

**Com. Sub. for House Concurrent Resolution 43**, U. S. Army CSM Hugh H. 'Smokey' Stover Memorial Road.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (H. C. R. 8, 16, 25, 27, 32, and 33 and Com. Sub. for H. C. R. 22 and 43) contained in the preceding report from

the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

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

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

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**House Concurrent Resolution 12**, Charles E. Jarvis Memorial Bridge.

And has amended same.

**House Concurrent Resolution 20**, Bill Withers Memorial Road.

And has amended same.

**House Concurrent Resolution 26**, Victor Yoak Memorial Bridge.

And has amended same.

**House Concurrent Resolution 38**, "U.S. Marine Corps Sergeant David Andrew Green Memorial Bridge."

And has amended same.

And,

**House Concurrent Resolution 62**, Major Samuel Wilson Rogers Jr. Memorial Bridge.

And has amended same.

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

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (H. C. R. 12, 20, 26, 38, and 62) contained in the preceding report from the Committee on Transportation and Infrastructure were taken up for immediate consideration and considered simultaneously.

The following amendments to the resolutions, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

**House Concurrent Resolution 12**, Charles E. Jarvis Memorial Bridge.

On page one, in the third Whereas clause, line thirteen, by striking out “66” and inserting in lieu thereof “63”.

**House Concurrent Resolution 20**, Bill Withers Memorial Road.

On page one, in the first Whereas clause, line fourteen, after the word “nominations” by striking out the comma and inserting in lieu thereof the word “and”;

On page two, in the first Whereas clause, line two, by striking out the words “on April 3” and inserting in lieu thereof the words “away on March 30”;

On page two, in the Resolved clause, line seven, by striking out the words “along County State Route 34”;

And,

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

Requesting the Division of Highways to name Slab Fork Road, beginning near the Lester Highway and proceeding to its end at the Coalfield Expressway in Raleigh County, the “Bill Withers Memorial Road”.

**House Concurrent Resolution 26**, Victor Yoak Memorial Bridge.

On page one, in the third Whereas clause, lines nineteen and twenty, after the word “there” by striking out the period and the words ““there’s a closeness and friendliness””.

**House Concurrent Resolution 38**, “U.S. Marine Corps Sergeant David Andrew Green Memorial Bridge.”.

On page two, in the Resolved clause, line twenty-seven, by striking out the words “county, the “U. S. Marine” and inserting in lieu thereof the words “County, the “U.S. Marine Corps”;

On page two, in the first Further Resolved clause, line thirty, by striking out the words “U. S. Marine Corps Sgt. David A.” and inserting in lieu thereof the words ““U.S. Marine Corps Sergeant David Andrew”;

And,

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

Requesting the Division of Highways to name bridge number: 26-001/01-000.01 (26A080), (40.02115, -80.73147) locally known as 4th Street Overpass, carrying CR 1/1 over US 250 & WV 2 in Marshall County, the “U.S. Marine Corps Sergeant David Andrew Green Memorial Bridge”.

**House Concurrent Resolution 62**, Major Samuel Wilson Rogers Jr. Memorial Bridge.

On page one, in the sixth Whereas clause, line fifteen, by striking out “17” and inserting in lieu thereof “24”.

The question being on the adoption of the resolutions (H. C. R. 12, 20, 26, 38, and 62), as amended, the same was put and prevailed.

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

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions on March 31, 2021:

**Senate Resolution 33**: Senators Stollings, Baldwin, Phillips, and Nelson;

**Senate Resolution 34**: Senator Baldwin;

And,

**Senate Resolution 35**: Senators Baldwin and Woelfel.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 6:58 p.m., the Senate adjourned until tomorrow, Friday, April 2, 2021, at 10 a.m.

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## FRIDAY, APRIL 2, 2021

The Senate met at 10:05 a.m.

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

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

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Tom Takubo, a senator from the seventeenth district.

Pending the reading of the Journal of Thursday, April 1, 2021,

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

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

The Senate then proceeded to the third order of business.

A message from the Clerk of the House of Delegates announced that that body 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

**Eng. Com. Sub. for House Bill 2003**, Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Summers, J. Pack, and Brown.

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

**Eng. Com. Sub. for House Bill 2094**, Relating to the juvenile restorative justice programs.

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

**Eng. Com. Sub. for House Bill 2400**, Authorizing the Department of Transportation to promulgate legislative rules.

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

**Eng. Com. Sub. for House Bill 2499**, Tax reduction for arms and ammo manufacturing.

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

**Eng. House Bill 2852**, Relating to distribution of the allowance for increased enrollment.

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

**Eng. House Bill 2898**, Making a supplementary appropriation to WorkForce West Virginia – Workforce Investment Act.

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

**Eng. House Bill 2941**, Supplementary appropriation decreasing an existing item and adding a new item of appropriation to the Department of Revenue, Insurance Commissioner.

### **Executive Communications**

The Clerk then presented the following communications from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

April 1, 2021

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

House Bill No. Two Thousand Seven Hundred One (2701), which was presented to me on March 26, 2021.

House Bill No. Two Thousand Seven Hundred Eighty-Eight (2788), which was presented to me on March 26, 2021.

Committee Substitute for House Bill No. Two Thousand Seven Hundred Eighty-Nine (2789), which was presented to me on March 26, 2021.

Committee Substitute for House Bill No. Two Thousand Eight Hundred Two (2802), which was presented to me on March 26, 2021.

Committee Substitute for House Bill No. Two Thousand Eight Hundred Three (2803), which was presented to me on March 26, 2021.

House Bill No. Two Thousand Eight Hundred Four (2804), which was presented to me on March 26, 2021.

You will note that I have approved these bills on April 1, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Lee Cassis



*Jim Justice*  
*Governor of West Virginia*

April 2, 2021

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for Senate Bill No. Nine (9), which was presented to me on March 29, 2021.

Senate Bill No. Ten (10), which was presented to me on March 29, 2021.

Senate Bill No. Three Hundred Five (305), which was presented to me on March 29, 2021.

Committee Substitute for Senate Bill No. Five Hundred Seventeen (517), which was presented to me on March 29, 2021.

You will note that I have approved these bills on April 2, 2021.

Sincerely,

A handwritten signature in blue ink that reads "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 2nd day of April, 2021, 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 Com. Sub. for S. B. 275)**, Relating generally to WV Appellate Reorganization Act of 2021.

**(Com. Sub. for H. B. 2499)**, Tax reduction for arms and ammo manufacturing.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

**Senate Concurrent Resolution 45**, Dennis E. Davis Veterans Nursing Home.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 45** (originating in the Committee on Military)—Requesting the Department of Veterans' Assistance to name the new veterans' nursing home, to be built in Beckley, the "Dennis E. Davis Veterans Nursing Home".

Whereas, Dennis Davis began his association with the United States military in 1959 when he entered the Reserve Officer Training Corps (ROTC) program at West Virginia State University; and

Whereas, Dennis Davis served stints with the U.S. Army at Fort Knox in Kentucky and Fort Sill in Oklahoma. In 1965, he graduated from the Army's Non-Commissioned Officer Academy and received an honorable discharge in 1970; and

Whereas, In 1968, Dennis Davis received a Bachelor of Science degree in the field of education from West Virginia State University and subsequently began a career with the Kanawha County schools as a teacher, counselor, and administrator. In 1970, he received a Master of Science degree from Marshall University; and

Whereas, Dennis Davis ultimately took on the role of Assistant Superintendent of Kanawha County Schools for Vocational, Technical, and Adult Education; and

Whereas, In 1996, Governor Cecil Underwood appointed Dennis Davis as Executive Director of Workforce Development for West Virginia, in which position he served for four years; and

Whereas, Dennis Davis briefly returned to Kanawha County schools in 2013 as a member of the Kanawha County Board of Education, serving out the unexpired term of a previous member; and

Whereas, In January, 2017, Governor Jim Justice appointed Dennis Davis as Cabinet Secretary for the West Virginia Department of Veterans Assistance. He was responsible for the administration of claims for assistance across the state, plus the WV Veterans Nursing Facility, the West Virginia Veterans Home, and the Donel C. Kinnard Memorial State Veterans Cemetery, where he was also a member of the honor guard; and

Whereas, Dennis Davis passed away on January 18, 2021, at his home in Institute, West Virginia, in the presence of his loving

wife and son. Dennis Davis was subsequently interred in the Donel C. Kinnard Memorial State Veterans Cemetery; and

Whereas, It is fitting that an enduring memorial be established to commemorate the achievements and contributions of Dennis Davis to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Department of Veterans Assistance name the new veterans' nursing home, to be built in Beckley, the "Dennis E. Davis Veterans Nursing Home"; and, be it

*Further Resolved,* That the Department of Veterans' Assistance is hereby requested to have made and be placed signs identifying the facility as the "Dennis E. Davis Veterans Nursing Home"; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the acting Secretary of the Department of Veterans Assistance and the Commissioner of the Division of Highways.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Ryan W. Weld,  
*Chair.*

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

**Senate Concurrent Resolution 60** (originating in the Committee on Military)—Requesting the Interim Committee on Veterans' Affairs and the Department of Veterans Assistance study the merit of establishing a comprehensive program for suicide

prevention among veterans and active members of the armed forces, the National Guard, and reserve components and any other veterans issues it considers appropriate.

Whereas, Suicide is the 10th leading cause of death in the United States; and

Whereas, According to numerous studies, veterans face a disproportionate risk of suicide when compared to the general population; and

Whereas, According to the most recent data from the United States Department of Veterans Affairs and the United States Department of Defense, an average of nearly 20 veterans and active members of the armed forces die by suicide each day; and

Whereas, Many of the wounds sustained through armed service to the United States may be invisible, but those wounds are still treatable if those bearing them are connected to the proper resources; and

Whereas, The risk of suicide can be reduced through awareness, educational efforts, adequate resources, and treatment, as well as through the promotion of preventative factors that can offset the risks of suicide, such as positive coping skills, feeling connected to others, especially veterans, and access to mental health care; and

Whereas, The startlingly high rate of veteran suicide is a national health concern that affects us all, and it is our collective responsibility to address this issue; and

Whereas, It is imperative that our state and nation unite to recognize the issues of post-traumatic stress disorder, anxiety, depression, and difficulty readjusting to civilian life, in general, that, tragically, too often lead to a veteran contemplating or committing suicide; and

Whereas, It is the responsibility of a grateful nation to continue to care for those who have served in the armed forces by bringing

awareness to this issue and removing the stigma surrounding it; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Interim Committee on Veterans' Affairs and the Department of Veterans Assistance is hereby requested to study the issue of establishing a comprehensive program for suicide prevention among veterans and active members of the armed forces, the National Guard, and reserve components and any other veterans issues it considers appropriate; and, be it

*Further Resolved,* That the study shall seek to determine the scope of this program, the resources which shall be necessary for its establishment and operation, and identify the national, state, local, and private entities which may be necessary in order to effectively address this issue; and, be it

*Further Resolved,* That the study shall also seek to determine what resources are available from the United States Department of Veterans Affairs, the United States Department of Defense, and any other federal department of program to assist with the policy goals of this program and how to best maximize those resources in coordination with the program to be established by the Department of Veterans Assistance; and, be it

*Further Resolved,* That the Department of Veterans Assistance report to the regular session of the Legislature, 2022, 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 by the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Ryan W. Weld,  
*Chair.*

At the request of Senator Weld, unanimous consent being granted, the resolution (S. C. R. 60) contained in the foregoing report from the Committee on Military was then referred to the Committee on Rules.

Senator Maroney, from 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

**Eng. Com. Sub. for House Bill 2368**, Mylissa Smith's Law, creating patient visitation privileges.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with an amendment from the Committee on Health and Human Resources pending.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2573**, Relating generally to the transparency and accountability of state grants to reduce waste, fraud, and abuse.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2722**, Prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals.

**Eng. Com. Sub. for House Bill 2834**, Adding the Curator of the West Virginia Division of Arts, Culture and History as an ex officio voting member of the commission.

And,

**Eng. House Bill 2914**, To remove certain ex officio, voting members from the Archives and History Commission and update formatting.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2758**, Requiring the Insurance Commissioner to regulate professional bondsmen.

And has amended same.

**Eng. Com. Sub. for House Bill 2793**, Permit out of state residents to obtain West Virginia concealed carry permits.

And has amended same.

And,

**Eng. House Bill 3294**, Relating to unemployment insurance.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Weld, from the Committee on Military, submitted the following report, which was received:

Your Committee on Military has had under consideration

**Eng. House Bill 2874**, Extend the current veteran's business fee waivers to active duty military members and spouses.

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

Respectfully submitted,

Ryan W. Weld,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2890**, To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Trump, as chair of the Committee on the Judiciary, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Government Organization.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 2969**, To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Maroney, from 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

**Eng. Com. Sub. for House Bill 2982**, Relating to the Second Chances at Life Act of 2021.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on the Judiciary, with an

amendment from the Committee on Health and Human Resources pending.

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 3293**, Relating to single-sex participation in interscholastic athletic events.

And has amended same.

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

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

The Senate proceeded to the sixth order of business.

Senator Phillips offered the following resolution:

**Senate Resolution 38**—Recognizing the achievements of Ben Ferrell, a young man who is an archery/bow champion from Chapmanville, West Virginia.

Whereas, Ben Ferrell is a 16-year-old from Chapmanville, West Virginia, and is the son of Michael and Tena Ferrell; and

Whereas, Ben Ferrell is currently a tenth grader at Chapmanville Regional High School; and

Whereas, Ben Ferrell discovered his love for archery in 2017, where he began by shooting in his front yard with friends as a hobby, and he quickly discovered God blessed him with a talent for target shooting; and

Whereas, Ben Ferrell joined his first tournament in 2017 at Huntington Archery Club and brought home a first place finish in his very first shoot; and

Whereas, Since then, his love for the sport has grown, and he has had some major accomplishments in his 2020 season; and

Whereas, Ben Ferrell is self-taught, practices every morning for a few hours and the same in the evenings; and

Whereas, Ben can always be found in his parents yard or at a local range; and

Whereas, Ben Ferrell is very self-disciplined, makes excellent grades in school, and always gives God the credit; and

Whereas, Ben Ferrell's 2020 accomplishments include: West Virginia State Championship: First place; IBO Indoor World Championship: first place; IBO Winter National: first place; West Virginia Triple Crown: first place in all three shoots; West Virginia 2020 Triple Crown State Championship: first place; IBO National Triple Crown: Overall second place; and IBO 2020 Shooter of the Year; and

Whereas, Ben Ferrell is excited to get his 2021 season started, and his goal is to become a pro shooter and have his own bow shop; and

Whereas, Ben Ferrell can already at the age of 16 set up a bow from start to finish, and fletch his own arrows from his bedroom; and

Whereas, Ben Ferrell has been honored to have several sponsors, radio interviews and have his story published in local newspapers; therefore, be it

*Resolved by the Senate:*

That the West Virginia Senate hereby recognizes the achievements of Ben Ferrell, a young man who is an archery/bow champion from Chapmanville, West Virginia; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Ben Ferrell and his family.

Which, under the rules, lies over one day.

Senator Grady offered the following resolution:

**Senate Resolution 39**—Congratulating Tiarah Thornton, Miss Pre-Teen United States - 2020, for her achievements and contributions to her community and state.

Whereas, Tiarah Thornton is an ambitious 13-year-old native of West Virginia; and

Whereas, Tiarah Thornton is a three-time USTA state tumbling champion, school science fair winner, and weather girl for her school's news broadcast; and

Whereas, Tiarah Thornton also enjoys spending time outdoors, riding her horse, and taking photos of nature during free time; and

Whereas, As Miss Pre-Teen United States - 2020, Tiarah plans to advocate for and raise awareness for Hospice Care Organizations; and

Whereas, Tiarah Thornton chose Hospice Care because of the care they provided her father and family through his own cancer battle; and

Whereas, Serving her platform has helped her work through the grief of his loss and has also helped her make many lifelong friendships; and

Whereas, Tiarah's goal during her reign is to help ease the burdens of others receiving end of life care by putting smiles on

their faces with her “Journals With a Smile”, journals that will help terminally ill patients in Hospice create a keepsake for their families - journals filled with meaningful memories and moments that remind them of happy thoughts; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates Tiarah Thornton, Miss Pre-Teen United States - 2020, for her achievements and contributions to her community and state; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to Tiarah Thornton and her family.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 58,** Requesting study on possible incentives to county boards of education showing consistent academic growth.

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

**Senate Concurrent Resolution 59,** Requesting study on creating third tier within PERS for public safety employees.

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

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

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

**Senate Resolution 36**, Recognizing Cabell County Public Library on being named as finalist for 2021 National Medal for Museum and Library Service.

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

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

**Senate Resolution 37**, Memorializing life of Gilbert Benton “Gib” Miller, Sr.

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

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

The Senate proceeded to the eighth order of business.

**Eng. House Bill 2253**, Relating to forgery and other crimes concerning lottery tickets.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2253) passed with its title.

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

**Eng. House Bill 2888**, Relating to when contentions can be revived based on forensic scientific evidence that was not available at time of conviction.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2888) passed with its title.

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

**Eng. House Bill 3081**, Updating the West Virginia Business Corporations Act.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Clements, Grady, Hamilton, Ihlenfeld, Jeffries,

Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Caputo and Romano—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3081) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Caputo and Romano—2.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3081) takes effect from passage.

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

The Senate proceeded to the ninth order of business.

**Eng. House Bill 2028**, Exempting veterinarians from the requirements of controlled substance monitoring.

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

**Eng. House Bill 2366**, Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note.

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

**Eng. Com. Sub. for House Bill 2427**, Authorizing the Department of Health and Human Resources to promulgate legislative rules.

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

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

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

**ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

**§64-5-1. Department of Health and Human Resources.**

(a) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §27-9-1 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 4, 2021, relating to the Department of Health and Human Resources (behavioral health centers licensure, 64 CSR 11), is authorized with the following amendments:

On page 1, subsection 1.7, after the words, “supports in the” by inserting the words, “state of”;

On page 11, subdivision 4.5.5 by striking out the word, “alternations” and inserting in lieu thereof the word, “alterations”;

On page 11, by adding a new subdivision 4.5.6 to read as follows:

“4.5.6. All plumbing shall meet the requirements of local plumbing codes or, in the absence thereof, the National Plumbing Code and be maintained and repaired in a state to conform with its intended purpose.”;

And,

By renumbering the remaining subdivisions;

On page 28, paragraph 10.1.4.i, by striking out the word, “daily”;

On page 28, by striking out all of paragraph 10.1.4.l.:

On page 29, paragraph 10.1.4.m, after the word, “vermin” by inserting the words, “that stand to pose a threat to the health or safety of consumers or employees”;

And,

By renumbering the remaining paragraph;

On page 30, subdivision 10.2.11, by striking out the word, “sued” and inserting in lieu thereof the word, “used”;

On page 45, subdivision 12.16.5, by striking out the word, “uses” and inserting in lieu thereof the word, “use”;

On page 45, subdivision 12.16.5, by striking out the word, “made” and inserting in lieu thereof the word, “make”;

On page 52, paragraph 12.28.2.f, after the word, “immediate” by inserting a comma, and the words, “in-home”;

On page 52, paragraph 12.28.2.f, after the word, “record” by inserting the words, “in order to provide safe and appropriate care to consumers”;

And,

On page 55, subdivision 13.3.1 by changing the period and to a colon and inserting the following proviso: “*Provided*, That the Secretary may only suspend or revoke a license, if the licensee commits a violation which endangers the health, safety or welfare of a person;”;

(b) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-5B-8 of this code, relating to the Department of Health and Human Resources (hospital licensure, 64 CSR 12), is authorized with the following amendment:

‘On page 13, by inserting a new subdivision 4.3.7 to read as follows;

“4.3.7. A hospital shall post signage in every patient room, patient care area or department, and staff rest area information outlining the process for reporting patient safety concerns via the facility’s designated internal reporting mechanism and the process for reporting unresolved patient safety concerns or complaints to the West Virginia Office for Health Facility Licensure and Certification. The posting shall include the address and telephone number for the West Virginia Office for Health Facility Licensure and Certification. Signage color and text shall conform to the Office of Safety and Health Administration regulations for safety instruction signs as provided in standard §1910.145. Nothing in the provision precludes any patient, patient representative, or healthcare provider from making a good faith report pertaining to patient safety concerns and/or alleged wrongdoing or waste to any other appropriate authorities as provided §16-39-3”.’

(c) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §16-5C-5 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020,

relating to the Department of Health and Human Resources (nursing home licensure, 64 CSR 13), is authorized.

(d) The Legislature directs the Department of Health and Human Resources to promulgate the legislative rule effective of July 1, 2019, authorized under the authority of §16-1-4 of this code, relating to the Department of Health and Human Resources (food establishments, 64 CSR 17), with the following amendments:

On page 2, subsection 3.1, by adding a new subdivision 3.1.h, to read as follows:

‘3.1.h Chapter 6, section 6-501.115 is not applicable if the following conditions are met:

3.1.h.1. The dog is prohibited from entering any areas where food is being prepared.

3.1.h.2. An exterior play area is available for the dog;

3.1.h.3. The dog owner shall certify that his or her dog has a current rabies vaccination;

3.1.h.4. The dog owner will be asked to leave, if a dog creates a nuisance;

3.1.h.5. The establishment is licensed a private club, brew pub, or micro distillery;

3.1.h.6. The establishment has liability insurance for dog related incidents;

3.1.h.7. Dog accidents are cleaned and sanitized. Dog waste stations are available. A written procedure shall be established and posted concerning dog accident cleanup;

3.1.h.8. Signage is present indicating that the establishment is dog friendly;

3.1.h.9. Dog rules are provided to customers upon entrance.’

And,

By renumbering the remaining subdivisions.

(e) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-35-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 10, 2020, relating to the Department of Health and Human Resources (lead abatement licensing, 64 CSR 45), is authorized.

(f) The legislative rule filed in the State Register on November 20, 2020, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 4, 2021, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized.

(g) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §27-5-9(g) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2020, relating to the Department of Health and Human Resources (client rights at state-operated mental health facilities, 64 CSR 59), is authorized.

(h) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-50-11 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (delegation of medication administration and health maintenance tasks to approved medication assistive personnel, 64 CSR 60), is authorized.

(i) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §33-59-1(k) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2020, relating to the Department of Health and Human Resources (diabetes self-management education, 64 CSR 115), is authorized with the following amendment:

On page 1, subsection 1.2, by striking out, “53” and inserting in lieu thereof “59”.

(j) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-49-9 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2020, relating to the Department of Health and Human Resources (West Virginia clearance for access, registry, and employment screening, 69 CSR 10), is authorized with the following amendment:

On page 2, by adding a new subsection 2.3 to read as follows:

“ 2.3. Covered Provider – means the following facilities or providers that are required to participate in the WV CARES program: skilled nursing facilities; nursing facilities; home health agencies; providers of hospice care; long-term care hospitals; providers of personal care services; providers of adult day care; residential care providers that arrange for or directly provide long-term care services including assisted living facilities; intermediate care facilities for individuals with intellectual disabilities; persons responsible for the care of children as described in W. Va. Code 49-2-114; chronic pain management clinics; behavioral health centers; neonatal abstinence syndrome centers; opioid treatment centers; and any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment Screening program as determined by the secretary in legislative rule.”;

And,

By renumbering the remaining subsections;

(k) The legislative rule filed in the State Register on July 1, 2020, authorized under the authority of §16-59-2(g) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2020, relating to the Department of Health and Human Resources (recovery residence certification and accreditation program, 69 CSR 15), is authorized.

(l) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (child placing agencies licensure, 78 CSR 02), is authorized with the following amendments:

On page 11, by striking out paragraph 6.3.1.b;

And,

By renumbering the remaining paragraph;

On page 20, subsection 8.1, by striking out the sentence, “The agency shall require the following qualifications for each position.”

On page 20, by striking out subdivision 8.1.1,

And,

On page 20, by striking out subdivision 8.1.4. and inserting in lieu thereof a new subdivision 8.1.4 to read as follows:

“8.1.4. Case Managers shall have a bachelor’s or master’s degree in social work or a related human service field, or a Board

of Regents degree with a human service concentration, or a Bachelor's degree who has completed department approved training provided by the child placing agency;

On page 21 by striking paragraph, 8.2.1.a:

And,

By renumbering the remaining paragraphs;

On page 36, by striking out subdivision, 11.4.5.;

And,

Renumbering the remaining subdivisions.

(m) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2020, relating to the Department of Health and Human Resources (minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia, 78 CSR 03), is authorized with the following amendments:

On page 23, by striking out all of subdivision 6.1.1.;

And,

By renumbering the remaining subdivisions;

On page 26, subsection 7.1., by striking out "governing body shall be one of the following:"

On page 26, by striking out all of subdivisions 7.1.1, 7.1.2, 7.1.3, 7.1.4, and 7.1.5;

On page 36, by striking out all of subsection 10.6.;

On page 40, by striking out all of subdivision 11.3.2;

And,

By renumbering the remaining subdivisions;

On page 41, by striking out all of subsection 12.1 and inserting in lieu thereof a new subsection 12.1. to read as follows:

12.1 The organization shall meet all applicable federal, state, and local, health, building, safety, and fire codes.”

On page 42, by striking out all of subdivision 12.2.1 and inserting in lieu thereof a new subsection 12.2.1 to read as follows:

“12.2.1 Food shall be stored, prepared, and served according to local health department regulations;

On page 43, by striking out all of subdivision 12.2.2.;

And,

On page 43, by striking out all of subsection 12.3.;

(n) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §49-4-601b of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2020, relating to the Department of Health and Human Resources (procedure to contest the substantiation of child abuse or neglect, 78 CSR 27), is authorized with the following amendments:

On page 2, after subsection 2.14, by adding two new sections designated sections 3 and 4 to read as follows:

**“§78-27-3. Substantiation of abuse and neglect.**

The Bureau may consider an allegation against a person of abuse or neglect of a child to have been substantiated for purposes of its records in either of the following two circumstances:

(a) The allegation of abuse or neglect has been the subject of a petition under chapter 49 of this code, that resulted in an adjudication finding that the person committed one or more acts of abuse or neglect of a child, and that adjudication has not been reversed or vacated on appeal; or

(b) The Bureau, as a result of its own investigation has determined that an allegation against a person of abuse or neglect of a child has been substantiated, whether or not there has been an adjudication under subsection (a) of this section: *Provided*, that when there has been no adjudication, sections four and five of this rule apply.

**§78-27-4. Allegations of abuse or neglect substantiated on or before July 1, 2021.**

(a) Any person may write to the Bureau and inquire if the Bureau has included him or her in its records of persons against whom there has been a substantiated claim of abuse or neglect of a child. The person making the inquiry shall provide the Bureau with his or her full name, date of birth, address, and social security number.

(b) Within 30 days of the request, the Bureau shall inform the person that: (1) the Bureau has no record of any substantiated claim against the person of abuse or neglect of a child; or (2) the Bureau does have a record of a substantiated allegation against the person of abuse or neglect of a child. If the substantiation is not based upon an adjudication described in subsection (a), section three of this rule, the Bureau shall provide the notice required under section five of this rule, and all of the rights and obligations of the Bureau and the person apply as if the Bureau's substantiation had occurred after July 1, 2021.”;

And,

By renumbering the remaining sections;

On page 2, section 3, by striking out all of subsection 3.1. and inserting in lieu thereof a new subsection 3.1 to read as follows:

“3.1. After July 1, 2021, if the Bureau determines that an allegation against a person of abuse or neglect of a child has been substantiated, the Bureau shall provide written notice to the maltreater of its determination.”;

And,

On page 3, subsection 3.4., after the words “The notice shall” by striking out the remainder of the sentence and inserting in lieu thereof “inform the maltreater that a finding of a substantiated abuse and neglect is recorded with the Bureau. The notice shall also inform the maltreater that the fact that a finding of a substantiated abuse and neglect is recorded with the Bureau may keep the maltreater from certain types of employment and may also prevent him or her from foster or kinship care of a child.”.

**§64-5-2. Health Care Authority.**

The legislative rule filed in the State Register on September 28, 2020, authorized under the authority of §16-2D-4 of this code, relating to the Health Care Authority (exemption from certificate of need, 65 CSR 29), is authorized with the following amendments:

On page 1, by striking out all of subsections 3.1 and 3.2 and inserting in lieu thereof a new subsection 3.1 and subsection 3.2 to read as follows:

3.1. A health service exempt from certificate of need review by W.Va. Code §16-2D-11 may not be acquired, offered, or developed within this state unless notification of the performance of the exemption is provided to the authority.

3.2. A person or health care facility may not knowingly charge or bill for a health service exempted from certificate of need review by W.Va. Code §16-2D-11 without first submitting a notification of performance of the exemption to the authority.’

On pages 2 and 3, by striking out all of section 5 in its entirety;

And,

By renumbering the remaining sections.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2427) was reported by the Clerk and adopted:

On page one, section one, after line fifteen, by inserting the following:

On page 25, by striking out all of paragraph 9.5.1.f. and inserting in lieu thereof a new paragraph 9.5.1.f. to read as follows:

“9.5.1.f. Documentation that information on the Child Abuse and Neglect Registry created under W. Va. Code §15-13-1 *et seq.* was checked for that employee, student, or volunteer.”

And,

On page 4, subsection (f), line 83 by striking the period and adding the following:

“with the following amendment:

On page 50, after subsection 12.4., by adding a new section 13 to read as follows:

§64-48-13. Federal Model Program.

13.1. Any EMS agency licensed by the Bureau may seek approval from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to participate in the national Emergency Triage, Treat and Transport (ET3) Model program. Services under the ET3 Model program shall specifically include, but not be limited to, the transport of patients to alternative destinations such as federally qualified health centers, urgent care centers, physician offices and clinics, and behavioral health care facilities. The ET3 Model program has a five-year performance period and is not administered by the Bureau. Any EMS agency approved to participate in the ET3 Model program shall be governed solely by the standards and

criteria established by the Centers for Medicare & Medicaid Services in its delivery of ET3 services thereunder.”

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

The bill (Eng. Com. Sub. for H. B. 2427), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2529**, Prohibiting West Virginia institutions of higher education from discriminating against graduates of private, nonpublic or home schools by requiring them to submit to alternative testing.

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

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

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

## **CHAPTER 18. EDUCATION.**

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

#### **§18-8-12. Issuance of a diploma or other appropriate credential by public, private, or home school administrator.**

A person who administers a program of secondary education at a public, private or home school that meets the requirements of this chapter may issue a diploma or other appropriate credential to a person who has completed the program of secondary education. Such diploma or credential is legally sufficient to demonstrate that the person meets the definition of having a high school diploma or its equivalent. No state agency or institution of higher learning in this state may reject or otherwise treat a person differently solely on the grounds of the source of such a diploma or credential.

~~Nothing in this section prevents any agency or institution of higher learning from inquiring into the substance or content of the program to assess the content thereof for the purposes of determining whether a person meets other specific requirements.~~  
Nothing in this section prevents an institution, once a student has been fully admitted, from administering placement tests or other assessments to determine the appropriate placement of students into college-level course sequences or to assess the content thereof for the purposes of determining whether a person meets other requirements for a specific program.

### **CHAPTER 18B. HIGHER EDUCATION.**

The bill (Eng. Com. Sub. for H. B. 2529), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2633**, Creating the 2021 Farm Bill.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2763**, Creating WV Cyber Incident Reporting.

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

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

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

## **ARTICLE 6C. WEST VIRGINIA CYBER INCIDENT REPORTING.**

### **§5A-6C-1. Definitions.**

As used in this article:

“Cybersecurity Office” means the office created by §5A-6B-1 of this code.

“Incident” or “cybersecurity incident” means a violation, or imminent threat of violation, of computer security policies, acceptable use policies, or standard security practices.

### **§5A-6C-2. Scope.**

This article applies to all state agencies within the executive branch, constitutional officers, all local government entities as defined by §7-1-1 or §8-1-2 of this code, county boards of education as defined by §18-1-1 of this code, the Judiciary, and the Legislature.

### **§5A-6C-3. Cyber Incident reporting; when required.**

(a) Qualified cybersecurity incidents shall be reported to the Cybersecurity Office before any citizen notification, but no later than 10 days following a determination that the entity experienced a qualifying cybersecurity incident.

(b) A qualified cybersecurity incident meets at least one of the following criteria:

(1) State or federal law requires the reporting of the incident to regulatory or law- enforcement agencies or affected citizens;

(2) The ability of the entity that experienced the incident to conduct business is substantially affected; or

(3) The incident would be classified as emergency, severe, or high by the U.S. Cybersecurity and Infrastructure Security Agency.

(c) The report of the cybersecurity incident to the Cybersecurity Office shall contain at a minimum:

(1) The approximate date of the incident;

(2) The date the incident was discovered;

(3) The nature of any data that may have been illegally obtained or accessed; and

(4) A list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom the notice has been or will be provided.

(d) The procedure for reporting cybersecurity incidents shall be established by the Cybersecurity Office and disseminated to the entities listed §5A-6C-2 of this code.

#### **§5A-6C-4. Cybersecurity Office annual report.**

(a) On or before December 31 of each year, and when requested by the Legislature, the Cybersecurity Office shall provide a report to the Joint Committee on Government and Finance containing the number and nature of incidents reported to it during the preceding calendar year.

(b) The Cybersecurity Office shall also make recommendations, if any, on security standards or mitigation that should be adopted.

The bill (Eng. Com. Sub. for H. B. 2763), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2765**, Relating to allowing emergency management and operations' vehicles operated by airports to use red flashing warning lights.

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

The following amendment to the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

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

## **ARTICLE 1. WORDS AND PHRASES DEFINED.**

### **§17C-1-6. Authorized emergency vehicle.**

“Authorized emergency vehicle” means vehicles of a fire department, duly chartered rescue squad, police department, ambulance service, hospital police department, state, county, or municipal agency, and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, ~~and~~ Class A vehicles of members of duly chartered rescue squads, emergency management and operations vehicles operated by airports and designated pursuant to §17C-15-26 of this code, and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by §17A-10-1 of this code. Agency authorization and emergency equipment are provided in §17C-15-26 of this code. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles.

## **ARTICLE 15. EQUIPMENT.**

### **§17C-15-26. Special restrictions on lamps.**

(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front-direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which

the vehicle stands at a distance of more than 75 feet from the vehicle.

(b) No person may drive or move any vehicle or equipment upon any highway with any lamp or device on the vehicle displaying other than a white or amber light visible from directly in front of the center of the vehicle except as authorized by §17C-15-26(d) of this code.

(c) Except as authorized in §17C-15-26(d) and 17C-15-26(g) of this code and authorized in §17C-15-19 of this code, flashing lights are prohibited on motor vehicles: *Provided*, That any vehicle as a means for indicating right or left turn or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by §17C-15-19 of this code, red flashing warning lights are restricted to the following:

(A) Ambulances;

(B) Fire-fighting vehicles;

(C) Hazardous material response vehicles;

(D) Industrial fire brigade vehicles;

(E) Rescue squad vehicles not operating out of a fire department;

(F) School buses;

(G) Class A vehicles, as defined by §17A-10-1 *et seq.* of this code, of those firefighters who are authorized by their fire chiefs to have the lights;

(H) Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;

(I) Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(J) Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services, or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(K) West Virginia Department of Agriculture emergency response vehicles;

(L) Vehicles designated by the Secretary of the ~~Department of Military Affairs and Public Safety~~ Department of Homeland Security for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management; ~~and~~

(M) Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the ~~Department of Military Affairs and Public Safety~~ Department of Homeland Security and the county commission of the county of residence; and

(N) Emergency management and operations vehicles operated by airports.

Red flashing warning lights attached to a Class A vehicle may be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services, or chartered rescue squads.

(3) The use of red flashing warning lights is authorized as follows:

(A) Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall be designated by the fire chief and the State Fire Marshal's Office.

(C) Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the chief of the fire department and the State Fire Marshal's Office.

(D) Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.

(E) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(F) Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the state Fire Marshal's office.

(G) Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the Department of Health and Human Resources, and the sheriff of the county of residence.

(H) Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence, and the Department of Health and Human Resources.

(I) Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire

department, ambulance services, or duly chartered rescue squads shall be designated by their respective chiefs.

(J) Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.

(K) Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the ~~Department of Military Affairs and Public Safety~~ Department of Homeland Security.

(L) Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the ~~Department of Military Affairs and Public Safety~~ Department of Homeland Security and the county commission of the county of residence.

(M) Authorization for emergency management and operations vehicles operated by airports shall be designated by the airport director and the Secretary of the Department of Homeland Security.

(4) Yellow or amber flashing warning lights are restricted to the following:

(A) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by §17C-15-27 of this code;

(B) Postal service vehicles and rural mail carriers, as authorized in §17C-15-19 of this code;

(C) Rural newspaper delivery vehicles;

(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment;

(H) School buses; and

(I) Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department, or by an industrial fire brigade.

(5) The use of yellow or amber flashing warning lights shall be authorized as follows:

(A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, and postal service vehicles shall be designated by the sheriff of the county of residence.

(B) Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.

(C) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(D) Authorization for automotive fire apparatus shall be designated by the fire chief in conformity with the NFPA 1901 Standard for Automotive Fire Apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the state Fire Commission by legislative rule (87 CSR 1, *et seq.*), except as follows:

(i) With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard; and

(ii) Automotive fire apparatus may be equipped with blinking or flashing headlamps.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or Federal Transit Administration for the purpose of providing general public transportation or hauling solid waste may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in §17C-6-11 of this code may be equipped with yellow or amber flashing warning lights.

(g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.

The bill (Eng. Com. Sub. for H. B. 2765), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2785**, Relating to public school enrollment for students from out of state.

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

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

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

**ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.****§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.**

~~(a) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student continues to be enrolled in a school system after the sixteenth birthday~~ Compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a full-time publicly funded kindergarten program, and continues to the 17th birthday or for as long as the student continues to be enrolled in a school system after the 17th birthday.

(1) A child may be removed from such kindergarten program when the ~~principal, teacher and parent or guardian concur~~ determines that the best interest of the child would not be served by requiring further attendance. ~~Provided, That the principal shall make the final determination with regard to compulsory school attendance in a publicly supported kindergarten program.~~

(2) The compulsory school attendance provision of this article shall be enforced against a person 18 years of age or older for as long as the person continues to be enrolled in a school system and may not be enforced against the parent, guardian, or custodian of the person.

~~(3) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday or for as long as the student continues to be enrolled in a school system after the seventeenth birthday: Provided, That beginning in the school year~~

~~2019-2020, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program.~~

~~(b) Attendance at a state-approved or Montessori kindergarten, as provided in §18-5-18 of this code, is deemed school attendance for purposes of this section. Prior to entrance into the first grade in accordance §18-2-5 of this code, each child must have either:~~

~~(1) Successfully completed such publicly or privately supported, state approved kindergarten program, or Montessori kindergarten program; or~~

~~(2) Successfully completed an entrance test of basic readiness skills approved by the county in which the school is located. The test may be administered in lieu of kindergarten attendance only under extraordinary circumstances to be determined by the county board.~~

(b) A parent, as defined in §18-31-2 of this code, shall have the option, prior to enrolling in a publicly supported kindergarten program, to apply for a Hope Scholarship on behalf of his or her child as set forth in §18-31-1 et seq. of this code. Every year thereafter, a parent shall have the option to renew his or her child's enrollment in the Hope Scholarship Program pursuant to §18-31-8 of this code.

(c) Attendance at a state-approved, nonpublic kindergarten program, including a Montessori kindergarten program as provided in §18-5-18 of this code, homeschool kindergarten program, Hope Scholarship kindergarten program, or private, parochial, or church kindergarten program recognized under §18-8-1(k) of this code is deemed school attendance for the purposes of this section. Students entering the public school system after such kindergarten program shall be placed in the developmentally and academically appropriate grade level.

(d) ~~Notwithstanding the provisions of this section section five, article two of this chapter and section eighteen, article five of this chapter and §18-5-18 of this code,~~ a county board may provide for advanced entrance or placement under policies adopted by said board for any child who has demonstrated sufficient mental and physical competency for such entrance or placement.

(e) ~~This section does not prevent a~~ A student from another state, or who is eligible to enroll in a public school in this state, from enrolling in the shall be enrolled in the same grade in a public school in West Virginia as the student was enrolled at the school from which the student transferred. A transcript or other credential provided pursuant to §18-8-12 of this code shall be accepted by a public school in this state as a record of a student's previous academic performance for the purposes of placement and credit assignment.

The bill (Eng. Com. Sub. for H. B. 2785), as amended, was then ordered to third reading.

**Eng. House Bill 2791**, Relating to enrollment and costs of homeschooled or private school students at vocational schools.

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

**Eng. Com. Sub. for House Bill 2877**, Expand direct health care agreements beyond primary care to include more medical care services.

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

**Eng. House Bill 2906**, Relating to the School Building Authority's allocation of money.

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

**Eng. House Bill 2915**, Relating to public records management and preservation.

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

**Eng. Com. Sub. for House Bill 2916**, Creating the Semiquincentennial Commission for the celebration of the 250th anniversary of the founding of the United States of America.

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

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

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

**ARTICLE 13A. WEST VIRGINIA SEMIQUINCENTENNIAL COMMISSION AND FUND.**

**§4-13A-1. Findings; West Virginia Semiquincentennial Commission established; purpose.**

(a) The Legislature finds that the 250th anniversary of our nation's founding is of such historical significance as to warrant its commemoration.

(b) There is hereby created the West Virginia Semiquincentennial Commission.

(c) The purpose of the commission is to prepare for and commemorate the semiquincentennial of our nation's founding.

**§4-13A-2. Membership; terms; filling vacancies; election of chair and vice chair.**

(a) The Governor shall appoint 10 members as follows:

(1) Three academic historians;

(2) Five citizens members, no more than one of whom may be from any one state senatorial district;

(3) A member of the National Society of the Sons of the American Revolution;

(4) A member of the National Society of the Daughters of the American Revolution;

(b) The following shall serve as ex-officio voting members;

(5) The State Superintendent of Schools, or a designee;

(6) The Cabinet Secretary of Commerce, or a designee;

(7) The Curator of the Department of Arts, Culture, and History, or a designee;

(8) The Commissioner of the Division of Tourism, or a designee;

(9) The Executive Director of the Herbert Henderson Minority Affairs Office, or a designee;

(10) The West Virginia State Archivist;

(11) The Director of the West Virginia State Museums;

(12) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates, who shall serve as an ex officio nonvoting member of the commission; and

(13) One member of the State Senate, to be appointed by the President of the Senate, who shall serve as an ex officio nonvoting member of the commission;

(14) Members of the United States Senate from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(15) Members of the United States House of Representatives from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(c) All appointed members shall serve at the will and pleasure of the Governor;

(d) Appointments to fill vacancies shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

(e) The curator of the West Virginia Department of Arts, Culture and History shall serve as the chair of the commission. The commission shall elect a vice chair and secretary from among its members.

#### **§4-13A-3. Expense reimbursement.**

(a) Members shall serve without compensation.

(b) The commission may reimburse members for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a commission member, in a manner consistent with the guidelines of the travel management office of the Department of Administration, subject to availability of funds received pursuant to §4-13A-6(a)(1). No provision of this section may be construed to require any appropriation of funds by the Legislature.

#### **§4-13A-4. Quorum; meetings.**

(a) A simple majority of the members serving on the board at a given time constitutes a quorum for the transaction of business.

(b) Meetings shall be held in accordance with the provisions of §6-9A-1 *et seq.*, of this code.

**§4-13A-5. Advisory council.**

The commission may establish an advisory council composed of citizens at large who have knowledge of American history and interest in its semiquincentennial celebration to assist the commission in its work.

**§4-13A-6. Powers; duties; limitation on duration of contracts.**

(a) The commission may:

(1) Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or personal property for the purpose of aiding or facilitating the work of the commission, upon compliance with the provisions of §12-2-2 of this code;

(2) Procure supplies, services, and property and make or enter into contracts, leases, or other legal agreement as necessary to carry out its duties: *Provided*, That no contract, lease or other legal agreement may be entered into by the commission with terms which would extend beyond the termination date of the commission;

(3) Plan, develop and carry out programs and activities appropriate to commemorate the semiquincentennial of the founding of our nation;

(4) Encourage civic, historical, educational, economic, and other organizations throughout West Virginia to organize and participate in activities to expand the understanding and appreciation of the United States of America;

(5) Provide technical assistance to localities and nonprofit organizations to further the commemoration of the semiquincentennial of the founding of our nation;

(6) Develop programs and facilities to ensure that the semiquincentennial commemoration of the founding of our nation results in a positive legacy and long-term public benefit; and

(7) Encourage the development and conduct of programs designed to involve all citizens in activities that commemorate the semiquincentennial of the founding of our nation.

(b) The commission shall report to the Legislature at each regular session and at the same time report to the Governor concerning the action taken by the commission during the previous year in carrying out the provisions of this article and make such special reports as may be required by the Legislature and Governor.

**§4-13A-7. Termination of the commission.**

The commission shall terminate on June 30, 2027.

The bill (Eng. Com. Sub. for H. B. 2916), as amended, was then ordered to third reading.

**Eng. House Bill 2957**, Relating to the repeal of outdated code sections.

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

**Eng. House Bill 2958**, Relating to repealing outdated sections of state code.

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

**Eng. House Bill 3045**, Relating to firefighter disability claims.

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

The Senate proceeded to the tenth order of business.

**Com. Sub. for Senate Bill 125**, Budget Bill.

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

**Senate Bill 490**, Supplemental appropriation from General Revenue to Department of Veterans' Assistance.

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

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

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

The nays were: None.

Absent: Woodrum—1.

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

Engrossed Senate Bill 490 was then read a third time and put upon its passage.

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

The nays were: None.

Absent: Woodrum—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 490) passed with its title.

Senator Takubo moved that the bill take effect from passage.

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

The nays were: None.

Absent: Woodrum—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 490) takes effect from passage.

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

**Eng. Com. Sub. for House Bill 2005**, Relating to health care costs.

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

**Eng. Com. Sub. for House Bill 2093**, Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes.

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

**Eng. House Bill 2379**, Make criminal invasion of privacy a felony.

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

**Eng. Com. Sub. for House Bill 2760**, Relating to economic development incentive tax credits.

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

**Eng. House Bill 2768**, Supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways.

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

**Eng. Com. Sub. for House Bill 2769**, Supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles.

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

**Eng. Com. Sub. for House Bill 2770**, Including home confinement officers in definition of law-enforcement officers.

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

**Eng. House Bill 2790**, Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways.

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

**Eng. Com. Sub. for House Bill 2823**, Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code.

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

**Eng. House Bill 2829**, Providing for the amortization of annual funding deficiencies for municipal police or firefighter pension and relief funds.

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

**Eng. House Bill 3130**, Relating to elimination of sunset provisions concerning towing rates.

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

**Eng. House Bill 3175**, Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license.

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

**Eng. House Bill 3191**, Requiring employers to send certain notifications when retirants are hired as temporary, part-time employees.

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

**Eng. House Bill 3298**, Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund.

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

**Eng. House Bill 3300**, Relating to reducing personal income tax rates generally.

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

**Eng. Com. Sub. for House Joint Resolution 1**, Education Accountability Amendment.

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

**Eng. House Joint Resolution 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

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

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Tarr.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolution on April 1, 2021:

**Senate Resolution 36:** Senators Stollings and Lindsay.

On motion of Senator Takubo, at 11 a.m., the Senate adjourned until Monday, April 5, 2021, at 10 a.m.

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## MONDAY, APRIL 5, 2021

The Senate met at 10:02 a.m.

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

Prayer was offered by Tom Saunders, Senate Assistant Doorkeeper, Dunbar, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Stephen Baldwin, a senator from the tenth district.

Pending the reading of the Journal of Friday, April 2, 2021,

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

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

The Senate then proceeded to the third order of business.

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

**Eng. Com. Sub. for Senate Bill 80**, Allowing for administration of certain small estates by affidavit and without appointment of personal representative.

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

**Eng. Com. Sub. for Senate Bill 81**, Relating generally to WV Uniform Trust Code.

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

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

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

**Eng. Senate Bill 374**, Increasing threshold for bid requirement to \$10,000 to be consistent with other state agencies.

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

**Eng. Com. Sub. for Senate Bill 389**, Relating to State Resiliency Office responsibility to plan for emergency and disaster response, recovery, and resiliency.

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

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Com. Sub. for Senate Bill 389**—A Bill to amend and reenact §29-31-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that State Resiliency Office is responsible to plan for emergency and disaster response, recovery, and resiliency; clarifying that the State Resiliency Officer is a member of the State Resiliency Office Board; placing Secretary of the Department of Health and Human Resources on board; requiring that the President of the Senate appoint two nonvoting members, one from each party, to the board; requiring the Speaker of the House of Delegates appoint two nonvoting members, one from each party, to the board; requiring that State Resiliency Officer vote only in the event of a tie vote of board; requiring that board elect a vice chair from its membership; establishing duties and responsibilities of the vice chair; and eliminating notice requirement for board meetings.

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

Engrossed Committee Substitute for Senate Bill 389, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: Romano—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 389) passed with its House of Delegates amended title.

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

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

**Eng. Com. Sub. Senate Bill 421**, Authorizing Workforce West Virginia to hire at-will employees.

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

**Eng. Com. Sub. for Senate Bill 429**, Exempting Division of Emergency Management from Purchasing Division requirements for certain contracts.

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

**Eng. Senate Bill 463**, Consolidating position of Inspector General of former Workers' Compensation Fraud and Abuse Unit and position of Director of Insurance Fraud Unit.

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

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

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

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

On page 9, section 3, line 66, by striking the period, inserting a comma and "a professional who works in the profession, a board member who regulates the profession, and any other interested party."; and

On page 11, section 4, line 4 after the word "regulation" by inserting "a professional who works in the field, a board member who regulates the profession.".

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

Engrossed Committee Substitute for Senate Bill 472, as amended by the House of Delegates, was then put upon its passage.

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

The nays were: None.

Absent: Romano—1.

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

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

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

**Eng. Com. Sub. for Senate Bill 587**, Making contract consummation with state more efficient.

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

**Eng. Senate Bill 693**, Updating certain definitions and terms used in WV Personal Income Tax Act.

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

**Eng. Com. Sub. for House Bill 2022**—A Bill making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

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

The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 5th day of April, 2021, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for H. B. 2024)**, Expand use of telemedicine to all medical personnel.

**(Com. Sub. for H. B. 2026)**, Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce.

**(Com. Sub. for H. B. 2260)**, Relating to procurement of child placing services.

And,

**(Com. Sub. for H. B. 2263)**, Update the regulation of pharmacy benefit managers.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2002**, Relating to Broadband.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

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

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2507**, Remove the limitations on advertising and promotional activities by limited video lottery retailers.

And has amended same.

And,

**Eng. House Bill 2830**, Relating generally to sex trafficking.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bill was introduced, read by its title, and referred to the appropriate committee:

**By Senators Blair (Mr. President) and Baldwin (By Request of the Executive):**

**Senate Bill 722**—A Bill expiring funds to the balance of the Department of Transportation, State Rail Authority - West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2021, organization 0804, in the amount of \$750,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2021, organization 0704, and making a supplementary appropriation of public moneys out of the Treasury for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

Senators Nelson and Roberts offered the following resolution:

**Senate Concurrent Resolution 61**—Requesting the Joint Committee on Government and Finance study the feasibility of consolidating county boards of education to provide efficiencies and direct cost savings which may be used to increase spending per pupil and teacher salaries.

Whereas, West Virginia's educational system consists of 55 separate county boards of education. Each county board has its own organizational structure and is responsible for multiple administrative functions, including finance, transportation, facilities maintenance, personnel, and technology; and

Whereas, From the 2013-2014 to the 2020-2021 school years, West Virginia's K-12 enrollment has declined approximately 10 percent, from 281,013 to 252,357 students; and

Whereas, If these population trends continue on their current trajectory, the student population will continue to decrease, along with the funding associated with their attendance. As such, plans must be laid to increase efficiency in the systems that currently serve West Virginia students. In order for West Virginia students to thrive, they must have the resources to do so. By eliminating unnecessary duplication of services by combining county boards of

education, districts will free up resources that can more directly benefit students and teachers; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance undertake a study the feasibility of consolidating county boards of education to provide efficiencies and direct cost savings which may be used to increase spending per pupil and teacher salaries; and, be it

*Further Resolved,* That the study include the appropriateness and feasibility of consolidating school boards over a span of three to seven years; and, be it

*Further Resolved,* That the study include examining the feasibility of combining each consolidated county's school board into one regional school board through the following method: At the initial consolidation of the county boards, each county could retain all five board members, who would remain a part of the combined board; at the next general election, each county could elect only four board members; and in the subsequent general elections, the counties could reduce their board membership by one seat per county per general election until the school board is reduced to a more appropriate number of members; and, be it

*Further Resolved,* That the study include an examination of the creation of an Office of Superintendents that would include county superintendents from all of the consolidated counties; and the superintendents nominating one superintendent who, with the appropriate approval of the board, would lead the office and be designated the regional superintendent; and, be it

*Further Resolved,* That the study examine potential financial incentives to aid in the consolidation process, provide additional funding for maintenance budgets and new school improvements, provide for increased compensation or per diem for existing board members and administrators; and, be it

*Further Resolved*, That the study include the economic effects of county board consolidation, including the proposed savings that could be redirected to increase per-pupil spending and supplemental pay to teachers; and, be it

*Further Resolved*, That the study specifically include examining the feasibility of a pilot project that would combine Kanawha, Boone, Clay, and Putnam county boards of education; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation or resolutions 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 the legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senator Woodrum offered the following resolution:

**Senate Resolution 40**—Recognizing and commemorating the 150th anniversary of the founding of Summers County, West Virginia.

Whereas, Summers County is located in the southeastern region of West Virginia, scenically placed between the beautiful Greenbrier and New River valleys; and

Whereas, The City of Hinton serves as the county seat and is the sole municipality within Summers County; and

Whereas, The railroad boom of the early 20th century helped to build Hinton and Summers County, however, the county's current economy is based primarily on tourism, thanks to the

Bluestone Dam and Lake along with the Bluestone, Greenbrier, and New rivers which converge in Hinton; and

Whereas, Further, the New River Gorge National River begins at Hinton and flows northward into neighboring Fayette County; and

Whereas, Summers County is also home to Bluestone State Park, Pipestem Resort, and a number of other facilities that provide lodging, camping, and a variety of recreational activities; and

Whereas, The Hinton Railroad Museum, the Graham House, the Campbell Flanagan Murrell House, and other museums provide glimpses into the county's history; and

Whereas, The architecture of buildings in Hinton's nationally-registered historic district is of interest to many, and a solid core of retail stores and professional service providers meet the needs of residents and visitors alike; and

Whereas, Residents of Summers County enjoy a wonderful small town, laid back quality of life, and service clubs such as the Kiwanis, Lions, Rotary, and Ruritans support a number of community initiatives, school programs, and special events; and

Whereas, The Summers County Library supports the county school system and provides visitors with internet access and other services, while several denominations of churches meet the Summers County community's spiritual needs; and

Whereas, Summers County is served east-west by Interstate 64 and by north and south connections to Interstate 77, and the New River Parkway, when completed, will improve access to Sandstone Falls by upgrading River Road from I-64 near Exit 139 Sandstone into Hinton; and

Whereas, West Virginia Routes 3, 12, 19, 20, and 107 are the primary highways within the county, and Amtrak also provides an important transportation link to Summers County with its Cardinal line from New York to Washington DC to Chicago, and stops are

made three times per week to pick up and disembark passengers at Hinton's historic Rail Depot; and

Whereas, Summers County's elected officials and its employees are dedicated to making the county the best possible place to live, work, and visit that it can be; and

Whereas, All of these achievements are appropriate to be recognized for such an important county in West Virginia; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the 150th anniversary of Summers County, West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Summers County Commission and the New River Gateway Convention and Visitor's Bureau.

Which, under the rules, lies over one day.

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the fourth order of business.

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Concurrent Resolution 62** (originating in the Committee on Education)—Requesting the Joint Committee on Government and Finance study the possible incentives and rewards to be given to counties who show academic growth and success on a consistent basis.

Whereas, Success in academic performance across the state can be varied and inconsistent; and

Whereas, Flexibilities and incentives could incentivize counties to perform at a higher and more consistent rate and give counties a clear goal for improving their performance overall; and

Whereas, A study by the Michigan State University found that incentives are an effective means of improving student achievement, specifically those that are linked to student performances in the classroom; and

Whereas, A study from the University of Chicago found that non-financial rewards for student achievement were more effective in improving performance than financial rewards overall; and

Whereas, There are many ways to possibly incentivize a county to improve performances beyond giving financial incentives, such as recognitions, rewards, or extended privileges; therefore, be it

*Resolved by the Legislature of West Virginia:*

Requesting the Joint Committee on Government and Finance study the possible incentives and rewards to be given to counties who show academic growth and success on a consistent basis; and, be it

*Further Resolved*, that the study survey the counties to gain an insight into what kinds of flexibilities, streamlining or other means which may incentivize and reward positive academic outcomes; and, be it

*Further Resolved*, that the Joint Committee on Government and Finance consider all possible incentives for counties beyond financial incentives, such as rewards, recognitions, or expanded privileges; and, be it

*Further Resolved*, that the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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 the legislative appropriations to the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 62) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

**Com. Sub. for Senate Concurrent Resolution 45**, Dennis E. Davis Veterans Nursing Home.

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

The question being on the adoption of the resolution, and on this question, Senator Roberts demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. C. R. 45) adopted.

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

**Senate Resolution 38**, Recognizing Ben Ferrell on his achievements in archery.

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

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

**Senate Resolution 39**, Congratulating Miss Pre-Teen USA, 2020, Tiarah Thompson, on her achievements.

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

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

The Senate proceeded to the eighth order of business.

**Eng. House Bill 2028**, Exempting veterinarians from the requirements of controlled substance monitoring.

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

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr,

Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Baldwin, Ihlenfeld, Lindsay, and Romano—4.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2028) passed with its title.

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

**Eng. House Bill 2366**, Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2366) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2427**, Authorizing the Department of Health and Human Resources to promulgate legislative rules.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2427) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2427**—A Bill to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; directing the promulgation of a current legislative rule with amendments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to behavioral health centers licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospital licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to nursing home licensure; directing the Department of Health and

Human Resources to promulgate a legislative rule relating to food establishments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to lead abatement licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to client rights at state-operated mental health facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to delegation of medication administration and health maintenance tasks to approved medication assistive personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to diabetes self-management education; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia clearance for access, registry, and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to a recovery residence certification and accreditation program; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child placing agencies licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the procedure to contest the substantiation of child abuse or neglect; and authorizing the Health Care Authority to promulgate a legislative rule relating to exemption from certificate of need.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover,

Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2427) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2529**, Prohibiting West Virginia institutions of higher education from discriminating against graduates of private, nonpublic or home schools by requiring them to submit to alternative testing.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2529 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2529) passed.

The following amendment to the title of the bill, from the Committee on Education, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2529**—A Bill to amend and reenact §18-8-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-1-1e of said code, all relating to allowing an institution, once a student has been fully admitted, to administer placement tests or other assessments for certain purposes; prohibiting state institutions of higher education from discriminating against graduates of private, nonpublic, or home schools by requiring them to submit to alternative testing as a precondition for acceptance into the institution of higher education; and prohibiting institutions of higher education from rejecting a person with appropriate diploma or credentialing for admission to an institution of higher education solely because their secondary education was not accredited by the state Board of Education or agency the board approves.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2633**, Creating the 2021 Farm Bill.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on Friday, April 2, 2021, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 1. DEPARTMENT OF AGRICULTURE.****§19-1-2. Commissioner of Agriculture.**

The commissioner of agriculture shall be elected by the qualified voters of the state at the same time and in the same manner as other state officers are elected, and shall hold office for a term of four years and until his or her successor is elected and qualified.

~~The commissioner shall be a practical farmer, learned in the science of agriculture, and shall have made agriculture his chief business for a period of ten years immediately preceding his election.~~

**§19-1-3a. Marketing and Development Division; economic development duties.**

~~(a) The duties of the Marketing and Development Division are to~~ department shall establish marketing, promotional, and economic development programs to advance West Virginia agriculture in the domestic and international markets; ~~to~~ provide grading, inspection, and market news services to the various elements of the West Virginia agricultural industry; and ~~to~~ regulate and license individuals involved in the marketing of agricultural products. Upon request of the commissioner, the Department of Economic Development may coordinate with the Department of Agriculture in the development of such programs.

(b) Any documentary material, data, or other writing made or received by the department in furtherance of its economic development duties and for the purpose of furnishing assistance to a new or existing business shall be exempt from the provisions of §29B-1-1 et seq. of this code.

**§19-1-7. Shared animal ownership agreement to consume raw milk.**

(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:

(1) Acquires a percentage ownership interest in a milk-producing animal;

(2) Agrees to pay another for the percentage ownership interest for the care and boarding of the milk-producing animal at the dairy farm;

(3) Is entitled to receive a fair share of the animal's raw milk production as a condition of the contractual agreement;

(4) Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella, and E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women, and those with compromised immunity. The responsible party then agrees to release the herd seller of liability for the inherent dangers of consuming raw milk but not for those dangers that are caused by negligent acts or omissions of the herd seller; and

(5) Agrees not to distribute raw milk. The sale or resale of raw milk obtained from a herd share is strictly prohibited.

(b) The signed and executed shared animal ownership agreement shall be filed by the herd seller with the Commissioner of Agriculture and shall contain the names, addresses, and phone numbers of the herd seller and the responsible party so that either party may be contacted in the event of an illness.

(c) The herd seller shall meet the animal health requirements for milk-producing animals established by the state veterinarian in accordance with state and national standards including the following:

(1) Raw milk from milk-producing animals intended for consumption shall be from a herd that tested negative within the previous 12 months for brucellosis, tuberculosis, and other diseases as required by the state veterinarian. Additions to the herd shall test negative for the diseases within the previous 30 days before introduction into the herd; and

(2) Milk-producing animals producing bloody, stringy, or abnormal milk, but with only slight inflammation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.

(d) Parties to a shared animal ownership agreement and physicians who become aware of an illness directly related to consuming raw milk shall report the illness to the local health department and the Commissioner of Agriculture. Upon receipt of such a report, the Commissioner of Agriculture or his or her designee shall contact and warn other parties consuming raw milk from the same herd seller.

(e) The Commissioner of Agriculture may impose an administrative penalty not to exceed \$100 for a person who violates the provisions of this section. Any penalty imposed under this subsection may be contested by the person against whom it is imposed pursuant to §29A-5-1 *et seq.* of this code.

(f) The Commissioner of Agriculture, in consultation with the Department of Health and Human Resources, may propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code in compliance with raw milk dairy industry standards.

(g) Notwithstanding any provision of code to the contrary, raw milk may be sold without the parties entering into a written shared animal ownership agreement if the raw milk is to be used:

(1) As an ingredient in the preparation or making of a nonedible product, such as a soap or lotion; or

(2) As feed for another animal: *Provided*, That the sale of raw milk to be used as animal feed is subject to the provisions of §19-14-1 *et seq.* of this code.

**ARTICLE 1C. CARE OF LIVESTOCK.****§19-1C-2. Definitions.**

For the purposes of this article:

(1) “Board” means the Livestock Care Standards Board.

(2) “Commissioner” means the Commissioner of Agriculture.

(3) “Department” means the West Virginia Department of Agriculture.

(4) “Livestock” has the same definition as set out in §19-10B-2(d) of this code.

**§19-1C-3. Livestock Care Standards Board.**

(a) On July 1, 2010, there is hereby created the Livestock Care Standards Board.

~~(b) Prior to July 1, 2010, the Governor shall appoint, by and with the advice and consent of the Senate, the following eleven members:~~

~~(1) One member who is a veterinarian licensed in this state engaging in large animal practice, for a term of two years;~~

~~(2) The dean of the agriculture department of a college or university located in this state, for a term of three years;~~

~~(3) One member representing a county humane society that is organized under state law, for a term of four years;~~

~~(4) One member who is knowledgeable about food safety in this state, for a term of five years;~~

~~(5) Two members of the public representing West Virginia consumers, one for a term of two years and one for a term of four years;~~

~~(6) Two members representing state agricultural organizations that represent farmers, one of whom must be a member of the largest organization in the state representing farmers for a term of three years, and the other must be a member of a statewide livestock organization, for a term of five years; and~~

~~(7) Three members representing family farms engaged in animal production, at least two of whom are family farmers, for the following terms: one for three years, one for four years and one for five years.~~

~~(c) After the initial appointment terms, the appointment term is five years. Appointed members may be reappointed for additional terms.~~

~~(d) (b) Commencing July 1, 2010 2021, the board consists of the following 13 members, to be appointed by the Governor, by and with the consent of the Senate:~~

(1) The Commissioner of the Department of Agriculture or his or her designee, ex officio non-voting, who is the chairperson of the board;

(2) The ~~Director of the Animal Health Division~~ State Veterinarian, ex officio non-voting;

(3) One member who is a veterinarian licensed in this state engaging in large animal practice;

(4) The dean of the agriculture department of a college or university located in this state;

(5) One member representing a county humane society that is organized under state law;

(6) One member who is knowledgeable about food safety in this state;

(7) Two members ~~of the public representing West Virginia consumers~~ who are law-enforcement officers: *Provided, That one*

member shall be appointed for an initial term of two years, and the other shall be appointed for an initial term of five years;

~~(8) Two members representing state agricultural organizations that represent farmers, one of whom must be a member of the largest organization in the state representing farmers, and the other must be a member of a statewide livestock organization; and One member selected from a list of three individuals submitted from the largest statewide poultry organization;~~

(9) One member selected from a list of three individuals submitted by the largest statewide livestock organization; and

(10) Three members representing family farms engaged in animal production, at least two of whom are family farmers, selected from a list of 10 individuals submitted by the largest organization in the state representing farmers.

(c) After the initial appointment terms, the appointment term is five years. Appointed members may be reappointed for additional terms.

~~(e) (d) All members must be residents of this state during their terms. No more than seven members of the board may be of the same political party and no more than five may be from the same congressional district at any given time.~~

~~(f) (e) All appointed members serve until their successor has been appointed and qualified. Vacancies shall be filled in the same manner as the original appointment for the remainder of the unexpired term.~~

#### **§19-1C-4. Powers and duties of the board.**

(a) The board has the following powers and duties to:

(1) Establish standards governing the care and well-being of livestock;

(2) Maintain food safety;

- (3) Encourage locally grown and raised food; and
- (4) Protect West Virginia farms and families.

(b) The commissioner, in consultation with the board, is ~~also~~ authorized to establish standards by legislative rule, pursuant to the provisions of §29A-3-1 *et seq.* of this code, governing the care and well-being of livestock in this state, including:

(1) The agricultural best management practices for the care and well-being of livestock and poultry in this state;

(2) Procedures for addressing complaints regarding the inhumane treatment of livestock and coordinating efforts with county humane officers: *Provided, That documents and communication regarding any investigation thereof, are considered confidential and are exempt from disclosure pursuant to §29B-1-1 et seq. of this code;*

(3) Biosecurity, disease prevention, animal morbidity, and mortality data;

(4) Food safety practices; and

(5) The protection of local, affordable food supplies for consumers.

(c) ~~The Department of Agriculture shall administer and enforce the standards established by the board that are approved by the Legislature.~~ The board shall review any rule proposed by the commissioner for legislative approval pursuant to this section. After reviewing the proposed legislative rule, the board may provide a recommendation to the Legislative Rule-Making Review Committee that the Legislature:

(1) Authorize the promulgation of the legislative rule;

(2) Authorize the promulgation of part of the legislative rule;

(3) Authorize the promulgation of the legislative rule with certain amendments;

(4) Recommend that the proposed rule be withdrawn; or

(5) Reject the proposed rule.

#### **§19-1C-6. Meetings of the board.**

(a) The board shall meet at least annually, and the ~~chairperson~~ commissioner may call additional meetings of the board upon the written request of three members.

(b) The commissioner, on behalf of the board, may file an annual report with the Joint Committee on Government and Finance that contains information about the activities of the board and department for the prior year concerning livestock care standards; *Provided*; That after December 31, 2025, no reports filed on behalf the board may be filed with the Joint Committee on Government and Finance.

#### **§19-1C-7. Enforcement of livestock care standards.**

(a) The commissioner shall administer and enforce the standards established pursuant to this article. This authority may include, but is not limited to:

(1) Coordinating with and providing assistance to law-enforcement officers;

(2) Assisting law-enforcement officers with investigations and other actions taken in response to complaints regarding the care of livestock;

(3) Working with county, municipal, and state authorities to address situations in which a livestock care complaint needs to be reassigned due to a conflict of interest;

(4) Providing training for law-enforcement officers on the livestock care standards and proper animal handling techniques; and

(5) Providing opinions to law-enforcement officers, when such opinions are requested, regarding the application of livestock care standards promulgated pursuant to this article.

(b) State, county, and local law-enforcement officers shall notify the commissioner of all complaints and investigations concerning care of livestock, and may seek the advice and opinion of the commissioner regarding application of the livestock care standards in those cases.

(c) No later than September 1, 2021, the commissioner shall notify state, county, and local law-enforcement officers of the changes made to this article of code during the 2021 Regular Legislative Session.

## **ARTICLE 9A. FEEDING OF UNTREATED GARBAGE TO SWINE.**

### **§19-9A-2. Permit required for feeding garbage to swine; renewal; fee; exception.**

(a) No person shall feed garbage to swine without first securing a permit to do so from the commissioner. Such permits shall be renewed annually. ~~The fee for obtaining such permit shall be \$5.~~

(b) This article shall not apply to any person who feeds only his own household garbage to swine which are raised for such person's own use.

## **ARTICLE 12A. LAND DIVISION.**

### **§19-12A-5. Powers, duties, and responsibilities of commissioner.**

(a) The commissioner shall manage all institutional farms, equipment, and other property ~~in order~~ to most efficiently produce

food products for state institutions, support the department and its activities, advance the agricultural interests of the state, as identified by the commissioner, and otherwise implement the intent of the Legislature as set forth by this article. From the total amount of food, milk, and other commodities produced on institutional farms, the commissioner shall sell, at prevailing wholesale prices, and each of the institutions under the control of the Department of Health and Human Resources and Division of Corrections and Rehabilitation shall purchase, these products based on the dietary needs of each institution: *Provided*, That if the commissioner cannot sell sufficient food products to each institution to meet the demand created, each institution may purchase such food products from vendors who can supply those food products at the greatest savings to the taxpayers of the state.

(b) If requested by the Commissioner of the Division of Corrections and Rehabilitation, the commissioner may authorize the Division of Corrections and Rehabilitation to operate a farm or other enterprise using inmates as labor on those lands. The Commissioner of the Division of Corrections and Rehabilitation is responsible for the selection, direction, and supervision of the inmates and shall, in consultation with the Commissioner of Agriculture, assign the work to be performed by inmates. The Commissioner of Agriculture may also request inmate labor to perform work on the institutional farms, and if requested, the Commissioner of the Division of Corrections and Rehabilitation shall provide inmate labor, if available.

(c) The commissioner is hereby authorized and empowered to:

(1) Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes, any land, easements, equipment, or other property, except that property may not be leased for any use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the Commissioner of Agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained. ~~Any lease for an annual consideration of \$1,000 or more shall be by~~

~~sealed bid auction and the commission shall give notice of such auction by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for such publication is the county in which the property to be leased is located;~~

(2) Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-11-4 and §5A-11-5 of this code;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation, and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas, or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the Department of Environmental Protection will increase the beneficial use of such property. ~~Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) of this subsection; and~~

(4) Upon 30 days written notice to the lessee, cancel a lease to which the department is a party and which is for annual consideration of less than \$5 per acre: *Provided*, That such lease must contain a provision authorizing cancellation or impairment by the Legislature; and

(4) (5) Exercise all other powers and duties necessary to effectuate the purposes of this article.

(d) Notwithstanding the provisions of subsection (c) of this section, no timberland may be leased, sold, exchanged, or otherwise disposed of unless there is no commercially salable timber on the timberland, an inventory is provided, and an appraisal of the timber is provided, ~~and the sale, lease, exchange, or other disposition is accomplished by the sealed bid auction procedure provided above in subdivision (1) or (2), subsection (c) of this section as applicable.~~

(e) The commissioner may promulgate, pursuant to §29-1-1 *et seq.* of this code, rules and regulations relating to the powers and duties of the commissioner as enumerated in this section.

## **ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.**

### **§19-14-1. Title.**

This article shall be known as the “West Virginia Commercial Feed Law of 1991.”

### **§19-14-2. Definitions.**

(a) “Brand name” means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor, guarantor, or manufacturer and distinguishing it from all others.

(b) “Bulk” refers to commercial feed or feed ingredients distributed in nonpackaged form where a label cannot be attached and accompanied by an invoice or delivery slip.

(c) “Commercial feed” means all materials or combinations of materials which are distributed, or intended for distribution, for use as feed or for mixing in feed for animals, other than ~~man~~ humans, except: (1) Unmixed or unprocessed whole seeds when such whole or unprocessed seeds are not chemically changed or adulterated; (2) ~~unground~~ unprocessed hay, straw, stover, silage, cobs, husks, hulls, and raw meat when not mixed with other materials and when not adulterated; (3) individual chemical compounds when not mixed with other materials. The term commercial feed shall include the categories of feed ingredients, customer-formula feeds, pet foods and specialty pet foods.

(d) “Commissioner” refers to the commissioner of agriculture of the State of West Virginia or a duly authorized employee of the commissioner.

(e) “Contract feeder” means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract and the commercial feed is supplied, furnished, or provided to the independent contractor and such contractor’s remuneration is determined all or in part by feed consumption, mortality, profits, or the amount or quality of the product.

(f) “Customer-formula feed” means a commercial feed that consists of a mixture of commercial feed and/or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(g) “Distribute” means to offer for sale, sell, ~~expose for sale,~~ exchange, or barter commercial feed; or to supply, furnish, or provide commercial feed to a contract feeder.

(h) “Distributor” means any person who ~~sells, exposes for sale, offers for sale, exchanges, barter, gives, parcels out, allots, shares, or dispenses~~ distributes a commercial feed.

~~(i) “Domesticated animal” means any species of animal living and bred in a tame condition.~~

~~(j)~~ (i) “Drug” means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than ~~man~~ humans; and ~~substances, other than nutritive components,~~ any substance intended to affect the structure or any function of the animal body.

(j) “Feed” means any material consumed, or intended to be consumed, by animals other than humans, or any element of that material that contributes nutrition, taste, or aroma, or otherwise has a technical effect on the consumed material. The term “feed” includes raw materials, ingredients, and finished product.

(k) “Feed ingredient” means each constituent material making up ~~commercial~~ feed, including individual chemical compounds labeled for use as a feed ingredient.

(l) “Guarantor” means any person whose name appears on a label and who is therefore responsible for the product and its labeling.

~~(k)~~ (m) “Label” means a display of written, printed, or graphic matter printed upon or otherwise affixed to the container in which commercial feed is distributed; or printed upon or otherwise affixed to the invoice, delivery slip, or other shipping document which accompanies bulk shipments of commercial feed or customer-formula feed. All such labels shall be legible and in English.

~~(n)~~ (n) “Labeling” means and includes all labels as well as all other written, printed, or graphic matter, or advertising referencing such commercial feed found: (1) upon a commercial feed or any of its containers or wrappers, or (2) accompanying such commercial feed.

~~(o)~~ (o) “Manufacture” means to grind, mix, blend, package, pack, repackage, repack, or otherwise process a commercial feed for distribution.

~~(p)~~ (p) “Medicated feed” means any commercial feed which contains one or more drugs. Antibiotics included in a feed growth promotion and/or efficiency level are drug additives and feeds containing such antibiotics are included in the definition of “medicated feed”.

~~(q)~~ (q) “Mineral feed” means a commercial feed designed or intended to supply primarily mineral elements or inorganic nutrients.

~~(r)~~ (r) “Official sample” means any sample of commercial feed taken by the commissioner in accordance with the provisions of this article and rules promulgated hereunder.

~~(s)~~ (s) “Percent” or “percentage” means percentage by weights.

~~(s)~~ (t) “Person” means an individual, partnership, association, fiduciary, firm, company, corporation, or any organized group of persons whether incorporated or not.

~~(t)~~ (u) “Pet” means ~~any domesticated species of animal normally maintained in or near the household of the owner including, but not limited to, dogs, cats and specialty pets~~ dog (Canis familiaris) or cat (Felis catus).

~~(u)~~ (v) “Pet food” means any commercial feed manufactured and distributed for consumption by pets.

~~(v)~~ “Principal display panel” means the part of a label that is intended to be shown and examined when the product is on display for retail sale.

(w) “Process” means ~~any treatment that changes a feed ingredient so that it can no longer be restored to its previous form~~ a method used to prepare, treat, convert, or transform materials into feed or feed ingredients. The word “processed” can be used to further describe an ingredient name, so long as the ingredient is not nutritionally altered from the original form of the ingredient.

(x) “Product name” means the name of the commercial feed which identifies it, ~~such as: Species of animal, age group of animal, characterizing ingredients, specific use, or other descriptive terms~~ as to kind, class, or specific use and distinguishes it from all other products bearing the same brand name.

(y) “Quantity statement” means the net weight (mass), liquid measure, or count.

~~(y) “Registrant” means any person who registers commercial feed for distribution or use in this state.~~

(z) “Repack” or “repackaging” means to pack and label a previously manufactured and packaged commercial feed prior to a specific request of a customer.

(aa) “Specialty pet” means any ~~domesticated~~ pet animal normally maintained in a ~~cage or tank including, but not limited to,~~ household, such as gerbils, hamsters, rodents, ornamental birds, tropical fish, goldfish, snakes and turtles, reptiles, amphibians, ferrets, hedgehogs, marsupials, and rabbits not raised for food or fur.

(bb) “Specialty pet food” means any commercial feed ~~intended~~ prepared and distributed for consumption by specialty pets.

(cc) “Ton” means a net weight of two thousand pounds avoirdupois.

### **§19-14-3. Powers and duties of the commissioner.**

The commissioner has the power and authority to:

~~(a)~~ (1) Enter and inspect, during reasonable hours, any location where commercial ~~feeds are~~ feed is manufactured, distributed, transported, or used, and where records relating to the manufacture, distribution, shipment, labeling, or sale of commercial feed are kept. Such inspection ~~includes~~ may include, but is not limited to, examining, photographing, verifying, copying, and auditing records as is necessary to determine compliance with this article; and reviewing labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing, and sale of commercial feeds.

~~(b)~~ (2) Open, examine, sample, and test commercial feed, unmixed or unprocessed whole seeds, equipment, containers, transport containers, and packages used or intended to be used in the manufacture and distribution of commercial feeds.

~~(c)~~ (3) Issue permits and registrations pursuant to this article.

~~(d)~~ (4) Refuse, suspend, or revoke permits and registrations as provided in this article.

~~(e)~~ (5) Issue embargoes as provided in this article.

~~(f)~~ (6) Condemn and confiscate any product that is not brought into compliance with this article.

~~(g)~~ (7) Collect fees and penalties, and expend moneys under the terms of this article.

~~(h)~~ (8) Conduct sampling in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or other methods approved by the commissioner by rules.

~~(i)~~ (9) Conduct hearings as provided by this article.

~~(j)~~ (10) Assess civil penalties and refer violations to a court of competent jurisdiction.

~~(k)~~ (11) Obtain court orders directing any person refusing to submit to inspection, sampling, and auditing to submit.

~~(l)~~ (12) Establish and maintain feed testing facilities; establish reasonable fees for such tests; incur expenses; and conduct tests in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or other methods approved by the commissioner by rules.

~~(m)~~ (13) Be guided by the analytical results of the official sample when determining whether the commercial feed is deficient in any component.

~~(n)~~ (14) Report the analytical results on all official samples to the ~~registrant~~ guarantor and, in the case of deficient samples, also to the dealer and the purchaser, if known.

~~(o)~~ (15) Upon request made within 30 days from the date the official sample results are reported, furnish a portion of the official sample to the ~~registrant~~ guarantor.

~~(p) Publish and distribute annually a composite report containing: (1) The sales of commercial feeds and feed ingredients during the preceding period, (2) the results of the analysis of official samples as compared with the guarantee on the label, (3) firms responsible for the product, and (4) such other data the commissioner deems necessary: *Provided*, That the information on production and use so provided does not disclose the operations of any person.~~

~~(q) (16) To cooperate~~ Cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations ~~in order~~ to carry out the purpose and provisions of this article.

~~(r) (17) Promulgate~~ rules, in accordance with §29A-3-1 *et seq.* of this code, dealing with commercial feeds and enforcement of this article.

#### **§19-14-5. Permits; registration.**

(a) Permits and registrations shall not be transferrable with respect to persons or locations.

(b) A person must apply for a permit or registration at least ~~fifteen~~ 30 days prior to the expiration of the current permit or registration ~~expires~~; or at least ~~fifteen~~ 30 days prior to the date that the person intends to engage in the business of selling or marketing commercial feed products ~~or market products~~ in this state. All applications shall be accompanied by the required fee ~~established in this section~~. A penalty ~~of \$2~~ shall be added to the fee for all permits or registrations that are not applied for or renewed within the time limit.

(c) Persons manufacturing commercial feed or customer-formula feed in this state must obtain a Commercial Feed Manufacturing Permit from the commissioner, except ~~at~~ for persons manufacturing feed for only his/her animals on his/her premises, or those producing pet food. Application forms shall be

provided by the commissioner and include such information as established by rules. A separate permit shall be obtained for each manufacturing facility or location in this state. Each Commercial Feed Manufacturing Permit application shall be accompanied by ~~an~~ the required application fee ~~of \$15~~. Each permit issued shall expire on December 31, next following the date of issue.

(d) Each person ~~first~~ distributing commercial feed ~~into~~ in West Virginia ~~trade channels~~ must obtain a Commercial Feed Distributor Permit from the commissioner, except: (1) Persons distributing pet food exclusively, (2) persons holding a valid Commercial Feed Manufacturing Permit issued by the commissioner, and (3) persons ~~distributing only those feeds that they register~~ holding a Commercial Feed Guarantor Permit issued by the commissioner. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Distributor Permit application shall be accompanied by ~~an~~ the required application fee ~~of \$10~~. Each permit issued shall expire on December 31, next following the date of issue.

(e) ~~All commercial feed distributed or used in this state, except customer formula feed, must be registered. Commercial feed that can be uniquely identified by its brand name, product name, physical form or other descriptive term shall be registered as a separate product. Commercial feed that is packaged in such weights as to apply to several categories shall be registered in each applicable category. Application forms shall be provided by the commissioner and include such information as established by rules.~~ Each person whose name appears on the label of a commercial feed or customer-formula feed as guarantor must obtain a Commercial Feed Guarantor Permit from the commissioner for each manufacturing facility or location that distributes feed in or into the state, except those facilities or locations for which a Commercial Feed Manufacturing Permit has already been issued by the commissioner. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Guarantor Permit application shall be accompanied by the required application fee. Each permit issued shall expire on December 31, next following the date of issue.

~~(1) Commercial feed, other than pet food, in packages over ten pounds or bulk shall be registered permanently. A registration fee of \$10 per product shall accompany each application for registration, except that there will be no fee for a revision of a commercial feed already on file that involves a change in the net weight, a change in the list of ingredients, and/or a change in the guarantee for vitamins or minerals.~~

~~(2) (f) On the thirty first day of August, 1991, permanent registrations for pet food in packages over ten pounds are void and application for registration and payment of fees will be required. Pet food, including specialty pet foods, in packages over 10 pounds or bulk shall be registered annually. A registration fee of \$50 per product shall accompany each Each application for registration shall be accompanied by the required registration fee. The Each registration shall expire on ~~the thirty first day of August~~ August 31 next following the date of issue: *Provided*, That until June 30, 2027, an additional registration fee of \$50 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.~~

~~(3) (g) Commercial feed, excluding specialty pet food in packages of one pound or less, Pet food packaged in packages of 10 pounds and under shall be registered annually. A registration fee of \$40 per product shall accompany each Each application for registration shall be accompanied by the required registration fee. The Each registration shall expire on December 31, next following the date of issue: *Provided*, That until June 1, 2027, an additional registration fee of \$35 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.~~

~~(4) (h) Specialty pet food in packages of one pound or less shall be registered annually. A registration fee of \$20 per product shall accompany each Each application for registration shall be~~

accompanied by the required registration fee. The Each registration shall expire on December 31, next following the date of issue.

(f) (i) A person is not required to register any brand name or product name of commercial feed which is already registered by another person.

(g) (j) Alteration of ~~commercial feed~~ a pet food or specialty pet food that changes the label requires a new application for a ~~Commercial Feed Registration~~ registration be made and approved before distribution.

#### **§19-14-6. Refusal of applications; suspension and revocation of registrations and permits.**

The commissioner may refuse to grant, or may suspend or revoke ~~registration of any commercial feed~~ Commercial Feed Manufacturing Permit; any commercial feed manufacturing permit Commercial Feed Guarantor Permit; or any commercial feed distributor permit Commercial Feed Distributor Permit; or the registration of any Pet Food or Specialty Pet Food when it is determined that: ~~(a)(1)~~ (1) The applicant, permittee, or ~~registrant guarantor~~ registrant guarantor has violated the provisions of this article or any official rule promulgated hereunder; or ~~(b)(2)~~ (2) this article or the rules promulgated hereunder cannot be or will not be complied with: *Provided*, That the permittee or ~~registrant guarantor~~ registrant guarantor shall have the opportunity to be heard prior to the suspension or revocation of the registration or permit.

#### **§19-14-7. Hearings and appeals.**

(a) No application shall be refused until the applicant has the opportunity to amend his/her application to comply with the requirements of this article.

(b) No registration or permit shall be refused, suspended, or revoked until the ~~registrant guarantor~~ registrant guarantor or permittee shall have the opportunity to have a hearing before the commissioner.

~~(b)~~ (c) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this article, may ~~within forty-five days thereafter,~~ bring an action for judicial review in the circuit court of the county in which the violation occurred in accordance with §29A-5-1 et seq. of this code.

~~Any party aggrieved by a final judgment entered by a circuit court, may appeal to the West Virginia Supreme Court of Appeals.~~

#### **§19-14-8. Labeling.**

(a) When commercial feed, except customer-formula feed, is distributed in this state in bags or other containers, the label shall be affixed to the container; when commercial feed is distributed in bulk, the label shall accompany delivery.

(b) All commercial feed labels, except customer-formula feeds, shall ~~state~~ include the following:

(1) The ~~net weight avoirdupois. The net weight may also be stated in metric units~~ quantity statement.

(2) The product name, including brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis, expressed on an “as is” basis, stating what the commissioner determines by rules is required to advise the user of the composition of the commercial feed and other necessary information to support claims made on the label. The substances or elements guaranteed must be determinable by laboratory methods published by the association of official analytical chemists or ~~by an acceptable method supplied by the registrant~~ other methods approved by the commissioner.

(4) An ingredient statement, except that an ingredient statement is not required for single standardized ingredient feeds ~~or when such statement is not in the interest of consumers.~~ An ingredient statement shall include:

(A) The common or usual name of each ingredient as officially defined in the annual Official Publication of the Association of American Feed Control Officials;

(B) ~~Collective~~ Feed terms as defined in the annual Official Publication of the Association of American Feed Control Officials;

(C) The common or usual name of substances generally recognized as safe (GRAS) as authorized by 21 Code of Federal Regulations 570.30 (~~April 1, 1990~~ revised April 1, 2019) of the Federal Drug and Cosmetic Act as amended August, 1985;

(D) The common or usual name of substances which are so common ~~so~~ as to not need a definition, have a substantially safe history, and no safety hazard is known to exist after consumption by a significant number of animals, including, but not limited to, salt and sugar; or

(E) Other ingredients or additives that the commissioner, by rules, deems necessary.

(5) The name and principal mailing address of the manufacturer or the distributor.

(6) For all commercial feeds containing drugs and for all other such commercial feeds as the commissioner may require by legislative rules, Adequate ~~Adequate~~ adequate directions as necessary for their safe and effective use and precautionary statements for safe and effective use.

(7) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the medicated commercial feed;

(E) Withdrawal statements, if applicable; and

(F) The word “medicated” shall appear directly following and below the product name in type size, no smaller than one-half the type size of the product name.

(c) Pet food and specialty pet food labels shall have such additional information as required by the commissioner through rules.

(d) All customer-formula feeds shall be labeled at all times and shall be supplied to the purchaser at the time of delivery. The label shall bear the following information:

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of manufacture and/or delivery.

(4) ~~Net weight (avoirdupois) of the commercial feed and each feed ingredient used in the customer formula feed~~ The product name and quantity statement of each commercial feed and each other ingredient used in the mixture.

(5) For all customer-formula feeds containing drugs and for all other such customer-formula feeds as the commissioner may require by legislative rules, Adequate adequate directions as necessary for their safe and effective use and precautionary statements for safe and effective use.

(6) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the commercial feed;

(E) Withdrawal statements, if applicable; and

(F) The word “medicated” shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

### **§19-14-9. Tonnage reports; inspection fees.**

(a) Each person holding a Commercial Feed Manufacturing Permit; or a Commercial Feed ~~Distributor~~ Guarantor Permit, ~~and every registrant, except those persons exempted in subsection (b) of this section~~ exclusively manufacturing pet food or specialty pet food, shall report the number of tons of commercial feed distributed and pay an inspection fee on all feed distributed, except no inspection fee shall be due on:

(1) Commercial feed, if the payment was previously made by a ~~previous distributor, manufacturer, or guarantor.~~

(2) Customer-formula feeds or commercial feeds manufactured in this state, if the inspection fee was paid on the commercial feed or all the feed ingredients used as ingredients therein. For the purpose of this exemption, the sale of the feed ingredients used in customer-formula feeds are considered to have taken place before the processing of these items.

(3) Commercial feeds ~~or commercial feeds manufactured in this state~~ which are subsequently used as ingredients in the continuing manufacture of commercial feeds in which the end product is registered.

(4) Commercial feed supplied to a poultry contract feeder.

~~(5) Commercial feed in packages of ten pounds or less.~~

~~(6)~~ (5) Pet food or specialty pet food.

~~(7) Commercial feed, where the inspection fee was paid during a previous quarter and is offered for sale in the current quarter.~~

(b) An annual fee for commercial feed which does not meet the minimum inspection fee shall be paid in lieu of the inspection fee as established by legislative rule.

~~(b) (c) Each person holding a Commercial Feed Manufacturing Permit, or a Commercial Feed Distributor Guarantor Permit, or a registrant, except those persons: (1) Exclusively exclusively distributing or manufacturing pet food or specialty pet food; or (2) exclusively distributing or manufacturing commercial feed in packages of ten pounds or less, shall file a semiannual statement under oath before the 31st day of January 31 and July 31 of each year. The statement shall include the number of net tons of commercial feeds and feed ingredients manufactured or first distributed in this state during the preceding six-month period.~~

~~(d) Each report shall be accompanied by an inspection fee at the rate of 35¢ per ton established by legislative rule, including a minimum inspection fee, on commercial feed and feed ingredients with the minimum inspection fee being \$10 each statement. The minimum fee is waived if the total amount of the calculated inspection fee due is \$2 or less. Such fees become effective on July 1, 1991.~~

Inspection fees which are due and payable and not remitted to the commissioner within 15 days following the due date shall be assessed a penalty of 10 percent of the amount due, except that semiannual reports with no fees due received 15 days after the due date shall be assessed a penalty of \$10 in an amount established by legislative rule. The assessment of this penalty fee shall not prevent the commissioner from taking other actions as provided in this chapter.

~~(e)~~ (e) All persons must keep accurate records, as may be necessary or required by the commissioner, to indicate the tonnage

of commercial feed distributed in this state. The commissioner shall have the right to examine such records.

**§19-14-10. Adulteration.**

Commercial feed or feed ingredients is adulterated:

~~(a)(1) If it bears or contains any poisonous; or deleterious or nonnutritive substance, including pesticide chemical residues, food additives, color additives or drugs which is or may be render it injurious to animals when fed such feed in accordance with the directions, or to humans who consume the resultant food product of the animal health; unless the substance is not an added substance, in which case such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;~~

~~(b)(2) If its composition or quality falls below or differs from what is stated on the label or by its labeling; If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is: (A) A pesticide chemical in or on a raw commodity; or (B) a food additive;~~

~~(c)(3) If it contains viable weed seeds exceeding the limits set by the commissioner by rules; If it is, or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;~~

~~(d)(4) If the facilities, controls, or methods used in the manufacture, processing, or packaging do not conform to industry standards set by the commissioner by rules; or If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance~~

prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act;

~~(e)(5) If it was manufactured or held under conditions whereby it became contaminated by dust, dirt, insects, birds, rodents, or animal excretion thereby rendering it injurious to animal health. If it bears or contains any color additive which is unsafe within the meaning of Section 721 of the Federal Food, Drug, and Cosmetic Act;~~

(6) If it is, or it bears or contains, any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act;

(7) If it consists, in whole or part, of any filth or decomposed substance, or if it is otherwise unfit for feed;

(8) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(9) If it is, in whole or in part, the product of a diseased animal, or of an animal that has died other than by slaughter that is unsafe within the meaning of Section 401(a)(1) or (a)(2) of the Federal Food, Drug, and Cosmetic Act;

(10) If the container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(11) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(12) If any valuable constituent has been, in whole or in part, omitted or abstracted therefrom or any less valuable substance substituted therefor;

(13) If its composition falls below or differs from that which it is purported or represented to possess by its labeling; or

(14) If it contains a drug, and the methods used in the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the commissioner to assure that the drug meets the requirements of this law as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess.

#### **§19-14-11. Misbranding.**

Commercial feed ~~is~~ shall be deemed to be misbranded:

~~(a)~~(1) If its label or labeling is false or misleading;

~~(b)~~(2) If it is not labeled as required by this article;

~~(c)~~(3) If any word, statement, or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use;

~~(d)~~(4) If it purports to be or is represented as a commercial feed, ~~contains~~ if it purports to contain or is represented as containing

a commercial feed ingredient that does not conform to the definition of identity prescribed by the commissioner by rules; or

~~(e)~~(5) If any damage or inferiority has been concealed; or

(6) If it is distributed under the name of another commercial feed.

**§19-14-12. Embargoes; condemnation and confiscation; injunctions.**

(a) Embargo orders:

(1) When the commissioner has reasonable cause to believe any lot of commercial feed is being manufactured, distributed, offered for sale, exposed for sale, or used in this state in violation of the provisions of this article or any rule promulgated hereunder, then ~~he/she~~ he or she may issue and enforce a written embargo order, warning the custodian of the commercial feed not to manufacture, distribute, use, remove, or dispose of the commercial feed lot in any manner until the embargo is released by the commissioner or by court order.

(2) When the embargo is issued, the commissioner shall affix a tag or other marking to the commercial feed and/or to the manufacturing device warning that such product or process is under embargo and notify the custodian that ~~he/she~~ he or she has a right to request an immediate hearing.

(3) The commissioner shall release the commercial feed lot so embargoed when said commercial feed has been brought into compliance with this article and its rules.

(4) The commissioner shall have the authority to issue an embargo against a perishable product, even if the result is the involuntary disposal of the product.

(5) The commissioner may take action to seize and condemn any product if not brought into compliance with this article and the rules issued hereunder, within 90 days of the notice to the custodian.

(b) Condemnation and confiscation:

(1) Any commercial feed not in compliance with the provisions of this article or the rules promulgated hereunder shall be subject to condemnation and confiscation on complaint of the commissioner to the circuit court of the county in which the commercial feed in question is located. Jurisdiction is hereby conferred upon the circuit courts to hear and determine such matter.

(2) If the court finds that the commercial feed is in violation of the provisions of this article or its rules and should be confiscated, then the court shall order the condemnation and confiscation of such commercial feed and its disposition in a manner consistent with the quality of such commercial feed which is not in violation of any other laws of this state: *Provided*, That the owner thereof must first be given an opportunity to process or relabel such commercial feed or dispose of the same in full compliance with the provisions of this article and its rules.

(c) Injunctions: Upon application by the commissioner, the circuit court of the county in which the violation is occurring, has occurred, or is about to occur, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated hereunder. An injunction shall be issued without bond.

**§19-14-14. Prohibited acts.**

It shall be unlawful:

(a) To manufacture or distribute, ~~or knowingly use~~ any commercial feed that is adulterated or misbranded.

(b) To adulterate or misbrand any commercial feed.

(c) To distribute, use, remove, or dispose of commercial feed in violation of an embargo order, or condemnation and confiscation order provided for under this article.

(d) To manufacture, distribute, or use any commercial feed containing a drug or drugs that cause or may cause residue of the

drug or drugs in the edible tissues, milk, or eggs of the animals fed such feed in excess of the acceptable residue levels set by the commissioner by rules.

(e) To fail or refuse to register ~~commercial feeds~~ pet foods or specialty pet foods.

(f) To fail or refuse to obtain permits required under this article.

(g) To fail to make an accurate statement of tonnage.

(h) To fail to pay inspection fees as required under this article.

(i) To distribute or knowingly use any commercial feed that has not had an accurate statement of tonnage reported to the commissioner in the previous reporting period.

(j) To use or imply the name West Virginia Department of Agriculture, or reference any inspection or sample findings made by the West Virginia Department of Agriculture on labels or labeling of commercial feed.

(k) To interfere with the commissioner's official duties.

(l) To distribute raw milk for use as commercial feed for any species, unless:

(1) It has been decharacterized using a sufficient quantity of food coloring as designated by the commissioner;

(2) It has been decharacterized using food coloring approved by the U.S. Food and Drug Administration, or in the case of raw milk labeled as organic, approved by the U.S. Department of Agriculture;

(3) It has been decharacterized and the nutritive value of the milk has not been adversely affected by the decharacterization;

(4) The packaging of the raw milk does not resemble that used for the packaging of milk for human consumption;

(5) It is not stored at retail with, or in the vicinity of, milk or milk products intended for human consumption; and

(6) It does not otherwise violate this section.

### **§19-14-16. Deviations and Penalties.**

(a) The commissioner is authorized to adopt regulations establishing permitted analytical variation and providing for reasonable deviation from the guaranteed analysis.

(b) If the analysis of a sample shows a deviation from permitted analytical variation established by the commissioner, the guarantor or other responsible person shall be penalized as established by legislative rule.

(c) Penalties for multiple deviations within a sample shall be cumulative: *Provided*, That in no case shall the penalty exceed the retail value of the product.

(d) Penalties paid pursuant to this section shall, where possible, be used to reimburse the purchaser of the lot of commercial feed representing the sample analyzed. If the purchaser or purchasers cannot be found, the amount of the penalty assessed shall be paid to the commissioner and deposited in the department's fees account to be used for feed related program maintenance and educational training of the industry and consumers.

(e) If any penalty has not been paid within 90 days of notice of such penalty, a late payment penalty established by legislative rule will be added to the original penalty.

(f) If a product is found to be adulterated, the guarantor or other responsible party shall be penalized as established by legislative rules.

## **ARTICLE 21. CONSERVATION DISTRICTS.**

### **§19-21A-1. Legislative determinations and declaration of policy.**

It is hereby declared, as a matter of legislative determination:

(a) That the farm and grazing lands of the State of West Virginia are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by water and flooding is increased with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any landowner to conserve the soil and control erosion upon his lands causes a washing of soil and water from his or her lands onto other lands and makes the conservation of soil and control of erosion of such other lands difficult or impossible and increases the potential damages from flooding.

(b) That the consequences of such soil erosion in the form of soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by over-wash of -poor subsoil material, sand and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; the washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve which causes water shortages, intensifies periods of drought and causes crop failures; an increase in the speed and volume of rainfall runoff, causing more severe and more numerous floods which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and

other property from floods; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, grazing and reduction of suitable land available for homes and businesses.

(c) That to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damage and further the conservation, development, utilization, water quality, and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, development, utilization, water quality, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are engineering operations such as the construction of terraces, terrace outlets, dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned or eroded lands with water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) It is hereby declared to be the policy of the Legislature to provide for the conservation of the soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization, water quality, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

(e) This article contemplates that the incidental cost of organizing conservation districts will be borne by the state, while the expense of operating the districts so organized will be provided by donations, gifts, contributions, grants, and appropriations, in money, services, materials, or otherwise, from the United States or any of its agencies, from the State of West Virginia or from other sources, with the understanding that the owners or occupiers will contribute funds, labor, materials, and equipment to aid in carrying out erosion control measures on their lands.

### **§19-21A-3. Definitions.**

Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(1) “Agency of this state” means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) “Committee” or “State Conservation Committee” means the agency created in §19-21A-4 of this code.

(3) “Conservation” means the reduction of soil erosion, enhancement of water supplies, control, and abatement of nonpoint sources of water pollution, improvement of water quality, increased aquatic and wildlife habitat, and the reduction of damages caused by floodwater and sediment damages and other natural disasters.

~~(3)~~ (4) “District” or “conservation district” means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

(4) ~~(5)~~ “Grant” means the providing of grants for conservation purposes pursuant to legislative rule.

~~(5)~~ (6) “Governing body” means the supervisors of any conservation district, town, or city, council, city commission, county court, or body acting in lieu of a county court, in this state,

and the term “governmental division” means any conservation district, town, city, or county in this state.

~~(6)~~ (7) “Land occupier” or “occupier of land” means any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter, or tenant.

~~(7)~~ (8) “Landowners” or “owners of land” means any person or persons, firm, or corporation who holds title to any lands lying within a district organized under the provisions of this article.

~~(8)~~ (9) “Notice” means notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication is the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in the notice, adjournment may be made, from time to time, without the necessity of renewing the notice for the adjournment dates.

~~(9)~~ (10) “Petition” means a petition filed under the provisions of §19-21A-5(a) of this code for the creation of a district.

~~(10)~~ (11) “Soil conservation”, “erosion control”, or “erosion prevention projects” means those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

~~(11)~~ (12) “State” means the State of West Virginia.

~~(12)~~ (13) “Supervisor” means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

~~(13)~~ (14) “United States” or “agencies of the United States” means the United States of America, Natural Resources Conservation Service of the United States Department of

Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

~~(14)~~ (15) “Works of improvement” means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization, or disposal of water.

**§19-21A-4. State Conservation Committee; continuation.**

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following 10 members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The Director of the state Cooperative Extension Service;

(B) The Director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings, and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts, and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties, and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules, and orders issued or adopted;

(3) Provide for an annual audit of the accounts of receipts and disbursements; and

(4) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Assist and advise conservation districts and others in implementing conservation improvements, and projects to control and abate nonpoint sources of water pollution and prevent damage from floodwater and sediment;

~~(2)~~ (3) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article, and facilitate an interchange of advice and experience between the districts and cooperation between them;

~~(3)~~ (4) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

~~(4)~~ (5) Contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as needed basis;

~~(5)~~ (6) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or

agreements with, and cooperation in, programs of the United States government and any of its proper departments, bureaus, or agencies relating to natural disaster response, natural disaster recovery, or stream restoration related to flooding;

~~(6)~~ (7) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

~~(7)~~ (8) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

~~(8)~~ (9) Administer a conservation grant program that provides financial assistance to conservation districts and others to promote approved conservation, water quality, and soil conservation projects;

~~(9)~~ (10) Accept and receive donations, gifts, contributions, grants, and appropriations in money, services, materials, or otherwise from the United States or any of its agencies, from the State of West Virginia, or from other sources and use or expend the money, services, materials, or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services, or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations;

~~(10)~~ (11) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate, and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration, or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease, or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this

article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article;

~~(11) (12) Promulgate emergency and legislative rules to effectuate the provisions of this article as amended and reenacted by the Legislature during the 2018 regular session of the Legislature; and~~

(12) (13) Upon a Governor's proclamation declaring a state of emergency or federal disaster declaration, the state committee, its employees, or agents may enter any water of the state for the purpose of removing debris and other obstruction which impede water flow and present additional flood hazards. The agency shall make reasonable efforts to secure the permission of the landowner before entering any private property in connection with these removal activities. The exercise of this limited authority does not constitute taking of private property or trespass. This authority shall continue for the duration of the Governor's proclamation or the federal disaster declaration.

**§19-21A-8. Powers of districts; additional powers of supervisors.**

A conservation district organized under the provisions of this article and the supervisors thereof shall have the following powers, in addition to others granted in other sections of this article:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, ~~and~~ floodwater and sediment damage, and nonpoint source water pollution, and to the conservation, development, utilization, water quality, and disposal of water and the preventive and control measures needed to publish the results of such surveys, investigations, or research and to disseminate information concerning such preventive and control measures and works of improvement: *Provided*, That in order to avoid duplication of research activities, no district shall initiate any research program or publish the results except with the approval of

the state committee and in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of the lands or the necessary rights or interests in the lands in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil washing may be prevented and controlled, water quality may be improved, and works of improvement may be carried out;

(3) To carry out preventive and control measures and works of improvement within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land; drainage, irrigation, and other agricultural water management operations and measures for the prevention of floodwater and sediment damages, or for the control and abatement of nonpoint sources of water pollution; and the measures listed in §19-21A-2(c) of this code on lands owned or controlled by this state or any of its agencies with the consent and cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion-control and prevention operations, operations for the control and abatement of nonpoint sources of water pollution, and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to institute condemnation proceedings to acquire any property, real or personal, or rights or interests therein, whether or not located in the district, required for works of improvement; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article;

(6) To make available, on such terms as it shall prescribe, to land occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, water quality, and disposal of water;

(7) To construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

(8) To develop with the approval of the state committee comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and water quality improvement, or the conservation, development, utilization, and disposal of water within the district. The plans shall specify, in as much detail as may be possible, the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts, contributions and grants in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from any other source and to use or expend such money, services, materials or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make and, from time to time, amend and repeal rules and regulations not inconsistent with this article to carry into effect its purposes and powers;

(11) As a condition to this extending of any benefits under this article to, or the performance of work upon, any lands, the supervisors may require contributions in money, services, materials or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damage thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder in its acquisition, operation and disposition of property unless the Legislature shall specifically so state;

(13) To enter into contracts and other arrangements with agencies of the United States, with persons, firms, or corporations, including public corporations, with the state government of this state or other states, or any department or agency thereof, with governmental divisions, with soil conservation, drainage, flood control, soil erosion, or other improvement districts in this state or other states, for cooperation or assistance in constructing, improving, operating, or maintaining works of improvement within the district, or in preventing floods, or in conserving, developing, utilizing and disposing of water in the district, or for making surveys, investigations, or reports thereof; and to obtain options upon and acquire property, real or personal, or rights or interests therein, in other districts or states required for flood prevention and water quality improvement, or the conservation, development, utilization, and disposal of water within the district and to construct, improve, operate or maintain thereon or therewith works of improvement.

## **ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.**

### **§19-25-1. Purpose.**

The purpose of this article is to encourage owners of land to make available to the public land and water areas for military, law-enforcement, ~~or~~ homeland-defense training, or recreational, agricultural, or wildlife propagation purposes by limiting their liability for injury to persons entering thereon and for injury to the property of persons entering thereon and limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

### **§19-25-2. Limiting duty of landowner generally.**

(a) Subject to the provisions of §19-25-4 of this code, an owner of land owes no duty of care to keep the premises safe for entry or

use by others for recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous condition, use, structure, or activity on such premises to persons entering for such purposes.

(b) Subject to the provisions of §19-25-4 of this code, an owner of land who either directly or indirectly invites or permits without charge as that term is defined in §19-25-5 of this code, any person to use such property for recreational or wildlife propagation purposes does not thereby: (a) ~~Extend~~

(1) Extend any assurance that the premises are safe for any purpose; or (b) ~~confer~~

(2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or (c) ~~assume~~

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

(c) Subject to the provisions of §19-25-4 of this code, an owner of land owes who invites or permits without charge, as that term is defined in §19-25-5 of this code, any person to enter onto the owner's land for the purpose of utilizing the owner's land for any agricultural purpose does not thereby:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

### **§19-25-5. Definitions.**

Unless the context used clearly requires a different meaning, as used in this article:

“Agricultural purposes” means the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production;

“Charge” means:

(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in §19-25-2 of this code, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion which may not exceed \$50 a year per recreational participant: *Provided*, That the monetary cap on charges imposed pursuant to this article does not apply to the provisions of §20-14-1 *et seq.* of this code pertaining to the Hatfield-McCoy regional recreational authority or activities sponsored on the Hatfield-McCoy recreation area;

(B) For purposes of limiting liability for military, law-enforcement, or homeland-defense training set forth in §19-25-6 of this code, the amount of money asked in return for an invitation to enter or go upon the land;

“Land” includes, but is not limited to, roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment when attached to the realty;

“Noncommercial recreational activity” does not include any activity for which there is any charge which exceeds \$50 per year per participant;

“Owner” includes, but is not limited to, tenant, lessee, occupant, or person in control of the premises;

“Recreational purposes” includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain

vehicle riding, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic or scientific sites, aircraft or ultralight operations on private airstrips or farms or otherwise using land for purposes of the user;

“Wildlife propagation purposes” applies to and includes all ponds, sediment control structures, permanent water impoundments, or any other similar structure created in connection with surface mining activities as governed by §22-3-1 *et seq.* of this code or from the use of surface in the conduct of underground coal mining as governed by that article and any rules promulgated because of the article, which ponds, structures, or impoundments are designated and certified in writing by the Director of the Division of Environmental Protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds, and fish or other forms of aquatic life and finds and determines that the premises have the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures, or impoundments may not be removed without the joint consent of the director and the owner; and

“Military, law-enforcement, or homeland-defense training” includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment, or other use of land by a member of the Army National Guard or Air National Guard, a member of a reserve unit of the armed forces of the United States, a person on active duty in the armed forces of the United States, a state or federal law-enforcement officer, a federal agency or service employee, a West Virginia military authority employee or a civilian contractor supporting the military, and/or government employees acting in that capacity.

**ARTICLE 31. GUS R. DOUGLASS AGRICULTURAL CENTER AT GUTHRIE.**

**§19-31-1. Establishing the name.**

The Guthrie center, currently owned by the ~~Department of Health and Human Resources~~ Department of Agriculture, shall hereinafter be known as the Gus R. Douglass Agricultural Center at Guthrie.

**ARTICLE 35. FARMERS MARKETS.**

**§19-35-1. Legislative findings and purpose.**

(a) The Legislature hereby makes the following findings:

(1) Farmers markets are critical incubators for small farm and food businesses because they offer an inexpensive, accessible, entry-level market for reaching consumers directly, though research has shown that the average vendor makes only a nominal dollar amount in sales on any given market day;

(b) (2) The number of farmers markets and the variety of products sold at farmers markets has increased significantly in the past 10 years, adding millions of dollars to the state's economy;

(c) (3) Encouraging locally grown and raised food is important to the health and welfare of the citizens of West Virginia;

(d) (4) Permit fees and requirements for farmers market vendors can vary widely from county to county and from one regulatory official to the other. Current food permit categories are not designed for farmers markets and their vendors, but rather for restaurants, grocery stores, or concessioners; and

(e) (5) Food permits required for farmers market vendors are currently not recognized across county lines.

(b) It is the purpose of this article:

(1) To reduce barriers on participants producing, preparing, and selling certain foods at farmers markets and elsewhere within West Virginia;

(2) To place regulation of farmers markets, vendors, and local food producers primarily within the Department of Agriculture; and

(3) To encourage the growth of the local food industry in West Virginia.

### **§19-35-2. Definitions.**

For purposes of this article:

“Acidified food” means a low-acid food item to which acid or acid foods are added with a water activity of greater than 0.85 and a finished equilibrium of pH 4.6 or below. Acidified foods are considered potentially hazardous foods.

~~“Consignment farmers market” means a farmers market in which two or more vendors deliver their own farm and food products to a common location maintained by a third party that markets the vendors’ products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. A consignment farmers market may be mobile or in a stationary location.~~

“Delivered” means transferred to the consumer, either immediately upon sale or at a time thereafter.

“Department” means the Department of Agriculture.

“Farm and food product” means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, ~~cottage food~~, beekeeping, or other similar product, and includes potentially hazardous foods and nonpotentially hazardous food produced or manufactured therefrom. ~~Farm and food products are to be properly labeled.~~

“Farmers market” means:

(1) A traditional farmers market in which two or more vendors gather to sell farm and food products directly to consumers at a fixed location;

(2) An on-farm market or farm stand run by an individual producer that sells farm and food products;

(3) An online farmers market in which two or more vendors collectively market farm and food products and retain ownership of those products until they are sold; or

(4) A consignment farmers market ~~as defined herein~~ in which two or more vendors deliver their own farm and food products to a common location maintained by a third party that markets the vendors’ products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. A consignment farmers market may be mobile or in a stationary location;

(5) A mobile farmers market;

(6) An area within a fair or festival at which farm and food products are sold; or

(7) Any other form of farmers market approved by the commissioner.

“Farmers market vendor” or “vendor” means a person or entity that sells farm and food products at a farmers market.

~~“Homemade food item” means a nonpotentially hazardous food item, including a nonalcoholic beverage, which is produced and/or packaged at the private residence of the producer.~~

“Nonpotentially hazardous” means a food item that does not require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

“Potentially hazardous” means a food item that requires time/temperature control or other protocols for safety to limit pathogenic microorganism growth or toxin formation.

To ~~“Produce~~ produce” means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

“Producer” means the person who produces a ~~homemade~~ nonpotentially hazardous food item.

“Retailer” means and includes every person engaging in the business of selling, leasing, or renting tangible personal property.

“Seller” means the person who sells a ~~homemade~~ nonpotentially hazardous food item to a consumer. The seller of the ~~homemade~~ nonpotentially hazardous food item may be the producer of the item, an agent of the producer, or a third-party vendor, such as a retail shop or grocery store.

**§19-35-3. Farmers markets; ~~farmers market vendor permits; fees; scope.~~**

(a) All farmers markets operating within the state shall register with the department. Farmers markets shall register with the on a form prepared by the department and provide information to the department regarding:

- (1) ~~the~~ The type of farmers market;
- (2) The location, dates, and hours of operation;
- (3) ~~and its~~ The farmers markets’ vendors; and
- (4) Any other information required by the department.

(b) Upon submission of all required items, each farmers market shall be issued a Farmers Market Registration. Each farmers market shall display its registration in a conspicuous manner.

(c) Except for consignment farmers markets, which are required to apply for and obtain a food establishment permit from a local health department, no other type of farmers market is required to apply for and obtain a food establishment permit from a local health department.

(d) The department may establish regulations permitting the sampling of certain farm and food products at farmers markets by vendors.

(e) The department may establish penalties for violation of this section by legislative rule, pursuant to the provisions of §29A-3-1 et seq. of this code.

~~(b) Vendors at a farmers market selling farm and food products shall apply for a farmers market vendor permit and pay the annual permit fee to the department. The permit is valid in all counties in this state. A farmers market vendor permit shall be required in lieu of the food establishment permit, notwithstanding any other provisions of code or rule that require a food establishment permit or any other permit from a local health department. The department shall take final action upon all completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested.~~

~~(c) The annual farmers market vendor permit fee is \$35.~~

~~(d) The following vendors are exempt from obtaining a farmers market vendor permit:~~

~~(1) Producers delivering their products to a consignment farmers market only; or~~

~~(2) Vendors selling fresh, uncut produce.~~

~~(e) A consignment farmers market shall obtain a food establishment permit issued by the local health department. Certain farm and food product also require food establishment or other permits to be sold at farmers markets including, but not limited to, meat, poultry, dairy, fish, and sprouted seeds. Notwithstanding the~~

~~provisions of this article, the local health department in the jurisdiction in which the farmers market is located has the right to inspect and suspend the food establishment permit of a farmers market vendor that sells or serves food for which a food establishment permit is required.~~

~~(f) All farmers market vendor permits shall be displayed in a conspicuous manner.~~

~~(g) Nothing in this article eliminates or limits other state and federal rules and regulations that apply to certain farm and food products sold at a farmers market or a consignment farmers market.~~

~~(h) The department may establish regulations permitting the sampling of certain farm and food products at farmers markets by vendors.~~

~~(i) A vendor is subject to food sampling and inspection by the local health department in the jurisdiction in which the farmers market is located if the local health department determines that the vendor's food product is misbranded pursuant to §19-35-5(e) of this code, or adulterated, or if a consumer complaint has been received: *Provided*, That all sampling and inspection shall be performed in consultation with the Department of Agriculture.~~

~~(j) If the local health department in the jurisdiction in which the farmers market is located has reason to believe that an imminent health hazard exists it may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the local health department: *Provided*, That a local health department that invokes cessation of production under this subsection shall do so in consultation with the Department of Agriculture.~~

### **§19-35-3a. Farmers Market Vendor Permits.**

(a) Except as provided in subsection (d) of this section, all vendors at a farmers market selling farm and food products shall apply for a farmers market vendor permit from the department.

(b) The farmers market vendor permit, once issued, is valid in all counties in this state.

(c) Notwithstanding any other provisions of code or rule to the contrary, a vendor is not required to obtain a food establishment permit to sell at a farmers market.

(d) The following vendors are exempt from obtaining a farmers market vendor permit:

(1) Vendors selling fresh, uncut produce;

(2) Vendors selling nonpotentially hazardous foods; and

(3) Vendors selling other farm and food products that are identified by the department.

(e) The department shall establish the conditions and procedures for issuance of farmers market vendor permits. As a condition of obtaining a farmers market vendor permit, a vendor may be required to satisfy additional requirements, including but not limited to, submitting to inspections, and obtaining and maintaining certain additional licenses or certifications.

(f) All farmers market vendor permits shall be displayed in a conspicuous manner.

(g) The department may establish penalties for violation of this section by legislative rule, pursuant to the provisions of §29A-3-1 et seq. of this code.

**§19-35-3b. Role of local health departments in farmers markets.**

(a) No local health department may require a farmers market or a farmers market vendor to obtain a food establishment permit, except a consignment farmers market is required to obtain a food establishment permit: *Provided*, That nothing in this article shall be construed to exempt restaurants or other prepared food vendors from the requirement to obtain a food establishment permit.

(b) A vendor is subject to food sampling and inspection by the local health department in the jurisdiction in which the farmers market is located if the local health department determines that the vendor's food product is misbranded or adulterated, or if a consumer complaint has been received: *Provided*, That all sampling and inspection shall be performed in consultation with the Department of Agriculture.

(c) If the local health department in the jurisdiction in which the farmers market is located has reason to believe that an imminent health hazard exists it may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the local health department: *Provided*, That a local health department that invokes cessation of production under this subsection shall do so in consultation with the Department of Agriculture.

#### **§19-35-4. Legislative rules.**

~~(a) The Department of Agriculture department shall propose emergency or legislative rules for approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purposes of implementing this article, including the setting of any fees.~~

~~(b) The Department of Agriculture shall consult with the Department of Health and Human Resources and shall consider the guidelines established in the Farmers Market Vendor Guide in promulgating the rules. The rules shall set forth quantity limitations for each type of farm and food product for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code.~~

#### **§19-35-5. ~~Cottage foods; acidified foods; non-potentially hazardous foods; other exempted foods~~ Potentially hazardous foods.**

(a) Notwithstanding any provision of §16-1-1 *et seq.* of this code or any rules or regulations to the contrary, the department shall regulate ~~cottage foods, acidified foods, nonpotentially~~

potentially hazardous foods and other exempted foods sold at farmers markets.

(b) A vendor of potentially hazardous foods shall apply for and obtain a farmers market vendor permit as required by §19-35-3a of this code.

~~(b) (c) Online farmers market sales shall be delivered in person and are not permitted to be shipped. A home, farm, community, or commercial kitchen may be used by a cottage potentially hazardous foods vendor, as determined by the department.~~

(d) The department shall establish by legislative rule the requirements for obtaining a vendor permit for potentially hazardous foods, including acidified foods, and other categories identified and defined by the department.

~~(e) (e) All potentially hazardous foods for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code sold at farmers markets shall be labeled in compliance with the department's labeling standards and provide information about its content and sources. The label shall include the words "MADE IN A WV \_\_\_\_\_ KITCHEN" in capital, bold, 10 point type or larger words, with the blank space to state whether the product was made in a home, farm, community, or commercial kitchen.~~

~~(d) A farmers market vendor permit is required to sell the following farm and food products at farmers markets: Certain canned acidified foods, including, but not limited to, pickled products, sauces, and salsas. Acidified foods are low acid foods to which acid or acid foods are added with a water activity of greater than .085 and a finished equilibrium of pH 4.6 or below. The majority of the produce in canned acidified foods shall be sourced from the vendor's West Virginia farm or garden, and records of the source of the produce shall be maintained.~~

~~(e) A farmers market vendor permit is not required to sell the following farm and food products at farmers markets:~~

~~(1) Nonpotentially hazardous foods, including, but not limited to: Breads, cakes, and candies; honey, tree syrup, apple butter, and molasses; standardized, nondietary jams and jellies; and dehydrated fruits and vegetables; and~~

~~(2) Other foods that are exempted from certain regulations, including, but not limited to, certain fermented products, certain exempted condiments, commercially harvested mushrooms, and canned, whole, or chopped tomatoes, tomato sauce, and tomato juice having a finished equilibrium of pH 4.6 or below.~~

~~(f) The Department of Agriculture shall consult with the Department of Health and Human Resources to promulgate any rules deemed necessary by the Commissioner of Agriculture to ensure the health, sanitation, and safety of the products produced and sold pursuant to this section.~~

**§19-35-6. Direct sale of homemade food items Nonpotentially hazardous foods.**

(a) The production and sale of ~~homemade food items~~ nonpotentially hazardous foods, when done in conformity with this section and the accompanying legislative rules, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this state.

(b) The following conditions apply to the sale and delivery of ~~homemade food items~~ nonpotentially hazardous foods:

(1) The ~~homemade~~ nonpotentially hazardous food item must be sold by the producer to the consumer, whether in person or remotely, or by an agent of the producer or a third-party vendor; and

(2) The ~~homemade~~ nonpotentially hazardous food items must be delivered to the consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.

~~(c) The following information must be provided to the consumer, in the format required by subsection (d) of this section:~~

All nonpotentially hazardous foods shall be labeled in compliance with the department's labeling standards and provide information about their content and sources.

~~(1) The name, home address, and telephone number of the producer of the homemade food item;~~

~~(2) The common or usual name of the homemade food item;~~

~~(3) The ingredients of the homemade food item in descending order of predominance; and~~

~~(4) The following statement: "This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens."~~

~~(d) The information required by subsection (c) of this section must be provided: A home, farm, community, or commercial kitchen may be used by a nonpotentially hazardous foods vendor, as determined by the department.~~

~~(1) On a label affixed to the package, if the homemade food item is packaged;~~

~~(2) On a label affixed to the container, if the homemade food item is offered for sale from a bulk container;~~

~~(3) On a placard displayed at the point of sale, if the homemade food item is neither packaged nor offered for sale from a bulk container;~~

~~(4) On the webpage on which the homemade food item is offered for sale, if the homemade food item is offered for sale on the Internet; or~~

~~(5) On a receipt or other document provided to the customer with the homemade food item.~~

~~(e) The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or~~

poultry food product, as those terms are defined for purposes of the federal ~~Meat Inspection Act and federal Poultry Products Inspection Act~~, unless the production and sale of the items are within the exemption in 9 C.F.R. §303.1(d), §381.10(e), or §381.10(d) and comply with other applicable federal regulations.

(~~f~~) (e) This section shall not be construed to:

(1) Impede the authority of a local health department or the department to investigate or cease the production or sale of food items reported to have caused a foodborne illness;

(2) Preclude the department from providing assistance, consultation, or inspection at the request of the producer of a ~~homemade~~ nonpotentially hazardous food item;

(3) Preclude the production or sale of food items otherwise allowed by law;

(4) Exempt a producer, seller, third-party vendor, or third-party agent from any applicable tax law;

(5) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from any law that requires the producer, seller, third-party vendor, or third-party agent to register its business name, address, and other identification information with the state;

(6) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or

(7) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from any applicable law of another state.

(~~g~~) (f) This section preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of ~~homemade~~ nonpotentially hazardous food items: *Provided*, That such preemption shall not include space

rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration.

## **ARTICLE 37. WEST VIRGINIA FRESH FOOD ACT.**

### **§19-37-2. State-funded institutions to purchase food from in-state sources; exception.**

(a) Beginning July 1, 2019, all each state-funded institutions institution, such as including, but not limited to, schools, colleges, correctional facilities, governmental agencies, and state parks, shall purchase obtain a minimum of five percent of its food from in-state producers.

(b) To satisfy this requirement, state-funded institutions may purchase, either directly or indirectly fresh produce, meat and poultry products, milk and other dairy products, and other foods grown, produced, or processed from by in-state producers.

(c) The commissioner shall establish by legislative rules the criteria for a food or food product to satisfy the requirements of this section, and may further identify food and food products that are eligible to be considered for in-state food credit.

(d) The commissioner shall further establish the criteria for determining when exceptions or exemptions should be granted to state institutions, including, but not limited to, situations in which the desired food, such as: *Provided, That* such produce, meat and poultry products, milk and other dairy products, ~~can~~ cannot be grown or is not available from in-state producers.

(e) The state-funded institution shall ensure that all contracts for the purchase of food, or that include the purchase of food as a component of the contract, contain provisions to ensure that the institution complies with the provisions of this article and any legislative rule promulgated pursuant thereto.

**ARTICLE 38. AGRICULTURE INVESTMENT PROGRAM.****§19-38-1. Legislative findings and purpose.**

(a) The Legislature finds that:

(1) It is an important public policy to attract new and expand existing agricultural businesses and value-added facilities producing or further developing the availability of locally grown food and locally produced products.

(2) Agriculture-based businesses are necessary for diversifying the state's economy.

(3) Because of the unique nature of these businesses, agriculture-based businesses struggle to obtain appropriate capital for development or expansion and require unique tools and guidance to navigate the hurdles associated with establishment and growth.

(b) Therefore, the Legislature hereby creates the West Virginia Agriculture Investment Program to accomplish these important public policy goals.

**§19-38-2. Definitions.**

(a) "Commissioner" means the Commissioner of Agriculture, or his or her designee.

(b) "Department" means the West Virginia Department of Agriculture.

(c) "Fund" means the Agriculture Investment Fund created by this article.

(d) "Program" means the West Virginia Agriculture Investment Program created by this article.

**§19-38-3. Agriculture Investment Fund created.**

(a) There is hereby created in the State Treasury a special revenue account to be known as the West Virginia Agriculture

Investment Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys that may be appropriated and designated for the fund by the Legislature, and all interest or other return earned from investment of the fund. The fund may receive any appropriations, gifts, grants, contributions, or other money from any source that is designated for deposit into the fund.

(b) Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon fulfillment of the provisions of §11B-2-1 et seq. of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

#### **§19-38-4. West Virginia Agriculture Investment Program.**

(a) The West Virginia Agriculture Investment Program is hereby authorized. The purpose of this program is to attract and support new and expanding agriculture businesses and facilities producing or further developing products made, grown, or processed in West Virginia.

(b) The program shall be administered by the commissioner or his or her designee.

(c) Moneys may be awarded by the commissioner from the fund as either grants or loans.

(d) The criteria for awarding such grants or loans shall include, but are not limited to:

(1) The number of direct and indirect jobs expected to be created;

(2) The anticipated amount of private capital investment;

(3) The anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created;

(4) The anticipated amount of West Virginia-grown, processed, or produced agricultural products utilized or promoted by the project; and

(5) The projected impact on agricultural producers.

(e) The commissioner may establish a committee to assist in the administration of the program. Members of the committee shall receive no compensation for their service on the committee but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture travel regulations.

#### **§19-38-5. Legislative rules.**

The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 et seq. of this code. Those rules shall, at a minimum:

(1) Identify the types of individuals and entities that are eligible for grants or loans from the program;

(2) Provide for the selection of members of any committee established by the commissioner to assist in administration of the program;

(3) Establish criteria for making grants or loans: *Provided*, That the commissioner shall consult with the Department of Commerce before proposing such criteria;

(4) Establish procedures and requirements for grant or loan applications; and

(5) Establish the administration, record-keeping, and reporting requirements for entities that receive grants or loans from the program.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2633), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Beach—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2633) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2633**—A Bill to amend and reenact §19-1-2, §19-1-3a, and §19-1-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1C-2, §19-1C-3, §19-1C-4, and §19-1C-6 of said code; to amend said code by adding thereto a new section, designated §19-1C-7; to amend and reenact §19-9A-2 of said code; to amend and reenact §19-12A-5 of said code; to amend and reenact §19-14-1, §19-14-2, §19-14-3, §19-14-5, §19-14-6, §19-14-7, §19-14-8, §19-14-9, §19-14-10, §19-14-11, §19-14-12, and §19-14-14 of said code; to amend said code by adding thereto a new section, designated §19-14-16; to amend and reenact §19-21A-1, §19-21A-3, §19-21A-4, and §19-21A-8 of said code; to amend and reenact §19-25-1, §19-25-2, and §19-25-5 of said code; to amend and reenact §19-31-1 of said code; to amend and reenact §19-35-1, §19-35-2, §19-35-3, §19-35-4, §19-35-5, and §19-35-6 of said code; to amend said code by adding thereto two new sections, designated §19-35-3a and §19-35-3b; to

amend and reenact §19-37-2 of said code; and to amend said code by adding thereto a new article, designated §19-38-1, §19-38-2, §19-38-3, §19-38-4, and §19-38-5, all relating to the 2021 Farm Bill; eliminating certain qualifications for Commissioner of Agriculture; eliminating certain references to Marketing and Development Division of Department of Agriculture; authorizing Department of Agriculture to undertake certain marketing, promotional, and economic development activities; authorizing coordination between Department of Economic Development and Department of Agriculture; providing an exemption from disclosure under Freedom of Information Act for certain materials in connection with Department of Agriculture's marketing, promotional, and economic development duties; clarifying that raw milk can be sold for purposes other than human consumption; defining terms related to care of livestock; removing outdated information relating to appointment and composition of Livestock Care Standards Board; establishing length of term for appointments; authorizing reappointment of members for additional terms; providing for gubernatorial appointment of members of Livestock Care Standards Board, by and with consent of Senate; modifying membership of Livestock Care Standards Board; eliminating certain qualifications for members of Livestock Care Standards Board; authorizing Commissioner of Agriculture to promulgate certain legislative rules in consultation with Livestock Care Standards Board; providing an exemption from disclosure under Freedom of Information Act for certain materials in connection with complaints regarding inhumane treatment of livestock; directing board to review proposed rules on livestock care standards and provide recommendation to Legislative Rule-Making Review Committee; authorizing Commissioner of Agriculture to call additional meetings of Livestock Care Standards Board; authorizing Commissioner of Agriculture to file annual reports with Joint Committee on Government and Finance prior to a date certain; providing for administration and enforcement authority of Commissioner of Agriculture with respect to livestock care standards; directing law-enforcement officers to notify Commissioner of Agriculture of certain complaints and investigations; authorizing law-enforcement officers to seek advice of Commissioner of Agriculture concerning

application of livestock care standards; requiring Commissioner of Agriculture to notify law-enforcement officers of changes made during 2021 Regular Legislative session respecting livestock care standards; eliminating fee for permit to feed untreated garbage to swine; removing certain procedural requirements for certain contracts, leases, sales, exchanges, and other dispositions; authorizing cancellation of certain leases and providing for written notice to lessee; amending name of West Virginia Commercial Feed Law; defining, amending, and removing terms related to commercial feed; modifying powers and duties of commissioner; removing certain references to registrant in West Virginia Commercial Feed Law; eliminating requirement to publish annual composite report; changing deadline to apply for permit or registration under West Virginia Commercial Feed Law; eliminating specific fee amounts in statute and authorizing rulemaking related thereto; updating requirements for Commercial Feed Manufacturing Permit and Commercial Feed Distributor Permit; setting forth requirements for individuals to possess Commercial Feed Guarantor Permit; eliminating certain registration requirements for commercial feed products; modifying registration requirements for pet food and specialty pet food; requiring new application for registration in certain circumstances; authorizing Commissioner of Agriculture to refuse to grant, suspend, or revoke permits or registrations in certain circumstances; modifying procedures for certain persons to amend application and appeal adverse determinations; requiring appeals to be in accordance with Administrative Procedures Act; modifying labeling requirements for certain commercial feed products; modifying requirements for tonnage reports and inspection fees; authorizing commissioner to inspect certain tonnage records; modifying meaning of commercial feed or feed ingredients; modifying meaning of misbranding of commercial feed; make technical modifications; modifying certain prohibited acts; defining additional prohibited acts; authorizing establishment of analytical variation rules; authorizing penalties for excessive deviations; providing for penalties to be returned to purchasers where possible; authorizing late payment penalties; modifying authority of West Virginia Conservation Agency and State Conservation Committee to address certain water quality issues;

modifying legislative determinations; defining terms related to conservation districts; eliminating outdated language; modifying authority for conservation districts to address certain water quality issues; limiting liability of landowner who invites or permits persons to enter for agricultural purposes; defining terms related to landowner liability; clarifying ownership of Guthrie Center; modifying legislative findings and purpose; defining terms related to farmers markets and certain foods; eliminating certain definitions; modifying requirements for farmers market registration; requiring that registration be conspicuously displayed; clarifying that certain farmers markets are not required to obtain food establishment permit; providing for department to establish sampling regulations; authorizing rulemaking to establish penalties; modifying requirements for farmers market vendor permits; providing that farmers market vendor permit is valid in all counties; establishing requirements for farmers market vendor permits; clarifying that farmers market vendors are not required to obtain food establishment permit; exempting certain vendors from farmers market vendor permit requirement; directing department to establish conditions and procedures for issuance of vendor permits; authorizing inspections and additional license or certifications as condition of issuing vendor permits; requiring vendor permits be displayed in a conspicuous manner; authorizing rulemaking to establish penalties; clarifying role of local health departments in farmers markets; prohibiting local health department from requiring food establishment permits for farmers markets or vendors except for consignment farmers markets; clarifying that restaurants and prepared food vendors remain subject to food establishment permitting requirements; authorizing food sampling and inspection of a farmers market vendor by local health departments in certain conditions; authorizing local health department to invoke cessation of production in certain conditions; requiring vendor food sampling and inspection and invocation of cessation of production by local health departments at farmers markets to be in consultation with department of agriculture; directing department to promulgate rules; eliminating certain requirements for promulgation of legislative rules; establishing requirements for regulation of potentially hazardous foods and nonpotentially hazardous foods sold at farmers markets; requiring

vendors of potentially hazardous foods to obtain vendor permit; directing department to establish requirements for obtaining vendor permits; eliminating certain labeling requirements for potentially hazardous and nonpotentially hazardous; establishing requirements for sale of potentially hazardous and nonpotentially hazardous foods; expanding permissible kitchens for potentially hazardous foods and nonpotentially hazardous foods; modifying West Virginia Fresh Food Act to include additional categories of foods grown, produced, or processed by in-state producers; modifying requirements for state-funded institutions to obtain food from in-state producers; directing commissioner to establish criteria for food or food products to satisfy in-state requirement; directing commissioner to establish criteria for granting exceptions or exemptions; requiring state-funded institutions to ensure that all contracts related to purchase of food include provisions to ensure compliance with Fresh Food Act; establishing Agriculture Investment Program; setting forth legislative findings and purpose; defining terms; establishing special revenue account in State Treasury to be known as Agriculture Investment Fund; defining source of funds and permissible expenditures from fund; authorizing West Virginia Agriculture Investment Program; providing for program administration; authorizing either grants or loans from fund; establishing certain criteria for awarding grants or loans; authorizing commissioner to establish committee to assist in program administration; and authorizing rulemaking related to Agriculture Investment Program and Agriculture Investment Fund.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 2763**, Creating WV Cyber Incident Reporting.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2763) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2763**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5A-6C-1, §5A-6C-2, §5A-6C-3, and §5A-6C-4, all relating to “West Virginia Cyber Incident Reporting;” providing definitions; requiring all state agencies within the executive branch, constitutional officers, all local governmental entities, county boards of education, Judiciary, and Legislature to report cybersecurity incidents; establishing criteria for reporting incidents; mandating Cybersecurity Office develop and disseminate procedure for reporting incidents; and requiring annual report.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2765**, Relating to allowing emergency management and operations’ vehicles operated by airports to use red flashing warning lights.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sybolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2765) passed.

The following amendment to the title of the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2765**—A Bill to amend and reenact §17C-1-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-15-26 of said code, all relating to emergency management and operations vehicles operated by airports; allowing such vehicles to be equipped with and use red flashing warning lights; authorizing airport director and Secretary of the Department of Homeland Security to designate emergency management and operations vehicles operated by airports; and specifying that such designated vehicles are authorized emergency vehicles.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2785**, Relating to public school enrollment for students from out of state.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Baldwin and Ihlenfeld—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2785) passed.

The following amendment to the title of the bill, from the Committee on Education, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2785**—A Bill to amend and reenact §18-8-1a of the Code of West Virginia, 1931, as amended, relating to requirements for compulsory school attendance; providing that parent and guardian make determination to remove child from kindergarten program; updating references and removing outdated language; providing option to parent to apply for Hope Scholarship for child prior to enrollment in kindergarten and every year thereafter; allowing students who successfully complete publicly or privately supported, state-approved kindergarten program, Montessori kindergarten program, homeschool kindergarten program, Hope Scholarship Program, or private, parochial, or church kindergarten program recognized under subsection (k) of §18-8-1 of this code to be placed into the developmentally and academically appropriate grade level; requiring enrollment in same grade level as state or program from which student transferred; and requiring certain transcripts or credentials to be accepted as record of student's previous performance for placement and credit assignment.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2791**, Relating to enrollment and costs of homeschooled or private school students at vocational schools.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2791) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2877**, Expand direct health care agreements beyond primary care to include more medical care services.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2877) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 2906**, Relating to the School Building Authority's allocation of money.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2906) passed.

On motion of Senator Rucker, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 2906**—A Bill to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to the allocation of money among categories of projects; and providing that the School Building Authority's discretion be increased to allow them to allocate up to ten percent of their funds available for

distribution, except funds from the School Major Improvement fund and the School Access Safety Fund, for projects that service the educational community statewide, for school facilities under the direct supervision of the state board or an administrative council of an area vocational educational center, and for other purposes.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2915**, Relating to public records management and preservation.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 2916**, Creating the Semiquincentennial Commission for the celebration of the 250th anniversary of the founding of the United States of America.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2916) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2957**, Relating to the repeal of outdated code sections.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2957) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 2958**, Relating to repealing outdated sections of state code.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Beach—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2958) passed with its title.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3045**, Relating to firefighter disability claims.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3045) passed with its title.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate.

The Senate proceeded to the ninth order of business.

**Com. Sub. for Senate Bill 125**, Budget Bill.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2005**, Relating to health care costs.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 2093**, Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.**

**§16-5E-3a. Exemption for the United States Department of Veterans Affairs Medical Foster Homes; reporting.**

(a) The provisions of this article do not apply to any home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a Medical Foster Home, pursuant to 38 CFR §17.73, in which care is provided exclusively to three or fewer veterans.

(b) The West Virginia Department of Veterans Affairs shall report annually by December 1, to the Governor, outlining the scope and effectiveness of the Medical Foster Home Program for veterans in West Virginia.

**ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.**

**§16-49-1. Definitions.**

As used in this article:

“Applicant” means an individual who is being considered for employment or engagement with the department, a covered provider or covered contractor.

“Background check” means a prescreening of registries specified by the secretary by rule and a fingerprint-based search of state and federal criminal history record information.

“Bureau” means a division within the Department of Health and Human Resources.

“Covered contractor” means an individual or entity, including their employees and subcontractors, that contracts with a covered provider to perform services that include any direct access services.

“Covered provider” means the following facilities or providers:

- (i) A skilled nursing facility;
- (ii) A nursing facility;
- (iii) A home health agency;
- (iv) A provider of hospice care;
- (v) A long-term care hospital;

(vi) A provider of personal care services;

(vii) A provider of adult day care;

(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility;

(ix) An intermediate care facility for individuals with intellectual disabilities; ~~and~~

(x) Any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment Screening program as determined by the secretary by legislative rule-; and

(xi) Excludes medical foster home approved and annually reviewed by the United States Department of Veterans Affairs pursuant to 38 CFR §17.73.

“Department” means the Department of Health and Human Resources.

“Department employee” means any prospective or current part-time employee, full-time employee, temporary employee, independent contractor, or volunteer of the department.

“Direct access” means physical contact with a resident, member, beneficiary, or client, or access to their property, personally identifiable information, protected health information, or financial information.

“Direct access personnel” means an individual who has direct access by virtue of ownership, employment, engagement or agreement with the department, a covered provider, or covered contractor. Direct access personnel does not include volunteers or students performing irregular or supervised functions or contractors performing repairs, deliveries, installations or similar services for the covered provider. The secretary shall determine by

legislative rule whether the position in question involves direct access.

“Disqualifying offense” means:

(A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

(B) A conviction of any other crime specified by the secretary in rule, which shall include crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses, and financial crimes.

“Negative finding” means a finding in the prescreening that excludes an applicant from direct access personnel positions.

“Notice of ineligibility” means a notice pursuant to §16-49-3 of this code that the secretary’s review of the applicant’s criminal history record information reveals a disqualifying offense.

“Prescreening” means a mandatory search of databases and registries specified by the secretary in legislative rule for exclusions and licensure status prior to the submission of fingerprints for a criminal history record information check.

“Rap back” means the notification to the department when an individual who has undergone a fingerprint-based, state or federal criminal history record information check has a subsequent state or federal criminal history event.

“Secretary” means the Secretary of the West Virginia Department of Health and Human Resources, or his or her designee.

“State Police” means the West Virginia State Police Criminal Identification Bureau.

The bill (Eng. Com. Sub. for H. B. 2093), as amended, was then ordered to third reading.

**Eng. House Bill 2379**, Make criminal invasion of privacy a felony.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 2760**, Relating to economic development incentive tax credits.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 2768**, Supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2769**, Supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2770**, Including home confinement officers in definition of law-enforcement officers.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**CHAPTER 15A DEPARTMENT OF HOMELAND  
SECURITY.**

**ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.**

**§15A-7-5. Powers and duties of state parole officers.**

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than \$1,000 nor more than \$3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant: (1) Arrest or order confinement of any parolee or probationer under his or her supervision; and (2) search a parolee or probationer, or a parolee or probationer's residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) The Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation's training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

(d) In recognition of their duties in their employment which constitute law enforcement, state parole officers are determined to be qualified law enforcement officers as that term is used in §30-29-12 of this code.

(e) Any state parole officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §92B if the following criteria are met:

(A) The Division of Corrections and Rehabilitation has a written policy authorizing a state parole officer to carry a concealed firearm for self-defense purposes;

(B) There shall be in place in the Division of Corrections and Rehabilitation a requirement that state parole officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(C) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection includes provisions which: (i) Preclude or remove a person from participation in the concealed firearm program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(5) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state parole officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(f) The privileges authorized by the amendments in this section enacted during the 2021 regular session of the legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 7. DANGEROUS WEAPONS.**

#### **§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.**

(a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h), of this code and §61-7-11a(b)(2)(I) of this code, are enacted as a reasonable regulation of the manner in which citizens may exercise the rights accorded to them pursuant to section 22, article III of the Constitution of the State of West Virginia.

(b) (1) It is unlawful to possess a firearm or other deadly weapon:

(A) On a school bus as defined in §17A-1-1 of this code;

(B) In or on the grounds of any primary or secondary educational facility of any type: *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such

institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds ~~thereof~~ of the facility; or

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring;

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county, or municipal law-enforcement agency;

(B) Any probation officer appointed pursuant to §62-12-5 or chapter 49 of this code, in the performance of his or her duties;

(C) Any home incarceration supervisor employed by a county commission or a sheriff pursuant to §61-11B-7a of this code in the performance of his or her duties;

(D) A state parole officer appointed pursuant to §15A-7-5 of this code, while in performance of his or he official duties;

~~(E)~~ (F) A retired law-enforcement officer who meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and has on his or her person official identification in accordance with that act;

~~(D)~~ (G) A person, other than a student of a primary and secondary facility, specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

~~(E)~~ (H) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in

a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

~~(F)~~ (I) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

~~(G)~~ (J) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity;

~~(H)~~ (K) The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity; or

~~(I)~~ (L) Any person, 21 years old or older, who has a valid concealed handgun permit. That person may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school: *Provided, That:*

(i) When he or she is occupying the vehicle the person stores the handgun out of view from persons outside the vehicle; or

(ii) When he or she is not occupying the vehicle the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and

(2) The appropriate local office of the State Police, county sheriff or municipal police agency.

(d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a court which adjudicates a person who is 14 years of age or older as delinquent for a violation of §61-7-11a(b) of this code, may order the Division of Motor Vehicles to suspend a driver's license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person's application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward it to the Division of Motor Vehicles.

(e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this code, and if the person does not act to appeal the conviction within the time periods described in §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1) of this code shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within 20 days of the sentencing for

the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the commissioner shall make and enter an order revoking the person's license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when he or she enters a plea of guilty or is found guilty by a court or jury.

(f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable cause to believe that the person's violation of §61-7-11a(b) of this code is

imminent to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

**CHAPTER 62. CRIMINAL PROCEDURE.****ARTICLE 11B. HOME INCARCERATION ACT.****§62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.**

(a) The county commission may employ one or more persons with the approval of the circuit court and who ~~shall be~~ is subject to the supervision of the sheriff as a home incarceration supervisor or may designate the county sheriff to supervise offenders ordered to undergo home incarceration and to administer the county's home incarceration program. Any ~~person so supervising~~ supervisor shall have authority, equivalent to that granted to a probation officer pursuant to §62-12-10 of this code, to arrest a home incarceration participant when reasonable cause exists to believe that ~~such~~ the participant has violated the conditions of his or her home incarceration. Unless otherwise specified, the use of the term "supervisor" in this article shall refer to a home incarceration supervisor.

(b) In recognition of their duties in their employment which constitute law enforcement, home confinement supervisors are determined to be qualified law enforcement officers as that term is used in §30-29-12 of this code.

(c) Any home incarceration supervisor may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(A) The home incarceration program has a written policy authorizing home incarceration supervisors to carry a concealed firearm for self-defense purposes.

(B) There is in place in the home incarceration program a requirement that the home incarceration supervisors must regularly qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies in the county in which the home incarceration supervisors are employed; and

(C) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall include provisions which: (i) Preclude or remove a person from participation in the concealed firearm program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(5) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the Legislature are wholly within the discretion of the supervising authority over the home confinement supervisors.

(7) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize home incarceration programs wishing to do so to allow home incarceration supervisors to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

## **ARTICLE 12. PROBATION AND PAROLE.**

### **§62-12-5. Probation officers and assistants.**

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of ~~said~~ the order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical ~~assistants so appointed~~.

(c) The salary of probation officers and clerical assistants shall be paid at least twice per month, as the Supreme Court of Appeals by rule may direct and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or her assistants shall be provided by the state and the cost thereof shall be charged against the judicial accounts of the state.

(d) ~~No~~ A judge may not appoint any probation officer, assistant probation officer or clerical assistant who is related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of Appeals and in accordance with its rules, a judge of a circuit court whose circuit comprises more than one county may appoint a probation officer and a clerical assistant in each county of the circuit or may appoint the same persons to serve in these respective positions in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies, affects or supersedes the appointment or tenure of any probation officer, medical assistant or psychiatric assistant appointed by any court under any special act of the Legislature heretofore enacted, and the salary or compensation of those persons shall remain as specified in the most recent amendment of any special act until changed by the court, with approval of the Supreme Court of Appeals, by order

entered of record, and any such salary or compensation shall be paid out of the State Treasury.

(g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code, the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance with the court's procedures, ~~is—authorized~~ may to hire multijudicial-circuit probation officers, to be employed through the court's Division of Probation Services. Such officers may also supervise probationers who are on probation for sexual offences with the approval of the administrative director of the Supreme Court of Appeals or his or her designee.

(h) In recognition of their duties in their employment which constitute law enforcement, state probation officers are determined to be qualified law enforcement officers as that term is used in §30-29-12 of this code.

(i) Any state probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(A) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(B) There is in place a requirement that the probation officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(C) The Supreme Courts of Appeals issues a photographic identification and certification card which identify the home incarceration supervisors as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall include provisions which:  
(i) Preclude or remove a person from participation in the concealed

firearm program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(5) Any probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(j) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

The bill (Eng. Com. Sub. for H. B. 2770), as amended, was then ordered to third reading.

**Eng. House Bill 2790**, Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2823**, Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 2829**, Providing for the amortization of annual funding deficiencies for municipal police or firefighter pension and relief funds.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3130**, Relating to elimination of sunset provisions concerning towing rates.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 2. COMMON CARRIERS BY MOTOR VEHICLES.**

### **§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.**

(a) On or before July 1, 2016, the Commission shall promulgate rules to effectuate the provisions of this article.

(b) The rules promulgated pursuant to the provisions of this section shall describe:

(1) Factors determining the fair, effective, and reasonable rates levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle. The commission shall consider, but shall not be limited to:

(A) Tow ~~vehicle(s)~~ vehicle or vehicles and the special equipment required to complete ~~recovery/tow~~ recovery or tow;

(B) Total time to complete the recovery or tow;

(C) Number of regular and extra employees required to complete the recovery or tow;

(D) Location of vehicle recovered or towed;

(E) Materials or cargo involved in recovery or tow;

(F) Comparison with reasonable prices in the region;

(G) Weather conditions; and

(H) Any other relevant information having a direct effect on the pricing of the recovery, towing, and storage of a recovered or towed vehicle;

(2) The process for filing a complaint, and the review and investigation process to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable ~~shall be upon~~ is on the carrier;

(3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle where the commission determines that such charge or charges are not otherwise just, fair, or reasonable; and

(4) The process to review existing maximum statewide wrecker rates and special rates for the use of special equipment in towing and recovery work to ensure that rates are just, fair, and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for ancillary equipment.

(c) All carriers regulated under this article shall list their approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

(d) The rules promulgated pursuant to this ~~article~~ section shall sunset on July 1, ~~2024~~ 2023, unless reauthorized.

(e) On or before December 31, ~~2020~~ 2022, the Legislative Auditor shall review the rules promulgated by the Public Service Commission under this section. The audit shall evaluate the rate-making policy for reasonableness, the complaint process for timeliness, the penalties for effectiveness, and any other metrics the Legislative Auditor deems appropriate. The Legislative Auditor may recommend that the rule be reauthorized, reauthorized with amendment, or repealed.

The bill (Eng. H. B. 3130), as amended, was then ordered to third reading.

**Eng. House Bill 3175**, Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 6E. MOTOR VEHICLE SALESPERSON  
LICENSE.**

**§17A-6E-1. Findings and purpose.**

[Repealed.]

**§17A-6E-2. Definitions.**

[Repealed.]

**§17A-6E-3. License required.**

[Repealed.]

**§17A-6E-4. Eligibility and issuance of license.**

[Repealed.]

**§17A-6E-5. Expiration of license, renewal and expired license.**

[Repealed.]

**§17A-6E-6. Change of employer.**

[Repealed.]

**§17A-6E-7. Change of address, lost or stolen license, duplicate license.**

[Repealed.]

**§17A-6E-8. Display of license.**

[Repealed.]

**§17A-6E-9. Revocation, suspension, or refusal to renew license.**

[Repealed.]

**§17A-6E-10. Administrative due process.**

[Repealed.]

**§17A-6E-11. Investigation, matters,, confidential.**

[Repealed.]

**§17A-6E-12. Injunctive relief.**

[Repealed.]

**§17A-6E-13. Authority for rules.**

[Repealed.]

**§17A-6E-14. Motor Vehicle Salesperson License Fund.**

[Repealed.]

The bill (Eng. H. B. 3175), as amended, was then ordered to third reading.

**Eng. House Bill 3191**, Requiring employers to send certain notifications when retirants are hired as temporary, part-time employees.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Pensions, was reported by the Clerk and adopted:

By striking out everything after the enacting clause 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 10. WEST VIRGINIA PUBLIC EMPLOYEES  
RETIREMENT ACT.**

**§5-10-19. Employers to file information as to employees'  
service.**

(a) Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees and by any retirant who retired under section twenty-two-c of this article and who is working for the employer on a contract basis, as defined in section twenty-two-c of this article, and such other information as the board shall require in the operation of the retirement system.

(b) Prior to any retirant subsequently becoming employed on a temporary full-time or temporary part-time basis by a participating public employer, the employer shall notify the board and the retirant, in writing, if and when the retirant's potential temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either temporary full-time or temporary part-time employment, the employer shall notify the board, in writing, of the retirant's subsequent employment.

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

#### **§18-7A-13a. Resumption of service by retired teachers.**

(a) For the purpose of this section, reemployment of a former or retired teacher as a teacher shall in no way impair the teacher's eligibility for a prior service pension or any other benefit provided by this article.

(b) Retired teachers who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher and when regularly employed by the State of West Virginia. The payment of the allowance shall be discontinued on the first day of the month within which such employment begins and shall be resumed on the first day of the month succeeding the month within which such employment ceases. The annuity paid the teacher on first retirement resulting from the Teachers' Accumulation Fund and the Employers' Accumulation Fund shall continue throughout the governmental service and thereafter according to the option selected by the teacher upon first retirement.

(c) Retired teachers who qualified for an annuity because of disability shall receive no further retirement payments if the retirement board finds that the disability of the teacher no longer exists; payment shall be discontinued on the first day of the month within which the finding is made. If the retired teacher returns to service as a teacher, he or she shall contribute to the Teachers'

Accumulation Fund as a member of the system. His or her prior service eligibility, if any, shall not be impaired because of his or her disability retirement. His or her accumulated contributions which were transferred to the benefit fund upon his or her retirement shall be returned to his or her individual account in the Teachers' Accumulation Fund, minus retirement payments received which were not supported by such contributions and interest. Upon subsequent retirement, he or she shall receive credit for all of his or her contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person's retirement commences between the effective date of the enactment of this section in 2002 and December 31, 2002: *Provided, That* the person shall not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board is herewith authorized to require of the retired teachers and their employers such reports as it deems necessary to effectuate the provisions of this section.

(f) Prior to any retirant subsequently becoming employed on a substitute or temporary basis which if full-time would qualify the retirant as a teacher member or a nonteaching member, the employer shall notify the retirement board and the retirant, in writing, if and when the retirant's potential substitute or temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either substitute or temporary employment, the employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

The bill (Eng. H. B. 3191), as amended, was then ordered to third reading.

**Eng. House Bill 3298**, Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3300**, Relating to reducing personal income tax rates generally.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Tarr, and by unanimous consent, the bill was advanced to third reading with the unreported Finance committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Joint Resolution 1**, Education Accountability Amendment.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was laid over one day, retaining its place on the calendar.

**Eng. House Joint Resolution 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was laid over one day, retaining its place on the calendar.

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

**Eng. Com. Sub. for House Bill 2722**, Prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals.

**Eng. Com. Sub. for House Bill 2758**, Requiring the Insurance Commissioner to regulate professional bondsmen.

**Eng. Com. Sub. for House Bill 2793**, Permit out of state residents to obtain West Virginia concealed carry permits.

**Eng. Com. Sub. for House Bill 2834**, Adding the Curator of the West Virginia Division of Arts, Culture and History as an ex officio voting member of the commission.

**Eng. House Bill 2874**, Extend the current veteran's business fee waivers to active duty military members and spouses.

**Eng. Com. Sub. for House Bill 2890**, To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services.

**Eng. House Bill 2914**, To remove certain ex officio, voting members from the Archives and History Commission and update formatting.

**Eng. House Bill 2969**, To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility.

**Eng. Com. Sub. for House Bill 3293**, Relating to single-sex participation in interscholastic athletic events.

And,

**Eng. House Bill 3294**, Relating to unemployment insurance.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Weld.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 11:11 a.m., the Senate recessed until 5:30 p.m. today.

The Senate reconvened at 6:26 p.m. and, without objection, returned to the third order of business.

### **Executive Communications**

The Clerk then presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

April 5, 2021

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for House Bill No. Two Thousand Six Hundred Twenty-One (2621), which was presented to me on March 30, 2021.

Committee Substitute for House Bill No. Two Thousand Seven Hundred Ninety-Seven (2797), which was presented to me on March 30, 2021.

House Bill No. Two Thousand Eight Hundred Fifty-Four (2854), which was presented to me on March 30, 2021.

Committee Substitute for House Bill No. Two Thousand Eight Hundred Fifty-Five (2855), which was presented to me on March 30, 2021.

House Bill No. Two Thousand Nine Hundred Five (2905), which was presented to me on March 30, 2021.

You will note that I have approved these bills on April 5, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Lee Cassis

The Senate again proceeded to the fourth order of business.

Senator Hamilton, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 63** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the proposal of permitting members of certain groups to hunt, fish, and/or trap, within the state of West Virginia without obtaining a license or waiving the fees associated with such a license.

Whereas, All individuals who desire to obtain a license to hunt, fish, or trap within the state of West Virginia shall obtain a license to do so and shall pay the prescribed rate for such license; and

Whereas, There have been bills proposed in recent sessions of the West Virginia Legislature to permit members of certain groups to hunt, fish, or trap within the state of West Virginia without obtaining a license and/or waiving the fees incident to obtaining such licenses; and

Whereas, The specific groups of people that have been named in these proposed bills are veterans who were honorably discharged from the armed services of the United States or municipal volunteer firefighters to hunt, fish, or trap within this state without obtaining a license or permitting members of said groups to obtain such licenses without paying the prescribed fee; and

Whereas, There may be a significant number of people who desire to hunt, fish, or trap in West Virginia that are also members of the groups specifically named by this proposed legislation; and

Whereas, The enactment of such proposed legislation would likely have an impact on the revenue of the West Virginia Division of Natural Resources and/or other governmental entities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the proposal of permitting members of certain groups to hunt, fish, and/or trap, within the state of West Virginia without obtaining a license or waiving the fees associated with such a license; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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, prepare the report, and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Bill Hamilton,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 63) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

Senator Hamilton, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 64** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the proposal of regulating, through the passage of legislation, issues that have traditionally been within the purview of regulations adopted by the West Virginia Division of Natural Resources, including, but not necessarily limited to, bag limits for wild game, the protection of albino wild game, and/or assessment of a fee for wildlife injured or killed by wind power projects.

Whereas, It is the public policy of the State of West Virginia that the wildlife resources of this state shall be protected for the use and enjoyment of all the citizens of this state; and

Whereas, There have been bills proposed in recent sessions of the West Virginia Legislature to legislate issues that have traditionally been governed by regulations adopted by the West Virginia Division of Natural Resources; and

Whereas, One or more of the bills recently presented sought to establish seasonal bag limits for antlered deer; and

Whereas, One or more of the bills recently presented sought to prohibit the harvesting of albino deer; and

Whereas, Wind power projects utilize the use of wind turbines and towers to generate electricity throughout this state; and

Whereas, The components of wind power projects pose a collision risk to certain wildlife and have been known to injure or kill certain protected species within the state; and

Whereas, One or more of the bills recently presented sought to assess a fee to the operator of a wind-powered electricity generation facility whose operation resulted in the injuring or killing of protected species of animal, including, but not limited to, bald eagles, golden eagles, ravens, hawks, owls, and woodcocks; and

Whereas, Regulating the length of hunting or trapping seasons, bag limits for wild game, the protection of albino wild game, and/or the assessment of a fee for wildlife injured or killed has traditionally been within the purview of wildlife biologists and others with specialized knowledge within the West Virginia Division of Natural Resources; and

Whereas, The enactment of such proposed legislation would likely have an impact on the revenue of the West Virginia Division of Natural Resources and/or other governmental entities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the proposal of regulating, through the passage of legislation, issues that have traditionally been within authority of regulations adopted by the West Virginia Division of Natural Resources, including, but not necessarily limited to, bag limits for wild game, the protection of albino wild game, and/or assessment of a fee for wildlife injured or killed by wind power projects; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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, prepare the report, and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Bill Hamilton,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 64) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

Senator Hamilton, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 65** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the proposal of permitting primitive camping in secluded, remote areas of state-owned property managed by the West Virginia Division of Natural Resources.

Whereas, “Primitive camping” means being without neighbors, electricity, running water, bathroom facilities, and, often times, cell service. Primitive camping requires a stamp with an annual fee to be set by the director; and

Whereas, The parks and recreation program within the State of West Virginia is an integral part of the state’s identity; and

Whereas, The parks and recreation program is vital to the tourism industry of this state; and

Whereas, The administration of the parks and recreation program in this state is entrusted to the West Virginia Division of Natural Resources, which has traditionally done so by regulations; and

Whereas, There have been bills proposed in recent sessions of the West Virginia Legislature to permit primitive camping in secluded, remote areas of state-owned property managed by the West Virginia Division of Natural Resources; and

Whereas, Primitive camping generally means camping without electricity, running water, and bathroom facilities; and

Whereas, The enactment of such proposed legislation would likely have an impact on the revenue of the West Virginia Division of Natural Resources and/or other governmental entities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the proposal of permitting primitive camping in secluded, remote areas of state-owned property managed by the West Virginia Division of Natural Resources; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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, prepare the report, and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Bill Hamilton,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 65) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2017**, Rewriting the Criminal Code.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2730**, Relating to persons filing federal bankruptcy petition to exempt certain property of the estate.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Hamilton, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

**Eng. Com. Sub. for House Bill 2773**, Permitting DNR to issue up to 100 permits for boats greater than 10 horsepower on Upper Mud River Lake.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Bill Hamilton,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2842**, Preventing cities from banning utility companies in city limits.

With amendments from the Committee on Energy, Industry, and Mining pending;

And reports the same back with the recommendation that it do pass as amended by the Committee on Energy, Industry, and Mining to which the bill was first referred.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2918**, Relating to Family Drug Treatment Court.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 3254**, Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 3286**, Making a supplementary appropriation to the Division of Human Services – Child Care and Development.

**Eng. House Bill 3287**, Making a supplementary appropriation to the Department of Homeland Security.

**Eng. House Bill 3288**, Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR.

**Eng. House Bill 3289**, Supplementary appropriation to the Department of Commerce, Geological and Economic Survey.

**Eng. House Bill 3291**, Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services.

**Eng. House Bill 3292**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health.

**Eng. Com. Sub. for House Bill 3295**, Making a supplemental appropriation to Division of Human Services and Division of Health Central Office.

And,

**Eng. Com. Sub. for House Bill 3297**, Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 3310**, Relating to the jurisdiction of the Public Service Commission.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**House Concurrent Resolution 68**, Providing for the issuance of not to exceed \$22 million of refunding bonds pursuant to the Safe Roads Amendment of 1996.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions on April 2, 2021:

**Senate Concurrent Resolution 45:** Senator Caputo;

**Senate Resolution 38:** Senators Stollings, Lindsay, and Hamilton;

And,

**Senate Resolution 39:** Senators Tarr, Lindsay, Stollings, and Hamilton.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 6:34 p.m., the Senate adjourned until tomorrow, Tuesday, April 6, 2021, at 10 a.m.

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## TUESDAY, APRIL 6, 2021

The Senate met at 10:07 a.m.

(Senator Blair, Mr. President, in the Chair.)

Prayer was offered by the Honorable Patrick S. Martin, a senator from the twelfth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable John R. Unger II, a senator from the sixteenth district.

Pending the reading of the Journal of Monday, April 5, 2021,

At the request of Senator Karnes, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 78**, Relating to rehabilitative spousal support.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the reconsideration, amendment, and passage as amended, by a vote of a majority of all the members elected to the House of Delegates, as a result of the objections of the Governor, of

**Enr. Senate Bill 89**, Exempting certain kindergarten and preschool programs offered by private schools from registration requirements.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 377**, Relating to extension for boil water advisories by water utility or public service district.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

**Eng. Senate Bill 437**, Extending contingent increase of tax rate on certain eligible acute care hospitals.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 439**, Allowing use or nonuse of safety belt as admissible evidence in civil actions.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page six, section forty-nine-a, line sixty-nine, after the word “code” by changing the period to a comma and inserting the words “or if the driver is found to have concurrently violated any statute in Chapter 61 of this code.”

On motion of Senator Trump, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 439) was reported by the Clerk and adopted:

On page six, section forty-nine-a, subsection (c), subdivision (4), after the word “violated”, by striking out the words “any statute in Chapter 61” and inserting in lieu thereof “§61-5-17(h), §61-5-17(i), or §61-5-17(j)”.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 439, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Stollings, Unger, and Woelfel—10.

Absent: Romano—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 439) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 514**, Providing criteria for Natural Resource Commission appointment and compensation.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 518**, Relating to grounds for administrative dissolution of certain companies, corporations, and partnerships.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 644**, Exempting certain persons pursuing degree in speech pathology and audiology from license requirements.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page 2, section 2, line 20, by striking the words, “in speech-language pathology or”;

On page 2, section 2, line 25, by striking the words, “speech-language pathology or”;

On page 1, section 2, line 1, by striking the inserted word, “and” and inserting the language, “and (e)”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 644**—A Bill to amend and reenact §30-26-2 of the Code of West Virginia, 1931, as amended, relating to providing an exemption to the hearing-aid dealer license.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 644, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Beach—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 644) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the passage as amended, of

**Eng. House Bill 2253**, Relating to forgery and other crimes concerning lottery tickets.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of the following resolutions:

**House Concurrent Resolution 4**—Requesting the Division of Highways name bridge number 06-049/00-008.51 () (06A239), locally known as the Decker Adkins Bridge, carrying County Road 49 over Madison Creek in Cabell County, the “U. S. Army PFC Herman H. Lucas Memorial Bridge”.

**House Concurrent Resolution 10**—Requesting the Division of Highways name a bridge bearing the milepost 30.96, carrying County Route 38 over the Tygart Valley River in the town of Dailey, located in Randolph County, West Virginia, as the “James ‘Big Jim’ Shaffer Memorial Bridge”.

**House Concurrent Resolution 11**—Requesting the Division of Highways name bridge number: 18-331/00-003.99 (18A126), (38.86741, -81.81838) locally known as COTTAGEVILLE ARCH (SCDA), carrying WV 331 over MILL CREEK in Jackson county the “Thomas Brothers Memorial Bridge”.

**House Concurrent Resolution 18**—Requesting the Division of Highways name bridge number 18-021/22-000.49 () (18A245), locally known as Sycamore Creek Bridge #1, carrying County Route 21/22 over Sycamore Creek in Jackson County, the “U. S. Army CWO3 Daniel Okey Cunningham Memorial Bridge”.

**House Concurrent Resolution 19**—Requesting the Division of Highways name a bridge bearing the milepost 6.14, carrying County Route 41 in Putnam County, locally known as “Clymer’s Creek Road,” as the “U. S. Army Pvt. Dallis H. Johnson WWII Memorial Bridge”.

**House Concurrent Resolution 28**—Requesting the Division of Highways name bridge number 02-009/00-002.54 (02A176), locally known as Johnstontown Bridge, carrying WV Route 9 over Tilhance Creek in Berkeley County, the “Paul J. Hofe Memorial Bridge”.

**House Concurrent Resolution 40**—Requesting the Division of Highways name bridge number 22-007/00-021.18 (22A153), (38.22218, -82.11335) locally known as Myra Pony Truss,

carrying CR 7 over Mud River in Lincoln County, the “USMC Cpl Guy Maywood Edwards Memorial Bridge”.

**House Concurrent Resolution 41**—Requesting the Division of Highways name a set of twin bridges, number 11349, carrying US Route 35 over County Route 78 and 16-Mile Creek in Mason County, West Virginia as the “Halstead Brothers WWII Veterans Memorial Bridge”.

**House Concurrent Resolution 44**—Requesting the Division of Highways name Bridge Number: 28-019/00-020.58 () (28A187), (37.43298, -81.11005) locally known as GARDNER ROAD BRIDGE, carrying US 19 over BLUESTONE RIVER in Mercer County, the “Timothy Wayne Farley Memorial Bridge”.

**House Concurrent Resolution 46**—Requesting the Division of Highways name bridge number: 22-037/00-003.29 (22A163), (38.09662, -82.18916) locally known as Fourteen Mile Tub Girder Bridge, carrying WV 37 over Fourteen Mile Creek in Lincoln County, the “U. S. Navy BM1 Farris Burton Memorial Bridge”.

**House Concurrent Resolution 47**—Requesting the Division of Highways name bridge number 20-061/00-016.01 (20A184), (38.23939, -81.5576) locally known as Lens Creek Temporary Bridge, carrying WV 61 over Lens Creek in Kanawha County, the “SP5 Terry Lee McClanahan Memorial Bridge”.

**House Concurrent Resolution 51**—Requesting the Division of Highways name a portion of County Route 19/1, Ballangee Road, from its intersection with County Route 17/1, known as War Ridge Road, to its intersection with County Route 19/3, known as Big Stony Creek Road, in Summers County, the “U.S. Army PVT Lomer Elmo Davis Memorial Road”.

**House Concurrent Resolution 52**—Requesting the Division of Highways name bridge number: 25-001/00-010.40 (25A004), (39.53091, -80.34410) locally known as Mannington Arch, carrying CR 1 over Pyles Fork in Marion County, the “WW II Veterans Toothman Brothers Memorial Bridge”.

**House Concurrent Resolution 58**—Requesting the Division of Highways name bridge number: 03-005/00-017.66 (03A042), (38.63616, -81.62303) locally known as Seth Bridge, carrying CR 5 over Big Coal River in Boone County, the “Daniel Edward Kolhton ‘Red’ Haney Memorial Bridge”.

**House Concurrent Resolution 60**—Requesting the Division of Highways name bridge number 32-023/03-000.17 () (32A097), (37.54475, -80.68795) locally known as Cooks Fort Bridge, carrying CR 23/3 over Indian Creek in Monroe County, the “U. S. Army CPL Billy F. Mann Memorial Bridge”.

**House Concurrent Resolution 66**—Requesting the Division of Highways name bridge number: 20-060/00-005.59 (WB) (20A336), (38.35826, -81.63989) locally known as US 60 Washington Street Bridge, carrying US 60 over Elk River in Kanawha county, the “Charleston Police Officer Cassie Johnson-Fallen Heroes Memorial Bridge”.

**House Concurrent Resolution 67**—Requesting the Division of Highways to name a portion of Commerce Street; beginning at the corner of 12th and Commerce Streets and ending at the Department of Highways facility located just north of Kroger in Wellsburg, in Brooke County, the “U. S. Army SGT Roy E. Givens Memorial Road”.

**House Concurrent Resolution 71**—Requesting the Division of Highways name a bridge bearing the number 10-060/00-000.32 (10A140), (38.18106, -81.30672) locally known as “Smithers Creek Bridge,” carrying US Route 60 over Smithers Ck. & CR 21/15 in Fayette County as the “The Doctor Enrique Aguilar Memorial Bridge”.

**House Concurrent Resolution 75**—Requesting the Division of Highways name bridge number 04-035/02-003.09 () (04A196) locally known as the Hyers Run Plate Girder, carrying County Route 35/2 over Little Kanawha River in Braxton County, the “U. S. Army Corporal Charles William ‘Bill’ Knight Memorial Bridge”.

**House Concurrent Resolution 76**—Requesting the Division of Highways name bridge number 04-019/26-008.08 () (04A166) locally known as the Lower Exchange BXBM, carrying County Route 19/26 over Perkins Fork of Cedar Creek in Braxton County, the “U.S. Navy Seaman 1st Class Byrne Lee Singleton Memorial Bridge”.

**House Concurrent Resolution 77**—Requesting the Division of Highways name a portion of U.S. Route 219, in Monroe County, beginning at its intersection with WV Route 122 and ending at its intersection with County Route 219/16, the “Elmer Galford Memorial Road”.

**House Concurrent Resolution 85**—Requesting the Division of Highways name bridge number: 25-001/00-010.40 (25A004), (39.53091, -80.34410) locally known as Mannington Arch, carrying CR 1 over Pyles Fork in Marion County, the “WW II Veterans Toothman Brothers Memorial Bridge”.

The preceding resolutions were referred to the Committee on Transportation and Infrastructure.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to and the adoption as amended, of

**House Concurrent Resolution 12**, Charles E. Jarvis Memorial Bridge.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to and the adoption as amended, of

**House Concurrent Resolution 20**, Bill Withers Memorial Road.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to and the adoption as amended, of

**House Concurrent Resolution 26**, Victor Yoak Memorial Bridge.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 34**—Declaring the “pepperoni roll” to be the official State Food of West Virginia.

Referred to the Committee on Rules.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to and the adoption as amended, of

**House Concurrent Resolution 35**, Requesting the Department of Health and Human Resources to continuously evaluate the child welfare system.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to and the adoption as amended, of

**House Concurrent Resolution 38**, “U.S. Marine Corps Sergeant David Andrew Green Memorial Bridge”.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to and the adoption as amended, of

**House Concurrent Resolution 62**, Major Samuel Wilson Rogers Jr. Memorial Bridge.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 86**—Requesting the Joint Committee on Government and Finance study recruitment and

retention of health care workers and the causes of shortages of certain health care workers in West Virginia.

Referred to the Committee on Rules.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 87**—Requesting the Joint Committee on Government and Finance study empowering the West Virginia Courtesy Patrol to submit billing reimbursement for the cost of their services to automobile insurance carriers who provide roadside assistance.

Referred to the Committee on Rules.

The Senate proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2221**, Relating to the establishment of an insurance innovation process.

With amendments from the Committee on Banking and Insurance pending;

And reports the same back with the recommendation that it do pass as amended by the Committee on Banking and Insurance to which the bill was first referred.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2927**, Adding Caregiving expenses to campaign finance expense.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 3078**, Relating to powers and duties of the parole board.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 3215**, Amending the requirements to become an elected prosecutor.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 3304**, Authorizing the Division of Corrections and Rehabilitation to establish a Reentry and Transitional Housing Program.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Tarr, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on the Judiciary.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Joint Resolution 3**, Property Tax Modernization Amendment.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The resolution, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

The Senate proceeded to the sixth order of business.

Senators Nelson and Takubo offered the following resolution:

**Senate Resolution 41**—Congratulating the George Washington High School History Bowl team for finishing in fourth place of the 2020 National History Bowl Varsity Championships.

Whereas, Academic events provide students the opportunity to gain confidence, make new friends, strengthen long-term memory knowledge, help with university admission, and ignite a passion for life-long learning; and

Whereas, West Virginia's students can, and do, compete successfully in state, regional, and national academic competitions; and

Whereas, The George Washington High School History Bowl team consists of students committed to reading and learning about world and United States history; and

Whereas, The COVID-19 pandemic eliminated many opportunities for in-person competition in all fields of interscholastic competition in 2020 and delayed the spring national championship for eight months; and

Whereas, The George Washington High School History Bowl team maintained a winning spirit, dedication, and resolve to compete virtually during the COVID-19 pandemic; and

Whereas, The George Washington High School History Bowl team, consisting of: University of Chicago freshman Walker Combs; University of Indiana freshman Ben Woods; George Washington High School seniors Adam Keith and John Ward; and junior Reese Mason, were reunited in December 2020 to compete in a COVID-19 delayed National History Bowl Varsity Championship; and

Whereas, The George Washington High School History Bowl team demonstrated serious competitiveness on a national stage to defeat public and private school teams from Boston to Silicon Valley, and advance to the final four, after winning 13 rounds in two days at the virtual academic event; and

Whereas, The George Washington High School History Bowl team lost by one question in a close final four match to Adlai Stevenson High School from Chicago, Illinois; and

Whereas, The George Washington High School History Bowl team placed fourth in the nation, which ties their previous year's success and remains the best finish by any George Washington High School team in the history of the national competition hosted by International Academic Competitions; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates the George Washington High School History Bowl team for finishing in fourth place of the 2020 National History Bowl Varsity Championships; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to the George Washington High School History Bowl team.

Which, under the rules, lies over one day.

Senators Nelson and Takubo offered the following resolution:

**Senate Resolution 42**—Congratulating Walker Combs for winning the 2020 National History Bee Championship.

Whereas, The National History Bee is a buzzer-based history quiz competition for individual students who compete against each other in a series of rounds where they attempt to be the first to ring in and answer paragraph-length questions about various topics in history; and

Whereas, Academic events provide students the opportunity to gain confidence, make new friends, strengthen long-term memory knowledge, help with university admission, and ignite a passion for life-long learning; and

Whereas, West Virginia’s school students can, and do, compete successfully in state, regional, and national academic competitions; and

Whereas, Walker Combs, a senior at George Washington High School and member of the History Bowl team, competed in the National History Bee; and

Whereas, Walker Combs displayed his superior intellect in the National History Bee and became the first West Virginia student to win this national competition; therefore, be it

*Resolved by the Senate:*

That the Senate hereby congratulates Walker Combs for winning the 2020 National History Bee Championship; and, be it

*Further Resolved*, That the Senate commends Walker Combs for his outstanding academic achievements and extends its best wishes to him on a bright future ahead; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to Walker Combs.

Which, under the rules, lies over one day.

Senator Maynard offered the following resolution:

**Senate Resolution 43**—Requesting the construction of a licensed off-highway vehicle, semi-contiguous trail to parallel the Appalachian Hiking Trail on the western side.

Whereas, The U.S. Department of Commerce's Bureau of Economic Analysis shows that the outdoor recreation economy accounted for 2.2 percent (\$412 billion) of current-dollar GDP in 2016; and

Whereas, In 2017, Backcountry Discovery Routes generated \$17.3 million in new tourism expenditures, with the average traveling party spending \$3,769 per trip; and

Whereas, The construction of a licensed off-highway vehicle (OHV), semi-contiguous trail to parallel the Appalachian Hiking Trail on the western side connecting existing OHV trails, and off-road parks where possible, would bring in significant tourism dollars. The proposed trail should enter West Virginia in the southern part of the state and exit in the Potomac Highlands; and

Whereas, The Senate believes that the OHV trail will generate much needed economic stimulus to the state, create new jobs, and increase tax revenue; therefore, be it

*Resolved by the Senate:*

That the Senate hereby requests the construction of a licensed off-highway vehicle, semi-contiguous trail to parallel the Appalachian Hiking Trail on the western side; and, be it

*Further Resolved*, That the construction of a licensed off-highway vehicle, semi-contiguous trail to parallel the Appalachian Hiking Trail on the western side can be supported by all West Virginians; and, be it

*Further Resolved*, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Governor and the state legislatures of the states where the Appalachian Trail traverses, including: Georgia, North Carolina, Tennessee, Virginia, Maryland, Pennsylvania, New Jersey, New York, Massachusetts, Vermont, New Hampshire and Maine with the addition of Alabama, which lies to the west of Georgia and the trail.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 61**, Requesting study on consolidating county boards of education to provide efficiencies and direct cost savings.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Education; and then to the Committee on Rules.

**Senate Resolution 40**, Recognizing 150th anniversary of Summers County.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Woodrum, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

**House Concurrent Resolution 68**, Providing for the issuance of not to exceed \$22 million of refunding bonds pursuant to the Safe Roads Amendment of 1996.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

The Senate proceeded to the eighth order of business.

**Com. Sub. for Senate Bill 125**, Budget Bill.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, April 5, 2021, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend on third reading remaining in effect.

**Eng. Com. Sub. for House Bill 2093**, Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2093) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2760**, Relating to economic development incentive tax credits.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 2768**, Supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2768) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2768) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2769**, Supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2769) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2769) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2770**, Including home confinement officers in definition of law-enforcement officers.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2770) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2770**—A Bill to amend and reenact §15A-7-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-7-11a of said code; to amend and reenact §62-11B-7a of said code, and to amend and reenact §62-12-5 of said code, all relating generally to qualifying for protection under the Law-Enforcement Officers Safety Act; clarifying that home confinement supervisors, state probation officers, and state parole officers are qualified enforcement officers who may carry a concealed firearm nationwide, as authorized by the federal Law-Enforcement Officers Safety Act; exempting certain persons from prohibition for carrying deadly weapons on the premises of educational facilities; providing the statutory authority necessary to give home confinement supervisors, state probation officers, and parole officers the option to carry firearms pursuant to federal law; requiring annual firearm training pursuant to federal law; clarifying that supervisory entities retain sole discretion as to authorizing participation in a program and setting forth duties of supervising authorities as to participation of home confinement supervisors, state probation officers, and state parole officers.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2790**, Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings,

Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2790) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2790) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2823**, Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2823 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Beach—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2823) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 2829**, Providing for the amortization of annual funding deficiencies for municipal police or firefighter pension and relief funds.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2829) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 2915**, Relating to public records management and preservation.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 3130**, Relating to elimination of sunset provisions concerning towing rates.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3130) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 3130**—A Bill to amend §24A-2-2b of the Code of West Virginia, 1931, as amended, relating to rulemaking by the Public Service Commission with respect to common carriers by motor vehicle engaged in recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; extending sunset date for such rules to July 1, 2023; and extending deadline for audit of such rules by Legislative Auditor to December 31, 2022.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3175**, Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Ihlenfeld and Martin—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3175) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 3175**—A Bill to repeal §17A-6E-1, §17A-6E-2, §17A-6E-3, §17A-6E-4, §17A-6E-5, §17A-6E-6, §17A-6E-7, §17A-6E-8, §17A-6E-9, §17A-6E-10, §17A-6E-11, §17A-6E-12, §17A-6E-13, and §17A-6E-14 of the Code of West Virginia, 1931,

as amended, all relating to repeal of the motor vehicle salesperson license.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Ihlenfeld and Martin—2.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3175) takes effect from passage.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3191**, Requiring employers to send certain notifications when retirants are hired as temporary, part-time employees.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3191) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3298**, Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3298) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3298) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3300**, Relating to reducing personal income tax rates generally.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Monday, April 5, 2021, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend remaining in effect and with the unreported Finance committee amendment pending.

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2005**, Relating to health care costs.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 29B. HEALTH CARE AUTHORITY.**

**§16-29B-24. Reports required to be filed.**

(a) A covered facility, within ~~one hundred twenty~~ 120 days after the end of its fiscal year, unless an extension be granted by the authority, shall file with the authority its annual financial report prepared by an accountant or auditor.

(b) A covered facility, if applicable by legislative rule, shall submit upon request of the authority but at least annually:

(1) A statement of charges for all services rendered, except a behavioral health facility shall submit its gross rates for its top ~~thirty~~ 30 services by utilization;

(2) The Health Care Authority Financial Report, through the Uniform Reporting System;

(3) The current Uniform Bill form in effect for inpatients. This data is not subject to the provisions ~~of subsection (f), section twenty five of this article~~ §16-29B-25(f) of this code.

(c) The authority may request from a covered facility, except hospitals, the information from subsection (a) and (b) from its related organization.

(d) A home health agency shall annually submit a utilization survey.

(e) A summary of every contract or an amendment to an existing contract for the payment of patient care services between a purchaser or third party payor and a hospital shall be filed by the hospital.

~~(e)~~ (f) A covered facility failing to submit a report to the authority shall be notified by the authority and, if the failure continues for ~~ten~~ 10 days after receipt of the notice, the delinquent facility organization is subject to a penalty of \$1,000 for each day thereafter that the failure continues.

**§33-2-24. Authority of Insurance Commissioner to enforce No Surprises Act; administrative penalties; injunctive relief; regulatory assistance of other agencies; rulemaking; effective date.**

(a) The Insurance Commissioner shall enforce the applicable provisions of the No Surprises Act (H.R. 133, Public Law 116-260) against health insurers, medical providers, and health care facilities.

(b) Whenever the Insurance Commissioner believes, from evidence satisfactory to him or her, that any insurer, medical provider, or health care facility is violating the applicable provisions of the No Surprises Act, the Commissioner may assess a fine, not to exceed \$10,000 per violation, after notice and hearing pursuant to §33-2-13 of this code. In addition to the administrative penalty available in this subsection, the Insurance Commissioner may cause a complaint to be filed in the appropriate court of this state seeking to enjoin and restrain the insurer, medical provider, or health care facility from continuing the violation or engaging therein or doing any act in furtherance thereof.

(c) The Insurance Commissioner may, at his or her discretion, seek assistance from any other state government agency regarding regulatory enforcement of this section against medical providers or health care facilities. The Insurance Commissioner may also call upon the Attorney General for legal assistance and representation as provided by law.

(d) The Insurance Commissioner may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this section.

(e) The provisions of this section shall become effective January 1, 2022.

On motions of Senators Maroney and Azinger, the following amendments to the Health and Human Resources committee

amendment to the bill (Eng. Com. Sub. for H. B. 2005) were reported by the Clerk, considered simultaneously, and adopted:

On page one, by striking out the chapter heading;

On page one, by striking out the article heading;

On page one, by striking out section twenty-four in its entirety;

And,

On page two, before the section caption, by inserting the following:

## **ARTICLE 2. INSURANCE COMMISSIONER.**

The question now being on the adoption of the Health and Human Resources committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2005), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2022**, 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 Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

**Eng. House Bill 2379**, Make criminal invasion of privacy a felony.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 2722**, Prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2758**, Requiring the Insurance Commissioner to regulate professional bondsmen.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 10. PROFESSIONAL BONDSMEN IN CRIMINAL CASES.**

### **§51-10-1. Definitions.**

~~The words “bonding business” as used in this article mean the business of becoming surety for compensation upon bonds in criminal cases in the State of West Virginia, and the word “bondsmen” means any person or corporation engaged either as principal or as agent, clerk, or representative of another in such business.~~

When used in this article:

(1) “Bonding business” means the business of becoming surety for compensation upon bonds in criminal cases in the State of West Virginia;

(2) “Bondsman” means (A) any person engaged in the bonding business that has satisfied the requirements for, and is duly licensed as, an insurance producer with a property and casualty line of authority as set forth by the Insurance Commissioner and §33-12-1, et seq. of this code; or (B) any person who is approved and licensed under the provisions of this article who pledges cash or approved securities with the commissioner as security for bail bonds written in connection with a judicial proceeding and receives or is promised money or other things of value for the pledge;

(3) “Commissioner” means the Insurance Commissioner of West Virginia, as defined in §33-1-5 of this code; and

(4) “Insurer” means any domestic, foreign, or alien person, including a surety company, which has been qualified generally to transact surety business in the State of West Virginia.

**§51-10-8. Qualifications of bondsmen; rules to be prescribed by Supreme Court of Appeals; lists of agents to be furnished; renewal of authority to act; false swearing Insurance Commissioner; bondsman filing requirements; bondsman license renewal requirements; criminal penalty for filing false affidavit; list of bondsmen kept and provided to places of detention by Insurance Commissioner; requiring all bondsmen to be licensed by Insurance Commissioner after July 1, 2022.**

~~(a) The Supreme Court of Appeals shall under reasonable rules, specify the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the State of West Virginia, and the terms and conditions upon which the business may be carried on. After the first day of September, two thousand four, no person or corporation may, either as principal, or as agent, clerk, or representative of another, engage in the bonding business in any court regularly exercising criminal jurisdiction until qualified pursuant to the rules. The Supreme Court of Appeals, in making the rules, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral~~

~~qualities of the person so applying, and no person may be permitted to engage, either as principal or agent, in the business of becoming surety upon bonds for compensation in criminal cases, who has ever been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character. The court shall require every person qualifying to engage in the bonding business as principal to file with the court a list showing the name, age, and residence of each person employed by the bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of the persons stating that the person will abide by the terms and provisions of this article. The court shall require the authority of each of the persons to be renewed from time to time at periods the court may by rule provide. Before the authority may be renewed the court shall require from each of the persons an affidavit that since his or her previous qualifications to engage in the bonding business he or she has abided by the provisions of this article, and any person swearing falsely in any of the affidavits is guilty of false swearing.~~

~~(b) Persons authorized to engage in the bonding business in criminal cases in the State of West Virginia on the effective date of the amendments made to this section during the regular session of the Legislature in two thousand four may continue to engage in the business until the first day of September, two thousand four.~~

(a) The commissioner shall promulgate and propose legislative rules for promulgation under §29A-3-1, et seq. of this code, to carry out the intent, administration, and enforcement of this article. The commissioner may promulgate any emergency rules under §29A-3-15 of this code necessary to carry out the intent, administration, and enforcement of this article. The commissioner shall develop all forms, contracts, or other documents to be used for the purposes outlined in this article.

(b) The rules required by subsection (a) of this section shall specify the qualifications that a person must have when applying to be a bondsman, and the terms and conditions upon which the bonding business may be conducted. The commissioner shall

require a biennial fee of \$200 for all bondsman licensed under this article.

(c) The commissioner, in promulgating and proposing rules required by subsection (a) of this section, and in granting a license to a person to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person applying, and a person who has been convicted of any offense involving moral turpitude, or who is not known to be a person of good moral character shall not be licensed.

(d) The applicant shall provide the commissioner a qualifying power-of-attorney from a licensed insurer or surety company or pledge cash or approved securities with the commissioner as security for bail bonds.

(e) The applicant shall comply with the provisions of §33-12-37 of this code regarding criminal history record checks.

(f) The commissioner shall require every bondsman licensed to engage in the bonding business as a principal to file with the commissioner a list showing the name, age, and residence of each person employed by the bondsman as an agent, clerk, or representative in the bonding business, and require an affidavit from each of the persons stating that the person will abide by the terms and provisions of this article.

(g) (1) The commissioner shall require a person licensed as a bondsman to renew his or her license every two years and to file an affidavit stating that since his or her previous license to engage in the bonding business he or she has abided by the provisions of this article.

(2) A person who files a false affidavit is guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for the offense.

(3) A person seeking to renew his or her license to engage in the bonding business shall submit to the property and casualty requirements under section (d) of this section for each renewal.

unless he or she has voluntarily terminated his or her license to engage in the bonding business.

(h) The commissioner shall keep a list of all bondsmen and, upon the request of a place of detention listed under §51-10-6 of this code, furnish an alphabetical list of all licensed bondsmen to the jail.

(j) After July 1, 2022, a person shall not, either as principal, or as agent, clerk, or representative of an agent, engage in the bonding business unless licensed by the commissioner under this section.

The bill (Eng. Com. Sub. for H. B. 2758), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2793**, Permit out of state residents to obtain West Virginia concealed carry permits.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 7. DANGEROUS WEAPONS.**

### **§61-7-4. License to carry deadly weapons; how obtained.**

(a) (1) Except as provided in §61-7-4(hg) of this code, ~~any person~~ a legal resident or citizen of West Virginia desiring to obtain a state resident license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for the license, and pay to the sheriff, at the time of application, a fee of \$25. ~~Concealed~~ A concealed weapons license may only be issued for pistols and revolvers.

(2) A legal resident or citizen of another state of the United States desiring to obtain a nonresident state license to carry a concealed deadly weapon shall apply to a sheriff of any county in this state for the license, and pay to the sheriff, at the time of application, a fee of \$100. A concealed weapons licenses may only be issued for pistols and revolvers.

(b) Each applicant for a state resident license or nonresident license to carry a concealed deadly weapon shall file with the sheriff a complete application, as prepared by the Superintendent of the West Virginia State Police, in writing, duly verified, which sets forth only the following licensing requirements:

(1) The applicant's full name, date of birth, ~~Social Security~~ social security number, a description of the applicant's physical features, the applicant's place of birth, the applicant's country of citizenship, and, if the applicant is not a United States citizen, any alien or admission number issued by the United States Bureau of Immigration and Customs Enforcement, and any basis, if applicable, for an exception to the prohibitions of 18 U.S.C. §922(g)(5)(B);

(2) That, on the date the application is made, the applicant is a bona fide United States citizen or legal resident thereof and either a resident of this state and of the county in which the application is made or a resident of another state in the United States and has a valid driver's license or other state-issued photo identification showing the residence;

(3) That the applicant is ~~twenty-one~~ 21 years of age or older;

(4) That the applicant is not addicted to alcohol, a controlled substance, or a drug and is not an unlawful user thereof as evidenced by either of the following within the three years immediately prior to the application:

(A) Residential or court-ordered treatment for alcoholism or alcohol detoxification or drug treatment; or

(B) Two or more convictions for driving while under the influence or driving while impaired;

(5) That the applicant has not been convicted of a felony unless the conviction has been expunged or set aside, or the applicant's civil rights have been restored or the applicant has been unconditionally pardoned for the offense;

(6) That the applicant has not been convicted of a misdemeanor crime of violence other than an offense set forth in subdivision (7) of this subsection in the five years immediately preceding the application;

(7) That the applicant has not been convicted of a misdemeanor crime of domestic violence as defined in 18 U.S.C. §921(a)(33), or a misdemeanor offense of assault or battery either under §61-2-28 of this code or §61-2-9(b) or §61-2-9(c) of this code, in which the victim was a current or former spouse, current or former sexual or intimate partner, person with whom the defendant cohabits or has cohabited, a parent or guardian, the defendant's child or ward or a member of the defendant's household at the time of the offense, or a misdemeanor offense with similar essential elements in a jurisdiction other than this state;

(8) That the applicant is not under indictment for a felony offense or is not currently serving a sentence of confinement, parole, probation, or other court-ordered supervision imposed by a court of any jurisdiction, ~~or~~ is the subject of an emergency or temporary domestic violence protective order, or is the subject of a final domestic violence protective order entered by a court of any jurisdiction;

(9) That the applicant has not been adjudicated to be mentally incompetent or involuntarily committed to a mental institution. If the applicant has been adjudicated mentally incompetent or involuntarily committed, the applicant ~~must~~ shall provide a court order reflecting that the applicant is no longer under such disability and the applicant's right to possess or receive a firearm has been restored;

(10) That the applicant is not prohibited under the provisions of §61-7-7 of this code or federal law, including 18 U.S.C. §922(g) or (n), from receiving, possessing, or transporting a firearm;

(11) That the applicant has qualified under the minimum requirements set forth in subsection (~~de~~) of this section for handling and firing the weapon: *Provided*, That this requirement shall be waived in the case of a renewal applicant who has previously qualified; and

(12) That the applicant authorizes the sheriff of the county, or his or her designee, to conduct an investigation relative to the information contained in the application.

(~~bc~~) For both initial and renewal applications, the sheriff shall conduct an investigation including a nationwide criminal background check consisting of inquiries of the National Instant Criminal Background Check System, the West Virginia criminal history record responses, and the National Interstate Identification Index, and shall review the information received in order to verify that the information required in subsection (~~ab~~) of this section is true and correct. A license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available to him or her does not indicate that receipt or possession of a firearm by the applicant would be in violation of the provisions of §61-7-7 of this code or federal law, including 18 U.S.C. §922(g) or (n).

(~~ed~~) (1) Twenty-five dollars of the resident license application fee and any fees for replacement of lost or stolen licenses received by the sheriff shall be deposited by the sheriff into a concealed weapons license administration fund. The fund shall be administered by the sheriff and shall take the form of an interest-bearing account with any interest earned to be compounded to the fund. Any funds deposited in this concealed weapon license administration fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons licenses. Any surplus in the fund on hand at the end of each fiscal year may be

expended for other law-enforcement purposes or operating needs of the sheriff's office, as the sheriff considers appropriate.

(2) Fifteen dollars of the nonresident license application fee shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code; \$25 of the application fee shall be deposited into the State Treasury and credited to the account of the State Police for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles; and \$60 of the application fee shall be deposited in the concealed weapons license administration fund to be administered as provided in subsection (d) of this section.

~~(e)~~ All persons applying for a license ~~must~~ shall complete a training course in handling and firing a handgun, which includes the actual live firing of ammunition by the applicant. The successful completion of any of the following courses fulfills this training requirement: *Provided*, That the completed course includes the actual live firing of ammunition by the applicant:

(1) Any official National Rifle Association handgun safety or training course;

(2) Any handgun safety or training course or class available to the general public offered by an official law-enforcement organization, community college, junior college, college, or private or public institution or organization, or handgun training school ~~utilizing~~ using instructors certified by the institution;

(3) Any handgun training or safety course or class conducted by a handgun instructor certified as such by the state or by the National Rifle Association;

(4) Any handgun training or safety course or class conducted by any branch of the United States military, reserve, or National Guard, or proof of other handgun qualification received while serving in any branch of the United States military, reserve, or National Guard.

A photocopy of a certificate of completion of any of the courses or classes or an affidavit from the instructor, school, club, organization, or group that conducted or taught the course or class attesting to the successful completion of the course or class by the applicant or a copy of any document which shows successful completion of the course or class is evidence of qualification under this section and shall include the instructor's name, signature, and NRA or state instructor identification number, if applicable.

(~~ef~~) All concealed weapons license applications must be notarized by a notary public duly licensed under §39-4-1 *et seq.* of this code. Falsification of any portion of the application constitutes false swearing and is punishable under §61-5-2 of this code.

(~~fg~~) The sheriff shall issue a license unless he or she determines that the application is incomplete, that it contains statements that are materially false or incorrect, or that applicant otherwise does not meet the requirements set forth in this section. The sheriff shall issue, reissue, or deny the license within 45 days after the application is filed if all required background checks authorized by this section are completed.

(~~gh~~) Before any approved license is issued or is effective, the applicant shall pay to the sheriff a fee in the amount of \$25 which the sheriff shall forward to the Superintendent of the West Virginia State Police within 30 days of receipt. A license in effect as of the effective date of the amendments to this section enacted during the 2019 regular session of the Legislature shall, subject to revocation for cause, ~~be is~~ be valid until the licensee's birthday during the fifth year from the date of issuance or five years from the date of issuance, whichever is later in time. Renewals of such licenses and licenses newly issued after the effective date of the amendments to this section enacted during the 2019 regular session of the Legislature ~~shall~~, subject to revocation for cause, ~~be are~~ are valid for a period of five years from the licensees' most recent birthday.

(~~hi~~) Each license shall contain the full name and address of the licensee and a space upon which the signature of the licensee shall be signed with pen and ink. The issuing sheriff shall sign and attach

his or her seal to all license cards. The sheriff shall provide to each new licensee a duplicate license card, in size similar to other state identification cards and licenses, suitable for carrying in a wallet, and the license card is considered a license for the purposes of this section. All duplicate license cards issued on or after July 1, 2017, shall be uniform across all 55 counties in size, appearance, and information and shall feature a photograph of the licensee.

(ij) The Superintendent of the West Virginia State Police, in cooperation with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for both resident and nonresident licenses and license cards showing that the license has been granted and shall do any other act required to be done to protect the state and see to the enforcement of this section.

(jk) If an application is denied, the specific reasons for the denial shall be stated by the sheriff denying the application. Any person denied a license may file, in the circuit court of the county in which the application was made, a petition seeking review of the denial. The petition shall be filed within 30 days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a license under the criteria set forth in this section. The applicant may be represented by counsel, but in no case is the court required to appoint counsel for an applicant. The final order of the court shall include the court's findings of fact and conclusions of law. If the final order upholds the denial, the applicant may file an appeal in accordance with the Rules of Appellate Procedure of the Supreme Court of Appeals. If the findings of fact and conclusions of law of the court fail to uphold the denial, the applicant may be entitled to reasonable costs and attorney's fees, payable by the sheriff's office which issued the denial.

(kl) If a license is lost or destroyed, the person to whom the license was issued may obtain a duplicate or substitute license for a fee of \$5 by filing a notarized statement with the sheriff indicating that the license has been lost or destroyed.

~~(1m) Whenever any person after applying for and receiving a concealed weapon license moves from the address named in the application to another county within the state, the license remains valid for the remainder of the five years unless the sheriff of the new county has determined that the person is no longer eligible for a concealed weapon license under this article, and the sheriff shall issue a new license bearing the person's new address and the original expiration date for a fee not to exceed \$5: *Provided*, That the licensee, within 20 days thereafter, notifies the sheriff in the new county of residence in writing of the old and new addresses. Whenever an applicant or licensee relocates from the address provided in his or her application to another address, he or she shall comply with the following notification requirements:~~

(1) Within 20 days of a resident licensee relocating from the address provided in his or her application to another county in the state, he or she shall provide written notification of the relocation to the sheriff of the county to which he or she moved and provide his or her new address. The sheriff shall then issue a new resident license bearing the licensee's new address and the original expiration date, for a fee not to exceed \$5. The license remains valid for the remainder of the original five year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

(2) Within 20 days of a resident licensee relocating from the address provided in his or her application to an address outside the state, he or she shall provide written notification to the sheriff of the issuing county of the relocation and provide his or her new address. The sheriff shall then issue a new nonresident license bearing the licensee's new address and the original expiration date, for a fee not to exceed \$5. The license remains valid for the remainder of the original five-year term unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article: *Provided*, That any renewal of the license in the new jurisdiction after expiration requires the payment of a nonresident license fee.

(3) Within 20 days of a nonresident licensee relocating from the address provided in his or her application to another address outside of the state, he or she shall provide written notification of the relocation to the sheriff of the issuing county and provide his or her new address. The sheriff shall then issue a new nonresident license bearing the licensee's new address and original expiration date, for a fee not to exceed \$5. This license remains valid for the remainder of the original five-year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

(4) Within 20 days of a nonresident licensee relocating to West Virginia from the address provided in his or her application, he or she shall provide written notification of the relocation to the sheriff of the county to which he or she has moved and provide his or her new address. The sheriff shall then issue a new resident license bearing the licensee's new address and the original expiration date, for a fee not to exceed \$5. This license remains valid for the remainder of the original five-year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

~~(m)~~ The sheriff shall, immediately after the license is granted ~~as aforesaid~~ under this section furnish the Superintendent of the West Virginia State Police a certified copy of the approved application. The sheriff shall furnish to the Superintendent of the West Virginia State Police at any time so requested a certified list of all licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued concealed weapons licenses.

~~(n)~~ The sheriff shall deny any application or revoke any existing license upon determination that any of the licensing application requirements established in this section have been violated by the licensee.

~~(o)~~ A person who is engaged in the receipt, review, or in the issuance or revocation of a concealed weapon license does not

incur any civil liability as the result of the lawful performance of his or her duties under this article.

(~~p~~q) Notwithstanding subsection (a) of this section, with respect to application for a resident license by an honorably discharged veteran of the armed forces of the United States, or a former law-enforcement officer honorably retired from agencies governed by §7-14-1 *et seq.* of this code, §8-14-1 *et seq.* of this code, §15-2-1 *et seq.* of this code, and §20-7-1 *et seq.* of this code, an honorably retired officer or an honorably discharged veteran of the armed forces of the United States is exempt from payment of fees and costs as otherwise required by this section. All other application and background check requirements set forth in this section are applicable to these applicants.

(~~e~~r) Information collected under this section, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for, or holder of, a concealed weapon license, is confidential: *Provided*, That this information may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a license; (ii) to assist in a criminal investigation or prosecution; or (iii) for other lawful law-enforcement purposes. A person who violates this subsection is guilty of a misdemeanor and, upon conviction ~~thereof~~, shall be fined not less than \$50 or more than \$200 for each offense.

(~~r~~s) A person who pays fees for training or application pursuant to this article after the effective date of this section is entitled to a tax credit equal to the amount actually paid for training not to exceed \$50: *Provided*, That if such training was provided for free or for less than \$50, then such tax credit may be applied to the fees associated with the initial application.

(~~s~~t) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a concealed weapon license issued in accordance with the provisions of this section authorizes the holder of the license to carry a concealed pistol or revolver on the lands or waters of this state.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 2793) was reported by the Clerk and adopted:

On page two, section four, line twenty-two, after the word “state-issued” by inserting the words “or federally issued”.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2793), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2834**, Adding the Curator of the West Virginia Division of Arts, Culture and History as an ex officio voting member of the commission.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 2874**, Extend the current veteran’s business fee waivers to active duty military members and spouses.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2890**, To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services.

On second reading, coming up in regular order, was read a second time.

On motions of Senators Jeffries and Nelson, the following amendment to the bill was reported by the Clerk:

On page two, section two, line twenty-five, by striking out “60.00” and inserting in lieu thereof “100.00”.

Following discussion,

The question being on the adoption of amendment offered by Senators Jeffries and Nelson to the bill (Eng. Com. Sub. for H. B. 2890), the same was put.

The result of the voice vote being inconclusive, Senator Plymale demanded a division of the vote.

A standing vote being taken, there were thirteen “yeas” and twenty-one “nays”.

Whereupon, Senator Blair (Mr. President) declared the amendment offered by Senators Jeffries and Nelson to the bill rejected.

The bill (Eng. Com. Sub. for H. B. 2890) was then ordered to third reading.

**Eng. House Bill 2914**, To remove certain ex officio, voting members from the Archives and History Commission and update formatting.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 2969**, To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**CHAPTER 17. ROADS AND HIGHWAYS.****ARTICLE 16D. ELECTRONIC TOLL COLLECTION ACT.****§17-16D-6. Liability of owner.**

(a) All owners and operators of motor vehicles shall pay the posted toll when on any toll road, highway, or bridge authorized by the Legislature, including any toll collected by a private toll transportation facility pursuant to §17-17-38 of this code, either by paying the toll at a toll collection facility on the toll road, highway, or bridge at the time of travel thereon or by paying the toll within the time prescribed for toll payment in a toll billing notice or invoice generated by an electronic toll collection system. These tolls may be collected by electronic toll collection. If an owner or operator of a vehicle fails to pay the prescribed toll when due, the owner of the vehicle is in violation of this article.

(b) If a violation occurs, the registration plate number of the vehicle as recorded by a video collection system establishes a rebuttable presumption for civil enforcement purposes that the owner of the vehicle was operating the vehicle, or had consented to another person operating the vehicle, at that time. This presumption may be overcome only if the owner: (1) proves by a preponderance of the evidence that he or she was not in fact operating the vehicle at the time; and (2) identifies by name and mailing address the person who was operating the vehicle.

(c) If the presumption is not overcome by a preponderance of the evidence, the owner of the vehicle shall be found to have violated this article and be held responsible for payment of the tolls and the administrative fees and money penalties imposed by this article for failure to timely pay the tolls.

(d) Nothing in this section prohibits: (1) A law-enforcement officer from issuing a citation to a person in control of a vehicle for a violation of this article or other provisions of law at the time of the violation; ~~or~~ (2) the Parkways Authority from issuing reminder notices or making other communications directly or indirectly in connection with toll collection efforts or efforts to enforce

violations of this article. The Parkways Authority is authorized to use secondary sources of information and services including, but not limited to, services such as the National Change of Address Service or skip tracing services; or (3) a private toll transportation facility from issuing any notices, reminders, or other communications in connection with its toll collection efforts pursuant to §17-17-38(c) and §17-17-38(d) of this code.

**§17-16D-10. Evading tolls; damaging, interfering with, or obstructing video toll collection or infrastructure; violations and criminal penalties.**

(a) Any person who knowingly or intentionally evades or seeks to evade the payment of tolls, rents, fees, or charges established by the Parkways Authority for the use of any toll facility under the jurisdiction of the Authority, or of any private toll transportation facility pursuant to §17-17-38 of this code, is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$50 for each violation of this article.

(b) Any person who deliberately damages, defaces, or obstructs a video collection system infrastructure or power supply with the intent to interfere with, ~~or~~ alter, or prevent the functioning of the system or electronic toll collection, or who obstructs a license plate or causes it to be unreadable by the video collection system, or who causes a transponder or other device used in an electronic toll system to be inoperable or unreadable thereby causing no toll to be charged, including a private toll transportation facility pursuant to §17-17-38 of this code, is guilty of a misdemeanor and, in addition to any other penalties provided by the code, and upon conviction, shall be fined not more than \$500 for each such action and, if applicable, is additionally liable to the Parkways Authority or the private toll transportation facility for all costs incurred ~~by the Authority~~ to repair the damaged, defaced, or obstructed property.

**ARTICLE 17. TOLL BRIDGES.**

**§17-17-10. Payment of toll prior to passage; demand of excessive toll; evading payment of toll.**

The proprietor of any toll bridge may require lawful toll to be paid previous to a passage thereover. ~~But if there be demanded at any such bridge more than is lawful, the proprietor shall forfeit to the party aggrieved so much as is illegally demanded and a further sum of not less than two nor more than \$15~~ Whoever shall knowingly or intentionally defraud, or attempt to defraud, the proprietor of any toll bridge by evading, or attempting to evade, the payment of lawful toll for crossing such bridge, or whoever shall aid another to evade, or attempt to evade, the payment of such toll, shall be guilty of a misdemeanor and, for every such offense shall, upon conviction thereof, be fined not in excess of \$10.

**§17-17-11. Gatekeeper to keep small change.**

A gatekeeper on any toll bridge without an electronic toll collection system, as defined in §17-16D-2 of this code, shall keep such money of small denomination on hand, as may reasonably be required in the ordinary course of business, for making change for passengers, and it is the duty of passengers to offer money for passage of a denomination as near as possible to the amount charged for such passage. This section shall not apply to persons now having a lawful right to pass on such bridge without the payment of toll.

**§17-17-12. Failure to provide gatekeeper and to allow prompt passage.**

If at any toll bridge without an electronic toll collection system there be a failure to give any person or property a passage over the same in a reasonable time, the proprietor thereof shall forfeit to such person not less than \$2 nor more than \$20. If the keeper of any toll bridge without an electronic toll collection system shall absent himself therefrom without leaving any person in charge of the gates thereon, he shall leave the gates open. Any keeper of a toll bridge without an electronic toll collection who shall fail to comply with the requirements of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined \$50 for every such offense; and any person injured by such failure shall be

entitled to recover therefor from such keeper all damages sustained thereby.

**§17-17-21. General supervision of bridges under jurisdiction of commissioner.**

The ~~state road~~ commissioner of highways shall properly maintain, repair, operate, manage, and control the bridges owned by the state, fix the rates of tolls and establish bylaws and rules and regulations for the use and operation of the bridges owned by the state, and may make and enter into all contracts or agreements necessary and incidental to the performance of his duties and the execution of his powers under this article, including power to permit use of such bridges owned by the state by street railways and other transportation lines, and telephone, telegraph, pipe, and other lines, and contract with them for such use and fix the terms and conditions thereof and the charges or tolls for such use of the bridges owned by the state.

**§17-17-22. Tolls to be charged for bond payment; intrastate and interstate bridges included in one issue; purchasing of existing bridges; disposition of tolls.**

Tolls shall be fixed, charged, and collected for transit over such bridges owned by the state and shall be so fixed and adjusted, in respect of the aggregate of tolls from the bridge or bridges owned by the state for which a single issue of bonds is issued, as to provide a fund sufficient to pay the principal and interest of such issue of bonds and to provide an additional fund to pay the cost of maintaining, repairing, and operating such bridge or bridges, subject, however, to any applicable law or regulation of the United States of America now in force or hereafter to be enacted or made. Two or more bridges owned by the state may be included in one issue of bonds, and intrastate and interstate bridges may be grouped in the same issue: *Provided*, That no existing bridge or bridges owned by the state shall be acquired by purchase, eminent domain, or otherwise, unless the ~~state road~~ commissioner of highways shall have determined that the income therefrom, based upon the toll receipts for the next preceding fiscal or calendar year, will be

sufficient to pay all expenses of operating and maintaining such bridge, in addition to the interest and sinking fund requirements of any bonds to be issued to pay the purchase price thereof, or, if such existing bridge or bridges owned by the state are to be combined with any other bridge or bridges, either then existing or thereafter to be constructed or acquired by purchase, eminent domain, or otherwise, as provided in §17-17-23b of this code, unless the ~~state~~ ~~road~~ commissioner of highways shall have determined that the income from such combined bridges, based upon the toll receipts for the next preceding fiscal or calendar year in the case of any existing bridge or bridges and upon estimates of future toll receipts in the case of any bridge or bridges to be constructed, will be sufficient to pay all expenses of operating and maintaining such combined bridges, in addition to the interest and sinking fund requirements of any bonds issued to pay the purchase price of such existing bridge or bridges and the interest and sinking fund requirements of any bonds issued to pay the cost of construction, acquiring, modernizing, repairing, reconstructing, or improving any bridge or bridges and approaches thereto, with which such existing bridge or bridges are to be so combined. The tolls from the bridge or bridges for which a single issue of bonds is issued, except such part thereof, as may be necessary to pay such cost of maintaining, repairing, and operating during any period in which such cost is not otherwise provided for (during which period the tolls may be reduced accordingly), shall be transmitted each month to the West Virginia Municipal Bond Commission and by it placed in a special fund which is hereby pledged to and charged with the payment of the principal of such bonds and the interest thereon, and to the redemption or repurchase of such bonds, such special fund to be a fund for all such bonds without distinction or priority of one over another. The moneys in such special fund, less a reserve for payment of interest, if not used by the West Virginia Municipal Bond Commission within a reasonable time for the purchase of bonds for cancellation at a price not exceeding the market price and not exceeding the redemption price, shall be applied to the redemption of bonds by lot at the redemption price then applicable. Notwithstanding the foregoing, payments of principal and interest on any bonds owned by the United States or any governmental

agency or department thereof may be made by the governing body directly thereto.

Any bridge or bridges constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired, or improved, under the provisions of this article and forming a connecting link between two or more state highways, or providing a river crossing for a state highway, are hereby adopted as a part of the state road system, but no such bridge or bridges shall be constructed or acquired by purchase, eminent domain, or otherwise, or reconstructed, repaired, or improved by the state, under the provisions of this article without the approval in writing of the ~~state road~~ commissioner of highways and the Governor. If there be in the funds of the West Virginia Municipal Bond Commission an amount insufficient to pay the interest and sinking fund on any bonds issued for the purpose of constructing or acquiring by purchase, eminent domain, or otherwise, or reconstructing, repairing, or improving, such bridge or bridges, the ~~state road~~ commissioner of highways is authorized and directed to allocate to said commission, from the state road fund, an amount sufficient to pay the interest on said bonds and/or the principal thereof, as either may become due and payable.

**§17-17-38. Municipal sale of ownership of toll bridges to private toll transportation facility; maintenance of tolls; imposition of liability for collection and payment; tax treatment and divestment.**

(a) Sale of municipally owned toll bridge. – Any municipality which owns and operates a toll bridge pursuant to this article may, at the sole discretion of the municipality, and upon adoption of a resolution to such effect by the council of such municipality, sell and convey such toll bridge to a private toll transportation facility subject to such terms and conditions as the council of such municipality may agree.

(b) Privilege to maintain tolls. – Any private toll transportation facility purchasing a municipally-owned toll bridge located fewer than five miles from a toll-free bridge which crosses the same body

of water or obstacle pursuant to subsection (a) of this section may retain, modify, and collect any such toll charges for the use thereof on persons and things passing over any such bridge as the facility may, by resolution, from time to time prescribe.

(c) *Electronic collection of tolls and imposition of liability for payment.* – The collection and enforcement of tolls for the use of any such bridge may be accomplished by electronic toll collection in the same manner and procedures as provided in §17-16D-1 *et seq.* of this code, and the imposition of liability for payment of such tolls shall apply as set forth specifically in §17-16D-5, §17-16D-6, §17-16D-7, and §17-16D-10 of this code: *Provided*, That the toll rates provided for in §17-17-9 of this code shall not apply to a private toll transportation facility.

(d) *Nonrenewal of vehicle registration.* – If an owner of a vehicle has received at least one invoice from a private toll transportation facility for any unpaid tolls and has: (1) failed to pay the unpaid tolls and administrative fees, and (2) failed to file a notice to contest liability for a toll violation as provided for in the invoice, then the private toll transportation facility may notify the Commissioner of the Division of Motor Vehicles, who shall, if no form contesting liability has been timely filed with the private toll transportation facility, refuse to register or renew the registration of any vehicle of which the person committing the violation is a registered owner or co-owner until such time as the private toll transportation facility has notified the commissioner that such fees and unpaid tolls have been paid or satisfied.

(e) *Tax treatment of municipally owned toll bridge sold to private toll transportation facility.* – A municipally owned toll bridge sold to a private transportation facility pursuant to this section shall be considered exempt for purposes of ad valorem property taxation under §11-1-1 *et seq.* of this code: *Provided*, That if said exemption is in any way held to be invalid, then the value of a municipally owned toll bridge purchased by a private toll transportation facility, for purposes of ad valorem property taxation under §11-1-1 *et seq.* of this code, shall in no event be valued at more than its salvage value, which for purposes of this article is the

lower of fair market salvage value or five percent of the original cost of the property.

(f) *Divestment of private toll bridge.* – Nothing in this section shall be construed to limit or prevent the subsequent sale, lease, assignment, or transfer of a municipally-owned toll bridge purchased by a private toll transportation facility, provided that all other requirements of this section are met.

(g) *Definitions.* – For purposes of this section, the term “private toll transportation facility” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity engaged in the collecting or charging of tolls on a previously municipal-owned toll bridge pursuant to this article.

## **CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATION OF TITLE, AND ANTITHEFT PROVISIONS.**

### **ARTICLE 2A. UNIFORM MOTOR VEHICLE RECORDS DISCLOSURE ACT.**

#### **§17A-2A-9. Fees.**

Any person making a request for disclosure of personal information required or permitted under sections five through eight of this article, ~~both~~ inclusive, shall pay to the division all reasonable fees related to providing the information: *Provided*, That all fees under this section shall be set by legislative rule pursuant to §29A-3-1 *et seq.* of this code: *Provided, however, That nothing herein shall prohibit the division from entering into a separate fee agreement with a private toll transportation facility to facilitate permitted disclosures pursuant to §17A-2A-7 of this code.*

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

### **ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

**§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

(a) The jurisdiction of the commission shall extend to all public utilities in this state and shall include any utility engaged in any of the following public services:

Common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline; sleeping car or parlor car services; transmission of messages by telephone, telegraph, or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas, or electricity by municipalities or others; sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of §16-13A-1 *et seq.* of this code, except that the Public Service Commission will have no jurisdiction over the provision of stormwater services by a public service district; toll bridges located more than five miles from a toll-free bridge which crosses the same body of water or obstacle, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service: *Provided further*, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate

over the operation, rates, and charges of the producer and for such length of time as the commission may consider to be proper.

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services and having at least 4,500 customers and annual combined gross revenues of \$3 million or more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

(2) Regulation of measurements, practices, acts, or services, as granted and described in §24-2-7 of this code;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in §24-2-8 of this code;

(4) Submission of information to the commission regarding rates, tolls, charges, or practices, as granted and described in §24-2-9 of this code;

(5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in §24-2-10 of this code; and

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees, and charges, service areas and contested utility combinations: *Provided*, That any request for an investigation related to such a dispute that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve said dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis

of the rates, fees, and charges or other information as the commission considers necessary is filed: *Provided, however,* That the disputed rates, fees, and charges so fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered or, amended by the commission in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission's exercise of the powers enumerated in this section and the commission shall resolve these complaints: *Provided,* That any formal complaint filed under this section that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the matter complained of is filed by the political subdivision: *Provided, however,* That whenever the commission finds any regulations, measurements, practices, acts, or service to be unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or finds that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices, or services, to be furnished, imposed, observed, and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate, or otherwise in violation of this chapter, and shall make such other order respecting the same as shall be just and reasonable: *Provided further,* That if the matter complained of would affect rates, fees, and charges so fixed by the political subdivision providing separate or combined water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(8) If a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public Service Commission for such redress as will bring the accounts to current status or otherwise resolve the breached covenant, and the commission shall have jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) The area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility is duly authorized to charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which such facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for the facility were a siting certificate issued under §24-

2-11c of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(2) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, and for which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility, regardless of whether the facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: *Provided*, That the owner or operator is subject to §24-

2-1(d)(5) of this code if a material modification of the facility is made or constructed.

(4) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to §24-2-11 of this code to construct an electric generating facility described in this subsection or to make or construct a material modification of the electric generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order thereon as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection do not affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of the facility and any affiliated public utility subject to the provisions of this chapter.

(e) The commission does not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) "Internet protocol-enabled service" means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data, or video.

(2) "Voice-over Internet protocol service" means any service that:

(i) Enables real-time two-way voice communications that originate or terminate from the user's location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user's location.

(3) The term "voice-over Internet protocol service" includes any service that permits users to receive calls that originate on the

public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission ~~has~~ shall not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to §24-2-12 and §24-2-12a of this code if all entities involved in the transaction are under common ownership.

(g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power systems are most fairly and effectively regulated by the local governing body. Therefore, notwithstanding any other provisions of this article, the commission ~~has~~ shall not have jurisdiction over the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the jurisdiction of the Public Service Commission over municipal power systems is limited to that granted specifically in this code.

On motion of Senators Trump and Romano, the following amendment to the Government Organization committee amendment to the bill (Eng. H. B. 2969) was reported by the Clerk and adopted:

On page eight, section nine, after the article heading by inserting the following:

**§17A-2A-7. Permitted disclosures.**

The division or its designee shall disclose personal information as defined in section three of this article to any person who requests the information if the person: (a) Has proof of his or her identity; and (b) verifies that the use of the personal information will be strictly limited to one or more of the following:

(1) For use by any governmental agency, including any court or law-enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a governmental agency in carrying out its functions;

(2) For use in connection with matters of motor vehicle or driver safety and theft, motor vehicle product alterations, recalls or advisories, performance monitoring of motor vehicles, motor vehicle parts and dealers, motor vehicle market research activities including survey research and removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agents, employees or contractors:

(A) For the purpose of verifying the accuracy of personal information submitted by the individual to the business or its agents, employees or contractors; and

(B) If the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against or recovering on a debt or security interest against the individual;

(4) For use in conjunction with any civil, criminal, administrative, or arbitral proceeding in any court or governmental agency or before any self-regulatory body, including investigation in anticipation of litigation, the service of process, the execution or enforcement of judgments and orders, or pursuant to an order of any court;

(5) For use in research and producing statistical reports, so long as the personal information is not published, redisclosed or used to contact individuals;

(6) For use by any insurer or insurance support organization or by a self-insured entity, its agents, employees or contractors in connection with claim investigation activities, antifraud activities, rating or underwriting;

(7) For use in providing notice to the owners of towed or impounded vehicles;

(8) For use by any licensed private investigator agency or licensed security service for any purpose permitted under this section;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. App. 2710 *et seq.*);

(10) For use in connection with the operation of private toll transportation facilities; and

(11) For any other use specifically authorized by law that is related to the operation of a motor vehicle or public safety.

The question now being on the adoption of the Government Organization committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. 2969), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 3293**, Relating to single-sex participation in interscholastic athletic events.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 2. STATE BOARD OF EDUCATION.**

### **§18-2-25d. Clarifying participation for sports events to be based on biological sex of the athlete at birth.**

(a) The Legislature hereby finds:

(1) There are inherent differences between biological males and biological females, and that these differences are cause for celebration, as determined by the Supreme Court of the United States in *United States v. Virginia* (1996);

(2) These inherent differences are not a valid justification for sex-based classifications that make overbroad generalizations or perpetuate the legal, social, and economic inferiority of either sex. Rather, these inherent differences are a valid justification for sex-based classifications when they realistically reflect the fact that the sexes are not similarly situated in certain circumstances, as recognized by the Supreme Court of the United States in *Michael M. v. Sonoma County, Superior Court* (1981) and the Supreme Court of Appeals of West Virginia in *Israel v. Secondary Schools Act. Com'n* (1989);

(3) In the context of sports involving competitive skill or contact, biological males and biological females are not in fact similarly situated. Biological males would displace females to a substantial extent if permitted to compete on teams designated for biological females, as recognized in *Clark v. Ariz. Interscholastic Ass'n* (9th Cir. 1982);

(4) Although necessarily related, as concluded by the United States Supreme Court in *Bostock v. Clayton County* (2020), gender identity is separate and distinct from biological sex to the extent that an individual's biological sex is not determinative or indicative of the individual's gender identity. Classifications based on gender identity serve no legitimate relationship to the State of West Virginia's interest in promoting equal athletic opportunities for the female sex; and

(5) Classification of teams according to biological sex is necessary to promote equal athletic opportunities for the female sex.

(b) Definitions. - As used in this section, the following words have the meanings ascribed to them unless the context clearly implies a different meaning:

(1) “Biological sex” means an individual’s physical form as a male or female based solely on the individual’s reproductive biology and genetics at birth.

(2) “Female” means an individual whose biological sex determined at birth is female. As used in this section, “women” or “girls” refers to biological females.

(3) “Male” means an individual whose biological sex determined at birth is male. As used in this section, “men” or “boys” refers to biological males.

(c) Designation of Athletic Teams. —

(1) Interscholastic, intercollegiate, intramural, or club athletic teams or sports that are sponsored by any public secondary school or a state institution of higher education, including a state institution that is a member of the National Collegiate Athletic Association (NCAA), National Association of Intercollegiate Athletics (NAIA), or National Junior College Athletic Association (NJCAA), shall be expressly designated as one of the following based on biological sex:

(A) Males, men, or boys;

(B) Females, women, or girls; or

(C) Coed or mixed.

(2) Athletic teams or sports designated for females, women, or girls shall not be open to students of the male sex where selection for such teams is based upon competitive skill or the activity involved is a contact sport.

(3) Nothing in this section shall be construed to restrict the eligibility of any student to participate in any interscholastic, intercollegiate, or intramural athletic teams or sports designated as “males,” “men,” or “boys” or designated as “coed” or “mixed”: *Provided*, That selection for a team may still be based on those who try out and possess the requisite skill to make the team.

(d) Cause of Action. —

(1) Any student aggrieved by a violation of this section may bring an action against a county board of education or state institution of higher education alleged to be responsible for the alleged violation. The aggrieved student may seek injunctive relief and actual damages, as well as reasonable attorney's fee and court costs, if the student substantially prevails.

(2) In any private action brought pursuant to this section, the identity of a minor student shall remain private and anonymous.

(e) The State Board of Education shall promulgate rules, including emergency rules, pursuant to §29A-3B-1 *et. seq.* of this code to implement the provisions of this section. The Higher Education Policy Commission and the Council for Community and Technical College Education shall promulgate emergency rules and propose rules for legislative approval pursuant to §29A-3A-1 *et. seq.* of this code to implement the provisions of this section.

The bill (Eng. Com. Sub. for H. B. 3293), as amended, was then ordered to third reading.

**Eng. House Bill 3294**, Relating to unemployment insurance.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Joint Resolution 1**, Education Accountability Amendment.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was laid over one day, retaining its place on the calendar.

**Eng. House Joint Resolution 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere

with, any impeachment proceedings of the House of Delegates or the Senate.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was laid over one day, retaining its place on the calendar.

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

**Eng. Com. Sub. for House Bill 2002**, Relating to Broadband.

**Eng. Com. Sub. for House Bill 2017**, Rewriting the Criminal Code.

**Eng. Com. Sub. for House Bill 2507**, Remove the limitations on advertising and promotional activities by limited video lottery retailers.

**Eng. House Bill 2730**, Relating to persons filing federal bankruptcy petition to exempt certain property of the estate.

**Eng. Com. Sub. for House Bill 2773**, Permitting DNR to issue up to 100 permits for boats greater than 10 horsepower on Upper Mud River Lake.

**Eng. House Bill 2830**, Relating generally to sex trafficking.

**Eng. Com. Sub. for House Bill 2842**, Preventing cities from banning utility companies in city limits.

**Eng. House Bill 2918**, Relating to Family Drug Treatment Court.

**Eng. Com. Sub. for House Bill 3254**, Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis.

**Eng. House Bill 3286**, Making a supplementary appropriation to the Division of Human Services – Child Care and Development.

**Eng. House Bill 3287**, Making a supplementary appropriation to the Department of Homeland Security.

**Eng. House Bill 3288**, Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR.

**Eng. House Bill 3289**, Supplementary appropriation to the Department of Commerce, Geological and Economic Survey.

**Eng. House Bill 3291**, Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services.

**Eng. House Bill 3292**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health.

**Eng. Com. Sub. for House Bill 3295**, Making a supplemental appropriation to Division of Human Services and Division of Health Central Office.

**Eng. Com. Sub. for House Bill 3297**, Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home.

And,

**Eng. House Bill 3310**, Relating to the jurisdiction of the Public Service Commission.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Woelfel.

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senator Woelfel were ordered printed in the Appendix to the Journal.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 11:25 a.m., the Senate recessed until 5 p.m. today.

The Senate reconvened at 5:26 p.m. and, without objection, returned to the third order of business.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 359**, Informing landowners when fencing that may contain livestock is damaged due to accident.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page 1, Section 17, line 4, by following the words “to contact” by inserting the word “either” and, on lines 4 and 5, by striking out the words “that owns the fence.” and inserting in lieu thereof, the words “or any known lessee of the land by immediately reporting the fence damage to dispatch to initiate an attempt to alert the landowner or lessee of the fence damage.”;

And,

By striking out the title and substituting therefor a new title, to

read as follows:

**Eng. Senate Bill 359**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17C-4-17, relating to law enforcement making reasonable attempt to contact a landowner or lessee when an accident occurs that damages a fence that could contain livestock.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. S. B. 359) was reported by the Clerk and adopted:

On page one, section seventeen, after the word “land” by striking out the words “by immediately reporting the fence damage to dispatch to initiate an attempt”.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Senate Bill 359, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—28.

The nays were: None.

Absent: Beach, Boley, Ihlenfeld, Stollings, Unger, and Woelfel—6.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 359) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 375**, Relating to county boards of education policies for open enrollment.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page two, section §18-5-16, following line 34, by inserting a new paragraph (F) to read as follows:

(F) The county board to which the student wishes to be transferred may not refuse a transfer by virtue of the student transferring from a private, parochial, church or religious school holding an exemption approved pursuant to §18-8-1(k) of this code.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 375**—A Bill to amend and reenact §18-5-16 of the Code of West Virginia, 1931, as amended, relating to county board of education open enrollment; amending provisions pertaining to the contents of county board of education policies for open enrollment; prohibiting transfer refusal by virtue of student transferring from approved exemption (k) school; setting forth reasons for which an open enrollment application may be denied and the process for application denial; and amending provisions pertaining to funding in certain instances of a student transfer.

On motion of Senator Takubo, the following amendment to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 375) was reported by the Clerk and adopted:

On page two, after the word “code”, by changing the period to a colon and adding the following proviso: *Provided*, That nothing in this paragraph shall be construed to allow a county board to give an enrollment preference to a student transferring from a private, parochial, church, or religious school holding an exemption approved pursuant to §18-8-1(k) of this code.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 375, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—28.

The nays were: None.

Absent: Beach, Boley, Ihlenfeld, Stollings, Unger, and Woelfel—6.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 375) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate again proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 6th day of April, 2021, 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. 346)**, Authorizing DMV use electronic means when providing notice for licensees and vehicle owners.

**(Com. Sub. for S. B. 429)**, Exempting Division of Emergency Management from Purchasing Division requirements for certain contracts.

**(Com. Sub. for S. B. 587)**, Making contract consummation with state more efficient.

And,

**(S. B. 693)**, Updating certain definitions and terms used in WV Personal Income Tax Act.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Concurrent Resolution 3**, Urging Congress reopen public lands in WV.

And reports back a committee substitute for same as follows:

**Com. Sub. for Senate Concurrent Resolution 3** (originating

in the Committee on Government Organization)—Urging the United States Congress to reopen public lands in the State of West Virginia.

Whereas, Off-highway vehicle recreation has demonstrated a tremendous economic benefit of at least \$43 billion throughout the United States and to West Virginia, in particular; and

Whereas, West Virginia has an unparalleled opportunity to replace lost jobs with new employment supporting off-highway vehicle recreation; and

Whereas, West Virginia currently suffers from the highest rates of drug overdose deaths, and the actual number of deaths due to opioid overdose has quadrupled since 2010, but wilderness therapy programs, outdoor recreation, and off-highway vehicle recreation have demonstrated positive health effects for veterans with post-traumatic stress disorder and individuals with opioid addictions; and

Whereas, off-highway vehicle recreation can provide greater access to the state's public lands for disabled persons; and

Whereas, The public benefits of maintaining West Virginia's recreation economy, opportunities for outdoor therapy, the adventure travel industry, and providing access for disabled persons to the state's public lands, provide powerful reasons to restore full access to nationally managed public lands in this state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby urges the United States Congress to reopen public lands in the State of 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 representatives and senators elected by the citizens of West Virginia serving the citizens of West Virginia in the Congress of the United States in Washington, D. C.

With the recommendation that the committee substitute be adopted.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Smith, from the Committee on Energy, Industry, and Mining, submitted the following report, which was received:

Your Committee on Energy, Industry, and Mining has had under consideration

**Senate Concurrent Resolution 55**, Supporting Atlantic Coast Pipeline.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Randy E. Smith,  
*Chair.*

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Concurrent Resolution 61**, Requesting study on consolidating county boards of education to provide efficiencies and direct cost savings.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended; but under the original double committee reference first be referred to the Committee on Rules.

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

The resolution, under the original double committee reference, was then referred to the Committee on Rules, with an amendment from the Committee on Education pending.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 66** (originating in the Committee on Transportation and Infrastructure)—Requesting the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability study existing and potential income sources for the State Road Fund.

Whereas, The West Virginia State Road Fund is the primary mechanism for collecting and distributing highway and maintenance funds in West Virginia; and

Whereas, The West Virginia Blue Ribbon Commission on Highways noted in its Final Report in 2015 that State Road Fund revenues have not kept pace with inflation, and traditional highway funding mechanisms are insufficient to maintain current state infrastructure; and

Whereas, The motor fuel excise tax has provided the bulk of transportation revenues for the West Virginia Division of Highways; and

Whereas, Based on recent announcements, including the U.S. President's January 27, 2021 Executive Order on Tackling the Climate Crisis at Home and Abroad, which announced the development of a plan to achieve or facilitate clean and zero-

emission vehicles for federal, state, local, and Tribal government fleets, the number of alternative fuel vehicles on West Virginia roads will increase, thereby reducing the use of motor fuel and motor fuel excise taxes; and

Whereas, The Federal Highway Administration in July 2017 reported that highway construction costs nationwide grew by an estimated 68 percent over the last 13 years, and that key highway components, as measured by the Bureau of Labor Statistics, like asphalt, concrete, and metal, grew at 107 percent, 61 percent, and 45 percent, respectively between 2003 and 2016; and

Whereas, The National Highway Construction Cost Index has shown further cost increases since 2016, amplifying the need for additional funding for the State Road Fund; and

Whereas, It is imperative that West Virginia's transportation infrastructure be improved and maintained; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability are hereby requested to study existing and potential income sources for the State Road Fund; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session of the Legislature, 2022, 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.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 66) contained in the foregoing report from the Committee on Transportation and Infrastructure was then referred to the Committee on Rules.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Senate Concurrent Resolution 67** (originating in the Committee on Transportation and Infrastructure)—Requesting the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability study criteria for honorary infrastructure naming resolutions.

Whereas, The West Virginia Division of Highways reports that the West Virginia Legislature has adopted between 40 and 95 honorary naming resolutions each regular legislative session during the last ten years, totaling approximately 700 resolutions; and

Whereas, The Division of Highways further reports that each naming resolution costs \$700 on average for sign fabrication and installation, a cost that neither includes the time spent by division employees when assisting with the process of gathering data for such resolutions, nor the time spent by legislative staff tasked with drafting, reviewing, researching, proofing, and processing such naming resolutions; and

Whereas, The West Virginia Legislature, especially the Senate Committee on Transportation and Infrastructure and its staff, spends numerous hours per legislative session working on these

resolutions, sometimes at the expense of bills; and

Whereas, The Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) places restrictions on the placement and design of signs and sign content, and violation of the MUTCD could result in the loss of federal funding to the State of West Virginia; and

Whereas, Naming resolutions frequently put the West Virginia Division of Highways in the unenviable position of violating legal directives, such as the Governor's Executive Order No. 2-12, when fulfilling the resolution's request for a particular name honoring a military veteran; and

Whereas, The Legislature commonly adopts road naming resolutions that direct naming signs be placed on roads already named by counties, roads for which West Virginia Code §7-1-3 provides county commissions, in cooperation with local postal authorities, the Division of Highways, and the directors of county emergency communications centers, jurisdiction to name or rename; and

Whereas, Placing contradictory naming signs on the same road may create confusion and delay emergency response times; and

Whereas, West Virginia, like other nearby states with similar infrastructure naming programs, should develop a process, requirements, and criteria that must be met before honorees are considered for an infrastructure naming; and

Whereas, It is in the state's best interest that the time, money, and resources of the Division of Highways and the Legislature be used responsibly in a way that best benefits the state; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance and the Legislative Oversight Commission on Department of Transportation Accountability are hereby requested to study

criteria for honorary infrastructure naming resolutions; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the Legislature, on the first day of the regular session of the Legislature, 2022, 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.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 67) contained in the foregoing report from the Committee on Transportation and Infrastructure was then referred to the Committee on Rules.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Concurrent Resolution 68** (originating in the Committee on Government Organization)—Requesting the Joint Committee on Government and Finance study paid family leave for state employees and employees of county boards of education.

Whereas, The Parental Leave Act currently provides unpaid family leave of up to 12 weeks for employees of the state and county boards of education in certain circumstances; and

Whereas, There is bipartisan support to provide paid family leave of up to 12 weeks pursuant to the Parental Leave Act under certain circumstances; and

Whereas, Providing paid family leave will likely improve state and county boards of education employee hiring and retention; and

Whereas, The State of West Virginia and county boards of education will incur significant costs to provide paid family leave; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study paid family leave for state employees and employees of county boards of education; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 68) contained in the foregoing report from the Committee on Transportation and Infrastructure

was then referred to the Committee on Rules.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Concurrent Resolution 69** (originating in the Committee on Government Organization)—Requesting the Department of Economic Development, in collaboration and consultation with the State Department of Commerce, the State Department of Tourism, and the State Department of Transportation, study, develop, and present a plan to promote adventure travel throughout the state.

Whereas, Adventure travel is enjoying an ever-increasing popularity in West Virginia; and

Whereas, Adventure travel includes both motorized recreation and motorized off-highway access to nonmotorized recreation activities; and

Whereas, The indiscriminate and uncontrolled use of those vehicles may have a deleterious impact on the environment, wildlife habitats, sensitive areas, native wildlife, and native flora; and

Whereas, The Legislature hereby declares that effectively managed areas and adequate facilities for the use of off-highway vehicles, conservation, and enforcement are essential for ecologically balanced recreation; and

Whereas, Existing adventure travel recreational areas, facilities, and opportunities should be expanded and managed in a manner consistent with this article, with particular focus on maintaining sustained, long-term use; and

Whereas, New adventure travel recreational areas, facilities, and opportunities should be provided and managed pursuant to this

article in a manner that will conscientiously sustain long-term use; and

Whereas, The Department of Commerce should support both motorized adventure travel recreation and motorized off-highway access to nonmotorized recreation; and

Whereas, When an area or trail or portion thereof cannot be maintained to appropriate established standards for sustained long-term use, it should be closed to use and brought back into compliance with those standards. Those areas should remain closed until they can be managed within soil conservation and wildlife protection standards and, if these standards cannot be met, those areas should, at a minimum, be restored to the condition prior to the use of the area, trail, or portion designated for vehicular recreation; and

Whereas, Adventure travel motor vehicle recreation should be managed through financial assistance to local governments and joint undertakings with agencies of the United States; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Department of Economic Development, in collaboration and consultation with the State Department of Commerce, the State Department of Tourism, and the State Department of Transportation, is hereby requested to develop and present a plan to promote adventure travel throughout the state; and, be it

*Further Resolved*, That this plan shall include, but not be limited to, programs to encourage federal funding of adventure travel initiatives; and, be it

*Further Resolved*, That the plan shall consider the following areas:

- (1) Limiting liability of railroad companies which allow unused rail lines to be used for tourism or the public good;

- (2) Creation of the Office of Adventure Travel Recreation;
- (3) Earmarking a portion of the State Road Fund to benefit adventure travel recreation;
- (4) Updating the Division of Highways road abandonment and discontinuance rules and procedures;
- (5) Mapping all roads in state forests, state parks, national forests, and national parks which are state roads;
- (6) Updating the Division of Highways reporting mechanism for illegal gates and other public road blockages;
- (7) Authorization of the Division of Natural Resources to make rules consistent with federal outfitter and guide operating guidelines, and to require training and permitting for outfitters offering jeep tour services;
- (8) Creation of wildlife viewing stamps which allow public access to normally inaccessible state roads during certain times of year;
- (9) Creation of dispersed camping stamps which allow public access to normally inaccessible state property during certain times of year; and
- (10) Creation of an Adopt-A-Trail program which would allow volunteer organizations to participate in trail beautification in the state; and, be it

*Further Resolved*, That the Department Economic Development report to the regular session of the Legislature, 2022, 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 by the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted; but with further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 69) contained in the foregoing report from the Committee on Government Organization was then referred to the Committee on Rules.

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Concurrent Resolution 70** (originating in the Committee on Education)—Requesting the Joint Committee on Government and Finance to study and examine the population of children experiencing homelessness, as defined by McKinney-Vento Homeless Assistance Act, and the services provided to those children.

Whereas, “Children experiencing homelessness” is defined as a child who lacks a fixed, regular, and adequate nighttime residence. In accordance with McKinney-Vento Homeless Assistance Act, as amended by the Every Student Success Act, a child experiencing homelessness includes children: (i) Who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or awaiting foster care placement; (ii) children who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings; (iii) children who are living in cars, parks, public spaces, abandoned

buildings, substandard housing, bus or train stations, or similar settings; (iv) migratory children; and (v) children not in the physical custody of a parent or guardian; and

Whereas, Children experiencing homelessness are at greater risk of entering the child welfare system or juvenile justice system; being victims of sex trafficking; suffering from mental health and behavioral health issues; and experiencing significant disruptions in their education; and

Whereas, Both the West Virginia Department of Education and West Virginia Department of Health and Human Resources provide services to this vulnerable population, which are funded by both state and federal funds; and

Whereas, Coordinating the services provided by the West Virginia Department of Education and West Virginia Department of Health and Human Resources will ensure that all children experiencing homelessness will be served and will expose any gaps or barriers in providing such services, if any; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study and examine the population of children experiencing homelessness, as defined by McKinney-Vento Homeless Assistance Act, and the services provided to those children; and, be it

*Further Resolved,* That the examination at least include requesting a joint report from the West Virginia Department of Health and Human Resources and the West Virginia Department of Education on potential methods of ensuring that all county boards of education are using the correct definition of children experiencing homelessness when identifying these children; the services provided to homeless children by the West Virginia Department of Health and Human Resources and West Virginia Department of Education; any identified service gaps or barriers; and any recommendations for statutory changes needed to

overcome the service gaps or barriers, if necessary; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 70) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. House Bill 2029**, Relating to teacher preparation clinical experience programs.

And has amended same.

**Eng. Com. Sub. for House Bill 2145**, Relating to student aide class titles.

And has amended same.

**Eng. House Bill 3177**, Removing expired, outdated, inoperative and antiquated provisions and report requirements in education.

And has amended same.

And,

**Eng. House Bill 3299**, Authorizing Higher Education Rules.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2266**, Relating to expanding certain insurance coverages for pregnant women.

With an amendment from the Committee on Health and Human Resources pending;

And reports the same back with the recommendation that it do pass as amended by the Committee on Health and Human Resources to which the bill was first referred.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 2500**, Create an act for Statewide Uniformity for Auxiliary Container Regulations.

And has amended same.

**Eng. House Bill 3129**, Relating to the Consumer Price Index rate increase.

And has amended same.

And,

**Eng. House Bill 3133**, Relating to motor carrier rates.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2573**, Relating generally to the transparency and accountability of state grants to reduce waste, fraud, and abuse.

And has amended same.

And,

**Eng. House Bill 3301**, Relating generally to property tax increment financing districts.

And has amended same.

And reports the same back with the recommendation that they each do pass, as amended.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2581**, Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

Senator Maynard, from the Committee on Government

Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2667**, To create a cost saving program for state buildings regarding energy efficiency.

And reports the same back with the recommendation that it do pass; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance.

Senator Maroney, from 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

**Eng. Com. Sub. for House Bill 2674**, Relating to the administration of anesthetics.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Clements, from the Committee on Transportation and

Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. Com. Sub. for House Bill 2720**, Creating a Merit-Based Personnel System within DOT.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

At the request of Senator Sypolt, as vice chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Transportation and Infrastructure.

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2794**, To extend the Neighborhood Investment Program Act to July 1, 2026.

And,

**Eng. House Bill 3308**, Relating to increasing number of limited video lottery terminals.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2884**, To make changes to the FOIA law to protect public utility customer databases from disclosure, with exceptions.

And,

**Eng. House Bill 3132**, Relating to motor carrier inspectors.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2953**, To clarify that counties can hire fire fighters as paid staff and to modify the existing procedures to include a procedure of public hearing to commission a vote.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Maroney, from 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

**Eng. Com. Sub. for House Bill 2962**, Relating generally to dental practice.

And,

**Eng. House Bill 3311**, Relating to the cost of medical records.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

**Eng. Com. Sub. for House Bill 3002**, Update road abandonment process.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles H. Clements,  
*Chair.*

Senator Maroney, from 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

**Eng. House Bill 3107**, Declaring that Post Traumatic Stress Disorder diagnosed by a licensed psychiatrist is a compensable occupational disease for first responders.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. House Bill 3128**, Relating to carrier fees on 911 fee revenues.

And has amended same.

And reports the same back with the recommendation that it do

pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

The bill, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on Government Organization pending.

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Eng. Com. Sub. for House Bill 3266**, Providing for termination of extracurricular contact upon retirement.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Joint Resolution 3**, Property Tax Modernization Amendment.

With amendments from the Committee on the Judiciary pending;

And has also amended same.

And reports the same back with the recommendation that it be adopted as last amended by the Committee on Finance.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Maroney, from 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 House Concurrent Resolution 55**, Studying the viability of creating a veterinary school in West Virginia.

And,

**House Concurrent Resolution 78**, Requesting an examination of juvenile proceedings.

And reports the same back with the recommendation that they each be adopted; but under the original double committee references first be referred to the Committee on Rules.

Respectfully submitted,

Michael J. Maroney,  
*Chair.*

The resolutions, under the original double committee references, were then referred to the Committee on Rules.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolution on April 5, 2021:

**Senate Resolution 40:** Senators Baldwin and Stollings.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 5:49 p.m., the Senate adjourned until tomorrow, Wednesday, April 7, 2021, at 10 a.m.

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**WEDNESDAY, APRIL 7, 2021**

The Senate met at 10:05 a.m.

(Senator Blair, Mr. President, in the Chair.)

Prayer was offered by Grover Miller, Senate Assistant Doorkeeper, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert H. Plymale, a senator from the fifth district.

Pending the reading of the Journal of Tuesday, April 6, 2021,

At the request of Senator Sypolt, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Com. Sub. for Senate Bill 294**, Relating generally to savings and investment programs offered by state.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page nine, section six, line ninety-five, by striking out the word “units” and inserting in lieu thereof the word “checks”;

And,

On page nine, section six, line one hundred four, after the words “arising after the”, by striking out the word “fund’s” and inserting in lieu thereof the word “plan’s”.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 294, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 294) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 294) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 297**, Relating generally to modernizing Board of Treasury Investments.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Com. Sub. for Senate Bill 297**—A Bill to amend and reenact §12-6C-4 and §12-6C-9 of the Code of West Virginia, 1931, as amended, all relating generally to the Board of Treasury Investments; authorizing the board to provide compensation to appointed directors for each meeting attended and establishing the rate thereof; authorizing the board to invest in commercial paper with certain nationally recognized ratings and weighted maturity; authorizing the board to invest in corporate debt with certain

nationally recognized ratings and weighted maturity; authorizing the board to invest in state and local government securities with certain nationally recognized ratings and weighted maturity; authorizing the board to invest in certain asset-backed securities with certain nationally recognized ratings; removing the limitation on the percentage of the Consolidated Fund that the board may invest in evidence of indebtedness of any private corporation or association; and eliminating the requirement that the board invest a certain percentage of the Consolidated Fund in obligations guaranteed by the United States.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 297, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 297) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 307**, Relating generally to in-state tuition rates for certain persons.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 343**, Authorizing DMV to process online driver's license or identification card change of address.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 361**, Extending supervision for conviction of soliciting minor and using obscene matter with intent to seduce minor.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 376**, Removing obsolete provisions regarding DOH standards for studded tires and chains.

A message from the Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Senate Bill 397**, Relating to health care provider tax.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Senate Bill 397**—A Bill to amend and reenact §11-27-39 of the Code of West Virginia, 1931, as amended, relating to certain health care provider taxes; modifying definition of “eligible acute

care hospital” for purposes of certain tax; modifying effective date; and removing expiration date for the tax.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Senate Bill 397, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 397) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 397) takes effect from passage.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 401**, Relating to WV Consumer Credit and Protection Act.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 434**, Requiring training for law-enforcement officers responsible for investigating crimes of sexual assault.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 460**, Relating to Deputy Sheriff Retirement System Act.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section two, line eight, by striking out “§7-14D-9(a)” and inserting in lieu thereof “§7-14D-9a”;

On page five, section two, line one hundred twelve, after the word “subdivision” by striking out “(t)” and inserting in lieu thereof “(u)”;

On page thirteen, after line thirty-one, by inserting a new section, designated section twenty-four, to read as follows:

**§7-14D-24. Service as sheriff.**

(a) Any member who after the effective date of this article is elected sheriff of a county in West Virginia may elect to continue as a member in this plan by paying the amounts required by §7-14D-7 of this code. Upon the election, service as a sheriff shall be treated as covered employment and the sheriff is not entitled to any credit for that service under any other retirement system of the state.

(b) Any member retired as a deputy sheriff under this plan who, after the effective date of this article, is elected or appointed sheriff of a county in West Virginia, may elect to suspend the payment of his or her annuity from this system and again become a contributing member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service as a sheriff shall be treated as covered employment, and the sheriff is not entitled to any credit for that period of elected service under any other retirement system of the state. At the end of his or her term as sheriff, the member making such election shall have his or her annuity recalculated and shall be granted an adjustment to his or her previous annuity to include the period of elected service.

(c) Any person, who before the effective date of this article was elected sheriff of a county in West Virginia, and who, immediately prior to being so elected sheriff, was a deputy sheriff with at least 20 years of credited service under the Public Employees Retirement System, with at least 16 of those 20 years having been earned as a deputy sheriff, may elect to become a member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service shall be transferred from the Public Employees Retirement System pursuant to §7-14D-8 of this code: *Provided*, That any service as a sheriff shall be treated as covered employment under this article and the sheriff is not entitled to any credit for that service as a sheriff or the prior service as a deputy sheriff under any other retirement system of the state. Persons making the election provided for in this subsection shall do so within 10 days of taking office as sheriff or within 10 days of the effective date of this provision.

(d) Any person who, before the effective date of this article, was elected sheriff of a county of West Virginia, and who, prior to being elected sheriff, was a deputy sheriff and also a previously elected sheriff, with credited service under the Public Employees Retirement System, with at least 16 of those years having been earned as combined service as a deputy sheriff and a previously elected sheriff, may elect to become a member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service shall be transferred from the Public Employees Retirement System pursuant to §7-14D-8 of this code: *Provided*, That a person's service as a sheriff shall be treated as covered employment under this article, and that person is not entitled to any credit for that service as a sheriff or deputy sheriff under any other retirement system of this state. A person making the election provided in this subsection shall do so within 30 days of taking office as a sheriff or within 30 days of the effective date of this provision.

(e) Notwithstanding any other provision of the code to the contrary, any member who was elected sheriff of a county of West Virginia to serve on or after January 1, 2013, and who has not commenced retirement in the Deputy Sheriff Retirement System or the Public Employees Retirement System, must notify the board in writing by July 31, 2020, of his or her intent to pay the difference in the employee contribution between the Public Employees Retirement System and the Deputy Sheriff Retirement System in order to transfer all service credit earned as a sheriff or purchased in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act from the Public Employees Retirement System to the Deputy Sheriff Retirement System. The board shall compute the difference in employee contributions owed up through September 30, 2020, on the total compensation for which assets are being transferred and notify the sheriff of the amount owed in writing by letter mailed no later than August 21, 2020. This difference in employee contributions must be paid in full by the sheriff to the Deputy Sheriff Retirement System no later than September 30, 2020. If timely paid, employee and employer

contributions to the Deputy Sheriff Retirement System shall commence October 1, 2020.

(1) The board shall transfer assets from the Public Employees Retirement System into the Deputy Sheriff Retirement System no later than November 30, 2020.

(2) The amount of assets to be transferred for each transferring sheriff shall be computed as of July 1, 2019, using the actuarial valuation assumptions in effect for the July 1, 2019, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring sheriff in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(A) Compute the market value of the Public Employees Retirement System assets;

(B) Compute the accrued liability for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members;

(C) Reduce the market value of Public Employees Retirement System assets by the accrued liability determined in paragraph (B) of this subdivision;

(D) Compute the entry age method accrued liability for all active Public Employees Retirement System members;

(E) Compute the share of accrued liability as determined pursuant to paragraph (D) of this subdivision, that is attributable to those sheriffs in the Public Employees Retirement System who have elected to transfer to the plan;

(F) Compute the percentage of active member's accrued liability computed to the sheriffs by dividing paragraph (E) by paragraph (D) of this subdivision; and

(G) Determine the asset share to be transferred from Public Employees Retirement System to the plan by multiplying paragraph (C) times paragraph (F) of this subdivision.

(f) Any member who was appointed sheriff of a county in West Virginia in which retirement contributions were not made to the Deputy Sheriff Retirement System or the Public Employees Retirement System may purchase service credit for the period he or she served as appointed sheriff by the member remitting the required employee contribution and any interest thereon, and the participating public employer remitting the required employer contribution and any interest thereon. Interest shall accumulate at a rate of 7.5% per annum. Payments for the purchase of service credit authorized by this section must be made in full on or before September 30, 2021.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 460**—A Bill to amend and reenact §7-14D-2, §7-14D-11, §7-14D-13, §7-14D-19, §7-14D-20 and §7-14D-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-14D-32, all relating to the Deputy Sheriff Retirement System Act; defining terms; amending and removing conflicting statutory provisions; removing obsolete restriction on type of annuity required of married members; clarifying preretirement death benefits; clarifying survivor death benefit; authorizing the purchase of service credit for time served as an appointed sheriff in certain circumstances; and adding a severability clause.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 460, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 460) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 466**, Relating generally to appraisal management companies.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 479**, Relating to WV veterans service decoration and WV Service Cross.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 1. DEPARTMENT OF VETERANS' ASSISTANCE.**

**§9A-1-16. West Virginia veterans service decoration; West Virginia Service Cross.**

(a) A West Virginia veterans service decoration may be awarded to any resident of West Virginia who served in any of the federally recognized military services for a period at a time during which there was armed conflict.

(b) A West Virginia Service Cross and ribbon bar, along with a certificate signed by the Governor, may be awarded to any veteran who meets the criteria set forth in subsection (a) of this section, and who also was awarded a federal achievement medal, commendation medal, meritorious service medal, or a medal for valor by one of the federally recognized military services.

(c) West Virginia National Guard members may also be authorized to receive and wear the medals and ribbons authorized under the provisions of this section in an order of precedence determined by the Adjutant General.

(d) The secretary may propose rules pursuant to §29A-3-1 *et seq.* of this code to implement the provisions of this section.

**ARTICLE 1G. SERVICE MEDALS.**

**§15-1G-10. West Virginia veterans service decoration; West Virginia Service Cross.**

[Repealed.]

Senator Takubo moved that the Senate concur in the House of Delegates amendment to the bill.

Following discussion,

The question being on the adoption of Senator Takubo's aforestated motion, the same was put and prevailed.

Engrossed Committee Substitute for Senate Bill 479, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 479) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 494**, Authorizing transfer of moneys from Insurance Commission Fund to Workers' Compensation Old Fund.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

**Eng. Senate Bill 577**, Exempting certain fire departments from licensure requirements for providing rapid response services.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the

concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 651**, Allowing county boards of education to publish financial statements on website.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page one, section three-a, line one, by striking out the words “90 days” and inserting in lieu thereof the words “120 days”;

On page one, section three-a, line two, by striking out the words “State Tax Commissioner” and inserting in lieu thereof the words “State Auditor”;

On page two, section three-a, line thirty-three, after the word “shall” by inserting the words “in addition to the information required in subsection (a) of this section”;

On page two, section three-a, line forty-three, after the word “year,” by inserting the words “but no later than 90 days after the end of the fiscal year.”;

On page two, section three-a, line forty-four, by striking out the words “State Tax Commissioner” and inserting in lieu thereof the words “State Auditor”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 651**—A Bill to amend and reenact §18-9-3a of the Code of West Virginia, 1931, as amended, relating to giving county boards of education the option of publishing their financial statements on their websites rather than publishing as a Class I-0

legal advertisement; increasing the number of days for preparation for publication; requiring county boards to hold a public hearing before publishing on their websites; requiring county boards to provide public notice of the availability of such website posting; requiring county boards to include certain additional information if they publish their financial statements on their websites; providing maximum time period for filing statement with state auditor and superintendent; providing that the changes made by amendments to this section become effective for the fiscal year commencing on July 1, 2023; and making technical updates.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 651, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Stover, Unger, and Woelfel—12.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 651) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect July 1, 2021, of

**Eng. Com. Sub. for Senate Bill 673**, Relating to venue for bringing civil action or arbitration proceedings under construction contracts.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 680**, Allowing State Superintendent of Schools define classroom teachers certified in special education.

A message from the Clerk of the House of Delegates announced the passage by that body, without amendment, to take effect April 30, 2021, and requested the concurrence of the Senate in the changed effective date, as to

**Eng. Senate Bill 713**, Relating generally to inmate good time.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

On further motion of Senator Takubo, the Senate concurred in the changed effective date of the bill, that being to take effect April 30, 2021, instead of ninety days from passage.

Senator Takubo moved that the bill take effect April 30, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 713) takes effect April 30, 2021.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, to take effect from passage, of

**Eng. Com. Sub. for House Bill 2427**, Authorizing the Department of Health and Human Resources to promulgate legislative rules.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendments to the Senate amendments, as to

**Eng. Com. Sub. for House Bill 2529**, Prohibiting West Virginia institutions of higher education from discriminating against graduates of private, nonpublic or home schools by requiring them to submit to alternative testing.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the Senate amendments to the bill was reported by the Clerk:

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for House Bill 2529**—A Bill to amend and reenact §18-8-12 and §18B-1-1e of the Code of West Virginia, 1931, as amended; all relating to nondiscrimination in the higher education admissions process; allowing an institution, once a student has been fully admitted, to administer placement tests or other assessments for certain purposes; prohibiting state institutions of higher education from discriminating against graduates of private, nonpublic, or home schools by requiring them

to submit to alternative testing as a precondition for acceptance into the institution of higher education; and prohibiting institutions of higher education from rejecting a person with appropriate diploma or credentialing for admission to an institution of higher education solely because their secondary education was not accredited by the state Board of Education or agency the board approves.

On motion of Senator Takubo, the Senate concurred in the foregoing House of Delegates amendment to the Senate amendments to the bill.

Engrossed Committee Substitute for House Bill 2529, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2529) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, of

**Eng. Com. Sub. for House Bill 2633**, Creating the 2021 Farm Bill.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amendment title, of

**Eng. Com. Sub. for House Bill 2763**, Creating WV Cyber Incident Reporting.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, of

**Eng. Com. Sub. for House Bill 2765**, Relating to allowing emergency management and operations' vehicles operated by airports to use red flashing warning lights.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment to the Senate amendments, as to

**Eng. Com. Sub. for House Bill 2785**, Relating to public school enrollment for students from out of state.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the Senate amendments to the bill was reported by the Clerk:

On page three, section one-a, line forty-eight, by striking out all of subsection (e) and inserting in lieu thereof a new subsection, designated subsection (e), to read as follows:

(e) ~~(d) This section does not prevent~~ A student from another state, or who is eligible to enroll in a public school in this state, from enrolling in the shall be enrolled in the same grade in a public school in West Virginia as the student was enrolled at the school or program from which the student transferred. A transcript or other credential provided by a public school program, private

school program, homeschool program or HOPE scholarship program shall be accepted by a public school in this state as a record of a student's previous academic performance for the purposes of placement and credit assignment.

On motion of Senator Takubo, the Senate concurred in the foregoing House of Delegates amendment to the Senate amendments to the bill.

Engrossed Committee Substitute for House Bill 2785, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Baldwin—1.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2785) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 2895**—A Bill supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Veterans' Assistance, Department of Veterans' Assistance fund 0456, fiscal

year 2021, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

At the request of Senator Takubo, and by unanimous consent, the bill was taken up for immediate consideration and reference to a committee dispensed with.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 2900**—A Bill expiring funds to the balance of the Department of Education – State Board of Education – School Building Authority – School Construction Fund, fund 3952, fiscal year 2021, organization 0404, in the amount of \$2,766,137, from the State Department of Education – School Building Authority – Debt Service Fund, fund 3963, organization 0404, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

**Eng. House Bill 2906**, Relating to the School Building Authority's allocation of money.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment, as amended by the House of Delegates, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment to the Senate amendment, as to

**Eng. Com. Sub. for House Bill 2916**, Creating the Semiquincentennial Commission for the celebration of the 250th anniversary of the founding of the United States of America.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the Senate amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 13A. WEST VIRGINIA SEMIQUINCENTENNIAL COMMISSION AND FUND.**

**§4-13A-1. Findings; West Virginia Semiquincentennial Commission established; purpose.**

(a) The Legislature finds that the 250th anniversary of our nation's founding is of such historical significance as to warrant its commemoration.

(b) There is hereby created the West Virginia Semiquincentennial Commission.

(c) The purpose of the commission is to prepare for and commemorate the semiquincentennial of our nation's founding.

**§4-13A-2. Membership; terms; filling vacancies; election of chair and vice chair.**

(a) The Governor shall appoint 10 members as follows:

(1) Three academic historians;

(2) Five citizens members, no more than one of whom may be from any one state senatorial district;

(3) A member of the National Society of the Sons of the American Revolution;

(4) A member of the National Society of the Daughters of the American Revolution;

(b) The following shall serve as ex-officio voting members;

(1) The State Superintendent of Schools, or a designee;

(2) The Cabinet Secretary of Commerce, or a designee;

(3) The Curator of the Department of Arts, Culture, and History, or a designee;

(4) The Secretary of the Department of Tourism, or a designee;

(5) The Executive Director of the Herbert Henderson Minority Affairs Office, or a designee;

(6) The West Virginia State Archivist;

(7) The Director of the West Virginia State Museums;

(8) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates, who shall serve as an ex officio nonvoting member of the commission; and

(9) One member of the State Senate, to be appointed by the President of the Senate, who shall serve as an ex officio nonvoting member of the commission;

(10) Members of the United States Senate from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(11) Members of the United States House of Representatives from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(c) All appointed members shall serve at the will and pleasure of the Governor;

(d) Appointments to fill vacancies shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

(e) The curator of the West Virginia Department of Arts, Culture and History shall serve as the chair of the commission. The commission shall elect a vice chair and secretary from among its members.

**§4-13A-3. Expense reimbursement.**

(a) Members shall serve without compensation.

(b) The commission may reimburse members for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a commission member, in a manner consistent with the guidelines of the travel management office of the Department of Administration, subject to availability of funds received pursuant to §4-13A-6(a)(1). No provision of this section may be construed to require any appropriation of funds by the Legislature.

**§4-13A-4. Quorum; meetings.**

(a) A simple majority of the members serving on the board at a given time constitutes a quorum for the transaction of business.

(b) Meetings shall be held in accordance with the provisions of §6-9A-1 *et seq.*, of this code.

**§4-13A-5. Advisory council.**

The commission may establish an advisory council composed of citizens at large who have knowledge of American history and interest in its semiquincentennial celebration to assist the commission in its work.

**§4-13A-6. Powers; duties; limitation on duration of contracts.**

The commission may:

(1) Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or personal property for the purpose of aiding or facilitating the work of the commission, upon compliance with the provisions of §12-2-2 of this code;

(2) Procure supplies, services, and property and make or enter into contracts, leases, or other legal agreement as necessary to carry out its duties: *Provided*, That no contract, lease or other legal agreement may be entered into by the commission with terms which would extend beyond the termination date of the commission;

(3) Plan, develop and carry out programs and activities appropriate to commemorate the semiquincentennial of the founding of our nation;

(4) Encourage civic, historical, educational, economic, and other organizations throughout West Virginia to organize and participate in activities to expand the understanding and appreciation of the United States of America;

(5) Provide technical assistance to localities and nonprofit organizations to further the commemoration of the semiquincentennial of the founding of our nation;

(6) Develop programs and facilities to ensure that the semiquincentennial commemoration of the founding of our nation results in a positive legacy and long-term public benefit; and

(7) Encourage the development and conduct of programs designed to involve all citizens in activities that commemorate the semiquincentennial of the founding of our nation.

#### **§4-13A-7. Termination of the commission.**

The commission shall terminate on June 30, 2027.

On motion of Senator Takubo, the Senate concurred in the foregoing House of Delegates amendment to the Senate amendment to the bill.

Engrossed Committee Substitute for House Bill 2916, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2916) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2916) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 3313**—A Bill supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles, fund 9007, fiscal year 2021, organization 0802, for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 3314**—A Bill supplementing and amending Chapter eleven, Acts of the Legislature, Regular Session, 2020, known as the budget bill, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Homeland Security, West Virginia State Police, fund 0453, fiscal year 2021, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021 by adding new language.

Referred to the Committee on Finance.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 3315**—A Bill making a supplementary appropriation of public monies out of the Treasury from the balance of monies remaining unappropriated for the fiscal year ending June 30, 2021, to the Department of Environmental Protection, Division of Environmental Protection - Oil and Gas Reclamation Fund, fund 3322, fiscal year 2021, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

A message from the Clerk of the House of Delegates announced the passage by that body, to take effect from passage, and requested the concurrence of the Senate in the passage of

**Eng. House Bill 3316**—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, 2021, to the Department of Education, State Board of Education – State Department of Education, Fund 8712, fiscal year 2021, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**Com. Sub. for House Concurrent Resolution 84**—Requesting That the Joint Committee on Government and Finance study the declining population of military service veterans in West Virginia, and the policies, programs and other factors present in states with increasing populations of military service members and veterans that could potentially be emulated in West Virginia.

Referred to the Committee on Rules.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 7th day of April, 2021, 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. 80)**, Allowing for administration of certain small estates by affidavit and without appointment of personal representative.

**(Com. Sub. for S. B. 81)**, Relating generally to WV Uniform Trust Code.

(**S. B. 374**), Increasing threshold for bid requirement to \$10,000 to be consistent with other state agencies.

(**Com. Sub. for S. B. 389**), Relating to State Resiliency Office responsibility to plan for emergency and disaster response, recovery, and resiliency.

(**Com. Sub. for S. B. 421**), Authorizing Workforce West Virginia to hire at-will employees.

(**S. B. 463**), Consolidating position of Inspector General of former Workers' Compensation Fraud and Abuse Unit and position of Director of Insurance Fraud Unit.

(**Com. Sub. for S. B. 472**), Updating criteria for regulating certain occupations and professions.

(**Com. Sub. for H. B. 2094**), Relating to the juvenile restorative justice programs.

(**Com. Sub. for H. B. 2400**), Authorizing the Department of Transportation to promulgate legislative rules.

(**Com. Sub. for H. B. 2495**), Relating to the filing of asbestos and silica claims.

(**H. B. 2808**), Remove salt from list and definition of "mineral" for severance tax purposes.

(**H. B. 2852**), Relating to distribution of the allowance for increased enrollment.

(**H. B. 2898**), Making a supplementary appropriation to WorkForce West Virginia – Workforce Investment Act.

(**H. B. 2941**), Supplementary appropriation decreasing an existing item and adding a new item of appropriation to the Department of Revenue, Insurance Commissioner.

And,

**(H. B. 3010)**, To extend the special valuation method for cellular towers to towers owned by persons not subject to regulation by the Board of Public Works.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Senate Concurrent Resolution 71** (originating in the Committee on Government Organization)—Requesting the Joint Committee on Government and Finance study the importance of legislation prohibiting the state or its instrumentalities from contracting with, investing in, or otherwise doing business with entities involved in the Boycott, Divestment, and Sanctions Movement against Israel.

Whereas, The State of Israel is one of the United States' closest allies and international trading partners; and

Whereas, In recent years, the State of Israel and Israeli-owned businesses have been the target of economic, cultural, and academic boycotts; and

Whereas, These attempts to isolate Israel within the international arena have served as a vehicle for spreading anti-Semitism and advocating for the elimination of the Jewish state; and

Whereas, The Boycott, Divestment, and Sanctions Movement is deeply damaging to the causes of peace, justice, equality, democracy, and human rights for all people in the Middle East; and

Whereas, The State of West Virginia has an economic and a humanitarian obligation to denounce and reject the Boycott, Divestment, and Sanctions Movement, and to prevent the state or any of its instrumentalities from entering into contracts with, investing in, or otherwise doing business with entities that engage in the movement; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the importance of legislation prohibiting the state or its instrumentalities from contracting with, investing in, or otherwise doing business with entities involved in the Boycott, Divestment, and Sanctions Movement against Israel; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the Regular Session of the Legislature, 2022, 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.

And reports the same back with the recommendation that it be adopted; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

At the request of Senator Maynard, unanimous consent being granted, the resolution (S. C. R. 71) contained in the foregoing report from the Committee on Government Organization was then referred to the Committee on Rules.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2195**, Relating to motor vehicle crash reports.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2671**, Relating to financial exploitation of elderly persons, protected persons or incapacitated adults.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2688**, Allow county political parties to have building funds in a similar manner that state parties are allowed.

And reports the same back with the recommendation that it do pass.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2891**, Creating minimum statutory standards for law-enforcement officers.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 2933**, Anti-Discrimination Against Israel Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

Senator Tarr, as chair of the Committee on Finance, requested unanimous consent to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on Government Organization.

Which consent was not granted, Senator Woelfel objecting.

Following discussion,

At the request of Senator Woelfel, unanimous consent being granted, his foregoing objection was withdrawn.

Thereafter, on motion of Senator Tarr, as chair of the Committee on Finance, the second committee reference of the bill contained in the foregoing report from the Committee on Government Organization was dispensed with.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

**Eng. Com. Sub. for House Bill 3072**, Sunset the Board of Forestry.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Mark R. Maynard,  
*Chair.*

The Senate proceeded to the seventh order of business.

**Com. Sub. for Senate Concurrent Resolution 3**, Urging Congress reopen public lands in WV.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Senate Concurrent Resolution 55**, Supporting Atlantic Coast Pipeline.

On unfinished business, coming up in regular order, was reported by the Clerk.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Senate Resolution 41**, Congratulating George Washington High School History Bowl team.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Nelson, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, and on this question, Senator Nelson demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 41) adopted.

**Senate Resolution 42**, Congratulating Walker Combs for winning 2020 National History Bee Championship.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Nelson, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, and on this question, Senator Nelson demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover,

Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 42) adopted.

**Senate Resolution 43**, Requesting construction of off-highway vehicle trail to parallel Appalachian Hiking Trail.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Maynard, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Boley, Clements, Grady, Karnes, Maroney, Martin, Maynard, Nelson, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—20.

The nays were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Phillips, Plymale, Romano, Stollings, Stover, Unger, and Woelfel—14.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 43) adopted.

The Senate proceeded to the eighth order of business.

**Com. Sub. for Senate Bill 125**, Budget Bill.

On third reading, coming up in regular order, with the right having been granted on Monday, April 5, 2021, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar.

**Eng. Com. Sub. for House Bill 2005**, Relating to health care costs.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 2022**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

On third reading, coming up in regular order, with the right having been granted on yesterday, Tuesday, April 6, 2021, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar, following consideration of Committee Substitute for Senate Bill 125 already placed in that position.

**Eng. Com. Sub. for House Bill 2722**, Prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2722) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2722) takes effect July 1, 2021.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence in the changed effective date.

**Eng. Com. Sub. for House Bill 2758**, Requiring the Insurance Commissioner to regulate professional bondsmen.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Karnes and Martin—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2758) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2758**—A Bill to amend and reenact §51-10-1 and §51-10-8 of the Code of West Virginia, 1931, as amended, all relating to requiring the Insurance Commissioner to regulate professional bondsmen; providing definitions; requiring the Insurance Commissioner to promulgate and propose rules to carry out the intent, administration, and enforcement of the article; authorizing the promulgation of emergency rules; requiring the Insurance Commissioner to promulgate and propose rules regarding qualifications of bondsman; setting forth requirements for bondsman applicants; setting forth filing requirements for bondsmen with the Insurance Commissioner; setting forth renewal requirements for bondsman license; providing criminal penalty for false affidavit; requiring Insurance Commissioner to keep a list of licensed bondsmen and furnish to a jail upon request; and, after

July 1, 2022, requiring all bondsmen to be licensed by the Insurance Commissioner.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2760**, Relating to economic development incentive tax credits.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 2793**, Permit out of state residents to obtain West Virginia concealed carry permits.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2793 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2793) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2793**—A Bill to amend and reenact §61-7-4 of the Code of West Virginia, 1931, as amended, relating to permitting nonresidents to obtain state licenses to carry a concealed deadly weapon; requiring application to a county sheriff; establishing a \$100 fee and providing how that fee is to be used; providing that concealed weapons licenses may only be issued for pistols and revolvers; requiring non-residents to meet the same standards as West Virginia residents for licensure; and providing for the issuance of a new license if the resident or nonresident relocates.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2834**, Adding the Curator of the West Virginia Division of Arts, Culture and History as an ex officio voting member of the commission.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2834) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 2874**, Extend the current veteran's business fee waivers to active duty military members and spouses.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2874) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2890**, To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Ihlenfeld, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—26.

The nays were: Baldwin, Beach, Caputo, Jeffries, Lindsay, Romano, Stollings, and Unger—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2890) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

**Eng. Com. Sub for House Bill 2890**—A Bill to amend and reenact §24A-1-2 and §24A-1-3 of the Code of West Virginia, 1931, as amended, all relating to clarifying the authority of the Public Service Commission of West Virginia over luxury limousine services; defining terms; and creating exemption from certain contract and common carrier laws for luxury limousine services.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2914**, To remove certain ex officio, voting members from the Archives and History Commission and update formatting.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2914) passed with its title.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 2915**, Relating to public records management and preservation.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 2969**, To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

The nays were: Karnes, Martin, and Romano—3.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2969) passed.

At the request of Senator Maynard, as chair of the Committee on Government Organization, and by unanimous consent, the unreported Government Organization committee amendment to the title of the bill was withdrawn.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 2969**—A Bill to amend and reenact §17-16D-6 and §17-16D-10 of the Code of West Virginia, 1931, as amended; to amend and reenact §17-17-10, §17-17-11, §17-17-12, §17-17-21, and §17-17-22; to amend said code by adding thereto a new section, designated §17-17-38; to amend and reenact §17A-2A-7 and §17A-2A-9; and to amend and reenact §24-2-1 of said code, all relating to privately owned toll bridges; providing for the sale of a municipally owned toll bridge to a private toll transportation facility under certain circumstances; defining the term “private toll transportation facility”; authorizing disclosure of certain information in anticipation of litigation; authorizing the retention and collection of tolls on a privately owned toll bridge; clarifying procedures for the electronic collection of tolls by a private toll transportation facility; clarifying the tax treatment of toll bridges sold by a municipality to a private toll transportation facility; providing for the imposition of liability and nonrenewal of vehicle registration for failure to pay tolls on a privately owned toll bridge; clarifying the application of provisions of code to state owned and privately owned toll bridges; clarifying the jurisdiction of the Public Service Commission over toll bridges; and providing that commission does not have jurisdiction over certain telephone companies or municipal power systems.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 3293**, Relating to single-sex participation in interscholastic athletic events.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the consideration of

**Eng. House Bill 2969**, To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility.

Passed by the Senate in earlier proceedings today,

The bill still being in the possession of the Senate,

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Martin—1.

Absent: Hamilton—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 2969) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3294**, Relating to unemployment insurance.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3294) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 3294**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21A-2D-1, §21A-2D-2, §21A-2D-3, §21A-2D-4, §21A-2D-5, §21A-2D-6, §21A-2D-7, §21A-2D-8, and §21A-2D-9; amending said code by adding thereto a new article designated §21A-6B-1, §21A-6B-2, §21A-6B-3, §21A-6B-4, §21A-6B-5, §21A-6B-6, and §21A-6B-7; all generally relating to unemployment insurance; creating the Unemployment Insurance Program Integrity Act; providing short title; providing definitions; requiring the commissioner, on a weekly basis, to check unemployment insurance rolls against Division of Corrections and Rehabilitation's list of imprisoned individuals, check new hire records against the National Directory of New Hires, and check unemployment insurance rolls against a commercially available database that provides cross-matching functions to verify eligibility for unemployment benefits; providing for data sharing between Workforce West Virginia and other departments, agencies, or divisions; providing for action by bureau to make new eligibility determinations; requiring commissioner to implement internal administrative policies regarding the recovery of

fraudulent unemployment overpayments, cooperative agreements with the U.S. Department of Labor to investigate unemployment fraud, and recover overpayments of unemployment benefits; providing a mechanism for an employer to contact Workforce when an employee is offered their job back but refuses to be rehired; reporting of relevant data, to the extent permitted by federal law, by commissioner to the Legislature; providing for rulemaking; providing an effective date; establishing the Short Time Compensation Program within Workforce West Virginia; defining terms; requiring the commissioner to establish and implement a short-time compensation program by July 1, 2023; requiring program to meet applicable federal and state law; providing that an employer that wishes to participate submit an application; requiring the commissioner to develop an employer application form to request approval of a plan and an approval process to participate in the program; establishing requirements for an application; providing procedure for commissioner approval or disapproval of a plan; providing for the effective date of a plan, expiration of a plan, revocation of a plan, and modification of a plan; establishing employee eligibility requirements to receive short-time compensation under a plan; prescribing employee benefits and limitations on benefits; and providing for rulemaking.

Senator Takubo moved that the bill take effect July 1, 2022.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3294) takes effect July 1, 2022.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3300**, Relating to reducing personal income tax rates generally.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on Monday, April 5, 2021, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's first reading calendar, following consideration of Engrossed Committee Substitute for House Bill 2022 already placed in that position.

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2002**, Relating to Broadband.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **CHAPTER 17. ROADS AND HIGHWAY.**

### **ARTICLE 2E. DIG ONCE POLICY.**

**§17-2E-3. Use of rights-of-way; broadband conduit installation in rights-of-way; permits; agreements; compensation; valuation of compensation; telecommunications facilities construction and installation in rights of way.**

~~(a) Before obtaining a permit for the construction or installation of a telecommunications facility in a right-of-way, a telecommunications carrier, must enter into an agreement with the division consistent with the requirements of this article.~~

~~(b) Before granting a permit for longitudinal access or wireless access to a right of way, the division shall:~~

~~(1) First enter into an agreement with a telecommunications carrier, that is competitively neutral and nondiscriminatory as to other telecommunications carriers, and~~

~~(2) Upon receipt of any required approval or concurrence by the Federal Highway Administration the division may issue a permit granting access under this section: *Provided*, That the division shall comply with all applicable federal regulations with respect to approval of an agreement, including, but not limited to, 23 C.F.R. §710.403 and 23 C.F.R. §710.405. The agreement shall be approved by the Commissioner of Highways in order to be effective and, without limitation:~~

~~(A) Specify the terms and conditions for renegotiation of the agreement;~~

~~(B) Set forth the maintenance requirements for each telecommunications facility;~~

~~(C) Be nonexclusive; and~~

~~(D) Be for a term of not more than 30 years;~~

~~(e) Unless specifically provided for in an agreement entered into pursuant to subsection (a) of this section, the division may not grant a property interest in a right of way pursuant to this article.~~

~~(d) A telecommunications carrier shall compensate the division for the use of spare conduit or related facilities owned or controlled by the division as part of any longitudinal access or wireless access granted to a right of way pursuant to this section. The compensation must be, without limitation:~~

~~(1) At fair market value: *Provided*, That because the social, environmental, and economic benefits from such use of state highway rights of way is of overwhelming value to the citizens of this state and is in the overall public interest, the division shall establish the fair market value for purposes of this article at \$0 in monetary compensation;~~

~~(2) Competitively neutral;~~

~~(3) Nondiscriminatory;~~

~~(4) Open to public inspection;~~

~~(5) Determined based on the geographic region of this state, taking into account the population and the impact on private right-of-way users in the region; and once determined, set at an amount that encourages the deployment of digital infrastructure within this state; and~~

~~(6) Paid with in kind compensation.~~

~~(e) The division may consider adjustments for areas the division, in conjunction with the council, determines are underserved or unserved areas of the state and may consider the value to such areas for economic development, enhancing the transportation system, expanding opportunities for digital learning, and telemedicine.~~

~~(f) For the purpose of determining the amount of in kind compensation a telecommunications carrier must pay the division for the use of spare conduit or excess conduit or related facilities of the division as part of any longitudinal access or wireless access granted to a right of way pursuant to this section, the division may:~~

~~(1) Conduct an analysis once every five years, in accordance with the rules, policies, or guidelines of the division, to determine the fair market value of a right of way to which access has been granted pursuant to this section; and~~

~~(2) Determine the fair market value of the in-kind compensation based on the incremental costs for the installation of conduit and related facilities~~

(a) If in-ground construction or installation of a telecommunications facility in rights-of-way owned or controlled by the division serves a public purpose and shall be accommodated as a utility pursuant to federal and state law, the division will receive applications and issue a permit consistent with this section with respect to requirements and conditions for performing work in division rights-of-way.

(b) Upon receipt of a complete application as specified in the Accommodation of Utilities on Highway Right-of-Way and Adjustment and Relocation of Utility Facilities on Highway Projects Policy, or equivalent policy, as may be currently enforced by the division, that specifies the requirements and conditions for performing work in a right-of-way, the division shall, within 60 business days, advise applicant in writing of any deficiencies with the planned project that:

(1) Adversely affect the safety, design, construction, operation, maintenance, or stability of the state road system;

(2) Interfere with or impair the present use or planned future expansion of any affected highway or bridge;

(3) Conflict with applicable division policy with respect to requirements and conditions for performing work in division rights-of-way; or

(4) Violates applicable federal or state law.

(c) An applicant may correct any deficiencies and resubmit the application, which shall be reviewed by the division and either approved or denied within 30 days of the resubmittal. Any denial of a resubmittal shall be in writing and explain any deficiencies as provided in subsection (b) of this section. After the division approves a permit application, notwithstanding any other provision of this code to the contrary, the division shall issue a specific

district level construction authorization for the approved project within 10 business days unless specific logistical issues reasonably prevent commencement.

(d) Compliance with applicable environmental laws shall at all times be the responsibility of the applicant. If any environmental clearance must be performed by the division before an application is approved, the division will notify the applicant in writing of all necessary requirements for such clearance within 15 business days of receiving a complete application. The division will also provide a list of all known federal and state entities with whom an applicant may also need to consult and coordinate for environmental clearance purposes.

(e) The division will create and make available for potential applicants an informational notice specific to in-ground telecommunications facility construction and installation that explains routine issues for such projects, including a consolidated checklist or flow chart of all state or federal regulatory requirements, including but not limited to applicable permits, required reviews, required approvals, and required forms. The division shall annually update such informational notice for accuracy and completeness by coordination with each state or federal agency having required regulatory action in the permitting process legal, regulatory, and division requirements and may request the assistance of the Office of Broadband in preparing this informational notice.

~~(g)~~ (f) The provisions of this article shall not apply to the relocation or modification of existing telecommunications facilities in a right-of-way, nor shall these provisions apply to aerial telecommunications facilities or associated apparatus or equipment in a right-of-way. Relocation of telecommunications facilities within rights-of-way for state highways shall be in accordance with the provisions of §17-4-17b of this code.

#### **§17-2E-5. Telecommunications carrier initiated construction and joint use.**

(a) Upon application for a permit, the ~~applying telecommunications carrier~~ applicant shall notify, by email, the

~~council~~ Office of Broadband and all other telecommunications carriers on record with the ~~council~~ office of the application. Other telecommunications carriers have 15 calendar days to notify the applicant of their interest to share the applicant's trench. This requirement extends to all underground construction technologies.

(b) If no competing telecommunications carrier provides notice of interest to share the applicant's trench within 15 calendar days of notice of the project, ~~the carrier applying for the permit applicant~~ shall affirm that fact to the division prior to being issued a permit provide written certification in accordance with subsection (g) of this section.

(c) If a competing telecommunications carrier provides notice of interest to share the applicant's trench, an agreement between the two (or more) telecommunications carriers shall be executed by those entities within 30 days of the notice of interest, outlining the responsibilities and financial obligations of each, with respect to the installation within the right-of-way. The financial obligations of each carrier shall be based on the proportionate sharing of costs between each carrier for joint trenching or trench sharing based on the amount of conduit or innerduct space or excess conduit that is authorized in the agreements entered into pursuant to this article. If the division uses a trench, it shall also pay its proportional share unless it is utilizing the trench as in-kind payment for use of the right-of-way, or the division has otherwise determined, in its sole discretion, that including the division in the apportionment of costs is not warranted. A copy of the executed agreement shall be provided to the division.

(d) Should a dispute arise between the initial applying telecommunications carrier and a competing telecommunications carrier, including a failure to execute an agreement required by subsection (c) of this section, the dispute shall be adjudicated by the Public Service Commission. All disputes brought to the Public Service Commission under this article shall be adjudicated within 45 days.

(e) If two or more telecommunications carriers are required or authorized to share a single trench, each carrier in the trench must share the cost and benefits of the trench in a fair, reasonable, competitively neutral, and nondiscriminatory manner. This requirement extends to all underground construction technologies.

~~(f) The commissioner of the division shall promulgate rules governing the relationship between the telecommunications carriers, as hereinafter provided in this article~~

~~(g)~~ The provisions of this section do not apply to the following projects:

(1) Projects where the total continuous length of the trench is less than 1,000 feet;

(2) Projects that use the direct bury of cable or wire facilities;

(3) Projects that are solely for the service of entities involved in national security matters or where the disclosure or sharing of a trench location would be against federal policy; or

(4) Projects made available for lease to competing telecommunications carriers on a nondiscriminatory basis at rates established by the rules of the Federal Communications Commission Projects where the telecommunications carrier installs an amount of spare conduit or innerduct equal to what is being installed for its own use and which is given to the Office of Broadband. Such spare conduit or innerduct shall be made available for sale or lease to competing telecommunications carriers on a nondiscriminatory basis at rates apportioned on the basis of the cost of the installation thereof, to other telecommunications providers, and the revenues derived from such sale, less any costs associated therewith, shall be remitted to the telecommunications carrier that installed such spare conduit or innerduct established by the rules of the Federal Communications Commission in a manner consistent with all applicable state and federal law and regulations. All carriers installing spare conduit or innerduct shall notify the council and the Office of Broadband of

the location and capacity of such spare conduit and innerduct upon completion of the project, and the council shall make such information publicly available for competing telecommunications carriers.

(g) The Office of Broadband is responsible for ensuring compliance with this section and will provide the division and the applicant with certification of compliance at such time as the applicant has met all of the requirements of this section.

#### **§17-2E-6. In-kind compensation.**

[Repealed].

#### **§17-2E-7. Multiple carriers in a single trench. Use of telecommunications facilities owned or controlled by Division of Highways.**

~~(a) If the Division of Highways enters into an agreement with two or more telecommunications carriers, a consortium or other entity whose members, partners or other participants are two or more telecommunications carriers, or, if the Division requires or allows two or more telecommunications carriers to share a single trench, the agreements entered into pursuant to this article shall require that the telecommunications carriers share the obligation of compensating the Division of Highways on a fair, reasonable and equitable basis, taking into consideration the proportionate uses and benefits to be derived by each telecommunications carrier from the trench, conduits, and other telecommunications facilities installed under the agreements.~~

~~(b) The provisions of §17-2E-7(a) of this code do not prevent the Division of Highways from requiring every participating telecommunications carrier to bear joint and several liability for the obligations owed to the Division of Highways under the agreements.~~

~~(c) Any agreement requiring two or more telecommunications carriers to share the obligation of compensating the Division of Highways shall provide the Division the right to review and audit~~

~~the records and contracts of and among the participating carriers to ensure compliance with §17-2E-7(a) of this code~~

The division may enter into an agreement and issue a permit consistent with the requirements of §17-2E-3 of this code to allow any carrier to use excess telecommunications facilities owned or controlled by the division: *Provided*, That this section shall be subject to the provisions of the Vertical Real Estate Management and Availability Act, as provided for in §31G-5-1 *et seq.* of this code, and no excess telecommunications facilities owned or controlled by the division subject to §31G-5-1 *et seq.* of this code shall be governed by the provisions of this section.

**§17-2E-8. Existing policies. Disposal of in-kind compensation; excess telecommunications facilities.**

~~(a) The requirements set forth in this article do not alter existing rules, policies, and procedures relating to other utility facilities within a right-of-way or for accommodating utility facilities or other facilities under the control of the Division of Highways.~~

~~(b) The Division of Highways may consider the financial and technical qualifications of a telecommunications carrier when determining specific insurance requirements for contractors authorized to enter a right-of-way to construct, install, inspect, test, maintain, or repair telecommunications facilities with longitudinal access or wireless access to the right-of-way.~~

~~(c) If the Division of Highways authorizes longitudinal access, wireless access, or the use of, and access to, conduit or related facilities of the Division for construction and installation of a telecommunications facility, the Division may require an approved telecommunications carrier to install the telecommunications facility in the same general location as similar facilities already in place, coordinate their planning and work with other contractors performing work in the same geographic area, install in a joint trench when two or more telecommunications carriers are performing installations at the same time and equitably share costs between such carriers.~~

~~(d) The placement, installation, maintenance, repair, use, operation, replacement, and removal of telecommunications facilities with longitudinal access or wireless access to a right of way or that use or access conduit or related facilities of the Division shall be accommodated only when in compliance with this code and Division of Highways rules, policies and guidelines.~~

~~(e) Access to a right of way must be administered in compliance with the Telecommunications Act of 1996, 47 U.S.C. §151, et seq., as amended~~

Upon written approval of the Governor, the division may transfer or assign the ownership, control, or any rights related to any excess telecommunications facilities owned or controlled by the division to any other state agency.

#### **§17-2E-9. Rule-making authority.-**

~~The Commissioner of the Division of Highways may promulgate rules pursuant to the provisions of §29A-3-15 of this code as may be necessary to carry out the purpose of this article, and as may have been specifically delineated within this article~~

The commissioner of the division may promulgate rules pursuant to the provisions of §29A-3-1 et seq. of this code as may be necessary to carry out the purpose of this article.

### **CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.**

#### **ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.**

##### **§31G-1-4. Powers and duties of the council generally.**

(a) The council shall

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The council may request the assistance of the Legislative Auditor in gathering this data;

(3) Explore the potential for increased use of broadband service for the purposes of education, career readiness, workforce preparation and alternative career training;

(4) Explore ways for encouraging state and municipal agencies to expand the development and use of broadband services for the purpose of better serving the public, including audio and video streaming, voice-over Internet protocol, teleconferencing and wireless networking; ~~and~~

(5) Cooperate and assist in the expansion of electronic instruction and distance education services; and

(6) Explore ways to achieve digital equality of opportunity throughout the state, which is a condition where all individuals and communities have the information technology capacity needed for full participation in our society, democracy and economy.

(b) In addition to the powers set forth elsewhere in this article, the council is hereby granted ~~has and may exercise the powers authority necessary or appropriate to carry out and effectuate the purpose and intent of this article, as to:~~ The council shall have the power and capacity to

~~(1) Provide consultation services to project sponsors in connection with the planning, acquisition, improvement, construction or development of any broadband deployment project~~

~~(2)~~ (1) Promote awareness of public facilities that have community broadband access that can be used for distance education and workforce development;

~~(3)~~ (2) Advise on deployment of e-government portals such that all public bodies and political subdivisions have homepages,

encourage one-stop government access and that all public entities stream audio and video of all public meetings;

(4) ~~(3)~~ Make and execute contracts, commitments and other agreements necessary or convenient for the exercise of its powers; including, but not limited to, the hiring of consultants to perform the duties of the council ~~assist in the mapping of the state and categorization of areas within the state;~~

~~(5)~~ (4) Acquire by gift or purchase, hold, or dispose of real property and personal property in the exercise of its powers and performance of its duties as set forth in this article; and

(4) ~~(5)~~ Receive and dispense funds appropriated for its use by the Legislature ~~or other funding sources or solicit, apply for and receive any funds, property or services from any person, governmental agency or organization~~ to carry out its statutory duties.

~~(7) to oversee the use of conduit installed pursuant to section two of article three of this chapter; and to~~

~~(8) Perform any and all other activities in furtherance of its purpose~~

(c) The council shall ~~exercise its powers and authority to~~ advise and make recommendations to the Legislature Office of Broadband, and shall coordinate with the office on bringing broadband service to unserved and underserved areas, as well as to propose statutory changes that may enhance and expand broadband in the state.

(d) The council shall report to the Secretary of Economic Development ~~Joint Committee on Government and Finance~~ on or before ~~January~~ December 1 of each year. The report shall include the action that was taken by the council during the previous year in carrying out the provisions of this article. The council shall also make any other reports as may be required by the Legislature or the Governor.

**§31G-1-6. Mapping of areas within state.**

[Repealed]

**§31G-1-9. Collection of data.**

[Repealed]

**§31G-1-12. Grants.**

[Repealed]

**ARTICLE 1A. OFFICE OF BROADBAND.****§31G-1A-1. Office of Broadband; Director of Office.**

There is hereby established an Office of Broadband, which shall be organized within the Department of Economic Development under the authority of the Secretary of Economic Development. The Office of Broadband shall be managed by a director, who shall report to the Secretary of Economic Development. The Office of Broadband shall also report to the Joint Committee on Government and Finance of the West Virginia Legislature on or before December 30 of each year.

**§31G-1A-2. Powers and duties of the Office of Broadband generally.**

(a) The Office of Broadband shall have the following duties:

(1) Explore any and all ways to expand access to broadband services, including, but not limited to, middle mile, last mile, and wireless applications;

(2) Gather data regarding the various speeds provided to consumers in comparison to what is advertised. The office may request the assistance of the Legislative Auditor in gathering this data;

(3) Cooperate and assist in the expansion of electronic instruction and distance education services;

(4) Gather and report data regarding the adoption by broadband services, by speed, and by community, separately for residential and non-residential consumers;

(5) Gather and report data regarding prices charged for broadband services to residential and non-residential consumers, including, but not limited to one-time fees, monthly fees, termination fees, equipment fees, and other fees;

(6) Incorporate the goal of digital equality in its fulfillment of responsibilities, which is a condition where all individuals and communities have the information technology capacity needed for full participation in our society, democracy, and economy; and

(7) Provide for the increased public awareness of issues concerning broadband services.

(b) In addition to the powers set forth elsewhere in this article, the Office of Broadband is hereby granted the authority necessary and appropriate to carry out and effectuate the purpose and intent of this article, including, but not limited to, the authority to:

(1) Make and execute contracts, commitments, and other agreements necessary or convenient for the exercise of its powers, including, but not limited to, the hiring of consultants to assist in the mapping of the state and categorization of areas within the state;

(2) Acquire by gift or purchase, hold, or dispose of real or personal property in the exercise of its powers and performance of its duties as set forth in this article;

(3) Receive and dispense funds appropriated for its use by the Legislature or other funding sources or solicit, apply for, and receive any funds, property, or services from any person, governmental agency, or organization to carry out its statutory duties;

(4) To oversee the use of conduit installed pursuant to §31G-3-2 of this code;

(5) Make recommendations to the Legislature on bringing broadband service to areas of the state;

(6) Contract with and retain outside expert consultants to assist in the purposes of this article;

(7) Create guidelines for, and recommend to the Legislature, a means of implementing a voluntary donation program to allow for pipeline, railroad, and other similar structures and rights-of-way in the state to be donated to the state for use by public or private entities to facilitate broadband service and availability through placement of fiber;

(8) Create guidelines for, and recommend to the Legislature, a means of implementing a program to allow for an easement program to be established to allow public or private entities to facilitate broadband service and availability through placement of fiber;

(9) Coordinate with the Consumer Protection Division of the Office of the Attorney General to provide for the following consumer protections:

(A) If a broadband service to a subscriber is interrupted for more than 24 continuous hours, such subscriber shall, upon request, receive a credit or refund from the broadband operator in an amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber;

(B) A broadband operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of other speech protected by the 1st Amendment to the United States Constitution, or country of natural origin;

(C) A broadband operator shall provide subscribers 30 days advance written notice of any changes to rates or charges, including the expiration of any promotion or special pricing that would result in an increase in the subscribers billing or cost of service; and

(D) A broadband operator shall inform subscribers and provide written notice to subscribers that disputes regarding interrupted or substandard service or billing issues, which are unresolved to satisfaction of the subscriber; and

(10) Perform any and all other activities in furtherance of the purposes of this article.

(c) In furtherance of the purposes of this article, the Office of Broadband is permitted to seek non-state funding and grants. The Office of Broadband may utilize funding and grants to support the responsibilities, initiatives, and projects set forth in this article. The Office of Broadband may additionally disburse such moneys to fund projects and initiatives in furtherance of the enhancement and expansion of broadband services in this state, and the other purposes of this article.

### **§31G-1A-3. Mapping of areas within state.**

(a) Based on its analysis of data, broadband demand, and other relevant information, the Office of Broadband shall establish a mapping of broadband services in the state. The council shall publish an annual assessment and map of the status of broadband, including specific designations of unserved areas of the state. With respect to unserved areas of the state, the Office of Broadband shall, to the extent it is able, map project areas with funding provided by public entities. For the purposes of this section, the term “unserved area” means an area lacking broadband internet service from at least one terrestrial broadband internet service provider offering all of the following in at least one service plan to residential consumers: (1) an actual downstream data rate of at least 25 megabits per second; and (2) an actual upstream data rate of at least three megabits per second; and (3) unlimited data usage without overage charges; and (4) unlimited data usage without

“throttling” or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

(b) To the extent possible, and subject to limitations contained in subsection (g) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting estimated or actual downstream data rate and upstream data rate in a particular region, area, community, street or location. Any such mapping may only specify data rates at a particular street address or physical location, and shall not make public the IP address or the name of the specific individual at such location. This map shall be known as the West Virginia Broadband Availability Map.

(c) To the extent possible, and subject to limitations contained in subsection (g) of this section, the Office of Broadband shall additionally establish an interactive public map reflecting the adoption of broadband services, separately by estimated or actual downstream data rate and upstream data rates, in a particular region, area, community, street or location. Any such mapping shall provide data separately for residential connections and non-residential connections. This map shall be known as the West Virginia Broadband Adoption Map.

(d) The mapping provided for in this section may be based on information collected or received by the Broadband Council and Office of Broadband, including, but not limited to, data collected from:

(1) State and federal agencies or entities that collect data on broadband services;

(2) Industry provided information;

(3) Consumer data provided to the Broadband Council or Office of Broadband pursuant to §31G-1A-6 and §31G-1A-9 of this code; and

(4) Other data sources procured by or provided to the Office of Broadband or the Broadband Council.

(e) Any entity that has received or hereinafter receives state or federal moneys, and which has used those moneys to install infrastructure used for broadband services, shall furnish detailed information concerning the location, type, and extent of such infrastructure to the Office of Broadband for use in mapping and shall furnish the location, type, and prices of any broadband services subscribed to by residential (and separately non-residential) consumers as a result of the installed infrastructure.

(f) The mapping and designations provided for under this section may be revised on a continuing basis by the office as warranted by the data and information provided.

(g) In addition to the provisions of §31G-1A-13 of this code, the mapping of broadband services may exclude from public accessibility and availability:

(1) The location or identity of any critical infrastructure used by public or private entities in furtherance of their internet services;

(2) Personal name and personal IP addresses connected with particular data rates; and

(3) Information designated as confidential for public security reasons by either state or federal homeland security agencies: *Provided*, That it shall be duty of the public and private entities to make the Office of Broadband aware of such confidential designation: *Provided, however*, That unless the Office of Broadband determines good cause exists, the actual or estimated upstream and downstream data rates of an area or region of the state shall not be excluded from public or private availability.

(h) All executive agencies which have permitting and/or regulatory approval authority over any project permitted or reviewed and approved pursuant to §17-2E-3 of this code shall cooperate with and provide all necessary information to the Office of Broadband to determine the feasibility and federal allowability of creating Advanced Regulatory Environment Analysis (AREA) maps. AREA maps will pre-survey likely routes for middle-mile

infrastructure so all relevant information can be included in a centralized GIS mapping system to be maintained by the Office of Broadband for utilization by the private sector when extending new fiber infrastructure pursuant to §17-2E-1 *et seq.* of this code. AREA mapping shall also include, but is not limited to, any areas already granted Finding of No Significant Impact (“FONSI”), categorical exclusions (“CATEX”), areas prior approved by the West Virginia State Historic Preservation Office (“SHPO”), and all West Virginia Division of Highways mapping for permits that include installation of infrastructure.

(i) If in analyzing the consumer-supplied speed data for an area of two square miles or more, the Office of Broadband finds that speeds supplied by a provider are less than 80% of the lowest speed tier advertised by the provider in more than 40% of the tests in that area in a calendar year, then the Office of Broadband shall notify the Consumer Protection Division of the Attorney General’s Office, and shall transmit such records of any relevant speed tests in their custody to the Consumer Protection Division of the Attorney General’s Office.

#### **§31G-1A-4. Collection of data.**

(a) In order to ascertain, categorize, analyze, map, and update the status of broadband in the state, as well as to enable the Office of Broadband to make informed policy and legislative recommendations, the Office of Broadband may establish a voluntary data collection program. The program may include voluntarily submitted data from internet service providers, including any home or region data rate meters utilized by the provider. The program may also utilize and collect voluntarily submitted data rate information submitted by any person reflecting the person’s personal data rate at a particular IP address. This personal data rate may be based upon a web-based test or analysis program.

(b) Any and all data collected by the Office of Broadband shall not be deemed public information and is not subject to public release or availability pursuant to §29B-1-1 *et seq.* of this code.

(c) Any data collection program established by the Office of Broadband shall:

(1) Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person's physical address;

(2) Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and

(3) Not include any person's personal web history or search information, or otherwise publicly identify the person's name in connection with an IP address or physical address.

(d) The Office of Broadband may establish guidelines and additional rules governing a data collection program through the legislative rulemaking pursuant to the provisions of §29A-3-1 et seq. of this code.

**§31G-1A-5. Protection of proprietary business information.**

(a) Broadband deployment information provided to the Office of Broadband or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of §29B-1-1 et seq. of this code: *Provided*, That the information is identified as or would reasonably be contemplated to be confidential information when submitted to the Office of Broadband.

(b) Trade secrets or proprietary business information obtained by the council or the Office of Broadband from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual, or agency other than officials or authorized persons of the state.

(c) The official charged with securing and safeguarding trade secrets and proprietary data for the Office of Broadband is the Secretary of Economic Development, who is authorized to establish and administer appropriate security measures.

**§31G-1A-6. Legislative rule-making authority.**

In order to implement and carry out the intent of this article, the Secretary of the Department of Economic Development may propose rules for legislative approval pursuant to the provisions of §29A-3-1 et seq. of this code.

**ARTICLE 3. CONDUIT INSTALLATION; MICROTRENCHING.**

**§31G-3-3. Conduit installation or fiber installation by counties, municipalities, and other political subdivisions.**

(a) Notwithstanding any other provision of this code to the contrary, any county, municipality, or other political subdivision of the State of West Virginia may:

(1) Install or contract with any entity for the installation of conduit, fiber, or broadband facilities throughout that political subdivision;

(2) Partner with any of the following entities, or any combination thereof, to install such conduit or communications facilities throughout that political subdivision:

(A) Nonprofit organization;

(B) Cooperative association;

(C) Another county, municipality, or political subdivision;

(D) Private corporations, company, or person; or

(E) Public-private partnership; and

(4) Partner with any of the following entities, or any combination thereof, which operate a network operations center, to operate a fiber network: *Provided*, That a political subdivision may operate a network for their own use:

(A) Nonprofit organization;

(B) Cooperative association;

(C) Another county, municipality, or political subdivision;

(D) Private corporations, company, or person; or

(E) Public-private partnership.

#### **§31G-3-4. Compatible use.**

(a) A broadband operator shall be authorized to construct or operate a broadband system:

(1) Over public rights-of-way; and

(2) Through easements, which are within the area to be served by the broadband system and which have been dedicated for compatible uses.

(b) In installing, operating, and maintaining facilities, the broadband operator shall avoid all unnecessary damage and injury to any trees, structures, and improvements in and along the routes utilized for the system.

(c) The broadband operator shall indemnify and hold the state, county and municipality harmless at all times from any and all claims for injury and damage to persons or property, both real and personal, caused by the installation, operation, or maintenance of its broadband system, notwithstanding any negligence on the part of the state, county, and/or municipality, their employees, or agents. Upon receipt of notice in writing from the state, county, and/or municipality, the broadband operator shall, at its own expense, defend any action or proceeding against the state, county

and/or municipality in which it is claimed that personal injury or property damage was caused by activities of the broadband operator in the installation, operation or maintenance of its broadband system.

(d) The use of public highways and other public places shall be subject to:

(1) All applicable state statutes, municipal ordinances and all applicable rules governing the construction, maintenance, and removal of overhead and underground facilities of public utilities;

(2) For county highways, all applicable rules adopted by the governing body of the county in which the county highways are situated;

(3) For state or federal-aid highways, all public welfare rules adopted by the secretary of the Department of Transportation; and

(4) With respect to the use of any public highway that crosses the trackway of any railroad, nothing in this article shall be construed to provide for any greater or any lesser compliance with any safety policy or procedure established by the railroad with respect to the construction of utility crossings across the railroad's trackway that is applicable to any other similarly situated utility, whether utilizing aerial or buried lines.

(e) In the use of easements dedicated for compatible uses, the broadband operator shall ensure:

(1) That the safety, functioning, and appearance of the property and the convenience and safety of other persons is not adversely affected by the installation or construction of facilities necessary for a broadband system; and

(2) That the owner of the property is justly compensated by the broadband operator for any damages caused by the installation, construction, operation, or removal of facilities by the broadband operator.

(f) An “easement dedicated for compatible uses” is a public or private easement for electric, gas, telephone, or other utility transmission

#### **ARTICLE 4. MAKE-READY POLE ACCESS.**

##### **§31G-4-1. Definitions.**

As used in this article, the following terms are defined as follows:

(1) “Applicable codes” means uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization, including, but not limited to, the National Electrical Safety Code, or any local amendments to those codes: *Provided*, That notwithstanding any other provisions of said applicable codes, the Code of West Virginia, or the West Virginia Code of State Rules, variances for the installation and maintenance of broadband service infrastructure on utility poles shall be permitted if these are agreed upon between infrastructure owners.

~~(1)~~ (2) “Attacher” means any person, corporation, or other entity, or the agents or contractors of such seeking to permanently or temporarily fasten or affix any type of equipment, antenna, line, or facility of any kind to a utility pole in the right of way or its adjacent ground space.

~~(2)~~ (3) “Attachment Application” means the application made by an Attacher to a Pole Owner for attachment of equipment, antenna, line or facility of any kind to a utility pole. It shall include:

(A) Proof of insurance; or

(B) An indemnification agreement prepared by the Pole Owner.

~~(3)~~ (4) “Make Ready Costs” means the costs incurred by an Attacher associated with the transfer of the facilities, antenna, lines, or equipment of a Pre-Existing Third Party User, undertaken by an Attacher to enable attachment to the utility pole or similar

structure. Make-Ready Costs that are to be paid by an Attacher include, without limitation, all costs and expenses to relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment.

(4) (5) "Pole Owner" means a person, corporation or entity having ownership of a pole or similar structure in the right of way to which utilities, including without limitation, electric and communications facilities, are located or may be located whether such ownership is in fee simple or by franchise.

(5) (6) "Pre-Existing Third Party User" means the owner of any currently operating facilities, antenna, lines or equipment on a pole or its adjacent ground space in the right of way.

#### **§31G-4-2. Attachment to third party facilities.**

(a) Upon approval of an Attachment Application, an Attacher may relocate or alter the attachments or facilities of any Pre-Existing Third Party User as may be necessary to accommodate an Attacher's attachment using Pole Owner approved contractors; provided, however, that an Attacher will not effectuate a relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage without first providing 45 days prior written notice to the Pre-Existing Third Party User, in order to permit the Pre-Existing Third Party User to relocate its facilities on its own.

(b) In the event the Pre-Existing Third Party Users of such other facilities fail to transfer or rearrange their facilities within ~~forty-five~~ 45 days from receipt of notice of relocation or alteration of a Pre-Existing Third Party User's facilities that causes or would reasonably be expected to cause a customer outage, an Attacher may undertake such work.

(c) Within 30 days of the completion of any relocation or alteration, an Attacher shall send notice of the move and as-built reports to the Pre-Existing Third Party User and the owner of all

poles or other structures on which such relocations or alterations were made. The as-built reports shall include a unique field label identifier, and an address or coordinates.

(d) Upon receipt of the as-built reports, the Pre-Existing Third Party User and pole or structure owner(s) may conduct an inspection within 14 days at an Attacher's expense. An Attacher shall pay the actual, reasonable, and documented expenses incurred by the Pre-Existing Third Party User and pole or structure owner for the inspection. If any such relocation or alteration results in the facilities of the Pre-Existing Third Party User on the pole or other structure failing to conform with the applicable safety Pole Owner's standards, the Pre-Existing Third Party User shall, within seven days of the inspection, notify an Attacher of such failure to conform.

(e) In a notice, the Pre-Existing Third Party User may elect to either:

(1) Perform the correction itself and bill the Attacher for the actual, reasonable and documented costs of the correction, or

(2) Instruct the Attacher to correct such conditions at Attacher's expense. Any post-inspection corrections performed by the Attacher must be completed within 30 days of such notification.

(f) As a condition of exercising the ability to relocate, rearrange, or alter a Pre-Existing Third Party User's facilities pursuant to this section, an Attacher shall indemnify, defend and hold harmless the owner or owners of all poles or other structures on which such relocation, rearrangement or alteration takes place, the affiliates of such owner or owners, and the officers, directors and employees of such owner or owners and their affiliates, each being deemed an Indemnitee, from and against all third party damage, loss, claim, demand, suit, liability, penalty or forfeiture of every kind and nature, including, but not limited to, costs and expenses of defending against the same, payment of any settlement or judgment therefor and reasonable attorney's fees, that are actually and reasonably incurred by an Indemnitee, by reason of

any claim by an affected Pre-Existing Third Party User or any person or entity claiming through such Pre-Existing Third Party User arising from such relocation, rearrangement or alteration.

(g) All work performed must be in accordance with applicable codes, as defined in section one of this article, including, but not limited to, the National Electrical Safety Code ~~and other generally accepted safety codes~~; Provided, That the variances to applicable codes and to private agreements as set forth in §31G-6-1 of this code shall apply to this section.

(h) In the event an ILEC accepts payment for make-ready work, and fails to perform that work within 45 days, the ILEC which has been paid and which has failed to perform the work, shall immediately return and refund the moneys paid for that work which was not completed. Failure to return those funds within 14 calendar days shall be cause for a fine, payable to the Public Service Commission, equal to the amount of the payment and a cause of action in circuit court for return of the payment and is subject to treble damages, reasonable attorney's fees, and any applicable court costs. Good-cause and good-faith efforts to have performed the work shall be a defense against the imposition of any fine; Provided, That the provisions of this subsection shall not apply to any make-ready work where a pole replacement is necessary.

#### **§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.**

(a) The Public Service Commission shall possess and exercise regulatory jurisdiction over the provisions of this article. The commission shall administer and adjudicate disputes relating to the issues and procedures provided for under this article.

(b) The commission shall adopt the rates, terms, and conditions of access to and use of poles, ducts, conduits, and rights-of-way as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401 – 1.1415, inclusive, of the dispute resolution process incorporated by reference in those regulations and any subsequent modifications or

additions to the provisions of the United States Code or Code of Federal Regulations provisions referenced herein.

(c) The commission shall certify to the Federal Communications Commission that this state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the regulation of pole attachments. The certification shall include notice that the State of West Virginia hereby:

(1) Regulates the rates, terms, and conditions related to pole attachments; and

(2) In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the services.

(d) (1) Notwithstanding subsection (b), the commission shall promulgate rules to address abandoned cable, conductor, and related facilities attached to utility poles. The rules shall include provisions that:

(A) Provide for the pole owner to fully recover from the owner of the attachment the costs incurred by the pole owner for the removal and disposal of abandoned cable, conductors, and related facilities;

(B) Address situations where the pole owner is unable to receive full recovery of its removal and disposal costs from the owner of the attachment by instead receiving recovery of its net unrecovered costs from its jurisdictional customers, including other Attachers, in such manner as the commission determines is just and reasonable; and

(C) Allow the pole owner to book or defer these net costs on its accounting books and request recovery to the commission outside of a base rate case proceeding through a surcharge or other rate recovery mechanism.

(2) Any pole owner, after making reasonable efforts to require the attachment owner to remove abandoned facilities, that proceeds to remove what the pole owner reasonably believes is abandoned cable, conductor, and related facilities, shall be released and held harmless from liability from claims or any related losses claimed by the Attacher or others for the pole owner's removal work, including any loss of property value, potential business value, salvage value, or any other value of such cable, conductor, and related facilities.

(e) Notwithstanding subsection (b), the commission shall promulgate rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles. Should the attached facilities not be transferred in a timely manner from the old pole to the new pole by the owner of the attachments, as determined by the commission, the rules shall address this matter and include the right and mechanism of the pole owner itself to transfer the facilities to the new pole, to remove the old pole, and to recover its costs fully and timely from the owner of the facilities transferred. Any pole owner who transfers facilities from an old pole to a new pole, after reasonable due diligence, shall be released and held harmless from liability for its transfer work, except for acts of negligence or willful misconduct.

## **ARTICLE 6. PRE-EMPTION OF CONFLICTING LOCAL ORDINANCES AND PRIVATE RESTRICTIONS**

### **§31G-6-1. Pre-emption in favor of broadband services; construction of language in agreements.**

(a) Notwithstanding any other provision of the West Virginia Code or the West Virginia Code of State Rules to the contrary, any ordinance of any political subdivision relating to broadband service is hereby pre-empted to the extent necessary in favor of such broadband installation.

(b) No corporate policy, organizational policy, institutional policy, agreement, contract, or other like document, including the rules and regulations of any Home Owners Association, or any similar entity or organization, promulgated or made effective after the effective date of this section, may regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment and the terms of any such document shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.

**§31G-6-2. Pre-emption in favor of broadband service in pole attachments; construction of language in pole attachment agreements.**

(a) Notwithstanding any other provision of the West Virginia Code or the West Virginia Code of State Rules to the contrary, any ordinance of any political subdivision regarding pole attachment spacing, positioning, or order by or between any Investor Owned Utility (“IOU”) and any Incumbent Local Exchange Carrier (“ILEC”) and/or Competitive Local Exchange Carrier (“CLEC”) which would seek to provide broadband service, is hereby preempted to the extent necessary in favor of such broadband installation or deployment.

(b) Any corporate policy, individual agreement, organizational policy, contract, or like document relating to pole attachment spacing, positioning, or order by or between any Investor Owned Utility (“IOU”) and any Incumbent Local Exchange Carrier (“ILEC”) and/or Competitive Local Exchange Carrier (“CLEC”) shall be strictly construed in favor of encouraging and assisting broadband installation and deployment.

On motion of Senator Maynard, the following amendments to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 2002) were reported by the Clerk, considered simultaneously, and adopted:

On page eleven, section one, lines four through six, by striking out the words “The Office of Broadband shall also report to the

Joint Committee on Government and Finance of the West Virginia Legislature on or before December 30 of each year.”;

On page twelve, section two, line sixteen, following the word “economy;”, by striking out the word “and”;

One page twelve, section two, line seventeen, by striking out the period and inserting in lieu thereof a semicolon and the word “and”;

One page twelve, section two, after line seventeen, by inserting a new subdivision, designated subdivision (8), to read as follows:

(8) Report to the Joint Committee on Government and Finance of the West Virginia Legislature on or before December 30 of each year.;

And,

On page twenty, section four, lines twenty-three and twenty-four, by striking out the words “secretary of the Department of Transportation” and inserting in lieu thereof the words “Commissioner of the Division of Highways”.

On motion of Senator Plymale, the following amendment to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 2002) was next reported by the Clerk:

On page eighteen, section six, after line three, by inserting a new section, designated section seven, to read as follows:

**§31G-1A-7. Creation and Administration of Broadband Funds.**

(a) There is hereby created in the State Treasury a fund known as the Broadband Open Access Middle Mile Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with

appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(1) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(2) Expenditures from the fund shall be for the purposes of constructing open access middle mile fiber broadband to unserved and unfunded areas on the broadband availability map as so designated by the Office of Broadband and pursuant to this code.

(b) There is hereby created in the State Treasury a fund known as the Broadband Grant Matching Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(1) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(2) Expenditures from the fund shall be for the purposes of facilitating broadband projects which require up to a 50% match from sources other than the primary grantor and which extends or improves broadband access in this state. No expenditures shall be made from this fund until and unless satisfactory documentation of financial need is provided to the office and approved by the director: *Provided*, That but for this assistance, the grantee would be unable to be awarded or benefited by a grant.

(c) There is hereby created in the State Treasury a fund known as the Wired Wonderful West Virginia Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with

appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(1) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(2) Expenditures from the fund shall be for the purposes of establishing a pilot program for open-access last mile broadband internet service wherein internet service is provided on common infrastructure.

(3) Eligible recipients of disbursements from this fund must have an articulable nexus to healthcare, education, and a private sector network operator and must construct an open-access network which allows for multiple internet service providers to competitively offer their services upon this common middle and last mile infrastructure.

(d) There is hereby created in the State Treasury a fund known as the Broadband Provider Expansion Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(1) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(2) Expenditures from the fund shall be for the purposes of supporting existing broadband providers to extend their last mile networks within unserved and unfunded areas as indicated on the broadband availability map as so designated by Office of Broadband and pursuant to this code. The following amounts shall be made available to broadband providers, not receiving any other financial support in the eligible area, to provide service to unserved and unfunded areas after the provider demonstrates to the director

that they have completed the necessary infrastructure build to serve a home or business premises including verifiable speed test data with GPS coordinates and a signed affidavit indicating under criminal penalties that to the best of the provider's knowledge no other terrestrial broadband service was available to the premises at the time of installation:

(A) A provider shall receive \$2,000 per premises for completing infrastructure installation to a residence or business with

(i) an actual downstream data rate of 1,000 megabits per second; and

(ii) an actual upstream data rate of 50 megabits per second; and

(iii) unlimited data usage without overage charges; and

(iv) unlimited data usage without "throttling" or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period; or

(B) A provider shall receive \$500 per premises for completing infrastructure installation to a residence or business with a terrestrial wired or fixed wireless connection with

(i) an actual downstream data rate of 25 megabits per second; and

(ii) an actual upstream data rate of three megabits per second; and

(iii) unlimited data usage without overage charges; and

(iv) unlimited data usage without "throttling" or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

(3) Disbursements from this fund shall be made available on a first-come, first-served basis and shall be expended and made

available to providers until the fund is depleted. Upon additional legislative appropriation into this fund, disbursements shall be disbursed again in like fashion until the fund is depleted.

Following discussion,

The question being on the adoption of Senator Plymale's amendment to the bill, and on this question, Senator Woelfel demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Nelson, Plymale, Romano, Stollings, Stover, Unger, Woelfel, and Blair (Mr. President)—16.

The nays were: Azinger, Boley, Clements, Grady, Karnes, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, and Woodrum—18.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Plymale's amendment to the bill rejected.

On motion of Senator Ihlenfeld, the following amendment to the Government Organization committee amendment to the bill (Eng. Com. Sub. for H. B. 2002) was next reported by the Clerk:

On pages thirteen and fourteen, section two, by striking out all of subdivision (9) and inserting in lieu thereof a new subdivision (9) to read as follows:

(9) Coordinate with the Consumer Protection Division of the Office of the Attorney General to provide for the following consumer protections:

(A) If a broadband service to a subscriber is interrupted for more than 24 continuous hours, such subscriber shall, upon request, receive a credit or refund from the broadband operator in an

amount that represents the proportionate share of such service not received in a billing period, provided such interruption is not caused by the subscriber;

(B) A broadband operator may not deny service, deny access, or otherwise discriminate against subscribers, channel users, or any other citizens on the basis of age, race, religion, sex, physical handicap, political affiliation, political views, or exercise of other speech protected by the 1st Amendment to the United States Constitution, or country of natural origin;

(C) A broadband operator shall provide subscribers 30 days advance written notice of any changes to rates or charges, including the expiration of any promotion or special pricing that would result in an increase in the subscribers billing or cost of service;

(D) A broadband operator shall inform subscribers and provide written notice to subscribers that disputes regarding interrupted or substandard service or billing issues, which are unresolved to satisfaction of the subscriber;

(E) Repeated and consistent interrupted or substandard service issues by a broadband operator constitutes an unfair or deceptive act or practice and the subscriber can recover actual damages, or, not less than \$100 nor more than \$500; and

(F) A broadband operator may not advertise or include as a contractual term the downstream data rate or upstream data rate in terms of the maximum anticipated data rate or as an “up to” speed. Any advertisement or contractual term by a broadband operator relating to downstream data rate or upstream data rate shall specify the minimum data rate to be provided as part of the service. Violations of this paragraph or consistent and repeated substandard service constitute an unfair or deceptive act or practice which may be investigated by the Consumer Protection Division of the Office of the Attorney General.

Following discussion,

The question being on the adoption of Senator Ihlenfeld's amendment to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Stover, Trump, Unger, and Woelfel—14.

The nays were: Azinger, Boley, Clements, Grady, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Weld, Woodrum, and Blair (Mr. President)—20.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Ihlenfeld's amendment to the bill rejected.

The question now being on the adoption of the Government Organization committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2002), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2017**, Rewriting the Criminal Code.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 9C. WEST VIRGINIA SENTENCING COMMISSION.****§15-9C-3. Powers and duties of the commission.**

(a) The Sentencing Commission established pursuant to this article shall:

(1) ~~May request~~ Request information, data, and reports from any officer or agency of ~~the~~ state government, as required by the commission and as may be produced consistent with other laws;

(2) Issue invitations requesting the attendance and testimony of witnesses and the production of any evidence that relates directly to a matter with respect to which the commission or any member of the commission is empowered to make a determination under this article;

(3) ~~Shall establish~~ Establish a research and development program within the commission for the ~~purpose of following~~ purposes:

(A) ~~Serving~~ Serve as a clearinghouse and information center for the collection, preparation, and dissemination of information on sentencing practices; and

(B) ~~Assisting and serving~~ Assist and serve in a consulting capacity to state courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

(4) ~~Shall collect~~ Collect data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing processes;

(5) ~~Shall~~ Publish data concerning the sentencing process;

(6) ~~Shall collect~~ Collect and disseminate information concerning sentences actually imposed;

(7) ~~Shall collect~~ Collect and disseminate information regarding effectiveness of sentences imposed;

(8) ~~Shall make~~ Make recommendations to the Legislature concerning modification or enactment of sentencing and correctional statutes which the commission finds to be necessary and advisable to carry out an effective, humane, and rational sentencing policy;

(9) ~~Shall establish~~ Establish a plan and timetable to collect and disseminate information relating to incapacitation, recidivism, deterrence, and overall effectiveness of sentences imposed;

(10) ~~Shall provide~~ Provide recommendations to the Legislature for the creation of programs and establishment of facilities in the state that provide how the state can best shift its expenditures in a revenue-neutral fashion away from incarceration to treatment programs, facilities, and related services;

(11) ~~Shall conduct~~ Conduct a comprehensive review and study of national and local trends and programs that have proven successful in addressing and overcoming addiction and identifying the nature of the causes of addiction and criminal behavior related to drug addiction; and

(12) Consider, but not be bound to adopt, the provisions of the Second Engrossment of the Committee Substitute for HB2017, as passed by the West Virginia House of Delegates on March 31, 2021, including classifications of felonies and misdemeanors in the bill passed by the West Virginia House of Delegates set forth in the proposed §61-17-1 et seq. of the house bill.

The bill (Eng. Com. Sub. for H. B. 2017), as amended, was then ordered to third reading.

**Eng. House Bill 2379**, Make criminal invasion of privacy a felony.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2507**, Remove the limitations on advertising and promotional activities by limited video lottery retailers.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 2730**, Relating to persons filing federal bankruptcy petition to exempt certain property of the estate.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2773**, Permitting DNR to issue up to 100 permits for boats greater than 10 horsepower on Upper Mud River Lake.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 2830**, Relating generally to sex trafficking.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **CHAPTER 49. CHILD WELFARE.**

### **ARTICLE 5. RECORD KEEPING AND DATABASE.**

#### **§49-5-104. Confidentiality of juvenile records for children who become of age while a ward of the state or who have been transferred to adult criminal jurisdiction; separate and secure location; penalties; damages; accessibility of records for child victims of sex trafficking.**

(a) One year after the juvenile's 18th birthday, or one year after personal or juvenile jurisdiction has terminated, whichever is later, the records of a juvenile proceeding conducted under this chapter, including, but not limited to, law-enforcement files and records, may be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court.

(b) The records of a juvenile proceeding in which a juvenile was transferred to criminal jurisdiction pursuant to ~~section seven hundred ten, article four of this chapter~~ §49-4-710 of this code shall be kept in a separate secure confidential place and the records may not be inspected except by order of the circuit court if the juvenile is subsequently acquitted or found guilty only of an offense other than an offense upon which the waiver or order of transfer was based, or if the offense upon which the waiver or order of transfer was based is subsequently dismissed.

(c) To keep the confidentiality of juvenile records, they shall be returned to the circuit court in which the case was pending and be kept in a separate confidential file. The records shall be physically marked to show that they are to remain confidential and shall be securely kept and filed in a manner so that no one can have access to determine the identity of the juvenile, except upon order of the circuit court.

(d) Marking the juvenile records to show they are to remain confidential has the legal effect of extinguishing the offense as if it never occurred.

(e) The records of a juvenile convicted under the criminal jurisdiction of the circuit court pursuant to ~~subdivision (1), subsection (d), section seven hundred ten, article four of this chapter~~ §49-4-710(d)(1) of this code may not be marked and kept as confidential.

(f) Any person who willfully violates this section 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 so fined and confined, and is liable for damages in the amount of \$300 or actual damages, whichever is greater.

(g) Notwithstanding any other provision of this code, the records of a juvenile victim of sex trafficking within the meaning of §61-14-1 et seq. of this code, may be immediately accessible to the juvenile victim upon written request to the circuit court in which a juvenile delinquency case was pending.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY, AND DECENCY.**

#### **§61-8-5. Houses of ill fame and assignation; immunity for minor victims of sex trafficking; penalties; jurisdiction of courts.**

(a) Any person who shall keep, set up, maintain, or operate any house, place, building, hotel, tourist camp, other structure, or part thereof, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall own any place, house, hotel, tourist camp, other structure, or part thereof, or trailer or other conveyance knowing the same to be used for the purpose of prostitution, lewdness, or assignation, or who shall let, sublet, or rent any such place, premises, or conveyance to another with knowledge or good reason to know of the intention of the lessee or

rentee to use such place, premises, or conveyance for prostitution, lewdness, or assignation; or who shall offer, or offer to secure, another for the purpose of prostitution, or for any other lewd or indecent act; or who shall receive or offer or agree to receive any person into any house, place, building, hotel, tourist camp, or other structure, or vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation, or to permit any person to remain there for such purpose; or who for another or others shall direct, take, or transport, or offer or agree to take or transport, or aid or assist in transporting, any person to any house, place, building, hotel, tourist camp, other structure, vehicle, trailer, or other conveyance, or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period not less than six months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall be punished by imprisonment in the penitentiary for a period of not less than one year nor more than five years.

(b) Any person who shall engage in prostitution, lewdness, or assignation, or who shall solicit, induce, entice, or procure another to commit an act of prostitution, lewdness, or assignation; or who shall reside in, enter, or remain in any house, place, building, hotel, tourist camp, or other structure, or enter or remain in any vehicle, trailer, or other conveyance for the purpose of prostitution, lewdness, or assignation; or who shall aid, abet, or participate in the doing of any of the acts herein prohibited, shall, upon conviction for the first offense under this section, be punished by imprisonment in the county jail for a period of not less than 60 days nor more than six months, and by a fine of not less than \$50 and not to exceed \$100; and upon conviction for the second offense under this section, be punished by imprisonment in the county jail for a period of not less than six months nor more than one year, and by a fine of not less than \$100 and not to exceed \$250, and upon conviction for any subsequent offense under this section shall be

punished by ~~imprisonment~~ confinement in the ~~penitentiary~~ a state correctional facility for not less than one year nor more than three years: Provided, That no minor shall be prosecuted nor held criminally liable for an offense of prostitution in violation this subsection if the court determines that the minor is a victim of an offense under §61-14-1 et seq. of this code.

The subsequent offense provision shall apply only to the pimp, panderer, solicitor, operator, or any person benefiting financially or otherwise from the earnings of a prostitute.

(c) All leases and agreements, oral or written, for letting, subletting, or renting any house, place, building, hotel, tourist camp, or other structure which is used for the purpose of prostitution, lewdness, or assignation, shall be void from and after the date of any person who is a party to such an agreement shall be convicted of an offense hereunder. The term “tourist camp” shall include any temporary or permanent buildings, tents, cabins, or structures, or trailers, or other vehicles which are maintained, offered, or used for dwelling or sleeping quarters for pay.

(d) In the trial of any person, charged with a violation of any of the provisions of this section, testimony concerning the reputation or character of any house, place, building, hotel, tourist camp, or other structure, and of the person or persons who reside in or frequent same, and of the defendant or defendants, shall be admissible in evidence in support of the charge. Justices of the peace shall have concurrent jurisdiction with circuit, intermediate, and criminal courts to try and determine the misdemeanors set forth and described in this section.

## **ARTICLE 14. HUMAN TRAFFICKING.**

### **§61-14-2. Human trafficking of an individual; aiding and abetting human trafficking; penalties.**

(a) Any person who knowingly and willfully traffics an adult, or who knowingly and willfully aids, assists, or abets in any manner in the trafficking of an adult, is guilty of a felony and, upon

conviction ~~thereof~~, shall be ~~imprisoned~~ confined in a state correctional facility for not less than three nor more than 15 years, fined not more than \$200,000, or both ~~imprisoned~~ confined and fined.

(b) Any person who knowingly and willfully traffics a minor, or who knowingly and willfully aids, assists, or abets in any manner in the trafficking of a minor, is guilty of a felony and, upon conviction ~~thereof~~, shall be ~~imprisoned~~ confined in a state correctional facility for not less than five nor more than 20 years, fined not more than \$300,000, or both ~~imprisoned~~ confined and fined.

#### **§61-14-8. Immunity for minor victim of sex trafficking.**

(a) In a prosecution or a juvenile prosecution for an offense of prostitution in violation of ~~subsection (b), section five, article eight of this chapter~~ §61-8-5(b) of this code, a minor shall not be held criminally liable if the court determines that the minor is a victim of an offense under this article: *Provided*, That subject to proof, a minor so charged shall be rebuttably presumed to be a victim under the provisions of this article.

(b) This section does not apply in a prosecution or a juvenile proceeding for any of the other offenses under ~~subsection (b), section five, article eight of this chapter~~ §61-8-5(b) of this code, including specifically soliciting, inducing, enticing, or procuring another to commit an act or offense of prostitution, unless it is determined by the court that the minor was coerced into the criminal behavior.

(c) A minor who, under subsection (a) or (b) of this section, is not subject to criminal liability or adjudication as a juvenile delinquent is presumed to be an abused child, as defined in ~~section two hundred one, article one, chapter forty nine~~ §49-1-201 of this code, and may be eligible for services under chapter 49 of this code including, but not limited to, appropriate child welfare services including, but not limited to, comprehensive trauma-informed

services that are specialized to the needs of child victims of sexual abuse and exploitation or child sex trafficking victims.

**§61-14-9. Petition to vacate and expunge conviction or juvenile delinquency adjudication of sex trafficking victim.**

(a) Notwithstanding the age and criminal history limitations set forth in ~~section twenty six, article eleven of this chapter §61-11-26 of this code or the provisions in §49-4-103 of this code,~~ an individual convicted of prostitution in violation of ~~subsection (b), section five, article eight of this chapter §61-8-5(b) of this code~~ as a direct result of being a victim of trafficking, may apply by petition to the circuit court in the county of conviction or juvenile adjudication to vacate the conviction or adjudication of juvenile delinquency and expunge the record of conviction or record of adjudication of juvenile delinquency. The court may grant the petition upon a finding that the individual's participation in the offense was a direct result of being a victim of trafficking.

(b) A victim of trafficking seeking relief under this section is not required to complete any type of rehabilitation in order to obtain expungement.

(c) A petition filed under subsection (a) of this section, any hearing conducted on the petition, and any relief granted are subject to the procedural requirements of ~~section twenty six, article eleven of this chapter §61-11-26 of this code:~~ *Provided*, That the age or criminal history limitations in that section and the provisions of §49-4-103 of this code are inapplicable to victims of human trafficking.

The bill (Eng. H. B. 2830), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2842**, Preventing cities from banning utility companies in city limits.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Energy, Industry, and Mining committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 2918**, Relating to Family Drug Treatment Court.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 3254**, Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Bill 3286**, Making a supplementary appropriation to the Division of Human Services – Child Care and Development.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3287**, Making a supplementary appropriation to the Department of Homeland Security.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3288**, Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR.

On second reading, coming up in regular order, was read a second time.

On motion of Senator Tarr, the following amendment to the bill was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

That the total appropriation for the fiscal year ending June 30, 2021, to fund 0101, fiscal year 2021, organization 0100, be supplemented and amended by decreasing an existing item of appropriation as follows:

## TITLE II – APPROPRIATIONS.

### Section 1. Appropriations from general revenue.

#### EXECUTIVE

*5 – Governor’s Office*

(WV Code Chapter 5)

Fund 0101 FY 2021 Org 0100

		<b>General Revenue Fund</b>
	<b>Appro- priation</b>	
2	Current Expenses (R).....	13000      65,000

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0101, fiscal year 2021, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

## TITLE II – APPROPRIATIONS.

### Section 1. Appropriations from general revenue.

**EXECUTIVE**

*5 – Governor’s Office*

(WV Code Chapter 5)

Fund 0101 FY 2021 Org 0100

	<b>Appropriation</b>	<b>General Revenue Fund</b>
3a Equipment.....	07000	65,000

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0403, fiscal year 2021, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*61 – Division of Human Services*

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2021 Org 0511

	<b>Appropriation</b>	<b>General Revenue Fund</b>
5 Medical Services.....	18900	\$ 4,660,595

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0407, fiscal year 2021, organization 0506, be

supplemented and amended by decreasing an existing item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*57 – Division of Health –*

*Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2021 Org 0506

	<b>Appro- priation</b>	<b>General Revenue Fund</b>
19 Primary Care Support .....	62800	\$ 3,040,040

And, That the total appropriation for the fiscal year ending June 30, 2021, to fund 0403, fiscal year 2021, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

**TITLE II – APPROPRIATIONS.**

**Section 1. Appropriations from general revenue.**

**DEPARTMENT OF HEALTH AND HUMAN RESOURCES**

*61 –Division of Human Services –*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2021 Org 0511

	<b>Appropriation</b>	<b>General Revenue Fund</b>
25 Medical Services Administrative Costs ....	78900	\$ 7,700,635

The bill (Eng. H. B. 3288), as amended, was then ordered to third reading.

**Eng. House Bill 3289**, Supplementary appropriation to the Department of Commerce, Geological and Economic Survey.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3291**, Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3292**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 3295**, Making a supplemental appropriation to Division of Human Services and Division of Health Central Office.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 3297**, Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3310**, Relating to the jurisdiction of the Public Service Commission.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 1. GENERAL PROVISIONS.**

### **§24-1-1c. Legislative findings.**

The Legislature finds:

(1) Helping retail electric customers invest in and install solar photovoltaic energy facilities of their choice on their properties is in the public interest;

(2) Free-market financing may provide more customers with opportunities to install solar photovoltaic energy facilities;

(3) Installation of solar photovoltaic energy facilities will stabilize long-term energy costs making the state more attractive for industry and commercial investment;

(4) Financing arrangements, including those in which payments are based on the performance and output of the solar photovoltaic energy facility installed on the property of a retail electric customer, will help reduce or eliminate upfront costs involved in the investments and installation by the customers; and

(5) Individuals and entities which offer or receive these types of financing arrangements should not be considered or treated as public utilities.

### **§24-1-2. Definitions.**

~~Except where a different meaning clearly appears from the context, the words “public utility”, when used in this chapter, shall mean and include any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service: *Provided*, That “public utility” does not include individuals or entities owning a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement with the retail electric customer, subject to §24-2-1(a) of this code. Whenever in this chapter the words “commission” or “Public Service Commission” occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the Public Service Commission of West Virginia. Whenever used in this chapter, “customer” shall mean and include any person, firm, corporation, municipality, public service district or any other entity who purchases a product or services of any utility and shall include any such person, firm, corporation, municipality, public service district or any other entity who purchases such services or product for resale. Whenever in this chapter the words “governing body” occur, such word or words shall, unless a different intent clearly appears from the context, be taken to mean the municipal body charged with the authority and responsibility of enacting ordinances of the municipality, as defined in section two, article one, chapter eight §8-1-2 of this code, or a public service board of a public service district, as defined in section three, article thirteen a, chapter sixteen §16-13A-3 of this code.~~

Except where a different meaning clearly appears from the context, the following words when used in this chapter, shall mean:

“Commission” or “Public Service Commission” means the Public Service Commission of West Virginia.

“Customer” means any person, firm, corporation, municipality, public service district, or any other entity who purchases a product or services of any utility and shall include any person, firm, corporation, municipality, public service district, or any other entity who purchases the services or product for resale.

“Governing body” means the municipal body charged with the authority and responsibility of enacting ordinances of the municipality, as defined in §8-1-2 of this code, or a public service board of a public service district, as defined in §16-13A-3 of this code.

“Public utility” means any person or persons, or association of persons, however associated, whether incorporated or not, including municipalities, engaged in any business, whether herein enumerated or not, which is, or shall hereafter be held to be, a public service: *Provided*, That “public utility” does not include individuals or entities owning a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement with the retail electric customer, subject to §24-2-1(a) of this code.

## **ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.**

### **§24-2-1. Jurisdiction of commission; waiver of jurisdiction.**

(a) The jurisdiction of the commission ~~shall extend~~ extends to all public utilities in this state and ~~shall include~~ includes any utility engaged in any of the following public services:

~~Common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air; transportation of oil, gas, or water by pipeline; transportation of coal and its derivatives and all mixtures and~~

~~combinations thereof with other substances by pipeline; sleeping ear or parlor car services; transmission of messages by telephone, telegraph, or radio; generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility; supplying water, gas, or electricity by municipalities or others; sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems: *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission regardless of the number of customers served by the innovative, alternative method; any public service district created under the provisions of §16-13A-1 *et seq.* of this code, except that the Public Service Commission will have no jurisdiction over the provision of stormwater services by a public service district; toll bridges, wharves, ferries; solid waste facilities; and any other public service: *Provided, however*, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service: *Provided further*, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise such authority as the commission may deem appropriate over the operation, rates, and charges of the producer and for such length of time as the commission may consider to be proper.~~

(1) common carriage of passengers or goods, whether by air, railroad, street railroad, motor, or otherwise, by express or otherwise, by land, water, or air, whether wholly or partly by land, water, or air;

(2) transportation of oil, gas, or water by pipeline;

(3) transportation of coal and its derivatives and all mixtures and combinations thereof with other substances by pipeline;

(4) sleeping car or parlor car services;

(5) transmission of messages by telephone, telegraph, or radio;

(6) generation and transmission of electrical energy by hydroelectric or other utilities for service to the public, whether directly or through a distributing utility;

(7) supplying water, gas, or electricity by municipalities or others: (A) *Provided*, That natural gas producers who provide natural gas service to not more than 25 residential customers are exempt from the jurisdiction of the commission with regard to the provisions of the residential service; (B) *Provided however*, That upon request of any of the customers of the natural gas producers, the commission may, upon good cause being shown, exercise authority as the commission may consider appropriate over the operation, rates, and charges of the producer and for the length of time determined proper by the commission; (C) *Provided further*, That the provision of a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement (PPAs) with the retail electric customer, shall not constitute a public service, subject to the following conditions and limitations:

(i) PPAs must be 11 point font or larger.

(ii) the aggregate of all PPAs and net metering arrangements in the state for any utility shall not exceed three percent (3%) of the utility's aggregate customer peak demand in the state during the previous year;

(iii) there shall be individual customer on-site generator limits of designing the photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric customer and which in no case shall exceed 25kW for residential customers, 500 kW for commercial customers, and 2,000 kW for industrial customers;

(iv) customers who enter into PPAs relating to photovoltaic facilities are to notify the utility of its intent to enter into a transaction. In response, the utility shall notify within 30 days if any of the caps have been reached. If the utility does not respond within 30 days, the generator may proceed and the caps will be presumed not to have been reached; and

(v) the Public Service Commission may promulgate rules to govern and implement the provisions of interconnections for PPAs, except the PSC does not have authority over the power rates for the arrangements between the on-site generator and the customer;

(8) sewer systems servicing 25 or more persons or firms other than the owner of the sewer systems; *Provided*, That if a public utility other than a political subdivision intends to provide sewer service by an innovative, alternative method, as defined by the federal Environmental Protection Agency, the innovative, alternative method is a public utility function and subject to the jurisdiction of the Public Service Commission, regardless of the number of customers served by the innovative, alternative method;

(9) any public service district created under the provisions of §16-13A-1 *et seq.* of this code, except that the Public Service Commission has no jurisdiction over the provision of stormwater services by a public service district;

(10) toll bridges, wharves, ferries; solid waste facilities;

(11) and any other public service.

(b) The jurisdiction of the commission over political subdivisions of this state providing separate or combined water and/or sewer services and having at least 4,500 customers and annual combined gross revenues of \$3 million or more that are political subdivisions of the state is limited to:

(1) General supervision of public utilities, as granted and described in §24-2-5 of this code;

(2) Regulation of measurements, practices, acts, or services, as granted and described in §24-2-7 of this code;

(3) Regulation of a system of accounts to be kept by a public utility that is a political subdivision of the state, as granted and described in §24-2-8 of this code;

(4) Submission of information to the commission regarding rates, tolls, charges, or practices, as granted and described in §24-2-9 of this code;

(5) Authority to subpoena witnesses, take testimony, and administer oaths to any witness in any proceeding before or conducted by the commission, as granted and described in §24-2-10 of this code; and

(6) Investigation and resolution of disputes between a political subdivision of the state providing wholesale water and/or wastewater treatment or other services, whether by contract or through a tariff, and its customer or customers, including, but not limited to, rates, fees, and charges, service areas and contested utility combinations: *Provided*, That any request for an investigation related to ~~such~~ a dispute that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission of the political subdivision and the commission shall resolve ~~said~~ the dispute within 120 days of filing. The 120-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the rates, fees, and charges or other information as required by the commission ~~considers necessary~~ is filed: *Provided, however*, That the disputed rates, fees, and charges ~~so~~ fixed by the political subdivision providing separate or combined water and/or sewer services shall remain in full force and effect until set aside, altered or, amended by the commission in an order to be followed in the future.

(7) Customers of water and sewer utilities operated by a political subdivision of the state may bring formal or informal complaints regarding the commission's exercise of the powers

enumerated in this section and the commission shall resolve these complaints: *Provided*, That any formal complaint filed under this section that is based on the act or omission of the political subdivision shall be filed within 30 days of the act or omission complained of and the commission shall resolve the complaint within 180 days of filing. The 180-day period for resolution of the dispute may be tolled by the commission until the necessary information showing the basis of the matter complained of is filed by the political subdivision: *Provided, however*, That whenever the commission finds any regulations, measurements, practices, acts, or service to be unjust, unreasonable, insufficient, or unjustly discriminatory, or otherwise in violation of any provisions of this chapter, or finds that any service is inadequate, or that any service which is demanded cannot be reasonably obtained, the commission shall determine and declare, and by order fix reasonable measurement, regulations, acts, practices or services, to be furnished, imposed, observed, and followed in lieu of those found to be unjust, unreasonable, insufficient, or unjustly discriminatory, inadequate, or otherwise in violation of this chapter, and shall make ~~such other~~ an order ~~respecting the same as shall be~~ that is just and reasonable: *Provided further*, That if the matter complained of would affect rates, fees, and charges ~~so~~ fixed by the political subdivision providing separate or combined water and/or sewer services, the rates, fees, or charges shall remain in full force and effect until set aside, altered, or amended by the commission in an order to be followed in the future.

(8) If a political subdivision has a deficiency in either its bond revenue or bond reserve accounts, or is otherwise in breach of a bond covenant, any bond holder may petition the Public Service Commission for ~~such~~ any redress ~~as that~~ will bring the accounts to current status or otherwise resolve the breached covenant, ~~and the~~ The commission ~~shall have~~ has jurisdiction to fully resolve the alleged deficiency or breach.

(c) The commission may, upon application, waive its jurisdiction and allow a utility operating in an adjoining state to provide service in West Virginia when:

(1) An area of West Virginia cannot be practicably and economically served by a utility licensed to operate within the State of West Virginia;

(2) The area can be provided with utility service by a utility which operates in a state adjoining West Virginia;

(3) The utility operating in the adjoining state is regulated by a regulatory agency or commission of the adjoining state; and

(4) The number of customers to be served is not substantial. The rates the out-of-state utility charges West Virginia customers shall be the same as the rate the utility ~~is duly authorized to~~ may charge in the adjoining jurisdiction. The commission, in the case of any such utility, may revoke its waiver of jurisdiction for good cause.

(d) Any other provisions of this chapter to the contrary notwithstanding:

(1) An owner or operator of an electric generating facility located or to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be so designated prior to commercial operation of the facility, ~~and~~ for which ~~such~~ the facility the owner or operator holds a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, is subject to §24-2-11c(e) through §24-2-11c(j) of this code as if the certificate of public convenience and necessity for the facility were a siting certificate issued under §24-2-11c of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(2) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has been designated as an exempt wholesale generator under applicable federal law, or will be ~~so~~ designated prior to commercial operation of the facility, ~~and~~ for

which facility the owner or operator does not hold a certificate of public convenience and necessity issued by the commission on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(3) An owner or operator of an electric generating facility located in this state that had not been designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that generates electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law that preempts state law or solely for both sales at retail and sales at wholesale and that had been constructed and had engaged in commercial operation on or before July 1, 2003, is not subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility, regardless of whether the facility subsequent to its construction has been or will be designated as an exempt wholesale generator under applicable federal law: *Provided*, That the owner or operator is subject to §24-2-1(d)(5) of this code if a material modification of the facility is made or constructed.

(4) Any person, corporation, or other entity that intends to construct or construct and operate an electric generating facility to be located in this state that has not been or will not be designated as an exempt wholesale generator under applicable federal law prior to commercial operation of the facility that will generate electric energy solely for sale at retail outside this state or solely for sale at wholesale in accordance with any applicable federal law

that preempts state law or solely for both sales at retail and sales at wholesale and that had not been constructed and had not been engaged in commercial operation on or before July 1, 2003, shall, prior to commencement of construction of the facility, obtain a siting certificate from the commission pursuant to the provisions of §24-2-11c of this code in lieu of a certificate of public convenience and necessity pursuant to the provisions of §24-2-11 of this code. An owner or operator of an electric generating facility as is described in this subdivision for which a siting certificate has been issued by the commission is subject to §24-2-11c(e) through §24-2-11c(j) of this code, and is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the facility except for the making or constructing of a material modification thereof as provided in §24-2-1(d)(5) of this code.

(5) An owner or operator of an electric generating facility described in this subsection shall, before making or constructing a material modification of the facility that is not within the terms of any certificate of public convenience and necessity or siting certificate previously issued for the facility or an earlier material modification thereof, obtain a siting certificate for the modification from the commission pursuant to the provisions of §24-2-11c of this code, in lieu of a certificate of public convenience and necessity for the modification pursuant to the provisions of §24-2-11 of this code and, except for the provisions of §24-2-11c of this code, is not otherwise subject to the jurisdiction of the commission or to the provisions of this chapter with respect to the modification.

(6) The commission shall consider an application for a certificate of public convenience and necessity filed pursuant to §24-2-11 of this code, to construct an electric generating facility described in this subsection or to make or construct a material modification of the electric generating facility as an application for a siting certificate pursuant to §24-2-11c of this code if the application for the certificate of public convenience and necessity was filed with the commission prior to July 1, 2003, and if the commission has not issued a final order ~~thereon~~ as of that date.

(7) The limitations on the jurisdiction of the commission over, and on the applicability of the provisions of this chapter to, the owner or operator of an electric generating facility as imposed by and described in this subsection do not affect or limit the commission's jurisdiction over contracts or arrangements between the owner or operator of the facility and any affiliated public utility subject to the provisions of this chapter.

(e) The commission does not have jurisdiction of Internet protocol-enabled service or voice-over Internet protocol-enabled service. As used in this subsection:

(1) "Internet protocol-enabled service" means any service, capability, functionality, or application provided using Internet protocol, or any successor protocol, that enables an end user to send or receive a communication in Internet protocol format, or any successor format, regardless of whether the communication is voice, data, or video.

(2) "Voice-over Internet protocol service" means any service that:

(i) Enables real-time, two-way voice communications that originate or terminate from the user's location using Internet protocol or a successor protocol; and

(ii) Uses a broadband connection from the user's location.

(3) The term "voice-over Internet protocol service" includes any service that permits users to receive calls that originate on the public-switched telephone network and to terminate calls on the public-switched telephone network.

(f) Notwithstanding any other provisions of this article, the commission ~~has~~ does not have jurisdiction to review or approve any transaction involving a telephone company otherwise subject to §24-2-12 and §24-2-12a of this code, if all entities involved in the transaction are under common ownership.

(g) The Legislature finds that the rates, fees, charges, and ratemaking of municipal power systems are most fairly and effectively regulated by the local governing body. Therefore, notwithstanding any other provisions of this article, the commission ~~has~~ does not have jurisdiction over the setting or adjustment of rates, fees, and charges of municipal power systems. Further, the jurisdiction of the Public Service Commission over municipal power systems is limited to that granted specifically in this code.

On motion of Senator Trump, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 3310) was reported by the Clerk and adopted:

On page six, section one, line seventy, after the word “bridges” by inserting the words “located more than five miles from a toll-free bridge which crosses the same body of water or obstacle.”.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. H. B. 3310), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Joint Resolution 1**, Education Accountability Amendment.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the resolution was advanced to third reading with the unreported Judiciary committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. House Joint Resolution 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the resolution was advanced to third reading with the right for amendments to be considered on that reading.

(Senator Weld in the Chair.)

The Senate proceeded to the tenth order of business.

**Eng. House Bill 2029**, Relating to teacher preparation clinical experience programs.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2145**, Relating to student aide class titles.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2221**, Relating to the establishment of an insurance innovation process.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2266**, Relating to expanding certain insurance coverages for pregnant women.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 2500**, Create an act for Statewide Uniformity for Auxiliary Container Regulations.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2573**, Relating generally to the transparency and accountability of state grants to reduce waste, fraud, and abuse.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2674**, Relating to the administration of anesthetics.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2720**, Creating a Merit-Based Personnel System within DOT.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2794**, To extend the Neighborhood Investment Program Act to July 1, 2026.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2884**, To make changes to the FOIA law to protect public utility customer databases from disclosure, with exceptions.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2927**, Adding Caregiving expenses to campaign finance expense.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2953**, To clarify that counties can hire fire fighters as paid staff and to modify the existing

procedures to include a procedure of public hearing to commission a vote.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 2962**, Relating generally to dental practice.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 3002**, Update road abandonment process.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3078**, Relating to powers and duties of the parole board.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3107**, Declaring that Post Traumatic Stress Disorder diagnosed by a licensed psychiatrist is a compensable occupational disease for first responders.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3129**, Relating to the Consumer Price Index rate increase.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3132**, Relating to motor carrier inspectors.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3133**, Relating to motor carrier rates.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3177**, Removing expired, outdated, inoperative and antiquated provisions and report requirements in education.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 3215**, Amending the requirements to become an elected prosecutor.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Bill 3266**, Providing for termination of extracurricular contact upon retirement.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3299**, Authorizing Higher Education Rules.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3301**, Relating generally to property tax increment financing districts.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3304**, Authorizing the Division of Corrections and Rehabilitation to establish a Reentry and Transitional Housing Program.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3308**, Relating to increasing number of limited video lottery terminals.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. House Bill 3311**, Relating to the cost of medical records.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

**Eng. Com. Sub. for House Joint Resolution 3**, Property Tax Modernization Amendment.

On first reading, coming up in regular order, was read a first time and ordered to second reading.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 12:23 p.m., the Senate recessed until 5 p.m. today.

The Senate reconvened at 6:25 p.m. and, without objection, returned to the third order of business.

(Senator Blair, Mr. President, in the Chair.)

### **Executive Communications**

Senator Blair (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the eleventh day of April, 2021, which was received and read by the Clerk:

**STATE OF WEST VIRGINIA****EXECUTIVE DEPARTMENT****Charleston****A PROCLAMATION****By the Governor**

**WHEREAS**, the Constitution of West Virginia sets forth the respective powers, duties, and responsibilities of the three separate branches of government; and

**WHEREAS**, Article VI, Section 22 of the Constitution of West Virginia provides that the current regular session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of February two thousand twenty-one; and

**WHEREAS**, pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand twenty-one regular session of the Legislature is scheduled to conclude on the tenth day of April, two thousand twenty-one; and

**WHEREAS**, Article VI, Section 51 of the Constitution of West Virginia sets forth the obligations of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

**WHEREAS**, Subsection D, Article VI, Section 51 of the Constitution of West Virginia requires the Governor to issue a proclamation extending the regular session of the Legislature if the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session; and

WHEREAS, the Budget Bill has not been finally acted upon by the Legislature as of this seventh day of April, two thousand twenty-one.

NOW, THEREFORE, I, JIM JUSTICE, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand twenty-one regular session of the Legislature for an additional period not to exceed one day, through and including the eleventh day of April, two thousand twenty-one; but no matters other than the Budget Bill shall be considered during this extension of the regular session, except a provision for the cost thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the Governor

DONE at the Capitol in the City of Charleston, State of West Virginia, on this the seventh day of April, in the year of our Lord, Two Thousand Twenty-one, and in the One Hundred Fifty-Eighth year of the State.

  
GOVERNOR

  
SECRETARY OF STATE

Senator Blair (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, consisting of executive nominations for appointees:



*Jim Justice*  
*Governor of West Virginia*

April 7, 2021

**Senate Executive Message No. 2**  
**Regular Session 2021**

TO: The Honorable Members of the  
West Virginia Senate

Ladies and Gentlemen:

I respectfully submit the following nominations for your advice and consent:

1. For Member, Motor Vehicle Dealers Advisory Board, Dennis Sheets, Bluefield, Mercer County, for the term ending June 30, 2022.
2. For Member, Motor Vehicle Dealers Advisory Board, Margaret Wills, Fairmont, Marion County, for the term ending June 30, 2022.
3. For Member, Motor Vehicle Dealers Advisory Board, Wally Thornhill, Pecks Mill, Logan County, for the term ending June 30, 2021.
4. For Member, Board of Pharmacy, Jenna Misiti, Huntington, Cabell County, for the term ending June 30, 2023.
5. For Member, West Virginia Northern Community and Technical College Board of Governors, Ron Scott, Jr., Wheeling, Ohio County, for the term ending June 30, 2022.
6. For Member, Election Commission, Matthew G. Chapman, Wheeling, Ohio County, for the term ending June 4, 2026.
7. For Member, Surface Mine Board, Richard Flanigan, Kenova, Wayne County, for the term ending June 30, 2021.
8. For Member, West Virginia Municipal Pensions Oversight Board, Sarah H. Long, Charleston, Kanawha County, for the term ending January 1, 2024.

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## OFFICE OF THE GOVERNOR

9. For Member, West Virginia School of Osteopathic Medicine Board of Governors, Frederick B. Morgan, Bluefield, Virginia, for the term ending June 30, 2024.
10. For Member, Board of Accountancy, Horace W. Emery, Charleston, Kanawha County, for the term ending June 20, 2023.
11. For Member, Board of Accountancy, Theodore A. Lopez, Bridgeport, Taylor County, for the term ending June 30, 2023.
12. For Member, Board of the College Prepaid Tuition and Savings Program, Terri Underhill-Rader, Charleston, Kanawha County, for the term ending June 30, 2025.
13. For Member, West Virginia Board of Chiropractic, Barry A. Stowers, Fayetteville, Fayette County, for the term ending June 30, 2023.
14. For Member, West Virginia Board of Architects, Todd Boggess, Princeton, Mercer County, for the term ending June 30, 2025.
15. For Member, Natural Resources Commission, Byron K. Chambers, Romney, Hampshire County, for the term ending June 30, 2027.
16. For Member, Board of Pharmacy, Dennis Lewis, Chapmanville, Logan County, for the term ending June 30, 2025.
17. For Member, Marshall University Board of Governors, Angela R. Moore, Charleston, Kanawha County, for the term ending June 30, 2024.
18. For Member, Marshall University Board of Governors, Samuel R. Moore, Huntington, Cabell County, for the term ending June 30, 2024.
19. For Member, Marshall University Board of Governors, Donald R. Holcomb, Daniels, Raleigh County, for the term ending June 30, 2024.
20. For Member, West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners, Tyson C. Judy, Scott Depot, Putnam County, for the term ending June 30, 2023.
21. For Member, West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners, Roxanne E. Clay, Alum Creek, Lincoln County, for the term ending June 30, 2023.
22. For Chief Administrative Law Judge, Office of Tax Appeals, A.M. Pollack, Elkview, Kanawha County, for the term ending June 30, 2024.
23. For Member, West Virginia School of Osteopathic Medicine Board of Governors, Todd A. Smith, Princeton, Mercer County, for the term ending June 30, 2024.

## OFFICE OF THE GOVERNOR

24. For Member, Real Estate Commission, Margaret Shockey Bartles, Martinsburg, Berkeley County, for the term ending June 30, 2024.
25. For Member, Marshall University Board of Governors, Kathy D'Antoni, Barboursville, Cabell County, for the term ending June 30, 2024.
26. For Member, Board of Directors of the West Virginia United Health System, James Ferguson, Summersville, Nicholas County, for the term ending October 15, 2022.
27. For Member, Statewide Independent Living Council, Brenda Lamkin, Buckhannon, Upshur County, for the term ending June 30, 2023.
28. For Member, Statewide Independent Living Council, Cara T. Price, Philippi, Barbour County, for the term ending June 30, 2023.
29. For Member, Statewide Independent Living Council, Beverley Jones, Hurricane, Putnam County, for the term ending June 30, 2023.
30. For Member, Statewide Independent Living Council, Emily Robinson, Grantsville, Calhoun County, for the term ending June 30, 2023.
31. For Member, Statewide Independent Living Council, Robert Roswall, Charleston, Kanawha County, for the term ending June 30, 2023.
32. For Member, Statewide Independent Living Council, Michelle Wilshere, Charleston, Kanawha County, for the term ending June 30, 2021.
33. For Member, Statewide Independent Living Council, Ray B. Woods, Jr., St. Albans, Kanawha County, for the term ending June 30, 2021.
34. For Member, Statewide Independent Living Council, Carissa Davis, St. Albans, Kanawha County, for the term ending June 30, 2021.
35. For Member, Statewide Independent Living Council, Sandra Haberbosch, Shinnston, Harrison County, for the term ending June 30, 2023.
36. For Member, Statewide Independent Living Council, Darla R. Ervin, Morgantown, Monongalia County, for the term ending June 30, 2021.
37. For Member, Statewide Independent Living Council, Tara Martinez, Charleston, Kanawha County, for the term ending June 30, 2023.
38. For Member, Statewide Independent Living Council, Genette Eltringham, Weirton, Brooke County, for the term ending June 30, 2023.
39. For Member, Statewide Independent Living Council, Amee Shah, Vienna, Wood County, for the term ending June 30, 2023.

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40. For Member, Statewide Independent Living Council, Lysay Frye, Paden City, Wetzel County, for the term ending June 30, 2023.
41. For Member, Statewide Independent Living Council, Nichole Roberts, Hinton, Summers County, for the term ending June 30, 2023.
42. For Member, Racing Commission, JB Akers, Charleston, Kanawha County, for the term ending April 1, 2024.
43. For Director/State Forester, West Virginia Division of Forestry, C. Tom Cover, Jr., Lewisburg, Greenbrier County, to serve at the will and pleasure of the Governor.
44. For Member, Board of Examiners of Psychologists, Susannah Poe, Fairmont, Marion County, for the term ending June 30, 2023.
45. For Member, Board of Examiners of Psychologists, Charley W. Bowen, Jr., Culloden, Putnam County, for the term ending June 30, 2023.
46. For Member, Board of Optometry, David W. Harshberger, New Martinsville, Wetzel County, for the term ending June 30, 2023.
47. For Member, West Virginia University Board of Governors, James T. Jones, Morgantown, Monongalia County, for the term ending June 30, 2024.
48. For Member, West Virginia University Board of Governors, Tawnja Willis-Miller, Morgantown, Monongalia County, for the term ending June 30, 2024.
49. For Member, West Virginia University Board of Governors, Patrice A. Harris, Atlanta, Georgia, for the term ending June 30, 2024.
50. For Member, West Virginia Board of Medicine, Christopher Tipton, Kistler, Logan County, for the term ending September 30, 2022.
51. For Member, Fairmont State University Board of Governors, Deborah M. Prezioso, Fairmont, Marion County, for the term ending June 30, 2024.
52. For Member, Fairmont State University Board of Governors, Wendy G. Adkins, Morgantown, Monongalia County, for the term ending June 30, 2024.
53. For Member, West Liberty University Board of Governors, Jack C. Adams, McMurray, Pennsylvania, for the term ending June 30, 2024.
54. For Member, West Liberty University Board of Governors, Jamie Evick, Benwood, Marshall County, for the term ending June 30, 2024.

## OFFICE OF THE GOVERNOR

55. For Member, West Liberty University Board of Governors, Michael J. Baker, Wheeling, Ohio County, for the term ending June 30, 2023.
56. For Member, New River Community and Technical College Board of Governors, Roger F. Topping, Princeton, Mercer County, for the term ending June 30, 2022.
57. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Richard Casto, Madison, Boone County, for the term ending June 30, 2026.
58. For Member, West Virginia Board of Manufactured Housing Construction and Safety, Steven B. Solomon, Morgantown, Monongalia County, for the term ending June 30, 2026.
59. For Member, Board of Dentistry, William A. Klenk, Fayetteville, Fayette County, for the term ending June 30, 2025.
60. For Member, Fairmont State University Board of Governors, Jason C. Pizatella, Charleston, Kanawha County, for the term ending June 30, 2024.
61. For Member, West Liberty University Board of Governors, Richard H. Carter, Wheeling, Ohio County, for the term ending June 30, 2024.
62. For Member, West Virginia Board of Medicine, Ashish P. Sheth, Charleston, Kanawha County, for the term ending September 30, 2024.
63. For Executive Director, West Virginia Parkways Authority, Jeffrey A. Miller, Beckley, Raleigh County, to serve at the will and pleasure of the Governor.
64. For Member, West Virginia Municipal Pensions Oversight Board, Michael Payne, Weirton, Hancock County, for the term ending January 1, 2025.
65. For Member, West Virginia Municipal Pensions Oversight Board, Jason M. Mathews, Parkersburg, Wood County, for the term ending January 1, 2023.
66. For Member, West Virginia Municipal Pensions Oversight Board, David W. Lanham, Charleston, Kanawha County, for the term ending January 1, 2025.
67. For Member, West Virginia Archives and History Commission, Darla Spencer, Charleston, Kanawha County, for the term ending June 30, 2023.
68. For Member, West Virginia Archives and History Commission, Tracy L. Burch, Culloden, Cabell County, for the term ending June 30, 2023.
69. For Member, West Virginia Archives and History Commission, David Trowbridge, Huntington, Cabell County, for the term ending June 30, 2023.
70. For Member, West Virginia Archives and History Commission, Nathan J. Randolph, Huntington, Cabell County, for the term ending June 30, 2021.

## OFFICE OF THE GOVERNOR

71. For Member, West Virginia Archives and History Commission, Audy M. Perry, Huntington, Cabell County, for the term ending June 30, 2022.
72. For Member, West Virginia Board of Professional Surveyors, Douglas C. McElwee, Charleston, Kanawha County, for the term ending June 30, 2024.
73. For Member, West Virginia Board of Hearing Aid Dealers, Marsha Mattingly, Huntington, Cabell County, for the term ending June 30, 2021.
74. For Member, West Virginia Board of Hearing Aid Dealers, Jason Kaposy, Petersburg, Grant County, for the term ending June 30, 2024.
75. For Member, West Virginia Board of Hearing Aid Dealers, Jenny Cross, Elkins, Randolph County, for the term ending June 30, 2021.
76. For Member, West Virginia Board of Hearing Aid Dealers, Nancy B. Mullins Gillispie, Sumarco, Lincoln County, for the term ending June 30, 2021.
77. For Member, Fire Commission, William D. Camp, Parkersburg, Wood County, for the term ending June 30, 2024.
78. For Member, Fire Commission, Grant K. Gunnoe, Winfield, Putnam County, for the term ending June 30, 2024.
79. For Member, Fire Commission James L. Oldaker, Alum Creek, Lincoln County, for the term ending June 30, 2025.
80. For Member, West Virginia Archives and History Commission, Robert S. Conte, Union, Monroe County, for the term ending June 30, 2023.
81. For Member West Virginia Archives and History Commission, Dan Gatts, Moundsville, Marshall County, for the term ending June 30, 2023.
82. For Member, Aeronautics Commission, Gerald R. Sites, Petersburg, Grant County, for the term ending June 30, 2024.
83. For Member, Aeronautics Commission, James W. Wallace, Beverly, Randolph County, for the term ending June 30, 2024.
84. For Member, Aeronautics Commission, Tracy K. Miller, Bridgeport, Harrison County, for the term ending June 30, 2023.
85. For Member, West Virginia Emergency Medical Services Advisory Council, David J. Weller, Falling Waters, Berkeley County, for the term ending June 30, 2023.

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86. For Member, West Virginia Emergency Medical Services Advisory Council, Patricia Watson, Hamlin, Lincoln County, for the term ending June 30, 2023.
87. For Member, West Virginia Emergency Medical Services Advisory Council, Brian Doughty, Charleston, Kanawha County, for the term ending June 30, 2023.
88. For Member, West Virginia Emergency Medical Services Advisory Council, Brian W. Potter, Buckhannon, Upshur County, for the term ending June 30, 2023.
89. For Member, West Virginia Board of Hearing Aid Dealers, Deborah Chewning Barnes, Elkins, Randolph County, for the term ending June 30, 2023.
90. For Member, Commission on the Arts, Barbara A. Polgar, Follansbee, Brooke County, for the term ending June 30, 2021.
91. For Member, Commission on the Arts, Charles H. Friddle III, Elkins, Randolph County, for the term ending June 30, 2023.
92. For Member, Jobs Investment Trust Board, William B. Goode, Hurricane, Putnam County, for the term ending June 30, 2024.
93. For Member, Jobs Investment Trust Board, Timothy S. Millne, Huntington, Cabell County, for the term ending June 30, 2024.
94. For Member, Public Employees Insurance Agency Finance Board, William G. Milam, Charleston, Kanawha County, for the term ending June 30, 2024.
95. For Member, Public Employees Insurance Agency Finance Board, Jason Myers, Parsons, Tucker County, for the term ending June 30, 2023.
96. For Member, Public Employees Insurance Agency Finance Board, Jared Robertson, Grassy Meadows, Greenbrier County, for the term ending June 30, 2022.
97. For Member, Public Employees Insurance Agency Finance Board, Melody Duke, Winfield, Putnam County, for the term ending June 30, 2022.
98. For Member, New River Community and Technical College Board of Governors, Jim S. Ferguson, Bluefield, Mercer County, for the term ending June 30, 2021.
99. For Member, New River Community and Technical College Board of Governors, Thomas F. Lemke, Daniels, Raleigh County, for the term ending June 30, 2024.
100. For Member, New River Community and Technical College Board of Governors, Thomas R. Cochran, Daniels, Raleigh County, for the term ending June 30, 2023.
101. For Member, New River Community and Technical College Board of Governors, The Honorable Linda Sumner, Beckley, Raleigh County, for the term ending June 30, 2024.

## OFFICE OF THE GOVERNOR

102. For Member, New River Community and Technical College Board of Governors, Yvonne D. Seay, Beckley, Raleigh County, for the term ending June 30, 2021.
103. For Member, Public Employees Insurance Agency Finance Board, Michael T. Smith, Milton, Cabell County, for the term ending June 30, 2023.
104. For Member, Water Development Board, John M. Miller III, Gerrardstown, Berkeley County, for the term ending June 30, 2026.
105. For Member, New River Community and Technical College Board of Governors, John Barnes, Lewisburg, Greenbrier County, for the term ending June 30, 2023.
106. For Member, Board of Directors of the West Virginia United Health System, Bernard P. Twigg, Glen Dale, Marshall County, for the term ending October 15, 2026.
107. For Member, Election Commission, Benjamin M. Sullivan, Charleston, Kanawha County, for the term ending June 4, 2023.
108. For Member, Board of Risk and Insurance Management, Joseph M. Price, Charleston, Kanawha County, for the term ending June 30, 2024.
109. For Member, West Virginia Contractor Licensing Board, Amy Fairman, Fairmont, Marion County, for the term ending June 30, 2024.
110. For Member, Industrial Council, Anna M. Dailey, Charleston, Kanawha County, for the term ending June 30, 2024.
111. For Member, Industrial Council, Bengy K. Swanson, Core, Monongalia County, for the term ending June 30, 2024.
112. For Member, Industrial Council, Patrick M. Smith, South Charleston, Kanawha County, for the term ending June 30, 2023.
113. For Member, Municipal Home Rule Board, Dan Vriendt, St. Albans, Kanawha County, to serve at the will and pleasure of the Governor.
114. For Member, West Virginia Board of Education, Arthur S. Maynard, Huntington, Cabell County, for the term ending November 4, 2029.
115. For Member, Fire Commission, Steven L. Byers, Jr., Weston, Lewis County, for the term ending June 30, 2023.
116. For Member, West Virginia Real Estate Appraiser Licensing and Certification Board, Joseph A. Chico III, Morgantown, Monongalia County, for the term ending June 30, 2023.

## OFFICE OF THE GOVERNOR

117. For Member, Glenville State College Board of Governors, Frederick W. Parsons, Ripley, Jackson County, for the term ending June 30, 2024.
118. For Member and Chair, Flatwater Trail Commission, William R. Currey, St. Albans, Kanawha County, for the term ending December 31, 2024.
119. For Member, Flatwater Trail Commission, Amanda J. Pitzer, Thornton, Preston County, for the term ending December 31, 2022.
120. For Member, Flatwater Trail Commission, George Levitsky, Fairmont, Marion County, for the term ending December 31, 2021.
121. For Member, Flatwater Trail Commission, John S. Wilson, Jr., Bridgeport, Harrison County, for the term ending December 31, 2023.
122. For Member, Flatwater Trail Commission, John Burchett, Williamson, Mingo County, for the term ending December 31, 2021.
123. For Member, Board of Control for Southern Regional Education, Sarah Armstrong Tucker, Charleston, Kanawha County, for the term ending June 30, 2024.
124. For Member, West Virginia Regional Jail and Correctional Facility Authority Board, Charles N. Zerkle, Jr., Huntington, Cabell County, for the term ending June 30, 2023.
125. For Member, West Virginia Regional Jail and Correctional Facility Authority Board, David Blair Couch, Vienna, Wood County, for the term ending June 30, 2024.
126. For Member, Glenville State College Board of Governors, Douglas S. Morris, Naples, Florida, for the term ending June 30, 2024.
127. For Member, West Virginia Parole Board, Jack G. Roop, Beckley, Raleigh County, for the term ending June 30, 2022.
128. For Adjutant General, Brigadier General William E. Crane, Charleston, Kanawha County, to serve at the will and pleasure of the Governor.
129. For Member, Workforce Development Board, Diane W. Strong-Treister, Charleston, Kanawha County, for the term ending June 30, 2021.
130. For Member, Workforce Development Board, Stephanie Ahart, Morgantown, Monongalia County, for the term ending June 30, 2021.
131. For Member, Workforce Development Board, John Moses, Wheeling, Ohio County, for the term ending June 30, 2022.
132. For Member, Workforce Development Board, Stephanie J. Smith, Charleston, Kanawha County, for the term ending June 30, 2022.

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133. For Member, Workforce Development Board, Ray G. Burke, Nitro, Kanawha County, for the term ending June 30, 2022.
134. For Member, Workforce Development Board, Myisha Robinson, South Charleston, Kanawha County, for the term ending June 30, 2023.
135. For Member, Workforce Development Board, Michael Bombard, Fairmont, Marion County, for the term ending June 30, 2023.
136. For Member, Workforce Development Board, Steve Cox, Bidwell, Ohio, for the term ending June 30, 2023.
137. For Member, Workforce Development Board, Randall C. Rapp, Vienna, Wood County, for the term ending June 30, 2023.
138. For Member, Workforce Development Board, Michelle Foster, Charleston, Kanawha County, for the term ending June 30, 2023.
139. For Member, Workforce Development Board, Michael Sirockman, Winfield, Putnam County, for the term ending June 30, 2023.
140. For Member, Workforce Development Board, Brian L. Ulery, South Charleston, Kanawha County, for the term ending June 30, 2023.
141. For Member, Workforce Development Board, Marijane K. Waldron, Huntington, Cabell County, for the term ending June 30, 2023.
142. For Member, Workforce Development Board, Bryan Johnson, Kenova, Wayne County, for the term ending June 30, 2023.
143. For Member, Workforce Development Board, Bill J. Crouch, Charleston, Kanawha County, for the term ending June 30, 2023.
144. For Member, Workforce Development Board, Roy E. Hamilton, Hurricane, Putnam County, for the term ending June 30, 2022.
145. For Member, Workforce Development Board, Matthew J. Watts, Charleston, Kanawha County, for the term ending June 30, 2021.
146. For Member, Workforce Development Board, Natalie Oliverio, Clarksburg, Harrison County, for the term ending June 30, 2021.
147. For Member, Workforce Development Board, Marie Beaver, Charleston, Kanawha County, for the term ending June 30, 2021.

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148. For Member, Workforce Development Board, Scott A. Adkins, Charleston, Kanawha County, for the term ending June 30, 2023.
149. For Member, Workforce Development Board, R. Andrew Skidmore, Winfield, Putnam County, for the term ending June 30, 2021.
150. For Member, Workforce Development Board, Heather Vanater, Charleston, Kanawha County, for the term ending June 30, 2021.
151. For Member, Workforce Development Board, Jeff Rowe, South Point, Ohio, for the term ending June 30, 2022.
152. For Member, Workforce Development Board, Brian Stanley, Parkersburg, Wood County, for the term ending June 30, 2023.
153. For Member, Workforce Development Board, Lee Ann Belmont, Charleston, Kanawha County, for the term ending June 30, 2022.
154. For Member, Workforce Development Board, Traci L. Nelson, Charleston, Kanawha County, for the term ending June 30, 2023.
155. For Member, Workforce Development Board, Sarah Boley, Friendly, Tyler County, for the term ending June 30, 2022.
156. For Member, Workforce Development Board, Clinton C. Burch, Winfield, Putnam County, for the term ending June 30, 2023.
157. For Member, Workers' Compensation Board of Review, Bradley A. Crouser, Charleston, Kanawha County, for the term ending December 31, 2026.
158. For Member, Southern West Virginia Community and Technical College Board of Governors, J. Chris Adkins, Danville, Boone County, for the term ending June 30, 2023.
159. For Member, Southern West Virginia Community and Technical College Board of Governors, Eddie J. Canterbury, Logan, Logan County, for the term ending June 30, 2024.
160. For Member, Southern West Virginia Community and Technical College Board of Governors, Samuel A. Stewart, Matheny, Wyoming County, for the term ending June 30, 2024.
161. For Member, Southern West Virginia Community and Technical College Board of Governors, Robert Baldwin, Chapmanville, Logan County, for the term ending June 30, 2024.
162. For Member, Southern West Virginia Community and Technical College Board of Governors, David H. Gresham, Chapmanville, Logan County, for the term ending June 30, 2021.
163. For Member, Housing Development Fund, Robert L. Nistendirk, Charleston, Kanawha County, for the term ending October 30, 2024.

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164. For Member, Housing Development Fund, Sam G. Kapourales, Williamson, Mingo County, for the term ending October 30, 2023.
165. For Member, Housing Development Fund, John Gianola, Charleston, Kanawha County, for the term ending October 30, 2024.
166. For Member, Housing Development Fund, Kristina D. Raynes, Eleanor, Putnam County, for the term ending October 30, 2022.
167. For Chief Administrative Law Judge, Workers' Compensation Office of Judges within the Office of the Insurance Commissioner, Ted A. White, Wheeling, Ohio County, for the term ending December 31, 2023.
168. For Member, West Virginia Regional Jail and Correctional Facility Authority Board, David L. Hinkle, Bridgeport, Taylor County, for the term ending June 30, 2024.
169. For Member, Industrial Council, The Honorable Jeff Mullins, Daniels, Raleigh County, for the term ending June 30, 2021.
170. For Member, West Virginia Parole Board, Harold L. Hughes, Alum Creek, Kanawha County, for the term ending June 30, 2025.
171. For Member, West Virginia Hospital Finance Authority, Derek T. Snyder, Parkersburg, Wood County, for the term ending January 9, 2024.
172. For Member, West Virginia Board of Medicine, David A. Mullins, Princeton, Mercer County, for the term ending September 30, 2025.
173. For Member, West Virginia Board of Medicine, Mustafa Rahim, Beckley, Raleigh County, for the term ending September 30, 2024.
174. For Member, West Virginia Board of Medicine, Kiran R. Patel, Charleston, Kanawha County, for the term ending September 30, 2025.
175. For Member, West Virginia Board of Chiropractic, Karl Boone, Buckhannon, Upshur County, for the term ending June 30, 2022.
176. For Member, Board of Veterinary Medicine, Shawn D. Sette, Hurricane, Putnam County, for the term ending June 30, 2023.
177. For Member, Board of Veterinary Medicine, Jesse A. Fallon, Morgantown, Monongalia County, for the term ending June 30, 2022.
178. For Member, Board of Registration for Foresters, Dan Hackett, Buckhannon, Upshur County, for the term ending June 30, 2024.

## OFFICE OF THE GOVERNOR

179. For Member, Board of Registration for Foresters, Todd A. Lotter, Buckhannon, Upshur County, for the term ending June 30, 2025.
180. For Member, Board of Registration for Foresters, Denzil Linton, Canvas, Nicholas County, for the term ending June 30, 2023.
181. For Member, Real Estate Commission, Joseph T. Bevil, Nimitz, Summers County, for the term ending June 30, 2023.
182. For Member, Oil and Gas Conservation Commission, Randall M. Albert, Bluefield, Mercer County, for the term ending July 27, 2026.
183. For Member, West Virginia State University Board of Governors, Charles E. Jones, Jr., Charleston, Kanawha County, for the term ending June 30, 2024.
184. For Member, West Virginia State University Board of Governors, E. Gail Pitchford, Charleston, Kanawha County, for the term ending June 30, 2023.
185. For Member, West Virginia State University Board of Governors, Ian C. Flores, Cross Lanes, Kanawha County, for the term ending June 30, 2024.
186. For Member, West Virginia State University Board of Governors, Lester Raines, Charleston, Kanawha County, for the term ending June 30, 2023.
187. For Director, Geological and Economic Survey, Jessica Pierson Moore, Morgantown, Monongalia County, to serve at the will and pleasure of the Governor.
188. For Member, West Virginia Investment Management Board of Trustees, David H. Gardner, Sr., Charleston, Kanawha County, for the term ending January 31, 2027.
189. For Secretary, West Virginia Department of Environmental Protection, Harold D. Ward, Lake, Logan County, to serve at the will and pleasure of the Governor.
190. For Member, Bluefield State College Board of Governors, Cathy Deeb, Bluefield, Mercer County, for the term ending June 30, 2024.
191. For Member, West Virginia Board of Osteopathic Medicine, Sharon Horton Rowe, Lewisburg, Greenbrier County, for the term ending June 30, 2025.
192. For Member, West Virginia Board of Osteopathic Medicine, Jimmy W. Adams, Barboursville, Cabell County, for the term ending June 30, 2025.
193. For Member, West Virginia Board of Osteopathic Medicine, Terry V. Cox, Hurricane, Putnam County, for the term ending June 30, 2022.
194. For Member, West Virginia Board of Treasury Investments, Mark A. Mangano, Chester, Hancock County, for the term ending June 30, 2023.

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195. For Member, Housing Development Fund, Christopher A. Stansbury, Charleston, Kanawha County, for the term ending October 30, 2024.
196. For Director, Division of Emergency Management, GE McCabe, Jr., Milton, Cabell County, to serve at the will and pleasure of the Governor.
197. For Member, Board of Directors of the West Virginia United Health System, Randy Williams, Morgantown, Monongalia County, for the term ending October 15, 2022.
198. For Member, Board of Directors of the West Virginia United Health System, Michelle Rotellini, Daniels, Raleigh County, for the term ending October 15, 2026.
199. For Member, State Conservation Committee, Eli McCoy, Charleston, Kanawha County, for the term ending September 6, 2021.
200. For Member, State Conservation Committee, Angela Rosser, Prociuous, Clay County, for the term ending September 6, 2023.
201. For Member, State Conservation Committee, Britney Hervey Farris, Wellsburg, Brooke County, for the term ending September 6, 2022.
202. For Member, Board of Funeral Service Examiners, Eric B. Nichols, Charleston, Kanawha County, for the term ending June 30, 2024.
203. For Member, West Virginia Investment Management Board of Trustees, The Honorable Mike Hall, Winfield, Putnam County, for the term ending January 31, 2024.
204. For Member, West Virginia Board of Social Work Examiners, Charles S. Inghram, Athens, Mercer County, for the term ending June 30, 2025.
205. For Member, West Virginia Board of Social Work Examiners, Natalie Buskirk Murphy, Huntington, Cabell County, for the term ending June 30, 2025.
206. For Member, West Virginia Board of Social Work Examiners, Joanne Mahood Boileau, Ghent, Raleigh County, for the term ending June 30, 2025.
207. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Gloria Hollen, Inwood, Berkeley County, for the term ending June 30, 2023.
208. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Roy B. Forman, Williamstown, Wood County, for the term ending June 30, 2023.
209. For Member, West Virginia Commission for the Deaf and Hard of Hearing, John W. Burdette, Roncerverte, Greenbrier County, for the term ending June 30, 2023.

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210. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Paul See, Moorefield, Hardy County, for the term ending June 30, 2023.
211. For Member, Catastrophic Illness Commission, Victoria Shuman, Caldwell, Greenbrier County, for the term ending August 31, 2022.
212. For Member, Catastrophic Illness Commission, Sandra L. Cotton, Morgantown, Monongalia County, for the term ending August 31, 2023.
213. For Member, Catastrophic Illness Commission, John R. Davidson, Jr., Charleston, Kanawha County, for the term ending August 31, 2024.
214. For Member, Catastrophic Illness Commission, Jacques R. Williams, Morgantown, Monongalia County, for the term ending August 31, 2022.
215. For Member, Board of the College Prepaid Tuition and Savings Program Board of Trustees, Patrick M. Smith, South Charleston, Kanawha County, for the term ending June 30, 2021.
216. For Member, West Virginia Board of Social Work Examiners, Robert D. Musick, Morgantown, Monongalia County, for the term ending June 30, 2025.
217. For Member, Board of Barbers and Cosmetologists, Catherine Donahoe, Barboursville, Cabell County, for the term ending June 30, 2025.
218. For Member, Board of Optometry, Sheena H. Hunt, Elkins, Randolph County, for the term ending June 30, 2023.
219. For Member, West Virginia Massage Therapy Licensure Board, Laurie Lively, Lewisburg, Greenbrier County, for the term ending June 30, 2021.
220. For Member, West Virginia Massage Therapy Licensure Board, John D. Skelton, Shady Spring, Raleigh County, for the term ending June 30, 2022.
221. For Member, West Virginia Massage Therapy Licensure Board, Marsha D. Starr, Charleston, Kanawha County, for the term ending June 30, 2022.
222. For Member, West Virginia Massage Therapy Licensure Board, Tina M. Turner, Huntington, Cabell County, for the term ending June 30, 2021.
223. For Member, National Coal Heritage Area Authority, William R. Archer, Bluefield, Mercer County, for the term ending June 30, 2024.
224. For Member, National Coal Heritage Area Authority, James C. Gaal, Hinton, Summers County, for the term ending June 30, 2023.
225. For Member, National Coal Heritage Area Authority, Debrina J. Williams, Logan, Logan County, for the term ending June 30, 2022.

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226. For Member, National Coal Heritage Area Authority, Kris Mitchell, Spurlockville, Boone County, for the term ending June 30, 2024.
227. For Member, National Coal Heritage Area Authority, Sharon Cruikshank, Fayetteville, Fayette County, for the term ending June 30, 2022.
228. For Member, National Coal Heritage Area Authority, Christy L. Laxton, Pineville, Wyoming County, for the term ending June 30, 2024.
229. For Member, West Virginia Public Employees Grievance Board, Alesia Green, Hurricane, Putnam County, for the term ending June 30, 2022.
230. For Member, West Virginia Public Employees Grievance Board, Maria V. Eshenaur, Point Pleasant, Mason County, for the term ending June 30, 2021.
231. For Member, Consolidated Public Retirement Board, Donald Murray, Chester, Hancock County, for the term ending June 30, 2023.
232. For Member, Consolidated Public Retirement Board, David Nelson, Julian, Boone County, for the term ending June 30, 2025.
233. For Member, Consolidated Public Retirement Board, Reginald Patterson, Hurricane, Putnam County, for the term ending June 30, 2025.
234. For Member, West Virginia University - Parkersburg Board of Governors, Donna M. Smith, Vienna, Wood County, for the term ending June 30, 2024.
235. For Member, West Virginia University - Parkersburg Board of Governors, Jason Landers, Vienna, Wood County, for the term ending June 30, 2024.
236. For Member, West Virginia University - Parkersburg Board of Governors, John P. Hushion, Vienna, Wood County, for the term ending June 30, 2024.
237. For Member, West Virginia University - Parkersburg Board of Governors, Joseph R. Oliverio, Belmont, Pleasants County, for the term ending June 30, 2024.
238. For Member, West Virginia University - Parkersburg Board of Governors, Ami L. Shaver, Vienna, Wood County, for the term ending June 30, 2022.
239. For Member, West Virginia Massage Therapy Licensure Board, Roland W. Meffert, Hurricane, Putnam County, for the term ending June 30, 2021.
240. For Member, National Coal Heritage Area Authority, Frederick A. Barkey, Charleston, Kanawha County, for the term ending June 30, 2023.

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241. For Member, West Virginia Contractor Licensing Board, Mary N. Cleland, Charleston, Kanawha County, for the term ending June 30, 2024.
242. For Member, Consolidated Public Retirement Board, Mike P. McKown, Charleston, Kanawha County, for the term ending June 30, 2025.
243. For Member, Consolidated Public Retirement Board, Rhonda Bolyard, Morgantown, Monongalia County, for the term ending June 30, 2023.
244. For Member, Bridge Valley Community and Technical College Board of Governors, Mark C. Blankenship, Charleston, Kanawha County, for the term ending June 30, 2024.
245. For Member, Bridge Valley Community and Technical College Board of Governors, Megan Callaghan Bailey, Charleston, Kanawha County, for the term ending June 30, 2024.
246. For Member, Bridge Valley Community and Technical College Board of Governors, Barry Holstein, Charleston, Kanawha County, for the term ending June 30, 2024.
247. For Member, Bridge Valley Community and Technical College Board of Governors, Larry Pack, Jr., East Bank, Kanawha County, for the term ending June 30, 2024.
248. For Member, Bridge Valley Community and Technical College Board of Governors, Ashley N. Deem, South Charleston, Kanawha County, for the term ending June 30, 2024.
249. For Member, School Building Authority, The Honorable Kenneth W. Mann, Greenville, Monroe County, for the term ending July 31, 2022.
250. For Member, Auctioneers Board of Review, Shelby L. Crouse, St. Albans, Kanawha County, for the term ending January 1, 2022.
251. For Member, Auctioneers Board of Review, James W. Frio, Valley Grove, Ohio County, for the term ending January 1, 2023.
252. For Member, Auctioneers Board of Review, Oscar E. Click, Leon, Mason County, for the term ending January 1, 2024.
253. For Member, National Coal Heritage Area Authority, James H. Lackey, Huntington, Wayne County, for the term ending June 30, 2023.
254. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Kim Nuckles, Charleston, Kanawha County, for the term ending January 31, 2023.
255. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Douglas Auten, Morgantown, Monongalia County, for the term ending January 31, 2023.

## OFFICE OF THE GOVERNOR

256. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, Susannah Carpenter, Charleston, Kanawha County, for the term ending January 1, 2023.

257. For Member, Committee for the Purchase of Commodities and Services from the Handicapped, John F. Hyre, Kingwood, Preston County, for the term ending January 1, 2023.

Notice of these appointments was previously provided to the appropriate legislative staff at the time the appointments were made.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Justice", with a stylized flourish at the end.

Jim Justice  
Governor

JCJ: mrp

cc: Clerk of the Senate  
Assistant Clerk of the Senate  
Senate Confirmations Chair

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Boley, consideration of the nominations immediately hereinbefore reported was made a special order of business for Saturday, April 10, 2021, at 1 p.m.

The Clerk next presented the following communications from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
Governor of West Virginia

April 7, 2021

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Senate Bill No. Sixty-Seven (67), which was presented to me on April 1, 2021.

Committee Substitute for Senate Bill No. Three Hundred Fifty-Six (356), which was presented to me on April 1, 2021.

Senate Bill No. Three Hundred Ninety (390), which was presented to me on April 1, 2021.

Committee Substitute for Senate Bill No. Four Hundred Thirty-One (431), which was presented to me on April 1, 2021.

Committee Substitute for Senate Bill No. Four Hundred Thirty-Five (435), which was presented to me on April 1, 2021.

You will note that I have approved these bills on April 7, 2021.

Sincerely,

A handwritten signature in blue ink that reads "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk



*Jim Justice*  
Governor of West Virginia

April 7, 2021

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for House Bill No. Two Thousand Fourteen (2014), which was presented to me on April 1, 2021.

Committee Substitute for House Bill No. Two Thousand Two Hundred Ninety (2290), which was presented to me on April 1, 2021.

Committee Substitute for House Bill No. Two Thousand Three Hundred Eighty-Two (2382), which was presented to me on April 1, 2021.

Committee Substitute for House Bill No. Two Thousand Eight Hundred Ninety-Six (2896), which was presented to me on April 1, 2021.

House Bill No. Two Thousand Eight Hundred Ninety-Seven (2897), which was presented to me on April 1, 2021.

You will note that I have approved these bills on April 7, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh  
cc: The Honorable Lee Cassis



*Jim Justice*  
Governor of West Virginia

April 7, 2021

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

House Bill No. Two Thousand Eight Hundred Ninety-Nine (2899), which was presented to me on April 1, 2021.

House Bill No. Two Thousand Nine Hundred One (2901), which was presented to me on April 1, 2021.

House Bill No. Two Thousand Nine Hundred Three (2903), which was presented to me on April 1, 2021.

House Bill No. Two Thousand Nine Hundred Twenty (2920), which was presented to me on April 1, 2021.

House Bill No. Two Thousand Nine Hundred Forty (2940), which was presented to me on April 1, 2021.

You will note that I have approved these bills on April 7, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh  
cc: The Honorable Lee Cassis

The Senate again proceeded to the fourth order of business.

Senator Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Concurrent Resolution 72** (originating in the Committee on Education)—Requesting the Joint Committee on Government and Finance study the possible programs and procedures which can be implemented by county boards of education to facilitate summer and non-school-day feeding programs to prevent child food insecurity.

Whereas, More than 5,300,000 children nationally and one in five children in West Virginia live in a household that is food insecure; and

Whereas, Over 65 percent of school-aged children in West Virginia qualify for free or reduced-price meals; and

Whereas, Inadequate access to food places children at risk for health problems, obesity, nutrient deficiencies, and difficulties with learning and discipline; and

Whereas, Food insecurity for children continues when they are not in school, such as after school, snow days, during summer vacation, or extended breaks; and

Whereas, Innovative ideas and partnerships between county boards of education and other organizations are vital to ensure that children have access to nutritious, healthy, and sufficient food in and out of school; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the possible programs and procedures which can be implemented by county boards of education to

facilitate summer and non-school-day feeding programs to prevent child food insecurity; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance create a matrix containing the programs and resources available to each county board of education which can be used to address and prevent child food insecurity; and, be it

*Further Resolved*, That the study examine potential partnerships with social and civic groups, food pantries and food banks, faith-based initiatives, and corporate partnerships to aid county boards of education in providing food to students outside of the school day; and, be it

*Further Resolved*, That the study include recommendations for increasing efficiency in the delivery of the feeding programs to prevent child food insecurity as well as for streamlining coordination between all parties involved in the delivery of the feeding programs; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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 the legislative appropriations to the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 72) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2025**, Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2368**, Mylissa Smith's Law, creating patient visitation privileges.

With an amendment from the Committee on Health and Human Resources pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2370**, Provide that Public Service Districts cannot charge sewer rates for filling a swimming pool.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2581**, Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property.

With amendments from the Committee on the Judiciary pending;

And reports the same back with the recommendation that it do pass as amended by the Committee on the Judiciary to which the bill was first referred.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. Com. Sub. for House Bill 2667**, To create a cost saving program for state buildings regarding energy efficiency.

**Eng. House Bill 2900**, Expiring funds to the balance of the Department of Education – State Board of Education – School Building Authority – School Construction Fund.

**Eng. House Bill 3313**, Making supplemental appropriation to the Division of Motor Vehicles.

**Eng. House Bill 3314**, Making supplemental appropriation to West Virginia State Police.

**Eng. House Bill 3315**, Making supplemental appropriation to Division of Environmental Protection - Oil and Gas Reclamation Fund.

And,

**Eng. House Bill 3316**, Supplemental appropriation to the Department of Education, State Board of Education.

And reports the same back with the recommendation that they each do pass.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2694**, Create the 2nd Amendment Preservation Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2747**, Transferring the Parole Board to the Office of Administrative Hearings.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2982**, Relating to the Second Chances at Life Act of 2021.

With an amendment from the Committee on Health and Human Resources pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2997**, Adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 3106**, To change the hearing requirement for misdemeanors to 10 days.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 3128**, Relating to carrier fees on 911 fee revenues.

With amendments from the Committee on Government Organization pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on Finance.

Respectfully submitted,

Eric J. Tarr,  
*Chair.*

At the request of Senator Tarr, unanimous consent being granted, the Senate proceeded to the consideration of

**Eng. House Bill 3300**, Relating to reducing personal income tax rates generally.

On third reading, having been deferred in earlier proceedings today and now coming up in deferred order, with the unreported Finance committee amendment pending, and with the right having been granted on Monday, April 5, 2021, for further amendments to be received on third reading, was again reported by the Clerk.

At the request of Senator Tarr, as chair of the Committee on Finance, and by unanimous consent, the unreported Finance committee amendment to the bill was withdrawn.

On motion of Senator Tarr, the following amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **CHAPTER 11. TAXATION.**

### **ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.**

#### **§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.**

(a) Imposition of tax. — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) Rate and measure of tax. —

(1) Subject to the provisions of subsection (h) of this section, the tax imposed in subsection (a) of this section is five percent of the gross value of the natural resource produced or the health care

service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article: *Provided*, That effective July 1, 2019, the tax rate imposed by this subsection on the gross value of thermal or steam coal produced shall be reduced incrementally over the next three tax years for a total reduction of two percent by July 1, 2021. That on July 1, 2019, the reduction shall occur at the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall occur at the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of 100 percent of the two percent reduction. In the case of coal, the rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code and the additional severance tax on coal imposed by the state for the benefit of coal-producing counties as provided in §11-13A-6a of this code.

(2) On and after January 1, 2022, and notwithstanding any other provision of this article, or this code, the rate of tax on the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, shall be imposed and paid as follows. In the case of coal, the rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code and the additional severance tax on coal imposed by the state for the benefit of coal-producing counties as provided in §11-13A-6a of this code: *Provided*, That effective January 1, 2022, the thirty-five one hundredths of one percent additional severance tax levied pursuant to this section shall be deposited into the fund created pursuant to §11B-2-32 of this code.

**(A) For Metallurgical Coal and Coal not elsewhere classified:**

<b><u>When the annualized gross</u></b>	<b><u>The rate of tax on the gross value</u></b>
<b><u>value of coal per ton is:</u></b>	<b><u>of the coal is:</u></b>

<u>Less than \$65.00 .....</u>	<u>4.0%</u>
<u>\$65.00 to \$114.99 .....</u>	<u>5.0%</u>
<u>\$115.00 to \$134.99 .....</u>	<u>5.5%</u>
<u>\$135.00 to \$164.99 .....</u>	<u>6.0%</u>
<u>\$165.00 to \$199.99 .....</u>	<u>6.5%</u>
<u>\$200 or more.....</u>	<u>7.0%</u>

**(B) For Steam Coal:**

<b><u>When the annualized gross</u></b>	<b><u>The rate of tax on the gross value</u></b>
<b><u>value of coal per ton is:</u></b>	<b><u>of the coal is:</u></b>

<u>Less than \$35.00</u>	<u>2.0%</u>
<u>\$35.00 to \$59.99 .....</u>	<u>3.0%</u>
<u>\$60.00 to \$69.99 .....</u>	<u>3.5%</u>
<u>\$70.00 to \$84.99 .....</u>	<u>4.0%</u>
<u>\$85.00 to \$99.99 .....</u>	<u>5.0%</u>
<u>\$100.00 to \$119.99 .....</u>	<u>6.0%</u>
<u>\$120.00 or more.....</u>	<u>7.0%</u>

**(C) For coal mined by underground methods from seams with an average thickness of 37 inches to 45 inches:**

<b><u>When the annualized gross</u></b>	<b><u>The rate of tax on the gross value</u></b>
<b><u>value of coal per ton is:</u></b>	<b><u>of the coal is:</u></b>

<u>Less than \$65.00 .....</u>	<u>1.5%</u>
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<u>\$65.00 to \$114.99 .....</u>	<u>2.0%</u>
<u>\$115.00 to \$134.99 .....</u>	<u>2.5%</u>
<u>\$135.00 to \$164.99 .....</u>	<u>3.0%</u>
<u>\$165.00 to \$199.99 .....</u>	<u>4.0%</u>
<u>\$200.00 or more.....</u>	<u>5.0%</u>

**(D) For coal mined by underground methods from seams with an average thickness of less than 37 inches:**

<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
<u>value of coal per ton is:</u>	<u>of the coal is:</u>
<u>Less than \$65.00 .....</u>	<u>0.75%</u>
<u>\$65.00 to \$114.99 .....</u>	<u>1.0%</u>
<u>\$115.00 to \$134.99 .....</u>	<u>1.5%</u>
<u>\$135.00 to \$164.99 .....</u>	<u>2.0%</u>
<u>\$165.00 to \$199.99 .....</u>	<u>3.0%</u>
<u>\$200 or more.....</u>	<u>4.0%</u>

(c) “Metallurgical coal” means bituminous coal suitable for the manufacture of coke used or useable for the manufacture of iron or steel, or both.

(d) “Thermal or steam coal” defined. - For purposes of this section the term “thermal or steam coal” means coal sold for the purpose of generating electricity.

~~(d)~~ (e) “Certain health care services” defined. — For purposes of this section, the term “certain health care services” means, and is limited to, behavioral health services.

(f) “Annualized gross value” defined. — For purposes of this section, the term “annualized gross value” means, and is limited to, the average price of coal for a particular category provided in subdivision (2), subsection (b) of this section for the taxable year of the taxpayer derived by dividing the gross proceeds for the particular category by the amount of tons produced within that category.

~~(e)~~ (g) Tax in addition to other taxes. — The tax imposed by this section applies to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (d) of this section and shall be in addition to all other taxes imposed by law.

~~(f)~~ (h) Effective date. — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

~~(g)~~ (i) Reduction of severance tax rate. — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:

(1) For coal mined by underground methods from seams with an average thickness of 37 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional

severance tax imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code.

(2) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than 45 inches in average thickness or any existing mine that has not produced coal from seams 45 inches or less in thickness in the 180 days immediately preceding the effective date of this subsection.

(3) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

~~(h)~~ (j)(1) Termination and expiration of the behavioral health severance and business privilege tax. — The tax imposed upon providers of health care services under the provisions of this article shall expire, terminate and cease to be imposed with respect to privileges exercised on or after July 1, 2016. Expiration of the tax as provided in this subsection does not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

(2) Refunds made. — The Tax Commissioner shall issue a requisition on the Treasury for any amount finally, administratively or judicially determined to be an overpayment of the tax terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

~~(i)~~ (k) Termination and expiration of the privilege tax on limestone or sandstone. — The taxes imposed under this section for persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes

imposed under this section do not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of the termination.

**§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil Tax Commissioner to develop a uniform reporting form.**

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is levied and shall be collected from every person exercising the privilege an annual privilege tax at the rate and measure provided in subsection (b) of this section: *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: *Provided*, That effective for taxable periods beginning on or after January 1, 2020:

(1) For all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable

year, and for oil produced from any well which produced an average in excess of 10 barrels of oil per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer: Provided, That beginning on and after January 1, 2022, and notwithstanding any other provision of this article or this code:

(A) All natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day, and all natural gas produced from any well utilizing horizontal drilling techniques targeting shale formations which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day, during the calendar year immediately preceding a given taxable year, shall be subject to the following rate of tax on the privilege of severing natural gas for sale, profit, or commercial use on wells:-

<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
<u>value of natural gas per MCF is:</u>	<u>of the natural gas produced is:</u>
<u>Less than \$0.80 .....</u>	<u>4.0%</u>
<u>\$0.80 to \$2.99 .....</u>	<u>5.0%</u>
<u>\$3.00 to \$4.99 .....</u>	<u>6.0%</u>
<u>\$5.00 to \$5.99 .....</u>	<u>6.5%</u>
<u>\$6.00 or more.....</u>	<u>7.0%</u>

(B) All oil produced from any well which produced an average in excess of 10 barrels of oil per day, and all oil produced from any well utilizing horizontal drilling techniques targeting shale formations which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding a given taxable year, shall be subject to the following

rate of tax on the privilege of severing oil for sale, profit, or commercial use on wells:

<u>When the annualized gross</u>	<u>The rate of tax on the gross value</u>
<u>value of oil per barrel is:</u>	<u>of the oil produced is:</u>
Less than \$20.00 .....	4.0%
\$20.00 to \$69.99 .....	5.0%
\$70.00 to \$89.99 .....	6.0%
\$90.00 to \$109.99 .....	6.5%
\$110.00 or more.....	7.0%

(2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is two and five tenths percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer; and

~~(3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given~~

~~taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer.~~

(c) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons severing gas or oil in this state, and is in addition to all other taxes imposed by law.

(d) For purposes of this section, in determining the average amount of production of gas and oil in any given calendar year, a taxpayer must calculate the actual production of such well in the calendar year and divide the same by the number of days the well was in operation and producing gas or oil in such calendar year.

(e) “Annualized gross value” defined. — For purposes of this section, the term “annualized gross value” means, and is limited to:

(1) For natural gas, the total gross proceeds for sales of natural gas in the taxable year divided by the number of MCF produced for the taxable year, taking into account all wells from which natural gas was produced.

(2) For oil, the total gross proceeds for sales of oil in the taxable year divided by the number of barrels produced for the taxable year, taking into account all wells from which oil was produced.

~~(e)~~ (f) After the dedication in §11-13A-5a is made, the remaining proceeds collected from the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this code: *Provided*, That if on June 1, 2023, or on June 1 of any year thereafter, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$6 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on and after the next succeeding January 1. The Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the balance

in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant to this subsection.

(g) Effective January 1, 2022, the additional severance tax levied pursuant to this section over and above the current rate of the severance tax shall be deposited into the fund created pursuant to §11B-2-32 of this code. The tax commission may promulgate procedural rules to effectuate the provisions of this subsection.

## **ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.**

### **§11-15-2. Definitions.**

(a) *General.* — When used in this article and article fifteen-a of this chapter, words defined in subsection (b) of this section have the meanings ascribed to them in this section, except in those instances where a different meaning is provided in this article or the context in which the word is used clearly indicates that a different meaning is intended by the Legislature.

(b) *Definitions.* —

(1) “Business” includes all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, and all activities of the state and its political subdivisions which involve sales of tangible personal property or the rendering of services when those service activities compete with or may compete with the activities of other persons.

(2) “Communication” means all telephone, radio, light, light wave, radio telephone, telegraph and other communication or means of communication, whether used for voice communication, computer data transmission or other encoded symbolic information transfers and includes commercial broadcast radio, commercial broadcast television and cable television.

(3) “Contracting”:

(A) *In general.* — “Contracting” means and includes the furnishing of work, or both materials and work, for another (by a

sole contractor, general contractor, prime contractor, subcontractor or construction manager) in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for removal or demolition of a building or structure, or any part thereof, or for the alteration, improvement or development of real property. Contracting also includes services provided by a construction manager so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(B) *Form of contract not controlling.* — An activity that falls within the scope of the definition of contracting constitutes contracting regardless of whether the contract governing the activity is written or verbal and regardless of whether it is in substance or form a lump sum contract, a cost-plus contract, a time and materials contract, whether or not open-ended, or any other kind of construction contract.

(C) *Special rules.* — For purposes of this definition:

(i) The term “structure” includes, but is not limited to, everything built up or composed of parts joined together in some definite manner and attached or affixed to real property or which adds utility to real property or any part thereof or which adds utility to a particular parcel of property and is intended to remain there for an indefinite period of time;

(ii) The term “alteration” means, and is limited to, alterations which are capital improvements to a building or structure or to real property;

(iii) The term “repair” means, and is limited to, repairs which are capital improvements to a building or structure or to real property;

(iv) The term “decoration” means, and is limited to, decorations which are capital improvements to a building or structure or to real property;

(v) The term “improvement” means, and is limited to, improvements which are capital improvements to a building or structure or to real property;

(vi) The term “capital improvement” means improvements that are affixed to or attached to and become a part of a building or structure or the real property or which add utility to real property, or any part thereof, and that last or are intended to be relatively permanent. As used herein, “relatively permanent” means lasting at least a year in duration without the necessity for regularly scheduled recurring service to maintain the capital improvement. “Regular recurring service” means regularly scheduled service intervals of less than one year;

(vii) Contracting does not include the furnishing of work, or both materials and work, in the nature of hookup, connection, installation or other services if the service is incidental to the retail sale of tangible personal property from the service provider’s inventory: *Provided*, That the hookup, connection or installation of the foregoing is incidental to the sale of the same and performed by the seller thereof or performed in accordance with arrangements made by the seller thereof. Examples of transactions that are excluded from the definition of contracting pursuant to this subdivision include, but are not limited to, the sale of wall-to-wall carpeting and the installation of wall-to-wall carpeting, the sale, hookup and connection of mobile homes, window air conditioning units, dishwashers, clothing washing machines or dryers, other household appliances, drapery rods, window shades, venetian blinds, canvas awnings, free-standing industrial or commercial equipment and other similar items of tangible personal property. Repairs made to the foregoing are within the definition of contracting if the repairs involve permanently affixing to or improving real property or something attached thereto which extends the life of the real property or something affixed thereto or allows or intends to allow the real property or thing permanently attached thereto to remain in service for a year or longer; and

(viii) The term “construction manager” means a person who enters into an agreement to employ, direct, coordinate or manage

design professionals and contractors who are hired and paid directly by the owner or the construction manager. The business activities of a “construction manager” as defined in this subdivision constitute contracting, so long as the project for which the construction manager provides the services results in a capital improvement to a building or structure or to real property.

(4) “Directly used or consumed” in the activities of manufacturing, transportation, transmission, communication or the production of natural resources means used or consumed in those activities or operations which constitute an integral and essential part of the activities, as contrasted with and distinguished from those activities or operations which are simply incidental, convenient or remote to the activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include only:

(i) In the case of tangible personal property, physical incorporation of property into a finished product resulting from manufacturing production or the production of natural resources;

(ii) Causing a direct physical, chemical or other change upon property undergoing manufacturing production or production of natural resources;

(iii) Transporting or storing property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(iv) Measuring or verifying a change in property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(v) Physically controlling or directing the physical movement or operation of property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(vi) Directly and physically recording the flow of property undergoing transportation, communication, transmission, manufacturing production or production of natural resources;

(vii) Producing energy for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(viii) Facilitating the transmission of gas, water, steam or electricity from the point of their diversion to property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(ix) Controlling or otherwise regulating atmospheric conditions required for transportation, communication, transmission, manufacturing production or production of natural resources;

(x) Serving as an operating supply for property undergoing transmission, manufacturing production or production of natural resources, or for property directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xi) Maintaining or repairing of property, including maintenance equipment, directly used in transportation, communication, transmission, manufacturing production or production of natural resources;

(xii) Storing, removal or transportation of economic waste resulting from the activities of manufacturing, transportation, communication, transmission or the production of natural resources;

(xiii) Engaging in pollution control or environmental quality or protection activity directly relating to the activities of manufacturing, transportation, communication, transmission or the production of natural resources and personnel, plant, product or community safety or security activity directly relating to the

activities of manufacturing, transportation, communication, transmission or the production of natural resources; or

(xiv) Otherwise using as an integral and essential part of transportation, communication, transmission, manufacturing production or production of natural resources.

(B) Uses of property or services which do not constitute direct use or consumption in the activities of manufacturing, transportation, transmission, communication or the production of natural resources include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to transportation, communication, transmission, manufacturing production or production of natural resources, rather than an integral and essential part of these activities.

(5) "Directly used or consumed" in the activities of gas storage, the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business means used or consumed in those activities or operations which constitute an integral and essential part of those activities or operation, as contrasted with and distinguished from activities or operations which are simply incidental, convenient or remote to those activities.

(A) Uses of property or consumption of services which constitute direct use or consumption in the activities of gas storage,

the generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include only:

(i) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power and appliances, which are used immediately in production or generation activities and equipment, machinery, supplies, tools and repair parts used to keep in operation exempt production or generation devices. For purposes of this subsection, production or generation activities shall commence from the intake, receipt or storage of raw materials at the production plant site;

(ii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the transmission or distribution of gas, water and electricity to the public, and equipment, machinery, tools, repair parts and supplies used to keep in operation exempt transmission or distribution devices, and these vehicles and their equipment as are specifically designed and equipped for those purposes are exempt from the tax when used to keep a transmission or distribution system in operation or repair. For purposes of this subsection, transmission or distribution activities shall commence from the close of production at a production plant or wellhead when a product is ready for transmission or distribution to the public and shall conclude at the point where the product is received by the public;

(iii) Tangible personal property, custom software or services, including equipment, machinery, apparatus, supplies, fuel and power, appliances, pipes, wires and mains, which are used immediately in the storage of gas or water, and equipment, machinery, tools, supplies and repair parts used to keep in operation exempt storage devices;

(iv) Tangible personal property, custom software or services used immediately in the storage, removal or transportation of economic waste resulting from the activities of gas storage, the

generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business;

(v) Tangible personal property, custom software or services used immediately in pollution control or environmental quality or protection activity or community safety or security directly relating to the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business.

(B) Uses of property or services which would not constitute direct use or consumption in the activities of gas storage, generation or production or sale of electric power, the provision of a public utility service or the operation of a utility business include, but are not limited to:

(i) Heating and illumination of office buildings;

(ii) Janitorial or general cleaning activities;

(iii) Personal comfort of personnel;

(iv) Production planning, scheduling of work or inventory control;

(v) Marketing, general management, supervision, finance, training, accounting and administration; or

(vi) An activity or function incidental or convenient to the activities of gas storage, generation or production or sale of electric power, the provision of public utility service or the operation of a utility business.

(6) "Gas storage" means the injection of gas into a storage reservoir or the storage of gas for any period of time in a storage reservoir or the withdrawal of gas from a storage reservoir engaged in by businesses subject to the business and occupation tax imposed by sections two and two-e, article thirteen of this chapter.

(7) “Generating or producing or selling of electric power” means the generation, production or sale of electric power engaged in by businesses subject to the business and occupation tax imposed by section two, two-d, two-m or two-n, article thirteen of this chapter.

(8) “Gross proceeds” means the amount received in money, credits, property or other consideration from sales and services within this state, without deduction on account of the cost of property sold, amounts paid for interest or discounts or other expenses whatsoever. Losses may not be deducted, but any credit or refund made for goods returned may be deducted.

(9) “Includes” and “including”, when used in a definition contained in this article, does not exclude other things otherwise within the meaning of the term being defined.

(10) “Manufacturing” means a systematic operation or integrated series of systematic operations engaged in as a business or segment of a business which transforms or converts tangible personal property by physical, chemical or other means into a different form, composition or character from that in which it originally existed.

(11) “Person” means any individual, partnership, association, corporation, limited liability company, limited liability partnership or any other legal entity, including this state or its political subdivisions or an agency of either, or the guardian, trustee, committee, executor or administrator of any person.

(12) “Personal service” includes those: (A) Compensated by the payment of wages in the ordinary course of employment; and (B) rendered to the person of an individual without, at the same time, selling tangible personal property, such as nursing, barbering, shoe shining, manicuring and similar services.

(13) “Prepaid wireless calling service” means a telecommunications service that provides the right to utilize mobile wireless service as well as other nontelecommunications services,

~~including the download of digital products delivered electronically,~~ content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number decline with use in a known amount: Provided, That, effective January 1, 2022, notwithstanding any provision of this code to the contrary, the download of all digital products delivered electronically shall be taxable.

(14) Production of natural resources.

(A) “Production of natural resources” means, except for oil and gas, the performance, by either the owner of the natural resources or another, of the act or process of exploring, developing, severing, extracting, reducing to possession and loading for shipment and shipment for sale, profit or commercial use of any natural resource products and any reclamation, waste disposal or environmental activities associated therewith and the construction, installation or fabrication of ventilation structures, mine shafts, slopes, boreholes, dewatering structures, including associated facilities and apparatus, by the producer or others, including contractors and subcontractors, at a coal mine or coal production facility.

(B) For the natural resources oil and gas, “production of natural resources” means the performance, by either the owner of the natural resources, a contractor or a subcontractor, of the act or process of exploring, developing, drilling, well-stimulation activities such as logging, perforating or fracturing, well-completion activities such as the installation of the casing, tubing and other machinery and equipment and any reclamation, waste disposal or environmental activities associated therewith, including the installation of the gathering system or other pipeline to transport the oil and gas produced or environmental activities associated therewith and any service work performed on the well or well site after production of the well has initially commenced.

(C) All work performed to install or maintain facilities up to the point of sale for severance tax purposes is included in the “production of natural resources” and subject to the direct use concept.

(D) “Production of natural resources” does not include the performance or furnishing of work, or materials or work, in fulfillment of a contract for the construction, alteration, repair, decoration or improvement of a new or existing building or structure, or any part thereof, or for the alteration, improvement or development of real property, by persons other than those otherwise directly engaged in the activities specifically set forth in this subdivision as “production of natural resources”.

(15) “Providing a public service or the operating of a utility business” means the providing of a public service or the operating of a utility by businesses subject to the business and occupation tax imposed by sections two and two-d, article thirteen of this chapter.

(16) “Purchaser” means a person who purchases tangible personal property, custom software or a service taxed by this article.

(17) “Sale”, “sales” or “selling” includes any transfer of the possession or ownership of tangible personal property or custom software for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor’s business and is made to the transferee or his or her agent for consumption or use or any other purpose. “Sale” also includes the furnishing of a service for consideration. Notwithstanding anything to the contrary in this code, effective after June 30, 2008, “sale” also includes the furnishing of prepaid wireless calling service for consideration.

(18) “Service” or “selected service” includes all nonprofessional activities engaged in for other persons for a consideration, which involve the rendering of a service as distinguished from the sale of tangible personal property or custom software, but does not include contracting, personal services or the services rendered by an employee to his or her employer or any service rendered for resale: *Provided*, That the term “service” or “selected service” does not include payments received by a vendor of tangible personal property as an incentive to sell a greater volume of such tangible personal property under a manufacturer’s,

distributor's or other third party's marketing support program, sales incentive program, cooperative advertising agreement or similar type of program or agreement, and these payments are not considered to be payments for a "service" or "selected service" rendered, even though the vendor may engage in attendant or ancillary activities associated with the sales of tangible personal property as required under the programs or agreements.

(19) "Streamlined Sales and Use Tax Agreement" or "agreement", when used in this article, has the same meaning as when used in article fifteen-b of this chapter, except when the context in which the word "agreement" is used clearly indicates that a different meaning is intended by the Legislature.

(20) "Tax" includes all taxes, additions to tax, interest and penalties levied under this article or article ten of this chapter.

(21) "Tax Commissioner" means the State Tax Commissioner or his or her delegate. The term "delegate" in the phrase "or his or her delegate", when used in reference to the Tax Commissioner, means any officer or employee of the state Tax ~~Division~~ Department duly authorized by the Tax Commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated for this article.

(22) "Taxpayer" means any person liable for the tax imposed by this article or additions to tax, penalties and interest imposed by article ten of this chapter.

(23) "Transmission" means the act or process of causing liquid, natural gas or electricity to pass or be conveyed from one place or geographical location to another place or geographical location through a pipeline or other medium for commercial purposes.

(24) "Transportation" means the act or process of conveying, as a commercial enterprise, passengers or goods from one place or geographical location to another place or geographical location.

(25) “Ultimate consumer” or “consumer” means a person who uses or consumes services or personal property.

(26) “Vendor” means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article.

(c) *Additional definitions.* — Other terms used in this article are defined in article fifteen-b of this chapter, which definitions are incorporated by reference into article fifteen of this chapter. Additionally, other sections of this article may define terms primarily used in the section in which the term is defined.

### **§11-15-3. Amount of tax; allocation of tax and transfers.**

(a) *Vendor to collect.* — For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax as provided under this article and article fifteen-b of this chapter, and shall pay the amount of tax to the Tax Commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

(b) *Amount of tax.* — The general consumer sales and service tax imposed by this article shall be at the rate of 6¢ on the dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the rate of 5¢ on the dollar of sales.

(c) *Calculation tax on fractional parts of a dollar until January 1, 2004.* — There shall be no tax on sales where the monetary consideration is 5¢ or less. The amount of the tax shall be computed as follows:

(1) On each sale, where the monetary consideration is from 6¢ to 16¢, both inclusive, 1¢.

(2) On each sale, where the monetary consideration is from 17¢ to 33¢, both inclusive, 2¢.

(3) On each sale, where the monetary consideration is from 34¢ to 50¢, both inclusive, 3¢.

(4) On each sale, where the monetary consideration is from 51¢ to 67¢, both inclusive, 4¢.

(5) On each sale, where the monetary consideration is from 68¢ to 84¢, both inclusive, 5¢.

(6) On each sale, where the monetary consideration is from 85¢ to \$1, both inclusive, 6¢.

(7) If the sale price is in excess of \$1, 6¢ on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: 1¢ on the fractional part of the dollar if less than 17¢; 2¢ on the fractional part of the dollar if in excess of 16¢ but less than 34¢; 3¢ on the fractional part of the dollar if in excess of 33¢ but less than 51¢; 4¢ on the fractional part of the dollar if in excess of 50¢ but less than 68¢; 5¢ on the fractional part of the dollar if in excess of 67¢ but less than 85¢; and 6¢ on the fractional part of the dollar if in excess of 84¢. For example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7¢; on sales from \$1.17 to \$1.33, both inclusive, 8¢; on sales from \$1.34 to \$1.50, both inclusive, 9¢; on sales from \$1.51 to \$1.67, both inclusive, 10¢; on sales from \$1.68 to \$1.84, both inclusive, 11¢ and on sales from \$1.85 to \$2, both inclusive, 12¢: *Provided*, That beginning January 1, 2004, tax due under this article shall be calculated as provided in subsection (d) of this subsection and this subsection (c) does not apply to sales made after December 31, 2003.

(d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* — Beginning January 1, 2004, the tax computation under subsection (b) of this section shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(e) *No aggregation of separate sales transactions, exception for coin-operated devices.* — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though the sales are aggregated in the billing or payment therefor. Notwithstanding any other provision of this article, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(f) *Rate of tax on certain mobile homes.* — Notwithstanding any provision of this article to the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six percent of fifty percent of the sales price.

(g) *Construction; custom software.* — After December 31, 2003, whenever the words “tangible personal property” or “property” appear in this article, the same shall also include the words “custom software”.

(h) *Computation of tax on sales of gasoline and special fuel.* — The method of computation of tax provided in this section does not apply to sales of gasoline and special fuel.

(i) Calculation of tax after January 1, 2022 - After January 1, 2022, the general consumer sales and service tax imposed by this article shall be at the rate of 8¢ on the dollar of sales or services, excluding gasoline and special fuel sales.

**§11-15-3b. Exceptions to reduced rate of tax on food and food ingredients intended for human consumption; increased rate of taxation after January 1, 2022.**

The reduced rate of tax provided on food and food ingredients intended for human consumption provided in section three-a of this article shall not apply to sales, purchases and uses by consumers of “prepared food”, as defined in ~~article fifteen-b of this chapter~~ §11-15b-1 et seq. of this code, which shall remain taxable at the general rate of tax specified in ~~section three of this article and section two,~~

~~article fifteen a of this chapter §11-15-3 and §11-15b-2 of this code: *Provided*, That after June 30, 2007, the reduced rate of tax provided in section three a of this article §11-15-3-a of this code shall not apply to sales, purchases and uses by consumers of “prepared food”, “food sold through vending machines” and “soft drinks” as defined in article fifteen b of this chapter §11-15b-1 *et seq.* of this code, which shall be taxed at the general rate of tax specified in section three of this article and section two, article fifteen a of this chapter §11-15-3 and §11-15b-2 of this code: *Provided, however*, That effective January 1, 2022, the rate of tax specified in §11-15-3 and §11-15b-2 of this code shall not apply to sales, purchases and uses by consumers of “prepared food”, “food sold through vending machines” and “soft drinks” as defined §11-15b-1 *et seq.* of this code, those sales, purchases and uses by consumers shall be taxed at the rate of 8¢ per dollar.~~

#### **§11-15-8. Furnishing of services included; exceptions.**

(a) The provisions of this article apply not only to selling tangible personal property and custom software, but also to the furnishing of all services, except professional and personal services except as otherwise provided in this article, and except those services furnished by businesses subject to the control of the Public Service Commission when the service or the manner in which it is delivered is subject to regulation by the Public Service Commission.

(b) Notwithstanding any provision of this code to the contrary, on and after January 1, 2022, the sales of professional accounting services, sales of professional legal services, sales of professional engineering services, and sales of professional architect services shall be subject to a three percent excise tax: *Provided*, That notwithstanding any provision of this code to the contrary, any amount over \$1000 derived through the performance of legal services provided on a contingency fee basis that result in a legal settlement shall have an excise tax imposed on it at the rate of 8 percent of the amount derived.

(c) The proceeds from the additional tax on legal services provided on a contingency basis shall be deposited in the Stabilization and Future Economic Reform Fund as set forth in §11B-2-32 of this code.

### **§11-15-9. Exemptions.**

(a) *Exemptions for which exemption certificate may be issued.*

— A person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the Tax Commissioner, and deliver it to the vendor of the property or service in the manner required by the Tax Commissioner. However, the Tax Commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(1) Sales of gas, steam, and water delivered to consumers through mains or pipes and sales of electricity;

(2) Sales of textbooks required to be used in any of the schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to the West Virginia Department of Education and the Arts, the Higher Education Policy Commission, or the Council for Community and Technical College Education for universities and colleges located in this state;

(3) Sales of property or services to this state, its institutions or subdivisions, governmental units, institutions, or subdivisions of other states: *Provided*, That the law of the other state provides the same exemption to governmental units or subdivisions of this state and to the United States, including agencies of federal, state, or local governments for distribution in public welfare or relief work;

(4) Sales of vehicles which are titled by the Division of Motor Vehicles and which are subject to the tax imposed by §11-15-3c of this code or like tax;

(5) Sales of property or services to churches which make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, food for meals, and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(6) Sales of tangible personal property or services to a corporation or organization which has a current registration certificate issued under §11-12-1 *et seq.* of this code, which is exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, and which is:

(A) A church or a convention or association of churches as defined in Section 170 of the Internal Revenue Code of 1986, as amended;

(B) An elementary or secondary school which maintains a regular faculty and curriculum and has a regularly enrolled body of pupils or students in attendance at the place in this state where its educational activities are regularly carried on;

(C) A corporation or organization which annually receives more than one half of its support from any combination of gifts, grants, direct or indirect charitable contributions, or membership fees;

(D) An organization which has no paid employees and its gross income from fundraisers, less reasonable and necessary expenses incurred to raise the gross income (or the tangible personal property or services purchased with the net income), is donated to an organization which is exempt from income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended;

(E) A youth organization, such as the Girl Scouts of the United States of America, the Boy Scouts of America, or the YMCA Indian Guide/Princess Program and the local affiliates thereof, which is organized and operated exclusively for charitable

purposes and has as its primary purpose the nonsectarian character development and citizenship training of its members;

(F) For purposes of this subsection:

(i) The term “support” includes, but is not limited to:

(I) Gifts, grants, contributions, or membership fees;

(II) Gross receipts from fundraisers which include receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities in any activity which is not an unrelated trade or business within the meaning of Section 513 of the Internal Revenue Code of 1986, as amended;

(III) Net income from unrelated business activities, whether or not the activities are carried on regularly as a trade or business;

(IV) Gross investment income as defined in Section 509(e) of the Internal Revenue Code of 1986, as amended;

(V) Tax revenues levied for the benefit of a corporation or organization either paid to or expended on behalf of the organization; and

(VI) The value of services or facilities (exclusive of services or facilities generally furnished to the public without charge) furnished by a governmental unit referred to in Section 170(c)(1) of the Internal Revenue Code of 1986, as amended, to an organization without charge. This term does not include any gain from the sale or other disposition of property which would be considered as gain from the sale or exchange of a capital asset or the value of an exemption from any federal, state, or local tax or any similar benefit;

(ii) The term “charitable contribution” means a contribution or gift to or for the use of a corporation or organization, described in Section 170(c)(2) of the Internal Revenue Code of 1986, as amended; and

(iii) The term “membership fee” does not include any amounts paid for tangible personal property or specific services rendered to members by the corporation or organization;

(G) The exemption allowed by this subdivision does not apply to sales of gasoline or special fuel or to sales of tangible personal property or services to be used or consumed in the generation of unrelated business income as defined in Section 513 of the Internal Revenue Code of 1986, as amended. The exemption granted in this subdivision applies only to services, equipment, supplies, and materials used or consumed in the activities for which the organizations qualify as tax-exempt organizations under the Internal Revenue Code and does not apply to purchases of gasoline or special fuel which are taxable as provided in §11-14C-1 *et seq.* of this code;

(7) An isolated transaction in which any taxable service or any tangible personal property is sold, transferred, offered for sale, or delivered by the owner of the property or by his or her representative for the owner’s account, the sale, transfer, offer for sale, or delivery not being made in the ordinary course of repeated and successive transactions of like character by the owner or on his or her account by the representative: *Provided*, That nothing contained in this subdivision may be construed to prevent an owner who sells, transfers, or offers for sale tangible personal property in an isolated transaction through an auctioneer from availing himself or herself of the exemption provided in this subdivision, regardless of where the isolated sale takes place. The Tax Commissioner may propose a legislative rule for promulgation pursuant to §29A-3-1 *et seq.* of this code which he or she considers necessary for the efficient administration of this exemption;

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: *Provided*, That sales of tangible personal property and services to be used or consumed in the construction of or permanent improvement to real property and

sales of gasoline and special fuel are not exempt: *Provided, however,* That nails and fencing may not be considered as improvements to real property;

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property: *Provided,* That sales of gasoline and special fuel by distributors and importers is taxable except when the sale is to another distributor for resale: *Provided, however,* That sales of building materials or building supplies or other property to any person engaging in the activity of contracting, as defined in this article, which is to be installed in, affixed to or incorporated by that person or his or her agent into any real property, building, or structure is not exempt under this subdivision;

(10) Sales of newspapers when delivered to consumers by route carriers;

(11) Sales of drugs, durable medical goods, mobility-enhancing equipment and prosthetic devices dispensed upon prescription and sales of insulin to consumers for medical purposes;

~~(12) Sales of radio and television broadcasting time, preprinted advertising circulars and newspaper, and outdoor advertising space for the advertisement of goods or services;~~

~~(13)~~ (12) Sales and services performed by day care centers;

~~(14)~~ (13) Casual and occasional sales of property or services not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character by a corporation or organization which is exempt from tax under subdivision (6) of this subsection on its purchases of tangible personal property or services. For purposes of this subdivision, the term “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of like character” means sales of tangible personal property or services at fundraisers sponsored by a corporation or

organization which is exempt, under subdivision (6) of this subsection, from payment of the tax imposed by this article on its purchases when the fundraisers are of limited duration and are held no more than six times during any 12-month period and “limited duration” means no more than 84 consecutive hours: *Provided*, That sales for volunteer fire departments and volunteer school support groups, with duration of events being no more than 84 consecutive hours at a time, which are held no more than 18 times in a 12-month period for the purposes of this subdivision are considered “casual and occasional sales not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions of a like character”;

~~(15)~~ (14) Sales of property or services to a school which has approval from the Higher Education Policy Commission or the Council for Community and Technical College Education to award degrees, which has its principal campus in this state and which is exempt from federal and state income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended: *Provided*, That sales of gasoline and special fuel are taxable as provided in §11-15-18, §11-15-18b, and §11-14C-1 *et seq.* of this code;

~~(16)~~ (15) Sales of lottery tickets and materials by licensed lottery sales agents and lottery retailers authorized by the State Lottery Commission, under the provisions of §29-22-1 *et seq.* of this code;

~~(17)~~ (16) Leases of motor vehicles titled pursuant to the provisions of §17A-3-1 *et seq.* of this code to lessees for a period of 30 or more consecutive days;

~~(18)~~ (17) Notwithstanding the provisions of §11-15-18 or §11-15-18b of this code or any other provision of this article to the contrary, sales of propane to consumers for poultry house heating purposes, with any seller to the consumer who may have prior paid the tax in his or her price, to not pass on the same to the consumer, but to make application and receive refund of the tax from the Tax Commissioner pursuant to rules which are promulgated after being

proposed for legislative approval in accordance with chapter 29A of this code by the Tax Commissioner;

~~(19)~~ (18) Any sales of tangible personal property or services purchased and lawfully paid for with food stamps pursuant to the federal food stamp program codified in 7 U. S. C. §2011, *et seq.*, as amended, or with drafts issued through the West Virginia special supplement food program for women, infants, and children codified in 42 U. S. C. §1786;

~~(20)~~ (19) Sales of tickets for activities sponsored by elementary and secondary schools located within this state;

~~(21)~~ ~~Sales of electronic data processing services and related software: *Provided, That, for the purposes of this subdivision, "electronic data processing services" means:*~~

~~(A) The processing of another's data, including all processes incident to processing of data such as keypunching, keystroke verification, rearranging, or sorting of previously documented data for the purpose of data entry or automatic processing and changing the medium on which data is sorted, whether these processes are done by the same person or several persons; and~~

~~(B) Providing access to computer equipment for the purpose of processing data or examining or acquiring data stored in or accessible to the computer equipment;~~

~~(22)~~ (20) Tuition charged for attending educational summer camps;

~~(23)~~ (21) Dispensing of services performed by one corporation, partnership, or limited liability company for another corporation, partnership, or limited liability company when the entities are members of the same controlled group or are related taxpayers as defined in Section 267 of the Internal Revenue Code. "Control" means ownership, directly or indirectly, of stock, equity interests, or membership interests possessing 50 percent or more of the total combined voting power of all classes of the stock of a corporation, equity interests of a partnership or membership interests of a

limited liability company entitled to vote or ownership, directly or indirectly, of stock, equity interests or membership interests possessing 50 percent or more of the value of the corporation, partnership, or limited liability company;

~~(24)~~ (22) Food for the following are exempt:

(A) Food purchased or sold by a public or private school, school-sponsored student organizations, or school-sponsored parent-teacher associations to students enrolled in the school or to employees of the school during normal school hours; but not those sales of food made to the general public;

(B) Food purchased or sold by a public or private college or university or by a student organization officially recognized by the college or university to students enrolled at the college or university when the sales are made on a contract basis so that a fixed price is paid for consumption of food products for a specific period of time without respect to the amount of food product actually consumed by the particular individual contracting for the sale and no money is paid at the time the food product is served or consumed;

(C) Food purchased or sold by a charitable or private nonprofit organization, a nonprofit organization, or a governmental agency under a program to provide food to low-income persons at or below cost;

(D) Food sold by a charitable or private nonprofit organization, a nonprofit organization, or a governmental agency under a program operating in West Virginia for a minimum of five years to provide food at or below cost to individuals who perform a minimum of two hours of community service for each unit of food purchased from the organization;

(E) Food sold in an occasional sale by a charitable or nonprofit organization, including volunteer fire departments and rescue squads, if the purpose of the sale is to obtain revenue for the

functions and activities of the organization and the revenue obtained is actually expended for that purpose;

(F) Food sold by any religious organization at a social or other gathering conducted by it or under its auspices, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenue obtained from selling the food is actually used in carrying out those functions and activities: *Provided*, That purchases made by the organizations are not exempt as a purchase for resale; or

(G) Food sold by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, when the purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

~~(25)~~ (23) Sales of food by little leagues, midget football leagues, youth football or soccer leagues, band boosters, or other school, or athletic booster organizations supporting activities for grades kindergarten through 12 and similar types of organizations, including scouting groups and church youth groups, if the purpose in selling the food is to obtain revenue for the functions and activities of the organization and the revenues obtained from selling the food is actually used in supporting or carrying on functions and activities of the groups: *Provided*, That the purchases made by the organizations are not exempt as a purchase for resale;

~~(26)~~ (24) Charges for room and meals by fraternities and sororities to their members: *Provided*, That the purchases made by a fraternity or sorority are not exempt as a purchase for resale;

~~(27)~~ (25) Sales of or charges for the transportation of passengers in interstate commerce;

~~(28)~~ (26) Sales of tangible personal property or services to any person which this state is prohibited from taxing under the laws of the United States or under the Constitution of this state;

~~(29)~~ (27) Sales of tangible personal property or services to any person who claims exemption from the tax imposed by this article or §11-15A-1 *et seq.* of this code, or pursuant to the provision of any other chapter of this code;

~~(30)~~ (28) Charges for the services of opening and closing a burial lot;

~~(31)~~ (29) Sales of livestock, poultry, or other farm products in their original state by the producer of the livestock, poultry, or other farm products or a member of the producer's immediate family who is not otherwise engaged in making retail sales of tangible personal property; and sales of livestock sold at public sales sponsored by breeders or registry associations or livestock auction markets: *Provided*, That the exemptions allowed by this subdivision may be claimed without presenting or obtaining exemption certificates provided the farmer maintains adequate records;

~~(32)~~ (30) Sales of motion picture films to motion picture exhibitors for exhibition if the sale of tickets or the charge for admission to the exhibition of the film is subject to the tax imposed by this article and sales of coin-operated video arcade machines or video arcade games to a person engaged in the business of providing the machines to the public for a charge upon which the tax imposed by this article is remitted to the Tax Commissioner: *Provided*, That the exemption provided in this subdivision may be claimed by presenting to the seller a properly executed exemption certificate;

~~(33)~~ (31) Sales of aircraft repair, remodeling, and maintenance services when the services are to an aircraft operated by a certified or licensed carrier of persons or property, or by a governmental entity, or to an engine or other component part of an aircraft operated by a certificated or licensed carrier of persons or property, or by a governmental entity and sales of tangible personal property that is permanently affixed or permanently attached as a component part of an aircraft owned or operated by a certificated or licensed carrier of persons or property, or by a governmental

entity, as part of the repair, remodeling, or maintenance service and sales of machinery, tools, or equipment directly used or consumed exclusively in the repair, remodeling, or maintenance of aircraft, aircraft engines, or aircraft component parts for a certificated or licensed carrier of persons or property or for a governmental entity;

~~(34) Charges for memberships or services provided by health and fitness organizations relating to personalized fitness programs;~~

~~(35)~~ (32) Sales of services by individuals who babysit for a profit: *Provided*, That the gross receipts of the individual from the performance of baby-sitting services do not exceed \$5,000 in a taxable year;

~~(36)~~ (33) Sales of services by public libraries or by libraries at academic institutions or by libraries at institutions of higher learning;

~~(37)~~ (34) Commissions received by a manufacturer's representative;

~~(38)~~ (35) Sales of primary opinion research services when:

(A) The services are provided to an out-of-state client;

(B) The results of the service activities, including, but not limited to, reports, lists of focus group recruits and compilation of data are transferred to the client across state lines by mail, wire, or other means of interstate commerce, for use by the client outside the state of West Virginia; and

(C) The transfer of the results of the service activities is an indispensable part of the overall service.

For the purpose of this subdivision, the term "primary opinion research" means original research in the form of telephone surveys, mall intercept surveys, focus group research, direct mail surveys, personal interviews, and other data collection methods commonly used for quantitative and qualitative opinion research studies;

~~(39)~~ (36) Sales of property or services to persons within the state when those sales are for the purposes of the production of value-added products: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, and materials directly used or consumed by those persons engaged solely in the production of value-added products: *Provided, however*, That this exemption may not be claimed by any one purchaser for more than five consecutive years, except as otherwise permitted in this section.

For the purpose of this subdivision, the term “value-added product” means the following products derived from processing a raw agricultural product, whether for human consumption or for other use. For purposes of this subdivision, the following enterprises qualify as processing raw agricultural products into value-added products: Those engaged in the conversion of:

(A) Lumber into furniture, toys, collectibles, and home furnishings;

(B) Fruits into wine;

(C) Honey into wine;

(D) Wool into fabric;

(E) Raw hides into semi-finished or finished leather products;

(F) Milk into cheese;

(G) Fruits or vegetables into a dried, canned, or frozen product;

(H) Feeder cattle into commonly accepted slaughter weights;

(I) Aquatic animals into a dried, canned, cooked, or frozen product; and

(J) Poultry into a dried, canned, cooked, or frozen product;

~~(40)~~ (37) Sales of music instructional services by a music teacher and artistic services or artistic performances of an entertainer or performing artist pursuant to a contract with the owner or operator of a retail establishment, restaurant, inn, bar, tavern, sports or other entertainment facility, or any other business location in this state in which the public or a limited portion of the public may assemble to hear or see musical works or other artistic works be performed for the enjoyment of the members of the public there assembled when the amount paid by the owner or operator for the artistic service or artistic performance does not exceed \$3,000: *Provided*, That nothing contained herein may be construed to deprive private social gatherings, weddings, or other private parties from asserting the exemption set forth in this subdivision. For the purposes of this exemption, artistic performance or artistic service means and is limited to the conscious use of creative power, imagination, and skill in the creation of aesthetic experience for an audience present and in attendance and includes, and is limited to, stage plays, musical performances, poetry recitations and other readings, dance presentation, circuses and similar presentations, and does not include the showing of any film or moving picture, gallery presentations of sculptural or pictorial art, nude or strip show presentations, video games, video arcades, carnival rides, radio or television shows, or any video or audio taped presentations, or the sale or leasing of video or audio tapes, air shows, or any other public meeting, display or show other than those specified herein: *Provided, however*, That nothing contained herein may be construed to exempt the sales of tickets from the tax imposed in this article. The State Tax Commissioner shall propose a legislative rule pursuant to §29A-3-1 *et seq.* of this code establishing definitions and eligibility criteria for asserting this exemption which is not inconsistent with the provisions set forth herein: *Provided further*, That nude dancers or strippers may not be considered as entertainers for the purposes of this exemption;

~~(41)~~ (38) Charges to a member by a membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, for membership in the association or organization, including charges to members for newsletters

prepared by the association or organization for distribution primarily to its members, charges to members for continuing education seminars, workshops, conventions, lectures, or courses put on or sponsored by the association or organization, including charges for related course materials prepared by the association or organization or by the speaker or speakers for use during the continuing education seminar, workshop, convention, lecture, or course, but not including any separate charge or separately stated charge for meals, lodging, entertainment, or transportation taxable under this article: *Provided*, That the association or organization pays the tax imposed by this article on its purchases of meals, lodging, entertainment, or transportation taxable under this article for which a separate or separately stated charge is not made. A membership association or organization which is exempt from paying federal income taxes under Section 501(c)(3) or (c)(6) of the Internal Revenue Code of 1986, as amended, may elect to pay the tax imposed under this article on the purchases for which a separate charge or separately stated charge could apply and not charge its members the tax imposed by this article or the association or organization may avail itself of the exemption set forth in subdivision (9) of this subsection relating to purchases of tangible personal property for resale and then collect the tax imposed by this article on those items from its member;

~~(42)~~ (39) Sales of governmental services or governmental materials by county assessors, county sheriffs, county clerks, or circuit clerks in the normal course of local government operations;

~~(43)~~ (40) Direct or subscription sales by the Division of Natural Resources of the magazine currently entitled Wonderful West Virginia and by the Division of Culture and History of the magazine currently entitled Goldenseal and the journal currently entitled West Virginia History;

~~(44)~~ (41) Sales of soap to be used at car wash facilities;

~~(45)~~ (42) Commissions received by a travel agency from an out-of-state vendor;

~~(46)~~ (43) The service of providing technical evaluations for compliance with federal and state environmental standards provided by environmental and industrial consultants who have formal certification through the West Virginia Department of Environmental Protection or the West Virginia Bureau for Public Health, or both. For purposes of this exemption, the service of providing technical evaluations for compliance with federal and state environmental standards includes those costs of tangible personal property directly used in providing such services that are separately billed to the purchaser of such services and on which the tax imposed by this article has previously been paid by the service provider;

~~(47)~~ (44) Sales of tangible personal property and services by volunteer fire departments and rescue squads that are exempt from federal income taxes under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, if the sole purpose of the sale is to obtain revenue for the functions and activities of the organization and the revenue obtained is exempt from federal income tax and actually expended for that purpose;

~~(48)~~ (45) Lodging franchise fees, including royalties, marketing fees, reservation system fees, or other fees assessed that have been or may be imposed by a lodging franchiser as a condition of the franchise agreement;

~~(49)~~ (46) Sales of the regulation size United States flag and the regulation size West Virginia flag for display; and

~~(50)~~ (47) Sales of an aircraft sold in this state on or after July 1, 2020, as evidenced by a Federal Aviation Administration Bill of Sale AC Form 8050-2 and registered outside of this state as evidenced by Federal Aviation Administration Aircraft Registration AC Form 8050-1 shall be exempt, so long as the aircraft is removed from this state within 60 days of the date of purchase on the bill of sale. The time between the date of purchase and the removal of the aircraft shall not be counted for purposes of determining whether the aircraft is subject to use tax.

(b) *Refundable exemptions.* — Any person having a right or claim to any exemption set forth in this subsection shall first pay to the vendor the tax imposed by this article and then apply to the Tax Commissioner for a refund or credit, or as provided in §11-15-9d of this code give to the vendor his or her West Virginia direct pay permit number. The following sales of tangible personal property and services are exempt from tax as provided in this subsection:

(1) Sales of property or services to bona fide charitable organizations who make no charge whatsoever for the services they render: *Provided*, That the exemption granted in this subdivision applies only to services, equipment, supplies, food, meals, and materials directly used or consumed by these organizations and does not apply to purchases of gasoline or special fuel;

(2) Sales of services, machinery, supplies, and materials directly used or consumed in the activities of manufacturing, transportation, transmission, communication, production of natural resources, gas storage, generation, or production or selling electric power, provision of a public utility service or the operation of a utility service or the operation of a utility business, in the businesses or organizations named in this subdivision and does not apply to purchases of gasoline or special fuel;

(3) Sales of property or services to nationally chartered fraternal or social organizations for the sole purpose of free distribution in public welfare or relief work: *Provided*, That sales of gasoline and special fuel are taxable;

(4) Sales and services, firefighting or station house equipment, including construction and automotive, made to any volunteer fire department organized and incorporated under the laws of the State of West Virginia: *Provided*, That sales of gasoline and special fuel are taxable; and

(5) Sales of building materials or building supplies or other property to an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended, which are to be installed in, affixed to, or incorporated by, the

organization or its agent into real property or into a building or structure which is or will be used as permanent low-income housing, transitional housing, an emergency homeless shelter, a domestic violence shelter, or an emergency children and youth shelter if the shelter is owned, managed, developed, or operated by an organization qualified under Section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986, as amended.

(c) *Effective date.* – The amendments to this section in 2018 shall take effect beginning July 1, 2018, and apply to former sales made on and after that date: *Provided*, That the amendments to subdivision (6), subsection (b) of this section take effect upon passage of this act of the Legislature and shall be construed to prohibit on and after January 1, 2018, all transfers to the State Road Fund established in the State Treasury pursuant to section 52, article VI of the Constitution of West Virginia, of the taxes imposed by §11-15-1 *et seq.* and §11-15A-1 *et seq.* of this code.

**§11-15-9h. Exemptions for sales of computer hardware and software directly incorporated into manufactured products; certain leases; sales of electronic data processing service; sales of computer hardware and software directly used in communication; sales of educational software; sales of Internet advertising; sales of high-technology business services directly used in fulfillment of a government contract; sales of tangible personal property for direct use in a high-technology business or Internet advertising business; definitions.**

(a) In order to modernize the exemptions from tax contained in this article as a result of technological advances in computers and the expanded role of computers, the Internet and global instant communications in business and to encourage computer software developers, computer hardware designers, systems engineering firms, electronic data processing companies and other high-technology companies to locate and expand their businesses in West Virginia, the following sales of tangible personal property and software are exempt:

(1) Sales of computer hardware or software (including custom designed software) to be directly incorporated by a manufacturer into a manufactured product. For purposes of this subsection, the payment of licensing fees for the right to incorporate hardware or software developed by persons other than the manufacturer into a manufactured product is exempt from the tax imposed by this article;

(2) Sales of computer hardware or software (including custom designed software) directly used in communication as defined in this article;

(3) Sales of electronic data processing services;

(4) Sales of educational software required to be used in any of the public schools of this state or in any institution in this state which qualifies as a nonprofit or educational institution subject to administration, regulation, certification or approval of the Department of Education, the ~~Department of Education and the Arts~~ or the Higher Education Policy Commission;

(5) Sales of Internet advertising of goods and services;

(6) Sales of high-technology business services to high-technology businesses which enter into contracts with this state, its institutions and subdivisions, governmental units, institutions or subdivisions of other states, or with the United States, including agencies of federal, state or local governments for direct use in fulfilling the government contract; and

(7) Sales of prewritten computer software, computers, computer hardware, servers and building materials and tangible personal property to be installed into a building or facility for direct use in a high-technology business or an Internet advertising business.

(b) *Definitions.* —

As used in this article, the following terms have the following meanings:

(1) “Computer hardware” means a computer, as defined in article fifteen-b of this chapter, and the directly and immediately connected physical equipment involved in the performance of data processing or communications functions, including data input, data output, data processing, data storage, and data communication apparatus that is directly and immediately connected to the computer. The term “computer hardware” does not include computer software.

(2) “High-technology business” means and is limited to businesses primarily engaged in the following activities: Computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; design and development of new manufactured products which incorporate computer hardware and software; electronic data processing; network management, maintenance, engineering, administration and security services; website management, maintenance, engineering, administration and security services and computer systems management, maintenance, engineering, administration and security services. High-technology business as defined herein is intended to include businesses which engage in the activities enumerated in this definition as their primary business activity, and not as a secondary or incidental activity and not as an activity in support of or incidental to business activity not specifically enumerated in this definition.

(3) “High-technology business services” means and is limited to computer hardware design and development; computer software design, development, customization and upgrade; computer systems design and development; website design and development; network design and development; electronic data processing; computer systems management; computer systems maintenance; computer systems engineering; computer systems administration and computer systems security services.

(4) “Internet advertising business” means a for-profit business that is engaged, for monetary remuneration, in the primary business

activity of announcing, or calling public attention to, goods or services in order to induce the public to purchase those goods or services, and which uses the Internet as its sole advertising communications medium. For purposes of this definition, Internet advertising must be the primary business activity of the business and not a secondary or incidental activity and not an activity in support of or incidental to other business activity.

(5) “Network” means a group of two or more computer systems linked together.

(6) “Server” means a computer or device on a network that manages network resources.

(c) The amendments to this section made in the first extraordinary session of the Legislature in 2009 shall apply to purchases made on and after July 1, 2009.

(d) The provisions of this section shall terminate and shall not apply to any sales made on or after January 1, 2022.

## ARTICLE 15A. USE TAX.

### **§11-15A-2. Imposition of tax; ~~six percent tax rate~~; inclusion of services as taxable; transition rules; allocation of tax and transfers.**

(a) An excise tax is hereby levied and imposed on the use in this state of tangible personal property, custom software or taxable services, to be collected and paid as provided in this article or article fifteen-b of this chapter, at the rate of six percent of the purchase price of the property or taxable services, except as otherwise provided in this article: Provided, That effective January 1, 2022, for sales occurring and services provided the rate of taxation imposed by this article shall be 8% of the purchase price of the property or taxable services, unless provided otherwise in this article.

(b) *Calculation of tax on fractional parts of a dollar.* — The tax computation under subsection (a) of this section shall be carried

to the third decimal place and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(c) “Taxable services,” for the purposes of this article, means services of the nature that are subject to the tax imposed by ~~article fifteen of this chapter~~ §11-15-1 et seq. of this code. In this article, wherever the words “tangible personal property” or “property” appear, the same shall include the words “or taxable services,” where the context so requires.

(d) Use tax is hereby imposed upon every person using tangible personal property, custom software or taxable service within this state. That person’s liability is not extinguished until the tax has been paid. A receipt with the tax separately stated thereon issued by a retailer engaged in business in this state, or by a foreign retailer who is authorized by the Tax Commissioner to collect the tax imposed by this article, relieves the purchaser from further liability for the tax to which the receipt refers.

(e) Purchases of tangible personal property or taxable services made for the government of the United States or any of its agencies by ultimate consumers is subject to the tax imposed by this section. Industrial materials and equipment owned by the federal government within the State of West Virginia of a character not ordinarily readily obtainable within the state, is not subject to use tax when sold, if the industrial materials and equipment would not be subject to use taxes if sold outside of the state for use in West Virginia.

(f) This article does not apply to purchases made by counties or municipal corporations.

## **ARTICLE 17. TOBACCO PRODUCTS EXCISE TAX ACT.**

### **§11-17-3. Levy of tax; ratio; dedication of proceeds.**

(a) *Tax on cigarettes and tobacco products other than cigarettes.* — For the purpose of providing revenue for the General Revenue Fund of the state, an excise tax is hereby levied and imposed on sales of cigarettes and tobacco products other than cigarettes.

(b) *Tax rate on cigarettes.* — Effective May 1, 2003, the excise tax rate levied and imposed on the sale of cigarettes is 55 cents on each 20 cigarettes or in like ratio on any part thereof: *Provided*, That on and after July 1, 2016, the excise tax rate levied and imposed on the sale of cigarettes is \$1.20 on each 20 cigarettes or in like ratio on any part thereof: *Provided, however*, That effective January 1, 2022, the excise tax rate levied and imposed on the sale of cigarettes is \$2.20 on each 20 cigarettes or in like ratio on any part thereof: *Provided, further*, That effective January 1, 2022, 12.5 percent of the excise tax levied pursuant to this section shall be deposited into the fund created pursuant to §11B-2-32 of this code. Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(c) *Tax on tobacco products other than cigarettes.* — Effective January 1, 2002, the excise tax levied and imposed on the sales or use of tobacco products other than cigarettes at the rate equal to seven percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided*, That on and after July 1, 2016, the excise tax rate levied and imposed on the sales or use of tobacco products other than cigarettes is at the rate equal to 12 percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided, however*, That on and after January 1, 2022, the excise tax rate levied and imposed on the sales or use of tobacco products other than cigarettes is at the rate equal to 19.5 percent of the wholesale price of each article or item of tobacco products other than cigarettes sold by the wholesaler or subjobber dealer, whether or not sold at wholesale, or if not sold, then at the

same rate upon the use by the wholesaler or dealer: *Provided, further, That effective January 1, 2022, 7.5 percent of the excise tax levied pursuant to this section shall be deposited into the fund created pursuant to §11B-2-32 of this code.* Only one sale of the same article shall be used in computing the amount of tax due under this subsection.

(d) *Effective date of amendments.* — Amendments to this section enacted in the year 2003 apply in determining tax imposed under this article from May 1, 2003, through June 30, 2016. Amendments to this section enacted in the year 2016 apply in determining tax imposed under this article effective on and after July 1, 2016.

**§11-17-4b. Levy of tax on e-cigarette liquid; definitions; rate; invoice; report; payment; authority of the Tax Commissioner to inspect and examine witnesses; presumption; bond.**

(a) *Definitions.* — When used in this section, words, terms and phrases defined in this subsection, and any variations thereof required by the context, have the meaning ascribed to them in this subsection, except where the context indicates a different meaning is intended.

(1) “E-cigarette” means an electrical or electronic device that provides a smoke, vapor, fog, mist, gas or aerosol suspension of nicotine or another substance that, when used or inhaled, simulates the activity of smoking. The term e-cigarette includes, but is not limited to, a device that is composed of a heating element, battery or electrical or electronic circuit, or a combination of heating element, battery and electrical or electronic circuit, which works in combination with e-liquid to produce an inhalable product. The term e-cigarette includes, but is not limited to, any so designed, or similarly designed, product that is manufactured, distributed, marketed or sold as an e-cigarette, e-cigar, e-pipe or under any other name or descriptor. The term “simulates the activity of smoking”, in the context of this definition, means replicating, mimicking or reproducing an experience similar to inhaling, or

otherwise drawing into the mouth or nose, or exhaling the smoke or combustion product of burning tobacco or any other product or material that can be used in a similar fashion.

(2) “E-cigarette liquid” means any of the liquids or liquid mixtures used in e-cigarettes and is also known as e-juice, e-fluid, e-liquid or e-liquid product. E-cigarette liquid includes e-cigarette liquid mixing kits and e-cigarette liquid mixing kit components. When used in, or with, an e-cigarette, e-cigarette liquid is vaporized or otherwise converted into an inhalable product. E-cigarette liquid may or may not include, without limitation, propylene glycol, vegetable glycerin, nicotine from any source or flavorings.

(b) *Levy of tax; rate.* —

(1) On and after July 1, 2016, an excise tax is levied and imposed on sales of e-cigarette liquid at the rate of 7.5 cents per milliliter or fraction thereof, or if not sold, then at the same rate upon the use by the wholesaler or dealer: *Provided, That on and after January 1, 2022, the excise tax levied and imposed on the sales of e-cigarette liquid is at the rate of 23 percent of the wholesale price of each article or item, or if not sold, then at the same rate upon the use by the wholesaler or dealer: Provided, however, That effective January 1, 2022, revenues received from the first 90 percent of the excise tax levied pursuant to this section shall be deposited into the fund created pursuant to §11B-2-32 of this code.* For purposes of this article, any distributor, dealer, subjobber, subjobber dealer, retailer or any other person that imports or transports e-cigarette liquids into this state, or that causes e-cigarette liquids to be imported or transported into this state, is hereby deemed to be a wholesaler for purposes of this section and is liable for the tax imposed under this article. No wholesaler or other person may purchase e-cigarette liquids from any seller not approved by the Tax Commissioner. E-cigarette liquid mixing kits and e-cigarette liquid mixing kit components shall be taxed in accordance with the amount of e-cigarette liquid, in milliliters, that can be produced by or from the kit or components thereof, as determined by the Tax Commissioner.

(2) Only one sale of e-cigarette liquid shall be used in computing the amount of tax due under this section.

(c) *How tax paid; invoice required; reports required; due date; records to be kept.* —

(1) The tax imposed in this section on e-cigarette liquid shall be paid using an invoice method prescribed by the Tax Commissioner.

(2) The tax will be paid on any and all e-cigarette liquid coming into the state for the purpose of sale or use in this state on and after July 1, 2016.

(3) *Contents of delivery ticket or invoice.* — Unless otherwise permitted in writing by the Tax Commissioner, each delivery ticket or invoice for each purchase or sale of e-cigarette liquid must be recorded upon a serially numbered invoice showing:

(A) The name and address of the seller and the purchaser;

(B) The point of delivery;

(C) The date;

(D) (i) The number of e-cigarette cartridges, apparatus, containers or other devices; (ii) the quantity in milliliters of each cartridge, apparatus, container or other device; (iii) the wholesale price of each e-cigarette cartridge, apparatus, container or other device delivered in this state; or (iv) if sold outside of a cartridge or other device or container, the total quantity in milliliters of e-cigarette liquid not in cartridges, apparatus or other device or container delivered in this state and the wholesale price of the e-cigarette liquid;

(E) The invoice must either set out the amount of tax imposed by this article separately on the invoice or the invoice may instead indicate that the tax imposed under this article is included in the total price; and

(F) Any other information required by the Tax Commissioner.

(4) *Reports and payments due date.* — On or before the 15th day of each month, manufacturers, importers, every place of business as defined in this article, retail dealers, subjobbers, vending machine operators and wholesale dealers and their agents, shall file a report covering the business transacted in the previous month providing any information the Tax Commissioner determines necessary for the ascertainment or assessment of the taxes imposed by this article. Reports shall be signed under penalty of perjury and be in a form as prescribed by the Tax Commissioner. The amount of tax shown to be due on the monthly report, if any, shall be remitted on or before the due date of the monthly report. The first report due for e-liquid sales is August 15, 2016, for the sales completed in July 2016.

(5) *Reports required.* — The reports prescribed in this article are required, although a tax may not be due or no business transacted, for the period covered by the report. In the case of any failure to file a report on the date prescribed for filing when no tax is due, unless it is shown that the failure was due to reasonable cause, there is hereby imposed a penalty of \$25 for each month or fraction of a month that such report is delinquent, until the report is filed, in addition to any penalties imposed under section 19A of this article.

(6) *Records.* — Each person required to file a report shall make and keep the records necessary to substantiate the accuracy of the reports required by this section including, but not limited to, records of inventories, receipts, disbursements and sales. Records shall be retained for a period of time not less than three years from the time the report is due or the time when the report is filed, whichever is later.

(d) *Inspection of records and stocks; examination of witnesses; registration of e-cigarette sellers; presumption of nontax paid.* —

(1) The Tax Commissioner has the authority to inspect or examine the records, books and papers, and any equipment or e-

cigarette apparatus, and any stock of e-cigarette liquid kept in or upon the premises of persons who sell, possess or store e-cigarette liquid, for the purpose of determining the quantity and value of e-cigarette liquid acquired, on hand or disbursed, to verify the truth and accuracy of any statement, return, form or report and to ascertain whether the tax imposed by this article has been properly paid.

(2) In addition to the Tax Commissioner's powers set forth in article 10 of this chapter, the Tax Commissioner or the Tax Commissioner's agent may examine witnesses under oath in order to ascertain the amount of taxes and reports due under this article. If a witness or person fails or refuses to testify or grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock of e-cigarette liquid, necessary or useful to ascertain the amount of taxes and reports due under this article, the Tax Commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of the party and the court shall issue a summons to the party to appear before the Tax Commissioner at a place designated within the jurisdiction of the court, on a day fixed, to be continued as the occasion may require for good cause shown, to testify and give evidence and to produce for inspection any books, records and papers that may be required and to grant access to records, books, papers, equipment or e-cigarette apparatus, or any stock of e-cigarette liquid, for the purpose of ascertaining the amount of tax and reports due, if any.

(3) Each wholesale dealer of e-cigarette liquid must register with the Tax Commissioner and maintain a business registration certificate, showing the wholesale dealer of e-cigarette liquid to be registered as a seller of tobacco products or seller of both cigarettes and tobacco products prior to the sale or delivery of e-cigarette liquid to any retail dealer or subjobber in this state. A wholesale dealer may sell tax-paid e-cigarette liquid only to another wholesaler or a retail dealer or subjobber in this state. No person may purchase nontaxed e-cigarette liquid from any seller not approved by the Tax Commissioner.

(4) Whenever e-cigarette liquid is found in the place of business of any retail dealer, without evidence that the tax imposed by this section has been paid, it shall be presumed that the e-cigarette liquid is kept on the premises in violation of this article.

(e) *Bond.* — The Tax Commissioner may require wholesalers, subjobbers or retail dealers to file a continuous surety bond in an amount to be fixed by the Tax Commissioner but no less than \$1,000. The bond shall be conditioned upon faithfully complying with the provisions of this article including the filing of the returns and payment of all taxes prescribed by this article.

(f) *Administration and enforcement.* — The provisions of this article and articles nine and 10 of this chapter apply to administration and enforcement of the excise tax on e-cigarette liquid in the same manner and to the same extent as they apply to administration and enforcement of the excise tax on tobacco products, as imposed under this article.

(g) *Criminal sanctions.* — The criminal sanctions imposed in section nineteen-a of this article are hereby imposed with equal force and application with relation to actions, transactions and responsibilities prescribed under this section and under this article. For the purpose of applying and interpreting the provisions of section nineteen-a of this article, the words “container of tobacco products” shall be interpreted to mean and include the words “container of tobacco products or e-cigarette liquid”.

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-4g. Reduction and elimination of personal income tax.**

#### **(a). Findings.**

**(1) The Legislature finds that the state of West Virginia has suffered a tremendous loss of population over the past ten years. This loss in population is attributable to many factors including, in large part, the burdensome tax structure in West Virginia.**

(2) There is a need to encourage the citizens to not only stay in West Virginia, but for those who may have left to return and for others to consider West Virginia an attractive alternative for relocation. Additionally, if West Virginia is seen as attractive to citizens, business may be more inclined to locate in the state.

(3) The Legislature is committed to taking necessary measures to tackle the issues which have created the drain in population. This includes reforming an overburdensome tax structure. As a result, the Legislature is committed to reductions in the personal income tax and to ultimately reaching a complete elimination of that tax.

(4) This commitment to tax elimination should be done in a financially responsible manner to provide current and future citizens of the state greater personal income and a better quality of life.

(b). *Personal Income Tax Reduction Criteria.*

(1). Effective January 1, 2022, and thereafter, if the balance in the Stabilization and Future Economic Reform Fund as set forth in §11B-2-32 of this code is at or above \$100,000,000 at the end of any fiscal year, then the balance shall be transferred to the General Revenue Fund in increments of \$50,000,000 until the balance in the fund is less than or equal to \$100,000,000 but greater than or equal to \$50,000,000. For each \$50,000,000 incremental transfer the personal income tax shall be reduced by 12.5 basis points at the beginning of the next tax year.

(2) Effective January 1, 2022, and thereafter, there shall be a reduction in the personal income tax that is equal to the unappropriated amount of general revenue. For purposes of this section unappropriated revenue shall mean the difference between the total general revenue of the budget introduced by the Governor and the general revenue amount of the enacted budget. The reduction set forth in this subsection shall be directly proportionate to the amount each of the income brackets as set forth in §11-21-4e of this code contribute to the personal income tax collection in state fiscal year 2019. In those years in which there is no

unappropriated amount of general revenue, there shall be no reduction in the personal income tax.

(3) Effective January 1, 2022, and thereafter, there shall be a dollar-for-dollar reduction in personal income tax for any increase in general revenue over the previous year's actual collections that are attributable to increases to existing revenue sources or newly created revenue sources. These revenue sources shall include, but are not limited to, increased, modifications, or additions to any tax proceeds collected pursuant to this chapter that are deposited into the general revenue. The reduction set forth in this subsection shall be directly proportionate to the amount each of the income bracket as set forth in §11-21-4e of this code contributes to the personal income tax collection in state fiscal year 2019. In those years in which there is no increase in revenue from newly created revenue sources, there shall be no reduction in the personal income tax.

(c) *Further Legislative action required.* When the rate of taxation as set forth in this section has been reduced pursuant to the provisions of this section, that rate shall not again be raised without further action of the Legislature.

(d) *Past tax liabilities.* Tax liabilities, if any, arising for taxable periods prior to the date the tax is repealed, shall be determined, administered, assessed, and collected as if the tax imposed by this article had not been repealed, and the rights and duties of taxpayers and the state shall be fully and completely preserved.

(e) *Complete elimination.* Upon a complete elimination of the personal income tax, every provision of this article shall be repealed for all tax periods beginning on and after January 1 of the first year in which the rate of the personal income tax becomes zero percent.

(f) *Reporting.* The Tax Department shall prepare an annual report to the Joint Committee on Government and Finance detailing any changes to the personal income tax and increases in revenue from increases to existing revenue sources or newly created revenue sources.

(g) Notification. The Tax Department shall at least annually notify taxpayers of any changes in the personal income tax structure. This notice should come at the beginning of each tax year.

(h) Rulemaking. The Tax Department shall promulgate procedural rules to implement the provisions of this section. These rules include:

(1) The process for a reduction of the personal income tax based upon the balance in the fund created pursuant to §11-21-4k;

(2) The process for a reduction of the personal income tax based upon unappropriated amounts of general revenue;

(3) The process for a reduction of the personal income tax based upon increases in general revenue collections over previous years collections;

(4) A means to notify taxpayers of changes to their tax liability, including their tax rate and effective tax rate; and

(5) An annual report to the Joint Committee on Government and Finance of any changes to the personal income tax in the preceding tax year and any increases in collections attributable.

### **§11-21-25. Sales Tax Relief Credit.**

(a) Definitions – As used in this section, the following terms shall have the meaning ascribed to them in this subsection, unless the context in which the term is used clearly requires a different meaning or a specific different definition is provided:

(1) “Household” means the claimant and his or her spouse, if any, living in the same residence, as well any dependent children that may be claimed on the taxpayer’s federal income tax return. The household also includes any persons living in the same dwelling as the claimant and sharing its furnishings, facilities, and accommodation, but does not include bona fide lessees, tenants, or roomers and boarders on contract;

(2) “Household income” means all income received by all persons of a household while members of the household;

(3) “Income” means the sum of adjusted gross income as defined in the United States Internal Revenue Code, the modifications in §11-21-12(b), §11-21-12f and §11-21-12g of this Code increasing federal adjusted gross income, and all nontaxable income, including the amount of capital gains excluded from adjusted gross income, alimony, support money, nontaxable strike benefits, cash public assistance and relief, not including relief granted under this chapter, the gross amount of any pension or annuity, including Railroad Retirement Act benefits and veterans’ disability pensions, all payments received under the federal social security and state reemployment assistance or unemployment insurance laws, nontaxable interest received from the federal government or any of its instrumentalities, workers’ compensation, and the gross amount of loss of time insurance, but not including gifts from nongovernmental sources, food stamps, or surplus foods, or other relief in kind provided by a public agency;

(4) “Tax year” or “taxable year” means the calendar year used for computing household income under this chapter. A claimant’s tax year is the same period as is covered by his federal income tax return.

(b) *Refundable Credit* – Subject to the requirements and limitations of this section, for tax years beginning on and after January 1, 2022, any resident having a gross household income equal to or less than \$35,000 for the tax year, shall be allowed a refundable credit against the taxes imposed by this article equal to the following amounts:

(1) For all residents having a household income of less than \$10,000, the amount of refundable credit shall be \$250.

(2) For all residents having a household income between \$10,001 and \$14,999, the amount of refundable credit shall be \$150.

(3) For all residents having a household income between \$15,000 and \$20,000, the amount of refundable credit shall be \$150.

(4) For all residents having a household income between \$20,001 and \$24,999, the amount of refundable credit shall be \$100.

(5) For all residents having a household income between \$25,000 and \$29,999, the amount of refundable credit shall be \$100.

(6) For all residents having a household income between \$30,000 and \$34,999, the amount of refundable credit shall be \$50.

(c) *One claim per household* - Notwithstanding any other provision of this section to the contrary, only one claimant per household per tax year shall be entitled to relief under this section.

(d) *Advance Refunds of Credit* – The amount of credit which would (but for this subsection) be allowable under this section shall be reduced (but not below zero) by the aggregate refunds and credits made or allowed to the taxpayer under this subsection.

(1) *In General* – Each claimant who would have been an eligible resident based upon their household income in the year preceding the taxable year shall be allowed a prepayment of the credit: *Provided*, That any claim for prepayment of the credit must be made on or before April 15 of the tax year to which it relates.

(2) *Advanced refund amount* – For the 2022 calendar year, for purposes of subdivision (1) of this subsection, the advanced refund amount is the amount that would have been allowed as a credit under this section for the 2020 taxable year if this section had applied to such taxable year.

(3) *Timing and manner of payments* – The Commissioner shall, subject to the provisions of this article, pay any advance refund of credit under the following guidelines:

(i) 25% of the amount of prepayment by June 15 of the taxable year;

(ii) 25% of the amount of prepayment by September 15 of the taxable year;

(iii) 25% of the amount of prepayment by December 15 of the taxable year; and

(iv) 25% of the amount of prepayment by March 15 of the year following the taxable year.

(4) *Interest not accruable* - No interest shall be allowed on any prepayment attributable to this subsection.

(5) *Delivery of payments* – Notwithstanding any provision of this Code to the contrary, the Commissioner may certify and disburse refunds using any reasonable commercial means necessary.

(e) The Commissioner may prescribe such rules as may be necessary to carry out the purposes of this section.to increases to existing revenue sources or newly created revenue sources.

## **CHAPTER 11B. DEPARTMENT OF REVENUE.**

### **ARTICLE 2. STATE BUDGET OFFICE.**

#### **§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.**

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in sections twenty-one and twenty-two of this article. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with this subsection up to an aggregate amount not to exceed thirteen percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended. The Revenue Shortfall Reserve Fund shall be funded as set forth in this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time.

Except as provided otherwise in this subsection, within sixty days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund such amount of the first ~~fifty percent~~ 50% of all surplus revenues, if any, determined to have accrued during the fiscal year just ended, as may be necessary to bring the balance of the Revenue Shortfall Reserve Fund to ~~thirteen percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.~~ If at the end of any fiscal year the Revenue Shortfall Reserve Fund is funded at an amount equal to or exceeding ~~thirteen percent of the state's General Revenue Fund budget for the fiscal year just ended,~~ then there shall be no further deposit by the secretary under the provisions of this section of any surplus revenues as set forth in this subsection until that time the Revenue Shortfall Reserve Fund balance is less than ~~thirteen percent of the total appropriations from the State Fund, General Revenue.~~ when combined with the Revenue Shortfall Reserve Fund – Part B as set forth in subsection (f) of this section is equal to or is greater than 23% of a rolling average of the actual revenue collected in the immediately preceding seven fiscal years, the secretary shall deposit into the Stabilization and Future Economic Reform Fund as set forth in §11B-2-32 of this code 50% of the surplus after deducting any unappropriated balance which for the purposes of this section is the difference between the total general revenue of the budget introduced by the Governor and the general revenue amount of the enacted budget.

(c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the

authority of the Governor to reduce appropriations under this section or §11B-2-21 or §11B-2-22 ~~of this article of this code~~, then in that event the Governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section nineteen, article VI of the Constitution of West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the Revenue Shortfall Reserve Fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the Governor may proceed with a reduction of appropriations pursuant to §11B-2-21 or §11B-2-22 ~~of this article of this code~~. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also proceed with a reduction of appropriations pursuant to sections twenty-one and twenty-two of this article.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters or for other fiscal needs as determined solely by the Legislature.

(e) Prior to October 31 in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund: *Provided*, That for the fiscal year 2014, pursuant to this subsection and subject to all other conditions, requirements and limitations set forth in this section, the Governor may borrow funds from the Revenue Shortfall Reserve Fund prior to the first day of April. The amount of funds borrowed under this subsection shall not exceed one and one-half percent of the general revenue estimate for the

fiscal year in which the funds are to be borrowed, or the amount the Governor determines is necessary to make timely payment of the state's obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within ninety days of their withdrawal.

(f) The Revenue Shortfall Reserve Fund – Part B is continued within the State Treasury. The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to the provisions of section two, article eleven-a, chapter four of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust Fund to the Physician's Mutual Insurance Company pursuant to the provisions of article twenty-f, chapter thirty-three of this code and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part B may be expended as provided in subdivision (2) of this subsection;

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for expenditure for the purposes set forth in §4-11a-3 of this code; and

(3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to, but not exceeding, ten percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.

(h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, \$100 million, or such greater amount as may be certified as necessary by the Director of the Budget Office for the purposes of subsection (e) of this section, 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. All other moneys in the Revenue Shortfall Reserve Fund shall be made available 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. Any balance of the Revenue Shortfall Reserve Fund, including accrued interest and other return earned thereon at the end of any fiscal year, does not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of §12-6-1 *et seq.* of this code. Any balance of the Revenue Shortfall Reserve Fund – Part B, 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 the Revenue Shortfall Reserve Fund – Part B for the purposes set forth in this section.

**§11B-2-32. Stabilization and Future Economic Reform Fund.**

(a) There is created in the State Treasury a special account, designated the “Stabilization and Future Economic Reform Fund”.

which is an interest- and earnings-accumulating account administered by the State Treasurer in accordance with the provisions of this section.

(b) The purpose of the fund is to provide a long term smoothing mechanism for utilizing one time appropriations and volatile revenue sources for decreasing net taxation on the people of West Virginia and to provide long term financial security to the state and its citizens and to act as a means to avoid revenue shortfalls without the necessity of accessing the Revenue Shortfall Reserve Funds as set forth in §11B-2-20 of this code.

(c) The fund shall consist of the following funding sources:

(1) Appropriation by the Legislature;

(2) Income from investments;

(3) Deposits as required by §11B-2-20; and

(4) All other sums available for deposit to the account, public or private.

(d) Any balance remaining in the fund at the end of the fiscal year does not revert to the General Revenue Fund but remains in the fund and may be used in a manner consistent with this article.

(e) For fiscal years beginning on or after January 1, 2022, the Secretary of the Department of Tax and Revenue, with the written approval of the Governor, may transfer additional moneys to the fund to supplement the General Revenue Fund where budget shortfalls may have occurred. The Legislature may authorize transfers of moneys from the fund to stabilize the state's General Revenue Fund up to, but not more than, 50% of the fund's current balance as of the beginning of the fiscal year in which the transfer shall be authorized.

(f) The Stabilization and Future Economic Reform Fund may be invested in the manner permitted by §12-6-8 of this code and the Secretary of the Department of Tax and Revenue may contract

with the West Virginia Investment Management Board, or the West Virginia Board of Treasury Investments, for any services with respect to fund investments that the secretary considers necessary and prudent.

(g) Upon the complete elimination of the state personal income tax as set forth in §11-21-4g of this code, the proceeds from the Stabilization and Future Economic Reform Fund may be utilized to reduce the fiscal impact of additional taxes including but not limited to, taxation on income that is not employee compensation such as interest, dividends, retirement income in the form of pensions or annuities, the manufacturing inventory and equipment tax, and to stabilize the state's annual budget.

## **CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

### **ARTICLE 22. STATE LOTTERY ACT.**

#### **§29-22-9b. Personal income tax reduction instant lottery scratch-off game.**

(a) Beginning January 1, 2022, the commission shall establish an instant lottery scratch-off game designated as the personal income tax reduction game, which is offered by the lottery.

(b) Notwithstanding the provisions of §29-22-18 of this code, all net profits received from the sale of personal income tax reduction benefit game lottery tickets, materials and games are deposited with the state Treasurer into the "Personal Income Tax Reduction Lottery Fund" created under subsection (c) of this section. These funds shall be transferred to the Stabilization and Future Economic Reform Fund as set forth in §11B-2-32 of this code upon written request of the Secretary of Tax and Revenue to the Investment Management Board and the state Treasurer in accordance with the provisions of this section. This transfer shall occur at least annually.

(c) There is created in the state treasury a special revenue fund designated and known as the "Personal Income Tax Reduction

Lottery Fund” which shall consist of all revenues derived from the Personal Income Tax Reduction game and any appropriation to the fund by the Legislature and all interest or other returns earned by the investment of the fund.

(d) The commission shall change the design or theme of the personal income tax reduction game regularly so that the game remains competitive with the other instant lottery scratch-off games offered by the commission. The tickets for the instant lottery game created in this section shall clearly state that the profits derived from the game are being used to eliminate the personal income tax in this state.

Following discussion,

Senator Romano then moved that Senator Tarr’s amendment to Engrossed House Bill 3300 be tabled.

Following discussion,

Senator Trump arose to a point of order stating the motion to table is not a debatable motion under Rule 40 of the Rules of the Senate.

Which point of order, the President ruled well taken.

The question being on the adoption of Senator Romano’s motion that Senator Tarr’s amendment to Engrossed House Bill 3300 be tabled, and on this question, Senator Beach demanded the yeas and nays.

Following a point of inquiry to the President, with resultant response thereto,

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts,

Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's motion that Senator Tarr's amendment to the bill (Eng. H. B. 3300) be tabled was rejected.

Senator Woelfel arose to a point of order citing Rule 15a of the Rules of the Senate which states in part "Prior to any committee reporting a bill to the floor, any bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or other subdivision of the State or in any manner changes or modifies any existing tax or rate of taxation, such bill shall have attached thereto a fiscal note, if available."

Which point of order, the President ruled not well taken stating Rule 15a of the Rules of the Senate applies to bills, not amendments, and a fiscal note had been prepared for the bill.

Following discussion,

Senator Karnes moved the previous question.

Following a point of inquiry to the President, with resultant response thereto,

Senator Woelfel arose to a point of order stating Senator Karnes was on the Senate floor and was not wearing a mask in contravention to Senate rules.

Which point of order, the President ruled not well taken.

The question being on the adoption of the aforesaid motion for the previous question by Senator Karnes, and on this question, Senator Lindsay demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Karnes, and Martin—3.

The nays were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—31.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared the motion for the previous question by Senator Karnes had not prevailed.

Following discussion,

(Senator Weld in the Chair.)

Following discussion,

(Senator Blair, Mr. President, in the Chair.)

Following discussion,

Senator Weld arose to a point of order stating that debate had digressed to a personal nature rather than the merits of Senator Tarr's amendment to the bill.

Which point of order, the President ruled well taken.

Following extended discussion,

The question being on the adoption of Senator Tarr's amendment to the bill, the same was put and prevailed.

Having been engrossed, the bill (Eng. H. B. 3300), as just amended, was then read a third time and put upon its passage.

Following points of inquiry to the President, with resultant responses thereto,

Senator Unger arose to a point of order citing Rule 15a of the Rules of the Senate which states in part “Prior to any committee reporting a bill to the floor, any bill which either increases or decreases the revenue or fiscal liability of the State or any county, municipality or other subdivision of the State or in any manner changes or modifies any existing tax or rate of taxation, such bill shall have attached thereto a fiscal note, if available.”

Which point of order, the President ruled not well taken stating that the pending bill originated in the House of Delegates and a fiscal note had been prepared.

Senator Unger then appealed the ruling of the Chair, and on this question, Senator Unger demanded the yeas and nays.

Following points of inquiry to the President, with resultant responses thereto,

The question being “Shall the Chair be sustained?”

On this question, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—24.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Plymale, Romano, Stollings, Unger, and Woelfel—10.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the Chair sustained.

Pending discussion,

Senator Baldwin moved that the bill (Eng. H. B. 3300) be rereferred to the Committee on Finance.

The question being on the adoption of Senator Baldwin's aforestated motion, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Baldwin's aforestated motion had not prevailed.

Pending discussion,

The question being "Shall Engrossed House Bill 3300 pass?"

Senator Woelfel requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senator Woelfel would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Karnes, Maroney, Maynard, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—18.

The nays were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Martin, Nelson, Phillips, Plymale, Romano, Stollings, Stover, Unger, and Woelfel—16.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3300) passed.

At the request of Senator Tarr, as chair of the Committee on Finance, and by unanimous consent, the unreported Finance committee amendment to the title of the bill was withdrawn.

On motion of Senator Tarr, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 3300**—A Bill to amend and reenact §11-13A-3 and §11-13A-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §11-15-2, §11-15-3, §11-15-3b, §11-15-8, §11-15-9, and §11-15-9h; to amend and reenact §11-15A-2; to amend and reenact §11-17-3 and §11-17-4b; to amend said article by adding thereto new sections, designated §11-21-4g and §11-21-25; to amend and reenact §11B-2-20; to amend said code by adding thereto a new section, designated §11B-2-32; and to amend said code by adding thereto a new section, designated §29-22-9B, all relating to optimizing economic efficiency and revenue efficiency of the West Virginia tax structure, across multiple facets of the tax system, and to modernize State taxation to reflect best practices, and standards for an integrated tax system; reducing the personal income tax; providing for revenue replacement measures; relating to the severance tax imposed on the privilege of severing coal, oil, and natural gas for sale, profit or commercial use; specifying classifications of certain natural resources; specifying tiered rates for certain classifications of natural resources; changing the rate of the consumer sales and service tax and use tax; modifying tax on prepared foods; relating to the imposition of the consumers sales and service and the use tax upon the provision of certain professional services; providing for an excise tax on professional

legal, engineering, architectural, and accounting services; providing for an excise tax on legal settlements based on a contingency fee agreement; relating to the imposition of the consumer sales and service and use tax on advertising services, electronic data processing, personalized fitness services, and certain high technology services and equipment; modifying the use tax; relating to increasing the excise tax on cigarettes, other tobacco products, and e-cigarette liquid; to phase in a reduction in the rate of personal income tax; to provide that further action of the Legislature is necessary to raise the personal income tax following a reduction; to provide for elimination of the personal income tax upon the occurrence of certain events; providing findings; requiring notification to taxpayers of changes to personal income tax; requiring reporting to the legislature; allowing for inoperability of certain statutory provisions upon complete elimination of the personal income tax; to provide for tax liabilities that existed prior to elimination of personal income tax; providing a tax credit for low income households to offset the sales tax increase; providing for early payment of the credit; to establish Stabilization and Future Economic Reform Fund; to dedicate certain funding sources to fund; allowing fund to be invested; reallocating surplus revenues to fund upon the occurrence of certain events; to allow budget surplus to be deposited into fund upon obtaining a certain balance in the state revenue shortfall funds; to provide for uses of fund following the elimination of the personal income tax; to provide that Secretary of Tax and Revenue has authority over fund; to allow Secretary of Tax and Revenue to deposit additional amounts into fund upon obtaining a specified balance in the fund; to allow for a reduction in personal income tax brackets upon occurrence of unappropriated revenue; providing for dollar for dollar reduction in personal income tax brackets upon increases in general revenue related to specified events; to allow Legislature to transfer from fund to General Revenue Fund upon the fund reaching a certain balance; to allow fund to be invested; to reallocate budget surplus at the end of a fiscal year; to allow a percentage of budget surplus to be directed to the fund; to require the Lottery Commission develop a new instant lottery scratch-off game; creating a special revenue account at the Lottery Commission; providing for a transfer of funds from the special

revenue account to Stabilization and Future Economic Reform Fund; to allow Lottery Commission to change new instant lottery scratch-off game to allow it to remain competitive; making technical corrections; specifying effective dates; authorizing promulgation of rules; and defining terms.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate again proceeded to the tenth order of business.

The end of today's first reading calendar having been reached, the Senate returned to the consideration of

**Com. Sub. for Senate Bill 125**, Budget Bill.

On third reading, coming up in deferred order, with the right having been granted on Monday, April 5, 2021, for amendments to be received on third reading, was again reported by the Clerk.

On motion of Senator Tarr, the following amendment to the bill was reported by the Clerk and adopted:

On page thirty-six, item 45, line thirty, by striking out "3,676,414" and inserting in lieu thereof "4,900,000".

On motions of Senators Ihlenfeld, Baldwin, Beach, Caputo, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel, the following amendment to the bill (Com. Sub. for S. B. 125) was next reported by the Clerk:

On pages fifty-eight and fifty-nine, item sixty-eight, by striking out all of item sixty-eight and inserting in lieu thereof a new item sixty-eight to read as follows:

68 - West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2022 Org 0612

Personal Services and Employee Benefits.....	00100	\$ 63,321,161
Salary and Benefits of Cabinet Secretary and Agency Heads.....	00201	139,300
Children's Protection Act .....	09000	1,022,574
Current Expenses .....	13000	10,396,274
Repairs and Alterations.....	06400	450,523
Trooper Class.....	52100	3,299,147
Barracks Lease Payments .....	55600	237,898
Communications and Other Equipment (R) .....	55800	1,070,968
Trooper Retirement Fund .....	60500	9,925,563
Handgun Administration Expense .....	74700	77,892
Capital Outlay and Maintenance (R) .....	75500	250,000
Retirement Systems – Unfunded Liability .....	77500	19,156,000
Automated Fingerprint Identification System.....	89800	2,211,693
BRIM Premium .....	91300	<u>5,743,921</u>
Total.....		\$ 117,302,914

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, appropriation 55800) and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2021 are hereby reappropriated for expenditure during the fiscal year 2022.

From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than \$25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.

Following discussion,

The question being on the adoption of the amendment offered by Senators Ihlenfeld, Baldwin, Beach, Caputo, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—12.

The nays were: Azinger, Boley, Clements, Grady, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendment offered by Senators Ihlenfeld, Baldwin, Beach, Caputo, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel to the bill rejected.

On motions of Senators Lindsay, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Plymale, Romano, Stollings, Unger, and Woelfel, the following amendments to the bill (Com. Sub. for S. B. 125) were next reported by the Clerk and considered simultaneously:

On page sixty-seven, item eighty-three, line one, by striking out "0" and inserting in lieu thereof "500,000";

And,

On page sixty-seven, item eighty-three, line four, by striking out “29,950,955” and inserting in lieu thereof “30,450,955”.

Following discussion,

The question being on the adoption of the amendments offered by Senators Lindsay, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Plymale, Romano, Stollings, Unger, and Woelfel to the bill, and on this question, Senator Smith demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendments offered by Senators Lindsay, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Plymale, Romano, Stollings, Unger, and Woelfel to the bill rejected.

On motions of Senators Lindsay, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Plymale, Romano, Stollings, Unger, and Woelfel, the following amendments to the bill (Com. Sub. for S. B. 125) were next reported by the Clerk and considered simultaneously:

On page seventy-one, item ninety-five, by striking out all of item ninety-five and inserting in lieu thereof a new item ninety-five to read as follows:

95 - West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2022 Org 0463

WVU School of Health Science –		
Eastern Division .....	05600	\$ 2,235,352
WVU – School of Health Sciences.....	17400	15,056,370
WVU – School of Health Sciences –		
Charleston Division .....	17500	2,286,711
Rural Health Outreach Programs (R) .....	37700	164,517
West Virginia University		
School of Medicine		
BRIM Subsidy .....	46000	<u>1,203,087</u>
Total.....		\$ 20,946,037

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0343, appropriation 37700) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

On page seventy-two, item ninety-seven, line one, by striking out “12,051,542” and inserting in lieu thereof “12,235,068”;

On page seventy-two, item ninety-seven, line six, by striking out “13,464,687” and inserting in lieu thereof “13,648,213”;

On page seventy-three, item ninety-nine, line one, by striking out “8,746,107” and inserting in lieu thereof “8,879,296”;

On page seventy-three, item ninety-nine, line six, by striking out “9,463,215” and inserting in lieu thereof “9,596,404”;

On page seventy-four, item one hundred, line one, by striking out “6,287,473” and inserting in lieu thereof “6,383,221”;

On page seventy-four, item one hundred one, line one, by striking out “10,319,269” and inserting in lieu thereof “10,476,415”;

On page seventy-four, item one hundred three, line one, by striking out “6,350,238” and inserting in lieu thereof “6,446,942”;

On page seventy-four, item one hundred four, line one, by striking out “12,493,572” and inserting in lieu thereof “12,683,829”;

On page seventy-five, item one hundred five, line one, by striking out “8,966,122” and inserting in lieu thereof “9,102,662”;

On page seventy-five, item one hundred six, line one, by striking out “11,172,374” and inserting in lieu thereof “11,342,512”.

And,

On page seventy-five, item one hundred six, line three, by striking out “14,122,566” and inserting in lieu thereof “14,292,704”.

Following discussion,

The question being on the adoption of the amendments offered by Senators Lindsay, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Plymale, Romano, Stollings, Unger, and Woelfel to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendments offered by Senators Lindsay, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Plymale, Romano, Stollings, Unger, and Woelfel to the bill rejected.

On motions of Senators Woelfel, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, and Unger, the following amendments to the bill (Com. Sub. for S. B. 125) were next reported by the Clerk and considered simultaneously:

On page seventy-two, item ninety-six, line one, by striking out “85,017,960” and inserting in lieu thereof “97,017,960”;

On page seventy-two, item ninety-six, line seven, by striking out “98,742,558” and inserting in lieu thereof “110,742,558”;

On page seventy-three, item ninety-eight, line one, by striking out “40,761,199” and inserting in lieu thereof “46,761,199”;

And,

On page seventy-three, item ninety-eight, line seven, by striking out “43,282,632” and inserting in lieu thereof “49,282,632”.

Following discussion,

At the request of Senator Woelfel, unanimous consent being granted, the amendments offered by Senators Woelfel, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, and Unger to the bill were withdrawn.

On motions of Senators Plymale, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Unger, and Woelfel, the following amendments to the bill (Com. Sub. for S. B. 125) were next reported by the Clerk and considered simultaneously:

On page one hundred three, item one hundred seventy-five, line two, by striking out “1,648,318” and inserting in lieu thereof “51,648,318”;

And,

On page one hundred three, item one hundred seventy-five, line three, by striking out “1,780,000” and inserting in lieu thereof “51,780,000”.

Following discussion,

The question being on the adoption of the amendments offered by Senators Plymale, Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Unger, and Woelfel to the bill, the same was put and prevailed.

On motions of Senators Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel, the following amendment to the bill (Com. Sub. for S. B. 125) was next reported by the Clerk:

On page one hundred fifty-nine, item three hundred one, by striking out all of item three hundred one and inserting in lieu thereof a new item three hundred one to read as follows:

301 - Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 3587 FY 2022 Org 0439

Personal Services

and Employee Benefits.....00100 \$ 3,312,092

Current Expenses .....	13000	120,146
Mountain Stage .....	24900	300,000
Capital Outlay and Maintenance (R) .....	75500	50,000
BRIM Premium .....	91300	<u>48,453</u>
Total .....		\$ 3,830,691

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 3587, appropriation 75500) at the close of fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.

Following discussion,

The question being on the adoption of the amendments offered by Senators Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel to the bill, and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendment offered by Senators Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel to the bill rejected.

On motions of Senators Trump, Weld, Nelson, Takubo, and Maroney, the following amendments to the bill (Com. Sub. for S. B. 125) were next reported by the Clerk and considered simultaneously:

On page forty-three, item fifty-two, line one, by striking out “\$0” and inserting in lieu thereof “\$3,312,092”;

On page forty-three, item fifty-two, line four, by striking “\$0” and inserting in lieu thereof “\$120,146;”

On page forty-three, item fifty-two, line five, by striking out “\$0” and inserting in lieu thereof “\$300,000”;

On page forty-three, item fifty-two, line six, by striking “\$0” and inserting in lieu thereof “\$50,000”;

On page forty-three, item fifty-two, line seven, by striking “\$0” and inserting in lieu thereof “\$48,453”;

On page forty-three, item fifty-two, line eight, by striking out “\$0” and inserting in lieu thereof “\$3,830,691”;

On page seventy-two, item ninety-six, line one, by striking “\$85,017,960” and inserting in lieu thereof “\$97,017,960”;

On page seventy-two, item ninety-six, line seven, by striking out “\$98,742,558” and inserting in lieu thereof “\$110,742,558”;

On page seventy-three, item ninety-eight, line one, by striking out “\$40,761,199” and inserting in lieu thereof “\$46,761,199”;

And,

On page seventy-three, item ninety-eight, line seven, by striking out “\$43,282,632” and inserting in lieu thereof “\$49,282,632”.

At the request of Senator Trump, unanimous consent being granted, the amendments offered by Senators Trump, Weld, Nelson, Takubo, and Maroney to the bill were withdrawn.

On motions of Senators Beach, Baldwin, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel, the following amendments to the bill (Com. Sub. for S. B. 125) were next reported by the Clerk and considered simultaneously:

On page forty-two, item fifty-one, line one, by striking out “1,070,613” and inserting in lieu thereof “1,202,744”;

And,

On page forty-three, item fifty-one, line eight, by striking out “1,508,659” and inserting in lieu thereof “1,640,790”.

Following discussion,

The question being on the adoption of the amendments offered by Senators Beach, Baldwin, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel to the bill, and on this question, Senator Beach demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Sypolt, Unger, and Woelfel—12.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—22.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendments offered by Senators Beach, Baldwin, Caputo, Ihlenfeld, Jeffries, Lindsay,

Plymale, Romano, Stollings, Unger, and Woelfel to the bill rejected.

On motions of Senators Tarr and Trump, the following amendments to the bill (Com. Sub. for S. B. 125) were next reported by the Clerk and considered simultaneously:

On page forty-one, item 50, line nine, by striking out “300,000” and inserting in lieu thereof “0”;

On page forty-three, item 52, by striking out all of item 52 and inserting in lieu thereof a new item 52, to read as follows:

*52 - Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2022 Org 0439

Personal Services		
and Employee Benefits.....00100	\$	3,144,106
Salary and Benefits of		
Cabinet Secretary and		
Agency Heads.....00201		120,106
Current Expenses .....	13000	118,344
Mountain Stage.....	24900	295,500
Capital Outlay and Maintenance (R) .....	75500	49,250
BRIM Premium .....	91300	<u>47,727</u>
Total.....		\$ 3,775,033

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500) at the close of the fiscal year 2021 is hereby reappropriated for expenditure during the fiscal year 2022.;

On pages seventy-one and seventy-two, item 96, line one, by striking out “85,017,960” and inserting in lieu thereof “95,562,690”;

And;

On page seventy-three, item 98, line one, by striking out “40,761,199” and inserting in lieu thereof “46,059,781”.

Following discussion,

The question being on the adoption of the amendments offered by Senators Tarr and Trump to the bill, and on this question, Senator Smith demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Azinger, Karnes, Martin, and Smith—4.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendments offered by Senators Tarr and Trump to the bill adopted.

There being no further amendments offered,

The bill (Com. Sub. for S. B. 125), as just amended, was ordered to engrossment.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Consideration of Engrossed Committee Substitute for Senate Bill 125 having been concluded, the Senate proceeded to the consideration of

**Eng. Com. Sub. for House Bill 2022**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution.

On third reading, coming up in deferred order, with the right having been granted on yesterday, Tuesday, April 6, 2021, for amendments to be received on third reading, was reported by the Clerk.

On motion of Senator Tarr, the following amendment to the bill was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the provisions of Engrossed Committee Substitute for Senate Bill 125.

There being no further amendments offered,

(Senator Sypolt in the Chair.)

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2022), as just amended, was then read a third time and put upon its passage.

(Senator Blair, Mr. President, in the Chair.)

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—24.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Unger, and Woelfel—10.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2022) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—24.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Unger, and Woelfel—10.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2022) takes effect from passage.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senator was removed as a co-sponsor of the following resolutions on April 6, 2021:

**Senate Concurrent Resolution 63:** Senator Roberts;

**Senate Concurrent Resolution 64:** Senator Roberts;

And,

**Senate Concurrent Resolution 65:** Senator Roberts.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions on April 6, 2021:

**Senate Concurrent Resolution 55:** Senator Martin;

**Senate Resolution 41:** Senators Stollings and Lindsay;

And,

**Senate Resolution 42:** Senators Stollings and Lindsay.

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Takubo, at 9:30 p.m., the Senate adjourned until tomorrow, Thursday, April 8, 2021, at 10 a.m.

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## THURSDAY, APRIL 8, 2021

The Senate met at 11:15 a.m.

(Senator Blair, Mr. President, in the Chair.)

Prayer was offered by the Honorable Robert D. Beach, a senator from the thirteenth district.

At the request of Senator Beach, unanimous consent being granted, the Senate stood in observance of a moment of silence in recognition of the victims of the Holocaust.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael A. Woelfel, a senator from the fifth district.

Pending the reading of the Journal of Wednesday, April 7, 2021,

At the request of Senator Woodrum, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to the House of Delegates amendments to, and the passage as amended, of

**Eng. Com. Sub. for Senate Bill 375**, Relating to county boards of education policies for open enrollment.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 387**, Relating to drug screening of applicants for cash assistance.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page two, section six, line twenty-seven, by striking out “2022” and inserting in lieu thereof “2026”.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 387, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard,

Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 387) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 392**, Creating penalty for impersonating law-enforcement officer or official.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page one, line ten, after the words “Department of” by striking out the words, “Military Affairs and Public Safety” and inserting in lieu thereof the words, “Homeland Security”.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 392, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld,

Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 392) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to the House of Delegates amendments to, and the passage as amended, of

**Eng. Com. Sub. for Senate Bill 439**, Allowing use or nonuse of safety belt as admissible evidence in civil actions.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 483**, Allowing oaths be taken before any person authorized to administer oaths.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 496**, Relating to punishment for second or third degree felony.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 626**, Updating regulation for purchase of automobile catalytic converters.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

### **ARTICLE 3. CRIMES AGAINST PROPERTY.**

#### **§61-3-49. Purchase of scrap metal by scrap metal purchasing businesses, salvage yards, or recycling facilities; certificates, records, and reports of such purchases; criminal penalties.**

(a) For the purposes of this section, the following terms have the following meanings:

(1) “Business registration certificate” has the same meaning ascribed to it in §11-12-2 of this code.

(2) “Purchaser” means any person in the business of purchasing scrap metal or used auto parts, any salvage yard owner or operator, or any public or commercial recycling facility owner or operator, or any agent or employee thereof, who purchases any form of scrap metal or used auto parts.

(3) “Scrap metal” means any form of copper, aluminum, brass, lead, or other nonferrous metal of any kind, a catalytic converter, or any materials derived from a catalytic converter, or steel railroad track and track material.

(b) In addition to any requirement necessary to do business in this state, a scrap metal dealer shall:

(1) Have a current valid business registration certificate from the Tax Commissioner;

(2) Register any scales used for weighing scrap metal with the Division of Labor Weights and Measures ~~office~~;

(3) Provide a notice of recycling activity to the Department of Environmental Protection; and

(4) Register as a scrap metal dealer with the Secretary of State, who ~~is hereby directed to~~ shall maintain a list of scrap metal dealers and make it ~~publically~~ publicly available. The list shall include the dealer's business address, hours of operation, physical address, phone number, facsimile number, if any, and the name of the owners or principal officers of the business.

(c) Any purchaser of scrap metal shall make a record of such purchase that shall contain the following information for each transaction:

(1) The full name, permanent home and business addresses, and telephone number, if available, of the seller;

(2) A description and the motor vehicle license number of any vehicle used to transport the purchased scrap metal to the place of purchase;

(3) The time and date of the transaction;

(4) A complete description of the kind, character, and weight of the scrap metal purchased; and

(5) A statement of whether the scrap metal was purchased, taken as collateral for a loan, or taken on consignment.

(d) A purchaser also shall require and retain from the seller of the scrap metal the following:

(1) A signed certificate of ownership of the scrap metal being sold or a signed authorization from the owner of the scrap metal to sell ~~said~~ the scrap metal; and

(2) A photocopy of a valid driver's license or identification card issued by the West Virginia Division of Motor Vehicles of the person delivering the scrap metal, or in lieu thereof, any other valid

photo identification of the seller issued by any other state or the federal government: *Provided*, That, if the purchaser has a copy of the seller's valid photo identification on file, the purchaser may reference the identification that is on file, without making a separate photocopy for each transaction.

(e) It is unlawful for any purchaser to purchase any scrap metal without obtaining and recording the information required under subsections (c) and (d) of this section. The provisions of this subsection do not apply to purchases made at wholesale under contract or as a result of a bidding process: *Provided*, That the purchaser retains and makes available for review consistent with subsection (g) of this section the contract, bill of sale, or similar documentation of the purchase made at wholesale under contract or as a result of a bidding process: *Provided, however*, That the purchaser may redact any pricing or other commercially sensitive information from ~~said~~ the contract, bill of sale, or similar documentation before making it available for inspection.

(f) ~~No~~ A purchaser of scrap metal may not knowingly purchase or possess a stainless steel or aluminum beer keg, whether damaged or undamaged, or any reasonably recognizable part thereof, for the intended purpose of reselling as scrap metal unless the purchaser receives the keg or keg parts from the beer manufacturer or its authorized representative.

(g) Using a form provided by the West Virginia State Police, or his or her own form, a purchaser of scrap metal shall retain the records required by this section at his or her place of business for not less than three years after the date of the purchase. Upon completion of a purchase, the records required to be retained at a purchaser's place of business shall be available for inspection by any law-enforcement officer or, upon written request and during the purchaser's regular business hours, by any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property: *Provided*, That in lieu of the purchaser keeping the records at ~~their~~ his or her place of business, the purchaser shall file the records with the local detachment of the State Police and with the chief of police of the municipality or the sheriff of the county ~~wherein~~ he or she is transacting business

within ~~seventy-two~~ 72 hours of completion of the purchase. The records shall be retained by the State Police and the chief of police of the municipality or the sheriff for a period of not less than three years.

(h) To the extent otherwise permitted by law, any investigator employed by a public utility or railroad to investigate the theft of public utility or railroad property may accompany a law-enforcement officer upon the premises of a purchaser in the execution of a valid warrant or assist law enforcement in the review of records required to be retained pursuant to this section.

(i) Upon the entry of a final determination and order by a court of competent jurisdiction, scrap metal found to have been misappropriated, stolen, or taken under false pretenses may be returned to the proper owner of ~~such~~ the material.

(j) Nothing in this section applies to scrap purchases by manufacturing facilities that melt, or otherwise alter, the form of scrap metal and transform it into a new product or to the purchase or transportation of food and beverage containers or other nonindustrial materials having a marginal value per individual unit.

(k)(1) Nothing in this section applies to a purchaser of a motor vehicle on which a catalytic converter is installed, a scrap metal dealer purchasing a detached catalytic converter or converters accompanying the motor vehicle from which it or they were removed, a purchaser of a catalytic converter intended for installation on a vehicle owned or leased by the purchaser, or any person who purchases, other than for purposes of resale, a catalytic converter, or a motor vehicle on which a catalytic converter is installed, for personal, family, household, or business use.

(2) In transactions not exempted by subdivision (1) of this subsection, any person delivering ~~five~~ one or more automobile catalytic converters to a scrap metal dealer shall, in addition to the requirements set forth in subsection (c) of this section, execute a document stating containing the name of the person or entity from whom or which the catalytic converter or converters being delivered was received and affirming that he or she is the lawful

owner of the catalytic converters or is authorized by the lawful owner to sell the catalytic converters. Next to his or her signature the person delivering the catalytic converter or converters ~~he or she~~ shall place a clear impression of his or her index finger or thumb that is in ink and free of smearing, or the scrap metal dealer may elect to obtain the fingerprint electronically. This documentation shall be maintained consistent with subsection (c) of this section. Payment shall be made by check payable to the seller. No scrap metal dealer may process, sell, or remove a catalytic converter from its premises for at least 14 days after its acquisition: *Provided, That the 14-day retention requirement may be reduced to five days if, within the first consecutive five-day period, the scrap dealer provides all documentation required under this section to the local detachment of the State Police and: A) the chief of police of the municipality or, B) the sheriff of the county in which he or she is transacting business. A scrap metal dealer shall make a good faith effort to record any identifying information on a catalytic converter received or purchased and shall not purchase or take possession of a catalytic converter if the identifying information on it has been manually altered.*

(l) Any person who knowingly or with fraudulent intent violates any provision of this section for which no penalty is specifically set forth, including the knowing failure to make a report or the knowing falsification of any required information, is guilty of a misdemeanor and, upon conviction of a first offense ~~thereof~~, shall be fined not less than \$1,000 nor more than \$3,000; upon conviction of a second offense ~~thereof~~, shall be fined not less than \$2,000 and not more than \$4,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to suspend for a period of six months any business registration certificate held by that person; and upon conviction of a third or subsequent offense, ~~thereof~~ shall be fined not less than \$3,000 and not more than \$5,000 and, notwithstanding the provisions of §11-12-5 of this code, the court in which the conviction occurred shall issue an order directing the Tax Commissioner to cancel any business registration certificate held

by that person and state the date ~~said~~ the cancellation ~~shall take~~ takes effect.

(m) ~~No~~ A person may not have or take possession of any scrap metal that he or she knows, or has reason to know, has been stolen or unlawfully obtained. Any person violating this subsection is guilty of larceny.

(n) ~~No~~ A scrap metal dealer may not purchase, possess, or receive scrap metal that the scrap metal dealer knows, or has reason to know, has been stolen or unlawfully obtained by the seller. Any person violating this subsection is guilty of larceny.

(o) No A scrap metal dealer may not purchase, possess, or receive any of the following items of scrap metal, or any reasonably recognizable part thereof, without obtaining written documentation which reflects that the seller is authorized to possess and sell the item or items and that the seller is in lawful possession of the item of scrap metal:

- (1) Utility access covers;
- (2) Street light poles or fixtures;
- (3) Road or bridge guard rails;
- (4) Water meter covers;
- (5) Highway or street signs;
- (6) Traffic directional or traffic control signs;
- (7) Traffic light signals;
- (8) Any metal marked with any form of the name or initials of a governmental entity;
- (9) Property marked as or readily identifiable as owned by a telephone, cable, electric, water, or other utility provider;
- (10) Property owned and marked by a railroad;

- (11) Cemetery markers or vases;
- (12) Historical markers;
- (13) Utility manhole covers and storm water grates; ~~and~~
- (14) Fire hydrant or fire hydrant caps; or
- (15) Twisted pair copper telecommunications wiring of 25 pair or greater in 19, 22, 24, or 26 gauge.

(p) Nothing in this section prohibits a scrap dealer from purchasing or taking possession of scrap metal knowing or ~~have~~ having reason to know, that it is stolen or obtained illegally if it is done pursuant to a written agreement with law-enforcement officials.

**§61-3-49c. Possession of a catalytic converter without documentation of ownership or authority to possess; advertising the sale or purchase of a catalytic converter.**

(a) As used in this section, catalytic converter means a motor vehicle exhaust emission control that reduces toxic gases and pollutants from an internal combustion engine.

(b) Any person in possession of a catalytic converter which had previously been installed on a motor vehicle, or parts, thereof shall have in his or her possession written documentation of ownership or authorization to possess the catalytic converter. Any person who violates this subsection is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or confined in jail not more than one year or both fined and confined.

(1) Each catalytic converter possessed in violation of subsection (b) of this section shall constitute a separate offense.

(2) Any catalytic converter possessed in violation of subsection (b) of this section is subject to seizure at the time of arrest.

(3) A person possessing a single catalytic converter in violation of subsection (b) of this section shall for the offense be charged by citation and not subject to arrest for that offense.

(4) Notwithstanding the provisions of subsection (b) of this section, presentation to the court in which charges alleging a violation of said subsection are pending sufficient evidence to show lawful ownership or authority to possess constitutes an absolute defense to the charge or charges.

(c) Any person placing an advertisement on an internet-based platform, including but not limited to Facebook or Twitter, soliciting the sale or purchase of a catalytic converter must have completed the requirements to be considered a scrap metal recycler in §61-3-49(b) of this code, including any other business requirements. Any person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 or confined in jail not more than one year or both fined and confined.

(1) Each catalytic converter possessed in violation of subsection (c) of this section shall constitute a separate offense.

(2) Any catalytic converter possessed in violation of subsection (c) of this section is subject to seizure at the time of arrest.

(3) Notwithstanding the provisions of subsection (c) of this section, presentation to the court in which charges alleging a violation of said subsection are pending sufficient evidence to show lawful ownership or authority to possess constitutes an absolute defense to the charge or charges.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 626**—A Bill to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3-49c, all relating to the purchase and possession of certain scrap metal; updating the regulation of the purchase of automobile catalytic converters; requiring certain evidence and documentation from a seller of an automobile catalytic converter; placing restrictions on the payment for automobile catalytic converters;

placing restrictions on the sale or transfer of an automobile catalytic converter by a scrap metal dealer; requiring scrap metal dealer to make a good faith effort to record identifying information on a catalytic convertor; creating the criminal offense of possession of a catalytic converter without proof of ownership or authority to possess; requiring that persons charged with possession of a single catalytic convertor are to be charged by citation and not be subject to arrest; establishing an absolute defense to the criminal action; creating the criminal offense of a person making an internet-based ad soliciting the sale or purchase of a catalytic converter under certain conditions; and establishing criminal penalties.

On motion of Senator Takubo, the following amendments to the House of Delegates amendments to the bill (Eng. Com. Sub. for S. B. 626) were reported by the Clerk, considered simultaneously, and adopted:

On page four, section forty-nine, subsection (k), subdivision (1), after the words “accompanying the motor vehicle” by inserting the words: “or motor vehicles”;

On page seven, section forty-nine-c, subsection (c), after the word “converter” by inserting the words “in this state”;

And,

On page seven, section forty-nine-c, subsection (c), by striking out the word “considered”.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments, as amended.

Engrossed Committee Substitute for Senate Bill 626, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 626) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 634**, Requiring training of certain officers for persons with autism spectrum disorder.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 668**, Creating Psychology Interjurisdictional Compact.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the passage as amended, of

**Eng. House Bill 2093**, Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes.

A message from the Clerk of the House of Delegates announced that that body had refused to concur in the Senate amendments to, and requested the Senate to recede therefrom, as to

**Eng. Com. Sub. for House Bill 2267**, Establishing an optional bus operator in residence program for school districts.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

Senator Takubo moved that the Senate accede to the request of the House of Delegates and recede from its amendments to the bill.

Following discussion,

The question being on the adoption of Senator Takubo's aforestated motion, the same was put and prevailed.

Engrossed Committee Substitute for House Bill 2267, as amended by deletion, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2267) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the changed effective date, to take effect July 1, 2021, of

**Eng. House Bill 2722**, Prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

**Eng. Com. Sub. for House Bill 2758**, Requiring the Insurance Commissioner to regulate professional bondsmen.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

**Eng. Com. Sub. for House Bill 2793**, Permit out of state residents to obtain West Virginia concealed carry permits.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, of

**Eng. Com. Sub. for House Bill 2890**, To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, to take effect from passage, of

**Eng. House Bill 2969**, To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, to take effect from passage, of

**Eng. House Bill 3175**, Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendment to, and the passage as amended, of

**Eng. House Bill 3191**, Requiring employers to send certain notifications when retirants are hired as temporary, part-time employees.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amended title, passage as amended, to take effect July 1, 2022, of

**Eng. House Bill 3294**, Relating to unemployment insurance.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 24**—Urging Congress to extend federal tax incentives to participants in Jumpstart Savings programs that are similar to those that are currently provided to participants in College Savings plans, pursuant to 26 U.S.C. §529.

At the request of Senator Trump, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, the same was put and prevailed.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 98**—For West Virginia's Public Employees Insurance Agency (PEIA) Finance Board to examine how they can enhance reimbursement rates to providers.

Referred to the Committee on Rules.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 99**—Requesting the Joint Committee on Government and Finance study childcare in the state

of West Virginia, specifically looking to examine the costs and availability of childcare across the state.

Referred to the Committee on Rules.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 100**—Requesting a study on how Local Health Departments are funded and supported.

Referred to the Committee on Rules.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 101**—Requesting a study of the state’s laboratory needs and the utilization of private laboratories.

Referred to the Committee on Rules.

The Senate proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. Com. Sub. for House Bill 2363**, Relating to “Best Interests of the Child Protection Act of 2021”.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2363) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 2776**, Creating the Air Ambulance Patient Protection Act.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 2776) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Eng. House Bill 3089**, Make utility workers essential employees during a state of emergency.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 3089) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate proceeded to the sixth order of business.

Senator Smith offered the following resolution:

**Senate Concurrent Resolution 73**—Providing for the expiration of certain emergency orders issued during the coronavirus pandemic declared on March 16, 2020 in West Virginia.

Whereas, The global coronavirus (COVID-19) pandemic of 2020, which is continuing at this time, has presented unprecedented challenges for the citizens of West Virginia, which have required response of the government of the State of West Virginia; and

Whereas, Exercising the authority and power provided by our state code, the Governor of West Virginia has marshalled the resources of the state and the full authority and response of the government of West Virginia to address the COVID-19 pandemic; and

Whereas, As of April 6, 2021, the total number of confirmed COVID-19 cases in West Virginia is 113,819; and

Whereas, As of April 6, 2021, there have been 530,328 initial vaccinations for COVID-19 administered and 355,892 completed vaccinations for COVID-19 administered; and

Whereas, By May 17, 2021, the total number of complete vaccinations and partial vaccinations for COVID-19 in West Virginia will be substantially increased from current numbers; and

Whereas, By May 17, 2021, the vast majority of West Virginians will have immunity from COVID-19 through either having recovered from the disease or from being fully or partially vaccinated; and

Whereas, The Legislature is mindful of the continuing challenges that the pandemic presents, but recognizes that West Virginia must not prolong emergency measures which might unduly harm the economic and psychological well-being of our citizens; and

Whereas, It is our sworn duty to protect the individual liberties of the citizens of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Legislature hereby provides for the expiration of certain emergency orders issued during the coronavirus pandemic declared on March 16, 2020 in West Virginia; and, be it

*Further Resolved,* That it is the intent of the Legislature to provide a time limit for the emergency orders that have been made by the Governor of West Virginia during the current COVID-19 pandemic; and, be it

*Further Resolved,* That all such orders in effect on April 6, 2021, issued as a result of the COVID-19 pandemic, hereby expire on May 17, 2021, with the exception of Executive Orders 57-20, 79-20, 82-20, 26-20, 11-20, 11-21, 13-20, 17-20, 19-20, 27-20, 35-20, 54-20, 63-20, 66-20, 7-20, 72-20, 73-20, 83-20, 31-20 and 10-21; and, be it

*Further Resolved,* That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Governor of the State of West Virginia, the Honorable James C. Justice II.

Which, under the rules, lies over one day.

Senator Lindsay offered the following resolution:

**Senate Resolution 44**—Recognizing the dedicated public service of the Honorable Tod Joseph Kaufman.

Whereas, The Honorable Tod Joseph Kaufman is a life-long resident of Charleston, West Virginia, the eldest son of Paul J. and Rose Jean Kaufman; and

Whereas, The Honorable Tod Joseph Kaufman attended the public schools of Kanawha County, followed by a preparatory education at George School in Bucks County, Pennsylvania; and

Whereas, The Honorable Tod Joseph Kaufman attended college at Tufts University in Medford, Massachusetts, and graduated with honors in political science and English (1975). While attending Tufts University, he studied as a general course student at the London School of Economics and Political Science (1973-1974); and

Whereas, The Honorable Tod Joseph Kaufman returned home to study law at the West Virginia University College of Law, where he earned his Doctor of Jurisprudence (1980); and

Whereas, From a young age, the Honorable Tod Joseph Kaufman was a frequent visitor to the State Capitol, where his father, the Honorable Paul J. Kaufman, served in the State Senate for two terms in 1960 and 1964; and

Whereas, The Honorable Tod Joseph Kaufman began his public service as an honorary page in the State Senate at the age of eight until the age of 15. After law school, he returned to the capitol to serve as counsel to the Senate Majority Leader, William Moreland, during the 65th Legislature; and

Whereas, In 1982, Governor John D. Rockefeller IV appointed the Honorable Tod Joseph Kaufman, then 30 years of age, to the West Virginia Senate, to fill the unexpired term of then state Senator Bob Wise, who was elected to the U.S. House of Representatives; and

Whereas, The Honorable Tod Joseph Kaufman was elected to the West Virginia Senate in 1984, where he served one term; and

Whereas, The Honorable Tod Joseph Kaufman was elected to the bench in the Thirteenth Judicial Circuit (Kanawha County) in 1988 and re-elected in 1992, 2000, 2008, and 2016, serving as chief judge of West Virginia's largest circuit four times; and

Whereas, On March 31, 2021, the Honorable Tod Joseph Kaufman retired from public service after four decades of serving the citizens of Kanawha County and the State of West Virginia; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the dedicated public service of the Honorable Tod Joseph Kaufman; and, be it

*Further Resolved,* That the Senate congratulates the Honorable Tod Joseph Kaufman on the occasion of his well-deserved retirement and extends its sincere gratitude and appreciation to him for his distinguished service; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Honorable Tod Joseph Kaufman.

Which, under the rules, lies over one day.

Senator Baldwin offered the following resolution:

**Senate Resolution 45**—Recognizing the centennial of the West Virginia Board of Architects.

Whereas, On July 27, 1921, the act establishing the State Board of Examiners and Registration of Architects became effective; and

Whereas, For 100 years, it has been the mission of the West Virginia Board of Architects to protect the health, safety, and welfare of the citizens of West Virginia; and

Whereas, The board joined the National Council of Architectural Registration Boards in 1942 in order to work with other states focusing on public protection, model law, and uniform standards for architects; and

Whereas, Numerous dedicated and distinguished architects and public members have assisted the public by serving on the board at the invitation of the Governor; and

Whereas, Currently 1,350 architects are licensed to practice in West Virginia; and

Whereas, West Virginia acknowledges the significant contributions of the board in ensuring the education, examination, and experience of architects and its efforts to support continuing education; and

Whereas, The year 2021 marks the 100th anniversary of the West Virginia Board of Architects; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the centennial of the West Virginia Board of Architects; and, be it

*Further Resolved,* That the Senate extends its sincere appreciation and gratitude to the West Virginia Board of Architects for its contributions to the State of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the President of the West Virginia Board of Architects, Mr. Adam Krason.

Which, under the rules, lies over one day.

Senators Phillips and Stollings offered the following resolution:

**Senate Resolution 46**—Recognizing the accomplishment of Buffalo Elementary School on becoming champions of the Imagine Learning’s March MATH Madness.

Whereas, Buffalo Elementary School utilizes Imagine Math, the county-provided program for enrichment and remediation which allows students to work ahead of the intended classroom instructional pace and allows them to review skills already covered in class to keep them fresh in their minds; and

Whereas, The program requires students to explain their answers and understanding, thus further developing their math skills by completing answer and error analysis; and

Whereas, As March rolled around, Buffalo Elementary School found themselves in the Sweet 16 of the program's March Math Madness competition; and

Whereas, As the weeks progressed, Buffalo Elementary School progressed to the elite eight, final four, and then the top two of the competition; and

Whereas, Seeing the students' determination for success was refreshing. Students were assisting each other with understanding skills that they did not understand during a specific lesson. The support started pouring in from all over the state and it rejuvenated the student body; and

Whereas, On Monday, March 29, 2021, Buffalo Elementary School reaped the benefits of their hard work over the last month. The school was crowned the 14th Annual March MATH Madness champions. They are the first school to win the competition in the state of West Virginia; and

Whereas, Buffalo Elementary School students passed over 24,000 lessons this year on Imagine Math; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the accomplishment of Buffalo Elementary School on becoming champions of the Imagine Learning's March MATH Madness; and, be it

*Further Resolved,* That Buffalo Elementary School shall be honored for their great success as Champions of the Imagine Learning's March Math Madness, where the students not only gained new math skills, but came together as a community and demonstrated excellent work ethic to reach this prodigious achievement; and, be it

*Further Resolved*, That the Clerk is hereby directed to forward a copy of this resolution to Buffalo Elementary School.

Which, under the rules, lies over one day.

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Concurrent Resolution 74** (originating in the Committee on the Judiciary)—Requesting the Joint Committee on Government and Finance study the feasibility of legislation to reduce criminal activity and increase online marketplace transparency.

Whereas, Brick-and-mortar retailers in West Virginia are concerned about criminals stealing merchandise from brick-and-mortar stores and then illegally selling those goods on online marketplaces; and

Whereas, Some online third-party marketplaces support anonymous selling accounts on their platforms; and

Whereas, Criminal activity may be reduced and consumers may benefit from increased online marketplace transparency; 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 legislation to reduce criminal activity and increase online marketplace transparency; and, be it

*Further Resolved*, That the study include the significance of criminals stealing merchandise from brick-and-mortar stores and then illegally selling those goods on online marketplaces; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 74) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

**Senate Concurrent Resolution 75** (originating in the Committee on the Judiciary)—Requesting the Joint Committee on the Judiciary study the feasibility of conforming the timing of elections and ballot initiatives of political subdivisions of this state to coincide with scheduled statewide and federal primary and general elections.

Whereas, Some municipalities, counties, and other political subdivisions of this state currently hold elections and ballot initiatives outside of scheduled statewide and federal primary and general election dates; and

Whereas, Holding such local elections and ballot initiatives outside of the scheduled statewide and federal primary and general election cycle may cause political subdivisions to incur significant administrative costs; and

Whereas, Such costs incurred by political subdivisions could be reduced if such local elections and ballot initiatives coincide with scheduled statewide and federal primary and general elections; and

Whereas, Holding such local elections and ballot initiatives outside of the scheduled statewide and federal primary and general election cycle may result in low voter turnout on such local elections and ballot initiatives; and

Whereas, It is believed that voter turnout for local elections and ballot initiatives could increase if such local elections and ballot initiatives coincide with scheduled statewide and federal primary and general elections; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on the Judiciary is hereby requested to study the feasibility of conforming the timing of elections and ballot initiatives of political subdivisions of this state to coincide with scheduled statewide and federal primary and general elections; and, be it

*Further Resolved,* That the Joint Committee on the Judiciary report to the regular session of the Legislature, 2022, 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 to be paid from legislative appropriations to the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Charles S. Trump IV,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 75) contained in the foregoing report from the Committee on the Judiciary was then referred to the Committee on Rules.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for Senate Bill 125**, Budget Bill.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules.

**Eng. Com. Sub. for House Bill 2002**, Relating to Broadband.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 2005**, Relating to health care costs.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2005) passed.

On motion of Senator Maroney, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2005**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-2-24, relating to health care costs generally; requiring the Insurance Commissioner to enforce the applicable provisions of the No Surprises Act; permitting the Insurance Commissioner to assess a fine for violation of the No Surprises Act; permitting the Insurance Commissioner to seek administrative penalties for violations of the No Surprises Act; permitting the Insurance Commissioner to seek assistance from any other state government agency regarding regulatory enforcement; permitting the Insurance Commissioner to use the Attorney General for legal assistance; permitting rulemaking; and providing effective date.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2017**, Rewriting the Criminal Code.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2017) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2017**—A Bill to amend and reenact §15-9C-3 of the code of West Virginia 1931, as amended; relating to requiring the West Virginia Sentencing Commission to Consider, but not be bound to adopt, the provisions of the Second Engrossment of the Committee Substitute for HB2017, as passed by the West Virginia House of Delegates on March 31, 2021, including classifications of felonies and misdemeanors in the bill passed by the West Virginia House of Delegates set forth in the proposed §61-17-1 *et seq.* of the house bill.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

At the request of Senator Weld, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. House Bill 2379**, Make criminal invasion of privacy a felony.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 7, 2021, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend remaining in effect and with the unreported Judiciary committee amendment pending.

**Eng. Com. Sub. for House Bill 2507**, Remove the limitations on advertising and promotional activities by limited video lottery retailers.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 7, 2021, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 22B. LIMITED VIDEO LOTTERY.**

### **§29-22B-404. Advertising by commission or director prohibited.**

~~Neither the~~ The commission nor and the director may conduct video lottery advertising or promotional activities to promote or advertise limited video lottery only for the purpose of advising the public as to the use of the revenues generated by video lottery operations authorized by this article.

### **§29-22B-702. Additional duties of limited video lottery retailers.**

In addition to the general duties imposed on all licensees in ~~section 22B-701~~ §29-22B-701 of this code, a limited video lottery retailer shall:

(1) Attend all commission mandated meetings, seminars, and training sessions concerning operation of video lottery terminals,

the validation and redemption of video lottery winning tickets, and the operation of all ticket validation terminals and equipment;

(2) Maintain all skills necessary for the accurate validation of video lottery tickets;

(3) Supervise video lottery operations and ticket validation procedures at the applicable location;

(4) Permit no person to tamper with or interfere with the operation of any video lottery terminal;

(5) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;

(6) Ensure that video lottery terminals are within the sight and control of designated employees of the limited video lottery retailer;

(7) Ensure that video lottery terminals are placed and remain placed in the specific locations which have been approved by the commission. A video lottery terminal in a restricted access adult-only facility may not be relocated within the facility without the prior written approval of the commission;

(8) Monitor video lottery terminals to prevent access to or play by persons who are under the age of 21 years or who are visibly intoxicated;

(9) Maintain at all times sufficient change and cash in the denominations accepted by the video lottery terminals;

(10) Provide no access by a player to an automated teller machine (ATM) in the restricted access adult-only facility where video lottery games are played, accept no credit card or debit card from a player for the exchange or purchase of video lottery game credits or for an advance of coins or currency to be utilized by a player to play video lottery games, and extend no credit, in any manner, to a player so as to enable the player to play a video lottery game;

(11) Pay for all credits won upon presentment of a valid winning video lottery ticket;

(12) Report promptly in writing to the operator and the commission all video lottery terminal malfunctions and notify the commission in writing of the failure of an operator or service technician to provide prompt service and repair of the terminals and associated equipment;

(13) Conduct ~~no~~ any video lottery advertising or promotional activities only in accordance with legislative rules promulgated pursuant to §29A-3-1 et seq. of this code;

~~(14) Not use the words "video lottery" in the name of the approved location, or in any directions or advertising visible from outside the retailer's establishment;~~

~~(15) (14)~~ Install, post, and display prominently within or about the approved location signs, redemption information and other promotional material as required by the commission;

~~(16) (15)~~ Permit video lottery to be played only during those hours established and approved by the commission: *Provided*, That the limited video lottery retailer shall not permit video lottery to be played beyond the hour during which liquor may be served;

~~(17) (16)~~ Contract with no more than one licensed operator for the placement of video lottery terminals at the licensed location;

~~(18) (17)~~ Maintain insurance covering all losses as the result of fire, theft, or vandalism to video lottery terminals and associated equipment; and

~~(19) (18)~~ Comply with all applicable provisions of this article and rules and orders of the commission.

#### **§29-22B-706. Additional duties of operators.**

In addition to the general duties imposed on all licensees in ~~section 22B-701 of this article~~ §29-22B-701 of this code, an operator shall:

(1) Acquire video lottery terminals by purchase, lease, or other assignment only from licensed manufacturers;

(2) Acquire no video lottery terminals in excess of the number they are authorized to operate in this state as stated in the permit issued under part 11 of this article;

(3) Contract with limited video lottery retailers for a secure location for the placement, operation, and play of the video lottery terminals;

(4) Pay no compensation of any kind to any limited video lottery retailer or give or transfer anything of value to any limited video lottery retailer, that is in addition to the consideration stated in the written agreement between the operator and the limited video lottery retailer, which may be not less than 40 percent nor more than 50 percent of the amount of net terminal income received by the operator in connection with the video lottery terminals at that location;

(5) Pay for the installation and operation of commission approved telephone lines to provide direct dial-up or on-line communication between each video lottery terminal and the commission's central control computer;

(6) Purchase or lease and install computer controller units and other associated equipment required by the commission for video lottery terminals owned or leased by the permittee;

(7) Permit no person to tamper with or interfere with the operation of any video lottery terminal;

(8) Ensure that telephone lines from the commission's central control computer to the video lottery terminals located at the approved location are at all times connected, and prevent any person from tampering or interfering with the operation of the telephone lines;

(9) Ensure that video lottery terminals are placed and remain placed in the specific places within the approved restricted access adult-only facility that have been approved by the commission. No

video lottery terminal in a restricted access adult-only facility may be relocated within the restricted access adult-only facility without the prior written approval of the commission;

(10) Assume financial responsibility for proper and timely payments by limited video lottery retailers of all credits awarded to players in accordance with legislative rules promulgated by the commission;

(11) Enter into contracts with limited video lottery retailers to provide for the maintenance and repair of video lottery terminals and associated equipment only by licensed service technicians, and to provide for the placement of video lottery terminals pursuant to the provisions of this article;

(12) Conduct ~~no~~ any video lottery advertising and promotional activities only in accordance with legislative rules promulgated pursuant to §29A-3-1 et seq. of this code;

(13) Install, post, and display prominently within or about the approved location signs, redemption information and other material as required by the commission;

(14) Maintain general liability insurance coverage for all video lottery terminals in an amount of at least \$1 million per claim;

(15) Promptly notify the commission in writing of any breaks or tears to any logic unit seals;

(16) Assume liability for all amounts due to the commission in connection with any money lost or stolen from any video lottery terminal;

(17) Comply with all applicable provisions of this article and rules and orders of the commission; and

(18) Maintain a separate bank account into which the operator shall deposit the gross terminal income from all of the operator's video lottery terminals.

PART 12. PLACEMENT AND TRANSPORTATION OF  
VIDEO LOTTERY TERMINALS.

**§29-22B-1201. Placement of video lottery terminals.**

(a) Video lottery terminals allowed by this article may be placed only in licensed limited video lottery locations approved by the commission: ~~Provided, That prior to the approval of the placement of a video lottery terminal operated pursuant to a permit issued after December 31, 2017, the commission shall hold one or more public hearings at which interested persons may express their views on the proposed video lottery locations pursuant to subsection (b) of this section.~~

~~(b) Public Hearing.~~

~~(1) Notice of public hearing.— Notice of the public hearing or hearings shall be published as a Class II legal advertisement at the expense of the permittee, in a form acceptable to the commission, and accordance with the requirements of article three, chapter fifty-nine of this code. The published notice shall include, at a minimum:~~

~~(A) The date, time, place and purpose of the public hearing or hearings; and~~

~~(B) The proposed location of a video lottery terminal.~~

~~(e) (b) All video lottery terminals in approved locations shall be physically located as follows:~~

(1) The video lottery terminals shall be continuously monitored through the use of a closed circuit television system capable of identifying players and terminal faces and of recording activity for a continuous 24 hour period. All video tapes or other recording medium approved in writing by the commission shall be retained for a period of at least 60 days and be available for viewing by an authorized representative of the commission or the commissioner of alcohol beverage control. The cost of monitoring shall be paid by the limited video lottery retailer;

(2) Access to video lottery terminal locations shall be restricted to persons legally entitled by age to play video lottery games;

(3) The permittee shall submit for commission approval a floor plan of the area or areas where video lottery terminals are to be operated showing terminal locations and security camera mount location; and

(4) No video lottery terminal or video lottery camera may be relocated without prior written approval from the commission.

~~(d)~~ (c) Personnel of the limited video lottery retailer shall be present during all hours of operation at each video lottery terminal location. These personnel shall make periodic inspections of the restricted access adult-only facility in order to provide for the safe and approved operation of the video lottery terminals and the safety and well-being of the players.

~~(e)~~ (d) Security personnel of the commission and investigators of the Alcohol Beverage Control Commissioner shall have unrestricted access to video lottery terminal locations.

~~(f)~~ (e) Notwithstanding any other provision of this article to the contrary, the commission may not approve the placement of a video lottery terminal in a state park.

~~(g) Notwithstanding any other provision of this article to the contrary, during any bidding pursuant to section 1107 of this article occurring after June 30, 2021, the commission shall reduce the number of licensed limited video lottery locations to a number less than one thousand two hundred and fifty.~~

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2507), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Boley, Caputo, Clements, Hamilton, Jeffries, Lindsay, Maroney, Nelson, Phillips, Plymale, Romano, Rucker, Stollings, Stover, Swope, Sypolt,

Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—24.

The nays were: Azinger, Baldwin, Beach, Grady, Ihlenfeld, Karnes, Martin, Maynard, Roberts, and Smith—10.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2507) passed.

On motion of Senator Trump, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2507**—A Bill to amend and reenact §29-22B-404, §20-22B-702, §29-22B-706, and §29-22B-1201 of the Code of West Virginia, 1931, as amended, all relating to limited video lottery advertising and promotional activities; authorizing the Lottery Commission and its Director to conduct video lottery advertising for a certain limited purpose; authorizing certain video lottery advertising and promotional activities by licensed limited video lottery retailers; authorizing rulemaking by the Lottery Commission with respect to limited video lottery advertising and promotional activities by licensed limited video lottery retailers; removing restriction on use of certain words by licensed limited video lottery retailers; authorizing certain video lottery advertising and promotional activities by licensed limited video lottery operators; authorizing rulemaking by the Lottery Commission with respect to limited video lottery advertising and promotional activities by licensed limited video lottery operators; removing requirements for notice and public hearing prior to approval by Lottery Commission of placement of a video lottery terminal; and removing required reduction on licensed limited video lottery locations.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Boley, Caputo, Clements, Hamilton, Jeffries, Lindsay, Maroney, Nelson, Phillips, Plymale, Romano, Rucker, Stollings, Stover, Swope, Sypolt, Takubo, Tarr,

Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—24.

The nays were: Azinger, Baldwin, Beach, Grady, Ihlenfeld, Karnes, Martin, Maynard, Roberts, and Smith—10.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2507) takes effect July 1, 2021.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2730**, Relating to persons filing federal bankruptcy petition to exempt certain property of the estate.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 7, 2021, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 10. TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.**

**§38-10-4. Exemptions of property in bankruptcy proceedings.**

~~Pursuant to the provisions of 11 U.S.C. §522(b)(1), this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified under the provisions of 11 U.S.C. §522(d).~~

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

(a) The debtor's interest, not to exceed ~~\$25,000~~ \$35,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor: *Provided*, That when the debtor is a physician licensed to practice medicine in this state under ~~article three or article fourteen, chapter thirty~~ §30-3-1 et seq. or §30-14-1, et seq. of this code, and has commenced a bankruptcy proceeding in part due to a verdict or judgment entered in a medical professional liability action, if the physician has current medical malpractice insurance in the amount of at least \$1 million for each occurrence, the debtor physician's interest that is exempt under this subsection may exceed ~~\$25,000~~ \$35,000 in value but may not exceed \$250,000 per household.

(b) The debtor's interest, not to exceed ~~\$2,400~~ \$7,500 in value, in one motor vehicle.

(c) The debtor's interest, not to exceed \$400 in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor: *Provided*, That the total amount of personal property exempted under this subsection may not exceed \$8,000.

(d) The debtor's interest, not to exceed \$1,000 in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.

(e) The debtor's interest, not to exceed in value \$800 plus any unused amount of the exemption provided under subsection (a) of this section in any property.

(f) The debtor's interest, not to exceed \$1,500 in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.

(g) Any unmeasured life insurance contract owned by the debtor, other than a credit life insurance contract.

(h) The debtor's interest, not to exceed in value \$8,000 less any amount of property of the estate transferred in the manner specified in 11 U.S.C. §542(d), in any accrued dividend or interest under, or loan value of, any unmeasured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(i) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(j) The debtor's right to receive:

(1) A social security benefit, unemployment compensation or a local public assistance benefit;

(2) A veterans' benefit;

(3) A disability, illness or unemployment benefit;

(4) Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(5) A payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP) regardless of the amount of funds, unless:

(A) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;

(B) The payment is on account of age or length of service;

(C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code of 1986; and

(D) With respect to an individual retirement account, including a simplified employee pension, the amount is subject to the excise tax on excess contributions under Section 4973 and/or Section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether the tax is paid.

(k) The debtor's right to receive or property that is traceable to:

(1) An award under a crime victim's reparation law;

(2) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(4) A payment, not to exceed \$15,000 on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;

(5) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(6) Payments made to the prepaid tuition trust fund or to the savings plan trust fund, including earnings, in accordance with article thirty, chapter eighteen of this code on behalf of any beneficiary.

(l) Solely for the purpose of applying the provisions of 11 U.S.C. § 552(b)(2) in a federal bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law, an individual debtor domiciled in this state may exempt from property the debtor's bankruptcy estate the property specified under 11 U.S.C. § 552(d).

(m) The amendments made to this section during the 2021 session of the Legislature shall apply to bankruptcies filed on or after the effective date of those amendments.

There being no further amendments offered,

Having been engrossed, the bill (Eng. H. B. 2730), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2730) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 2730**—A Bill to amend and reenact §38-10-4 of the Code of West Virginia, 1931, as amended, relating generally to exemptions of property in bankruptcy; allowing a debtor in bankruptcy to use the federal law exemptions under 11 U.S.C. §522(d); increasing the value of a debtor's interest in property the debtor or a dependent of the debtor uses as a residence, in a

cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor to \$35,000; increasing the value of a debtor physician's interest that is exempt to \$35,000; increasing the value of a debtor's interest in one motor vehicle to \$7,500; and providing for an effective date.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2760**, Relating to economic development incentive tax credits.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Weld, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Weld, the following amendment to the bill was reported by the Clerk:

On page eighteen, after line sixty-six, by adding two new sections, designated sections eight-a and twenty-three-a, to read as follows:

## **ARTICLE 21. PERSONAL INCOME TAX.**

### **§11-21-8a. Credit for qualified rehabilitated buildings investment.**

A credit against the tax imposed by the provisions of this article is allowed as follows:

~~(a)~~ *Certified historic structures.* — For certified historic structures, the credit is equal to 10 percent of qualified rehabilitation expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 – Description of Rehabilitation, received by the state historic

preservation office after December 31, 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation expenditure, subject to the ~~limitations and other~~ provisions of §11-24-23a of this code: *Provided, however,* That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further,* That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 *et seq.* of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state, that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as “certified historic structures”, and further defined as a “qualified rehabilitated building”, as defined under §47(c)(1), Title 26 of the United States Code, as amended.

~~(b) The tax credit allowed by this section is eliminated after December 31, 2022: *Provided,* That any tax credits authorized by the state historic preservation officer and eligible to be claimed prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of law governing those tax credits that were in effect prior to January 1, 2023~~

(a) Any unused portion of the credit for qualified rehabilitated buildings investment authorized by this section which may not be taken in the taxable year to which the credit applies does not qualify for carryback and carryforward treatment subject to the identical general provisions under § 39, Title 26 of the United States Code, as amended: *Provided*, That the amount of the credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: *Provided, however*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by this section may not be carried back to any prior taxable year: *Provided further*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by this section may be carried over to each of the next 10 tax years following the first tax year for which the credit entitlement is authorized under this article for a specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.

(b) Effective for taxable years beginning on and after January 1, 2021, credits granted to an electing small business corporation (S corporation), limited partnership, general partnership, limited liability company, or multiple owners of property shall be passed through to the shareholders, partners, members, or owners, either pro-rata or pursuant to an agreement among the shareholders, partners, members, or owners, documenting an alternative distribution method. The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 *et seq.* of this code that provide the method of reporting the alternative method of distribution authorized by this section.

## **ARTICLE 24. CORPORATION NET INCOME TAX.**

### **§11-24-23a. Credit for qualified rehabilitated buildings investment.**

(a) A credit against the tax imposed by the provisions of this article shall be allowed as follows:

*Certified historic structures.* — For certified historic structures, the credit is equal to 10 percent of qualified rehabilitation

expenditures as defined in §47(c)(2), Title 26 of the United States Code, as amended: *Provided*, That for qualified rehabilitation expenditures made after December 31, 2017, pursuant to an historic preservation certification application, Part 2 – Description of Rehabilitation, received by the state historic preservation office after December 31, 2017, the credit allowed by this section is equal to 25 percent of the qualified rehabilitation expenditure: *Provided, however*, That the credit authorized by this section for qualified rehabilitation expenditures made after December 31, 2017, may not be used to offset tax liabilities of the taxpayer prior to the tax year beginning on or after January 1, 2020: *Provided further*, That the taxpayer is not entitled to this credit if, when the applicant begins to claim the credit and throughout the time period within which the credit is claimed, the taxpayer is in arrears in the payment of any tax administered by the Tax Division or the taxpayer is delinquent in the payment of any local or municipal tax, or the taxpayer is delinquent in the payment of property taxes on the property containing the certified historic tax structure when the applicant begins to claim the credit and throughout the time period within which the credit is claimed. The Tax Commissioner shall promulgate procedural rules in accordance with §29A-3-1 *et seq.* of this code that provide what information must accompany any claim for the tax credit for the determination that the taxpayer is not in arrears in the payment of any tax administered by the Tax Division, is not delinquent in the payment of any local or municipal tax, nor is the taxpayer delinquent in the payment of property taxes on the property containing the certified historic tax structure, and such other administrative requirements as the Tax Commissioner may specify. This credit is available for both residential and nonresidential buildings located in this state that are reviewed by the West Virginia Division of Culture and History and designated by the National Park Service, United States Department of the Interior as “certified historic building”, and further defined as a “qualified rehabilitated building”, as defined under §47(c)(1), Title 26, of the United States Code, as amended.

~~(b) Allocations and maximum amounts of tax credits per project and per fiscal year~~

~~(1) No more than \$10 million of the tax credits authorized by this section and section eight a, article twenty one of this chapter may be allocated, reserved or issued by the state historic preservation officer to any single certified rehabilitation.~~

~~(2) No more than \$30 million of the tax credits authorized by this section and section eight a, article twenty one of this chapter cumulatively may be issued by the state historic preservation officer for use in any given West Virginia state fiscal year, and any amount remaining up to \$30 million may not be carried over to a subsequent West Virginia state fiscal year.~~

~~(3) At the beginning of each fiscal year, no less than \$5 million of the tax credits authorized by this section and §11-21-8a of this code shall be set aside for reservation and the issuance of tax credits for certified rehabilitation projects with proposed tax credits of \$500,000. The balance of any amount set aside for these projects that has not been reserved pursuant to the procedures in subsection (c) of this section by the end of the fiscal year shall be allocated by the state historic preservation officer for the projects in any amount of other pending applicants otherwise eligible for the issuance of tax credits under this section and section eight a, article twenty one of this chapter in the order that the applications for those projects were received.~~

~~(e) (b) Procedure for issuance of tax credits reservations and certificates by the state historic preservation officer. —~~

(1) Any claim for the tax credits authorized pursuant to this section and §11-21-8a of this code shall be accompanied by a tax credit certificate issued by the state historic preservation officer.

(2) The tax credits will be awarded on a first come, first served basis. At the time the historic preservation certification application, Part 2—Description of Rehabilitation, is received by the state historic preservation office, the project will be placed on a reservation list, which will reserve the tax credit amount listed on the application. The historic preservation certification application, Part 2—Description of Rehabilitation, will be reviewed by the state historic preservation office for completion and submitted to the

~~National Park Service for full review. At the time the historic preservation certification application, Part 2 – Description of Rehabilitation, is submitted to the National Park Service, the state historic preservation officer shall send a request for the fee prescribed in subsection (d) of this section to the property owner. Upon approval of the historic preservation certification application, Part 2 – Description of Rehabilitation, from the National Park Service, including approval with conditions, that the project will meet the Secretary of the Interior’s standards for rehabilitation, the owner of the building will receive guarantee of the tax credits from the state historic preservation office.~~

(3) The state historic preservation officer shall issue tax credit certificates for certified rehabilitation projects that the National Park Service has determined have met the Secretary of the Interior standards for rehabilitation based on the issuance of an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work.

~~(4) Once the state historic preservation officer has allocated and reserved the maximum tax credits authorized for any given West Virginia state fiscal year, the state historic preservation officer then shall allocate and reserve tax credits against the maximum tax credits authorized for use in the succeeding West Virginia state fiscal year.~~

~~(5) If an applicant for tax credits that receives a reservation for tax credits for any given West Virginia state fiscal year fails to submit an approved historic preservation certification application, Part 3 – Request for Certification of Completed Work in the instance of a certified rehabilitation within thirty six (36) months of the date of the approved historic preservation certification application, Part 2 – Description of Rehabilitation, therefor or in the instance of a phased project as determined by the National Park Service within 60 months of the date of the advisory determination by the National Park Service therefor that such phase has been completed in accordance with the Secretary of the Interior standards for rehabilitation then the state historic preservation officer may reallocate part or all of the tax credits reserved therefor to other applicants in the order their applications were received.~~

~~(d)~~ (c) The state historic preservation officer shall prescribe and publish a form and instructions for an application for reservation and issuance of the tax credits authorized by this section and §11-21-8a of this code.

(e) (d) *Application fee.* — Each application for tax credits authorized pursuant to this section and §11-21-8a of this code shall require a fee payable to the state historic preservation officer equal to the lesser of: (1) 0.5% of the amount of the tax credits requested for in such application; and (2) \$10,000. The state historic preservation officer shall review and act on all such applications within 30 days of receipt.

Fees collected under this subsection shall be deposited into a special revenue account which is hereby created. The fund shall be administered by the state historic preservation officer and expended for the purposes of administering the provisions of this section and §11-21-8a of this code.

~~b The tax credit allowed by this section is eliminated after December 31, 2022: *Provided*, That any tax credits authorized by the state historic preservation officer and eligible to be claimed prior to January 1, 2023, shall continue to be eligible to be claimed subject to the provisions of law governing those tax credits that were in effect prior to January 1, 2023.~~

Any unused portion of the credit for qualified rehabilitated buildings investment authorized by this section which may not be taken in the taxable year to which the credit applies shall qualify for carryback and carryforward treatment subject to the identical general provisions under § 39, Title 26 of the United States Code, as amended: *Provided*, That the amount of such credit taken in a taxable year shall in no event exceed the tax liability due for the taxable year: *Provided, however*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by this section, may not be carried back to any prior taxable year: *Provided further*, That for tax years beginning on and after January 1, 2020, any unused portion of the credit authorized by this section may be carried over to each of the next 10 tax years following the first tax year for which the credit entitlement is

authorized under this article for a specific qualified rehabilitation buildings investment until used to exhaustion or forfeited due to lapse of time.

Following discussion,

The question being on the adoption of Senator Weld's amendment to the bill, the same was put and prevailed.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2760), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2760) passed.

On motion of Senator Weld, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2760**—A Bill to amend and reenact §11-13Q-9, §11-13Q-10, §11-13Q-10a, and §11-13Q-22 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-21-8a of said code; and to amend and reenact §11-24-23a of said code, all relating to economic development incentive tax credits; modifying the economic opportunity tax credit; authorizing the economic opportunity tax credit for the creation of 10 jobs under certain circumstances; eliminating credit to business franchise tax; terminating small business credit after a certain date; authorizing certain manufacturing activities to qualify for high

technology manufacturing tax credit; defining terms; limiting certain multiple tax credits for the same qualified investment; striking obsolete reference to prevailing wage requirement; providing effective dates; modifying the credit for qualified rehabilitated buildings investment; eliminating the termination date of the credit; providing for carryback and carryforward provisions for the tax credit; and eliminating the maximum allowable amount of the tax credit.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2773**, Permitting DNR to issue up to 100 permits for boats greater than 10 horsepower on Upper Mud River Lake.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2773 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2773) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2773) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence in the changed effective date.

**Eng. House Bill 2830**, Relating generally to sex trafficking.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2830) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 2830**—A Bill to amend and reenact §49-5-104 of the Code of West Virginia, 1931, as amended; to amend and reenact §61-8-5 of said code; and to amend and reenact §61-14-2, §61-14-8, and §61-14-9 of said code, all relating to strengthening sex trafficking laws; allowing for accessibility of juvenile adjudication records for child victims of sex trafficking; providing for immunity from prosecution for child victims of sex trafficking; providing for criminal liability of a person who aids, assists, or abets the trafficking of an adult or child; providing that a child victim of sex trafficking be eligible for comprehensive and specialized trauma-informed child welfare services; and allowing a child victim of sex trafficking to expunge records of conviction or juvenile delinquency adjudication; establishing penalties.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2842**, Preventing cities from banning utility companies in city limits.

On third reading, coming up in regular order, with the unreported Energy, Industry, and Mining committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 7, 2021, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on Energy, Industry, and Mining, was reported by the Clerk and adopted:

On page one, section twenty-two, by striking out the section caption and inserting in lieu thereof a new section caption, to read as follows:

**§8-12-23. Limitations on municipalities, political subdivisions, and local governing bodies' authority over energy usage and development.**

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2842), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Caputo, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—24.

The nays were: Baldwin, Beach, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—10.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2842) passed.

The following amendment to the title of the bill, from the Committee on Energy, Industry, and Mining, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2842**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-23, relating to placing limitations on the authority of municipalities, political subdivisions, and local governing bodies generally; forbidding a municipality, political subdivision, or a local governing body to enact any code, ordinance, or land use regulation that would prohibit, have the effect of prohibiting, or regulate in any manner a public utility or department of public utilities from furnishing a utility service to a utility customer based on an energy source which is provided or used by a utility service; forbidding a municipality, political subdivision, or a local governing body to enact any code, ordinance, or land use regulation that would prohibit or regulate a customer of a public utility or department of public utilities from purchasing, using, or connecting or reconnecting to a utility service based on the energy source provided or used by a utility service, forbidding a municipality, political subdivision, or a local

governing body to enact any code, ordinance, or land use regulation that would prohibit or regulate a public utility or department of public utilities from utilizing vehicles, equipment, machinery, or tools, to provide utility services to a utility customer based on the energy source used by or powering those vehicles, equipment, machinery, or tools used by the utility service; and defining terms.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2915**, Relating to public records management and preservation.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 2918**, Relating to Family Drug Treatment Court.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 2918 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2918) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 3254**, Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 7, 2021, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 12. COUNTY AND MUNICIPAL DEVELOPMENT AUTHORITIES.**

#### **§7-12-5. Compensation of members; expenses; recusal of member from voting where conflict of interest involved.**

(a) No member of the authority shall receive any compensation, whether in formal salary, per diem allowance or otherwise, in connection with his or her services as such member-~~Each~~: Provided, That each member shall, however, be entitled to reimbursement by the authority for any necessary expenditures in connection with the performance of his or her general duties as such member-: Provided however, That each member may be reimbursed for his or her reasonable and necessary expenses, including but not limited to compensation, in connection with his

or her performance of other duties as assigned by the authority in connection with the June 2016 flooding event in West Virginia, if such duties and such reimbursement is first approved by a vote of the authority, with the member to be reimbursed being recused from voting upon the question.

(b) Whenever a person associated with a public utility or bank as set out in section four of this article has a conflict of interest between the board and that public utility or bank, then he or she must recuse himself or herself from any vote, discussion or other activity associated with the board or its members that creates the conflict of interest.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.**

#### **§61-10-15. Pecuniary interest of county and district officers, teachers and school officials in contracts; exceptions; offering or giving compensation; penalties.**

(a) It is unlawful for any member of a county commission, district school officer, secretary of a Board of Education, supervisor or superintendent, principal or teacher of public schools or any member of any other county or district board or any county or district officer to be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service or in the furnishing of any supplies in the contract for or the awarding or letting of a contract if, as a member, officer, secretary, supervisor, superintendent, principal or teacher, he or she may have any voice, influence or control: *Provided*, That nothing in this section prevents or makes unlawful the employment of the spouse of a member, officer, secretary, supervisor, superintendent, principal or teacher as a principal or teacher or auxiliary or service employee in the public schools of any county or prevents or makes unlawful the employment by any joint county and circuit clerk of his or her spouse.

(b) Any person who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction

thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not more than one year, or both fined and confined.

(c) Any person convicted of violating the provisions of subsection (a) of this section shall also be removed from his or her office and the certificate or certificates of any teacher, principal, supervisor or superintendent so convicted shall, upon conviction thereof, be immediately revoked: *Provided*, That no person may be removed from office and no certificate may be revoked for a violation of the provisions of this section unless the person has first been convicted of the violation.

(d) Any person, firm or corporation that offers or gives any compensation or thing of value or who forebears to perform an act to any of the persons named in subsection (a) of this section or to or for any other person with the intent to secure the influence, support or vote of the person for any contract, service, award or other matter as to which any county or school district becomes or may become the paymaster is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500 and, in the court's discretion, the person or any member of the firm or, if it is a corporation, any agent or officer of the corporation offering or giving any compensation or other thing of value may, in addition to a fine, be confined in jail for a period not to exceed one year.

(e) The provisions of subsection (a) of this section do not apply to any person who is a salaried employee of a vendor or supplier under a contract subject to the provisions of said subsection if the employee, his or her spouse or child:

(1) Is not a party to the contract;

(2) Is not an owner, a shareholder, a director or an officer of a private entity under the contract;

(3) Receives no commission, bonus or other direct remuneration or thing of value by virtue of the contract;

(4) Does not participate in the deliberations or awarding of the contract; and

(5) Does not approve or otherwise authorize the payment for any services performed or supplies furnished under the contract.

(f) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a bank within the county serving or under consideration to serve as a depository of funds for the county or Board of Education, as the case may be, if the person does not participate in the deliberations or any ultimate determination of the depository of the funds.

(g) The provisions of subsection (a) of this section do not apply to any person who has a pecuniary interest in a public utility which is subject to regulation by the Public Service Commission of this state.

(h) Where the provisions of subsection (a) of this section would result in the loss of a quorum in a public body or agency, in excessive cost, undue hardship or other substantial interference with the operation of a governmental body or agency, the affected governmental body or agency may make written application to the West Virginia Ethics Commission pursuant to subsection (d), section five, article two, chapter six-b of this code for an exemption from subsection (a) of this section.

(i) The provisions of this section do not apply to publications in newspapers required by law to be made.

(j) No school employee or school official subject to the provisions of subsection (a) of this section has an interest in the sale, proceeds or profits in any book or other thing used or to be used in the free school system of this state, as proscribed in section nine, article XII of the Constitution of West Virginia, if they qualify for the exceptions set forth in subsection (e), (f),(g) or (h) of this section.

(k) The provisions of subsection (a) of this section do not prevent or make unlawful the employment of the spouse of any member of a county commission as a licensed health care provider at government-owned hospitals or other government agencies who provide health care services: *Provided*, That the member of a

county commission whose spouse is employed or to be employed may not:

(1) Serve on the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed;

(2) Vote on the appointment of members to the board for the government-owned hospital or other government agency who provides health care services where his or her spouse is employed or to be employed; or

(3) Seek to influence the hiring or promotion of his or her spouse by the government-owned hospital or other government agency who provides health care services.

(1) The provisions of subsection (a) of this section do not make unlawful the employment of a spouse of any elected county official by that county official: *Provided*, That the elected county official may not:

(1) Directly supervise the spouse employee; or

(2) Set the salary of the spouse employee: *Provided*, That the provisions of this subsection shall only apply to spouse employees who were neither married to nor engaged to the elected county official at the time of their initial hiring.

(m) The provisions of subsection (a) of this section do not prohibit reimbursement of a member of a development authority established under §7-12-1 *et seq.* of this code for:

(1) His or her necessary expenditures in connection with the performance of his or her general duties as such member, as permitted by §7-12-5(a) of this code; or

(2) His or her reasonable and necessary expenses, including but not limited to compensation, in connection with his or her performance of other duties as assigned by the authority in connection with the June 2016 flooding event in West Virginia, if such duties and such reimbursement is first approved by a vote of

the authority, with the member to be reimbursed being recused from voting upon the question, as permitted by §7-12-5(a) of this code.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 3254), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3254) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 3254**—A Bill to amend and reenact §7-1-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-10-15 of said code, all relating to reimbursement of members of county and municipal development authorities; providing that a member of a county or municipal development authority may be reimbursed for certain necessary expenses in connection with his or her performance of certain other duties authorized by the authority; providing that such other duties and such reimbursement must first be approved by a vote of the authority with the member to be reimbursed being recused from voting on the question; and providing that the prohibition against certain public officers and officials with any voice, influence, or

control with respect to certain contracts becoming pecuniarily interested in such contracts does not apply to certain members of a county or municipal development authority who receive certain reimbursements from such authority.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3286**, Making a supplementary appropriation to the Division of Human Services – Child Care and Development.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3286) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3286) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3287**, Making a supplementary appropriation to the Department of Homeland Security.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3287) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3287) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3288**, Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3288) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3288) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3289**, Supplementary appropriation to the Department of Commerce, Geological and Economic Survey.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3289) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3289) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3291**, Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Karnes—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3291) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Karnes—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3291) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3292**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3292) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3292) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 3293**, Relating to single-sex participation in interscholastic athletic events.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

(Senator Weld in the Chair.)

Pending discussion,

Senator Trump arose to a point of order stating the Senator from Jefferson had yielded for the purpose of answering questions posed by the Senator from Harrison, but the Senator from Harrison was not affording the Senator from Jefferson the opportunity to answer questions posed before asking further questions.

Which point of order, the Chair ruled well taken.

Pending discussion,

(Senator Blair, Mr. President, in the Chair.)

Pending extended discussion,

(Senator Tarr in the Chair.)

Pending discussion,

(Senator Blair, Mr. President, in the Chair.)

Pending discussion,

Senator Beach moved that Engrossed Committee Substitute for House Bill 3293 be tabled.

The question being on the adoption of Senator Beach's aforestated motion, the same was put and did not prevail.

Pending extended discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 3293 pass?"

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Martin, Maynard, Phillips, Roberts, Rucker, Smith, Stover, Sypolt, Tarr, Trump, Woodrum, and Blair (Mr. President)—18.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Maroney, Nelson, Plymale, Romano, Stollings, Swope, Takubo, Unger, and Weld—15.

Absent: Woelfel—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3293) passed.

On motion of Senator Rucker, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 3293**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25d, relating to designation of athletic teams or sports sponsored by any public secondary school or state institution of higher education according to biological sex; providing legislative findings; defining "biological sex", "female", and "male"; providing for designation of athletic teams as "males, men, or boys", "females, women, or girls", or "coed or mixed"; prohibiting biological males from participating on athletic teams or sports designated for biological females where competitive skill or contact is involved; clarifying that eligibility of any student to participate on athletic teams or sports designated for biological males is not restricted; providing

cause of action for student aggrieved by violation of this section; requiring identity of minor student related to such action to remain anonymous; requiring promulgation of rules by the State Board of Education; and requiring proposal of legislative rules by the Higher Education Policy Commission and Council for Community and Technical College Education.

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

On motion of Senator Takubo, at 2:07 p.m., the Senate recessed until 3 p.m. today.

The Senate reconvened at 3:02 p.m. and, without objection, returned to the third order of business.

### **Executive Communications**

The Clerk then presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
Governor of West Virginia

April 8, 2021

The Honorable Lee Cassis, Clerk  
West Virginia Senate  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Committee Substitute for Committee Substitute for Senate Bill No. Two Hundred Seventy-Five (275), which was presented to me on April 2, 2021.

You will note that I have approved this bill on April 8, 2021.

Sincerely,

A handwritten signature in blue ink that reads "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Stephen J. Harrison, Clerk



*Jim Justice*  
*Governor of West Virginia*

April 8, 2021

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, is the following bill:

Committee Substitute for House Bill No. Two Thousand Four Hundred Ninety-Nine (2499), which was presented to me on April 2, 2021.

You will note that I have approved this bill on April 8, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Justice".

Jim Justice  
Governor

JJ/mh

cc: The Honorable Lee Cassis

The Senate again proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 8th day of April, 2021, 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. 78)**, Relating to rehabilitative spousal support.

**(Second Enr. S. B. 89)**, Exempting certain kindergarten and preschool programs offered by private schools from registration requirements.

**(Com. Sub. for S. B. 377)**, Relating to extension for boil water advisories by water utility or public service district.

**(S. B. 437)**, Extending contingent increase of tax rate on certain eligible acute care hospitals.

**(Com. Sub. for S. B. 514)**, Providing criteria for Natural Resource Commission appointment and compensation.

**(Com. Sub. for S. B. 518)**, Relating to grounds for administrative dissolution of certain companies, corporations, and partnerships.

**(S. B. 644)**, Exempting certain persons pursuing degree in speech pathology and audiology from license requirements.

And,

**(Com. Sub. for H. B. 2793)**, Permit out of state residents to obtain West Virginia concealed carry permits.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

The Senate again proceeded to the eighth order of business and resumed consideration of its third reading calendar, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 3295**, Making a supplemental appropriation to Division of Human Services and Division of Health Central Office.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3295) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3295) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 3297**, Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3297) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3297) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3310**, Relating to the jurisdiction of the Public Service Commission.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 3310 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Phillips—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3310) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 3310**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-1-1c; to amend and reenact §24-1-2 of said code; and to amend and reenact §24-2-1 of said code; all generally relating to jurisdiction of the Public Service Commission; making legislative findings; defining terms; creating exception to the term public utility for certain solar photovoltaic energy facilities on the premises of a retail electric customer, the output of which is subject

to solar power purchase agreements; providing for rulemaking; and limiting jurisdiction of the Public Service Commission.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Phillips—1.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3310) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Joint Resolution 1**, Education Accountability Amendment.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Wednesday, April 7, 2021, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was laid over one day, retaining its place on the calendar, with the right to amend remaining in effect and with the unreported Judiciary committee amendment pending.

**Eng. House Joint Resolution 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

On third reading, coming up in regular order, with the right having been granted on yesterday, Wednesday, April 7, 2021, for amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was laid over one day, retaining its place on the calendar, and with the right to amend remaining in effect.

The Senate proceeded to the ninth order of business.

**Eng. House Bill 2029**, Relating to teacher preparation clinical experience programs.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

On page thirteen, section two-a, line ninety-seven, by striking out the words “subsection (e), section one of this article” and inserting in lieu thereof the words “§18A-3-1(e) of this code”.

The bill (Eng. H. B. 2029), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2145**, Relating to student aide class titles.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

On page four, section eight, lines ninety-two through ninety-three, by striking out the words “These classes are designed to improve skills and competency’s related to the provision of services to special needs students.”.

The bill (Eng. Com. Sub. for H. B. 2145), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2221**, Relating to the establishment of an insurance innovation process.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Banking and Insurance, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 60. INSURANCE INNOVATION.**

### **§33-60-1. Definitions.**

For the purposes of this article, unless the context otherwise indicates:

“Applicant” means a person or entity that has filed an application under §33-60-2 of this code.

“Beta test” means the phase of testing of an insurance innovation in the regulatory sandbox through the use, sale, license, or availability of the insurance innovation by or to clients or consumers under the supervision of the commissioner.

“Client” means a person, other than a consumer, utilizing a participant’s insurance innovation during a beta test to carry on some activity regulated by the commissioner.

“Commissioner” means the West Virginia Insurance Commissioner or the West Virginia Offices of the Insurance Commissioner, as appropriate.

“Extended no-action letter” means a public notice setting forth the conditions for an extended safe harbor beyond the beta test under which the commissioner will not take any administrative or

regulatory action against any person using the insurance innovation described in the extended no-action letter.

“Innovation” means any product, process, method, or procedure relating to the sale, solicitation, negotiation, fulfillment, administration, or use of any product or service regulated by the commissioner:

(A) That has not been used, sold, licensed, or otherwise made available in this state before the filing date of the application, whether or not the product or service is marketed or sold directly to consumers; and

(B) That has regulatory and statutory barriers that prevent its use, sale, license, or availability within this state.

“Innovation’s utility” means an evaluation by the commissioner of the insurance innovation’s ability to adequately satisfy factors set forth in §33-60-2(a)(2)(A) of this code.

“Limited no-action letter” or “limited letter” means a letter setting forth the conditions of a beta test and establishing a safe harbor under which the commissioner will not take any administrative or regulatory action against a participant or client of the participant concerning the compliance of the insurance innovation with West Virginia law so long as the participant or client abides by the terms and conditions established in the limited no-action letter.

“Participant” means an applicant that has been issued a limited no-action letter under §33-60-4 of this code.

“Person” means a person or entity.

“Qualified United States financial institution” means an institution that:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;

(B) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies; and

(C) Has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

“Regulatory sandbox” means the process established under this article by which an applicant may apply to beta test and obtain a limited no-action letter for an innovation, potentially resulting in the issuance of an extended no-action letter.

**§33-60-2. Application for admission to regulatory sandbox.**

(a) Except as provided in subsection (b) of this section, on or before December 31, 2025, an applicant may apply to the commissioner for admission to the regulatory sandbox by submitting an application in the form prescribed by the commissioner, accompanied by the following:

(1) A filing fee of \$750;

(2) A detailed description of the innovation, which shall include:

(A) An explanation of how the innovation will:

(i) Add value to customers and serve the public interest;

(ii) Be economically viable for the applicant;

(iii) Provide suitable consumer protection; and

(iv) Pose no unreasonable risk of consumer harm.

(B) A detailed description of the statutory and regulatory issues that prevents the innovation from being utilized, issued, sold, solicited, distributed, or advertised in the market currently;

(C) A description of how the innovation functions, as well as the manner in which it will be offered or provided;

(D) If the innovation involves the use of software, hardware, or other technology developed for the purpose of implementing or operating it, a technical white paper setting forth a description of the operation and general content of technology to be utilized, including:

(i) The problem addressed by that technology; and

(ii) The interaction between that technology and its users;

(E) If the innovation involves the issuance of a policy of insurance, a statement that:

(i) If the applicant will be the insurer on the policy, the applicant holds a valid license or certificate of authority and is authorized to issue the insurance coverage in question; or

(ii) If some other person will be the insurer on the policy, the other person holds a valid license or certificate of authority and is authorized to issue the insurance coverage in question; and

(F) A statement by an officer of the applicant certifying that no product, process, method, or procedure substantially similar to the innovation has been used, sold, licensed, or otherwise made available in this state before the filing date of the application;

(3) The name, contact information, and bar number of the applicant's insurance regulatory counsel, which shall be a person with experience providing insurance regulatory compliance advice;

(4) A detailed description of the specific conduct that the applicant proposes should be permitted by the limited no-action letter;

(5) Proposed terms and conditions to govern the applicant's beta test, which shall include:

(A) Citation to the provisions of West Virginia law that should be excepted in the notice of acceptance issued under §33-60-3(d)(2) of this code; and

(B) Any request for an extension of the time period for a beta test under §33-60-5(a) of this code and the grounds for the request;

(6) Proposed metrics by which the commissioner may reasonably test the innovation's utility during the beta test;

(7) Disclosure of all:

(A) Persons who are directors and executive officers of the applicant;

(B) General partners of the applicant if the applicant is a limited partnership;

(C) Members of the applicant if the applicant is a limited liability applicant;

(D) Persons who are beneficial owners owning 10 percent or more of the voting securities of the applicant;

(E) Other persons with direct or indirect authority to direct the management and policies of the applicant by contract, other than a commercial contract for goods or nonmanagement services; and

(F) Conflicts of interest with respect to any person listed in this subdivision and the commissioner;

(8) A statement that the applicant has funds of at least \$25,000 available to guarantee its financial stability through one or a combination of any of the following:

(A) A contractual liability insurance policy;

(B) A surety bond issued by an authorized surety;

(C) Securities of the type eligible for deposit by authorized insurers in this state;

(D) Evidence that the applicant has established an account payable to the commissioner in a federally insured financial institution in this state and has deposited money of the United States in an amount equal to the amount required by this subdivision that is not available for withdrawal except by direct order of the commissioner;

(E) A letter of credit issued by a qualified United States financial institution; or

(F) Another form of security authorized by the commissioner; and

(9) A statement confirming that the applicant is not seeking authorization for, nor shall it engage in, any conduct that would render the applicant unauthorized to make an application under subsection (b) of this section.

(b)(1)The following persons shall not be authorized to make an application to the commissioner for admission to the regulatory sandbox:

(A) Any person seeking to sell or license an insurance innovation directly to any federal, state, or local government entity, agency, or instrumentality as the insured person or end user of the innovation;

(B) Any person seeking to sell, license, or use an insurance innovation that is not in compliance with §33-60-2(a)(2)(E) of this code;

(C) Any person seeking to make an application that would result in the person having more than five active beta tests ongoing within the state at any one time; or

(D) Any person seeking a limited or extended no-action letter or exemption from any administrative regulation or statute concerning;

(i) Assets, deposits, investments, capital, surplus, or other solvency requirements applicable to insurers;

(ii) Required participation in any assigned risk plan, residual market, or guaranty fund;

(iii) Any licensing or certificate of authority requirements; or

(iv) The application of any taxes or fees.

(2) For the purposes of this subsection, “federal, state, or local government entity, agency, or instrumentality” includes but is not limited to any county, city, municipal corporation, local government, special district, public school district, or public institution of education.

**§33-60-3. Acceptance or rejection of application.**

(a)(1) Unless extended as provided in §33-60-3(a)(2) of this code, the commissioner shall issue a notice of acceptance or rejection in accordance with this section within 60 days from the date an application is received.

(2) The commissioner may extend by not more than 30 days the period provided in subdivision (1) of this subsection if he or she notifies the applicant before expiration of the initial 60-day period.

(3) An application that has not been accepted or rejected by a notice of acceptance or rejection issued by the commissioner prior to expiration of the initial 60-day period, or if applicable, the period provided in §33-60-3(a)(2) of this code, shall be deemed accepted.

(b) The commissioner may request from the applicant any additional material or information necessary to evaluate the application, including but not limited to:

(1) Proof of financial stability;

(2) A proposed business plan;

(3) Pro-forma financial statement; and

(4) Executive profiles on the applicant and its leadership demonstrating insurance or insurance-related industry experience and applicable experience in the use of the technology.

(c) The commissioner shall review the application to:

(1) Identify and assess:

(A) The potential risks to consumers, if any, posed by the innovation; and

(B) The manner in which the innovation would be offered or provided; and

(2) Determine whether it satisfies the following requirements:

(A) The application satisfies the requirements of §33-60-2 of this code;

(B) The application proposes a product, process, method, or procedure that meets the definition of innovation under §33-60-1 of this code;

(C) Approval of the application does not pose an unreasonable risk of consumer harm;

(D) The application identifies statutory or regulatory requirements that actually prevent the innovation from being utilized, issued, sold, solicited, distributed, or advertised in this state; and

(E) The application proposes an innovation that is not substantially similar to another innovation:

(i) That has been previously beta tested; or

(ii) Proposed in an application that is currently pending with the commissioner.

(d) Upon review of the application, the commissioner shall, in his or her discretion, issue one of the following:

(1) If the commissioner determines that the application fails to satisfy any of the requirements under §33-60-3(c)(2) of this code, he or she shall:

(A) Issue a notice of rejection to the applicant; and

(B) Describe in the notice of rejection the specific defects in the application; or

(2) If the commissioner determines that the application satisfies the requirements of §33-60-3(c)(2) of this code, he or she shall issue a notice of acceptance to the applicant. The notice of acceptance shall:

(A) Set forth the terms and conditions that will govern the applicant's beta test, which shall include, at a minimum:

(i) A requirement that the applicant:

(I) Abide by all West Virginia law, except where explicitly excepted;

(II) Utilize the insurance innovation within this state; and

(III) Report any change in the disclosures made pursuant to §33-60-2(a)(7) of this code;

(ii) A notice of the licenses required to be obtained prior to the commencement of the beta test;

(iii) Monthly reporting obligations structured to determine the progress of the beta test;

(iv) Consumer protection measures deemed necessary by the commissioner to be employed by the applicant;

(v) The level of financial stability required to be in place for the beta test. The commissioner may increase, decrease, or waive the requirements for financial stability required under §33-60-2(a)(8) of this code, commensurate with the risk of consumer harm posed by the insurance innovation;

(vi) The duration of the beta test, including any extension authorized under §33-60-5 of this code;

(vii) Permitted conduct under the limited letter;

(viii) Any limits established by the commissioner on the:

(I) Financial exposure that may be assumed by an applicant during the beta test;

(II) Number of customers an applicant may accept; and

(III) Volume of transactions that an applicant or its clients may complete during the beta test; and

(ix) The metrics the commissioner intends to use to determine the innovation's utility; and

(B) Provide that the notice of acceptance shall expire unless:

(i) It is accepted by the applicant in writing; and

(ii) The acceptance is filed with the commissioner within 60 days of the issuance of the notice.

(e) An applicant may request a hearing pursuant to §33-2-13 of this code on:

(1) A notice of rejection; and

(2) A notice of acceptance, if the request is made prior to its expiration.

**§33-60-4. Limited no-action letter.**

(a) Within 10 days following the timely receipt of an acceptance pursuant to §33-60-3(d)(2)(B) of this code, the commissioner shall issue a limited no-action letter that:

(1) Sets forth terms and conditions for the participant that are the same as those set forth in the notice of acceptance issued under §33-60-3(d)(2) of this code; and

(2) Provides that so long as the participant and any clients of the participant abide by the terms and conditions set forth in the letter, no administrative or regulatory action concerning the compliance of the insurance innovation with West Virginia law will be taken by the commissioner against the participant or any clients during the term of the beta test.

(b) If the application is deemed accepted under §33-60-3(a)(3) of this code, the proposed limited no-action letter included with the application shall be deemed to have the effect of a limited letter issued by the commissioner.

(c) The safe harbor of the limited letter shall persist until the earlier of:

(1) The early termination of the beta test under §33-60-5 of this code;

(2) The issuance of an extended no-action letter; or

(3) The issuance of a notice declining to issue an extended no-action letter.

(d) The commissioner shall publish all limited letters issued pursuant to this section on the commissioner's publicly accessible internet website.

**§33-60-5. Time period of beta test; extension of time period; penalties for violation of limited no-action letter.**

(a) The time period for a beta test shall be three years. The time period may be extended by the commissioner in the notice of acceptance for a period that is not longer than one year if a request is made in accordance with §33-60-2(a)(5)(B) of this code.

(b) During the beta test, the participant and any clients of the participant shall:

(1) Comply with all terms and conditions set forth in the limited no-action letter; and

(2) Provide the commissioner with all documents, data, and information requested by the commissioner.

(c) For any violation of the terms or conditions set forth in the limited letter, the commissioner may:

(1) Issue an order terminating the beta test and the safe harbor of the limited letter before the time period set forth in the limited letter has expired; and

(2) Impose a fine of not more than \$2,000 per violation.

(d) The commissioner may issue an order under §33-60-5(c) of this code if, following receipt of information or complaints, the commissioner determines the beta test is causing consumer harm.

(e) The commissioner may issue an order requiring a client to cease and desist any activity violating the terms or conditions set forth in the limited letter. The issuance of a cease and desist order to one client shall not otherwise impact the ability of the participant or any other clients to continue activities relating to the innovation in a manner compliant with the requirements of the limited letter.

(f) A participant or client may request a hearing on any order issued under this section pursuant to §33-2-13 of this code.

**§33-60-6. Extended no-action letter; review of beta test.**

(a) Within 60 days of completion of the beta test, unless the time period is extended up to 30 days upon notice from the commissioner, the commissioner shall issue an extended no-action letter or a notice declining to issue an extended no-action letter. The participant may continue to employ the insurance innovation pursuant to the terms and conditions of the limited letter during the period between the completion of the beta test and the issuance of either an extended no-action letter or a notice declining to issue an extended no-action letter.

(b) The commissioner shall review the results of the beta test to determine whether the innovation satisfies the following requirements:

(1) The data presented demonstrates that the innovation's utility was meritorious of an extension;

(2) Regulatory and statutory barriers prevent continued use of the innovation within this state;

(3) The innovation provided a benefit to West Virginia consumers; and

(4) The issuance of an extended no-action letter:

(A) Presents no risk of unreasonable harm to consumers or the marketplace; and

(B) Serves the public interest.

(c) Upon review of the results of the beta test the commissioner shall, in his or her discretion, issue one of the following:

(1) If the commissioner determines that the innovation fails to satisfy any of the requirements under §33-60-6(b) of this code, he or she shall:

(A) Issue a notice declining to issue an extended no-action letter;

(B) Describe in the notice the reasons for the declination;

(C) Notify the participant for the innovation of the notice; and

(D) Publish the notice on the commissioner's publicly accessible Internet website; or

(2) If the commissioner determines that the innovation satisfies the requirements under §33-60-6(b) of this code, he or she shall issue an extended no-action letter. An extended no-action letter issued by the commissioner shall include:

(A) A description of the insurance innovation and the specific conduct permitted by the extended no-action letter in sufficient detail to enable any person to use the innovation or a product,

process, method, or procedure not substantially different from the innovation within the safe harbor of the extended no-action letter;

(B) Notice of any certificate of authority, license, or permit the commissioner determines is necessary to use, sell, or license the innovation, or make the innovation available, in this state;

(C) An expiration date not greater than three years following the date of issuance;

(D) Notice that the extended no-action letter may:

(i) Be modified only by:

(I) Legislative rule proposed by the commissioner, if the safe harbor addresses a requirement established by rule; or

(II) An act of the Legislature; and

(ii) Be rescinded prior to its expiration if the commissioner receives complaints and determines continued activity poses a risk of harm to consumers;

(E) Clarification of required procedures related to the issuance and cancellation of any policies of insurance, if applicable, due to the expiration period; and

(F) Notice that, upon expiration, all persons relying on the extended no-action letter shall cease and desist operations related to the innovation unless changes have been made to West Virginia law to permit the innovation by:

(i) The promulgation of a legislative rule by the commissioner, if the safe harbor addresses a requirement established by rule; or

(ii) An act of the Legislature.

(d) A hearing on a notice of declination may be requested in accordance with §33-2-13 of this code.

(e) An extended no-action letter issued by the commissioner pursuant to this section shall be published on the commissioner's publicly accessible internet website.

**§33-60-7. Confidentiality of information.**

(a) All documents, materials, or other information in the possession or control of the commissioner that are created, produced, obtained, or disclosed in relation to this article and that relate to the financial condition of any person shall be confidential by law and privileged, are not subject to the provisions of chapter 29B of this code, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action.

(b) Notwithstanding any law to the contrary, the commissioner may disclose in an extended no-action letter any information relating to the insurance innovation necessary to clearly establish the safe harbor of the extended no-action letter.

**§33-60-8. Reports to the Legislature.**

(a) On or before September 1 each year during which there was activity pursuant to this article during the prior fiscal year, the commissioner shall submit a written report to the Joint Committee on Government and Finance that meets the requirements of §33-60-8(b) of this code.

(b) The report shall include the following:

(1) The number of:

(A) Applications filed and accepted;

(B) Beta tests conducted; and

(C) Extended no-action letters issued;

(2) A description of the innovations tested;

(3) The length of each beta test;

(4) The results of each beta test;

(5) A description of each safe harbor created under §33-60-6 of this code;

(6) The number and types of orders or other actions taken by the commissioner or any other interested party under this article;

(7) Identification of any statutory barriers for consideration by the Legislature following successful beta tests and the issuance of extended no-action letters; and

(8) Any other information or recommendations deemed relevant by the commissioner.

(c) The commissioner shall also, upon request of any committee of the Legislature, testify and explain any report submitted under this section and any activity pursuant to this article.

#### **§33-60-9. Reciprocity agreements.**

The commissioner may enter into agreements with state, federal, or foreign regulatory agencies to allow persons who make an insurance innovation available in West Virginia through the regulatory sandbox to make their insurance innovation available in other jurisdictions and to allow persons operating in similar regulatory sandboxes in other jurisdictions to make insurance innovations available in West Virginia under the standards of this article.

#### **§33-60-10. Rulemaking.**

(a) The Insurance Commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code for the purposes of administering this article.

(b) The Insurance Commissioner shall develop all forms, contracts, or other documents to be used for the purposes outlined in this article.

The bill (Eng. Com. Sub. for H. B. 2221), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2266**, Relating to expanding certain insurance coverages for pregnant women.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**§9-5-12. Medicaid program; maternity and infant care.**

~~(a) The Legislature finds that high rates of infant mortality and morbidity are costly to the state in terms of human suffering and of expenditures for long term institutionalization, special education, and medical care. It is well documented that appropriate care during pregnancy and delivery can prevent many of the expensive, disabling problems our children experience. There exists a crisis in this state relating to the availability of obstetrical services, particularly to patients in rural areas, and to the cost patients must pay for obstetrical services. The availability of obstetrical service for Medicaid patients enables these patients to receive quality medical care and to give birth to healthier babies and, consequently, improve the health status of the next generation.~~

~~The Legislature further recognizes that public and private insurance mechanisms remain inadequate, and poor and middle-income women and children are among the most likely to be without insurance. Generally, low income, uninsured children receive half as much health care as their insured counterparts. The state is now investing millions to care for sick infants whose deaths and disabilities could have been avoided.~~

~~It is the intent of the Legislature that the Department of Health and Human Resources participate in the Medicaid program for indigent children and pregnant women established by Congress under the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99 272, the Sixth Omnibus Budget~~

~~Reconciliation Act (SOBRA), Public Law 99-504, and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-203.~~

~~(b)~~ (a) The department shall:

(1) Extend Medicaid coverage to pregnant women and their newborn infants to 185 percent of the federal poverty level and to provide coverage up to ~~60 days~~ 1-year postpartum care, effective July 1, ~~2019~~, 2021 or as soon as federal approval has occurred.

(2) As provided under ~~COBRA, SOBRA, and OBRA~~ the Consolidated Omnibus Budget Reconciliation Act (COBRA), Public Law 99-272, the Sixth Omnibus Budget Reconciliation Act (SOBRA), Public Law 99-509, and the Omnibus Budget Reconciliation Act (OBRA), Public Law 100-123, effective July 1, 1988, infants shall be included under Medicaid coverage with all children eligible for Medicaid coverage born after October 1, 1983, whose family incomes are at or below 100 percent of the federal poverty level and continuing until such children reach the age of eight years.

(3) Elect the federal options provided under COBRA, SOBRA, and OBRA impacting pregnant women and children below the poverty level: *Provided*, That no provision in this article shall restrict the department in exercising new options provided by or to be in compliance with new federal legislation that further expands eligibility for children and pregnant women.

(4) The department is responsible for the implementation and program design for a maternal and infant health care system to reduce infant mortality in West Virginia. The health system design shall include quality assurance measures, case management, and patient outreach activities. The department shall assume responsibility for claims processing in accordance with established fee schedules and financial aspects of the program necessary to receive available federal dollars and to meet federal rules and regulations.

(5) ~~Beginning July 1, 1988, the~~ The department shall increase to no less than \$600 the reimbursement rates under the Medicaid program for prenatal care, delivery, and post-partum care.

~~(e)~~ (b) In order to be in compliance with the provisions of OBRA through rules and regulations, the department shall ensure that pregnant women and children whose incomes are above the Aid to Families and Dependent Children (AFDC) payment level are not required to apply for entitlements under the AFDC program as a condition of eligibility for Medicaid coverage. Further, the department shall develop a short, simplified pregnancy/pediatric application of no more than three pages, paralleling the simplified OBRA standards.

~~(d)~~ (c) Any woman who establishes eligibility under this section shall continue to be treated as an eligible individual without regard to any change in income of the family of which she is a member until the end of the ~~60-day~~ 1 year period beginning on the last day of her pregnancy.

~~(e)~~ (d) The department shall make payment for tubal ligation without requiring at least 30 days between the date of informed consent and the date of the tubal ligation procedure.

The bill (Eng. Com. Sub. for H. B. 2266), as amended, was then ordered to third reading.

**Eng. House Bill 2500**, Create an act for Statewide Uniformity for Auxiliary Container Regulations.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the unreported Government Organization committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2573**, Relating generally to the transparency and accountability of state grants to reduce waste, fraud, and abuse.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 10. WEST VIRGINIA DEVELOPMENT ACHIEVEMENTS TRANSPARENCY ACT.**

**§5B-10-1. Short title.**

This article shall be known and cited as the “West Virginia Development Achievements Transparency Act” or the “West Virginia DATA Act”.

**§5B-10-2. Purpose and findings.**

(a) The Legislature finds that public tax dollars are expended annually, whether directly in the form of grants or indirectly in the form of tax credits and incentives, for the purpose of developing and improving economic industries within the State of West Virginia.

(b) The Legislature further finds that the State of West Virginia should inform state taxpayers about these direct or indirect expenditures, the objectives of the expenditures, and whether the state met the intended objectives of the expenditures.

(c) The Legislature further finds that any funds deposited into the Grant Recovery Fund pursuant to §12-4-14(e)(10) of this code should be appropriated by the Legislature to the granting body that originally granted the funds to a grantee or subgrantee.

**§5B-10-3. Definitions.**

For the purpose of this article:

“Auditor” means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

“Business type” means the legal form of organization of a corporate parent or recipient corporation, including, but not limited to, a corporation, partnership, sole proprietorship, or limited liability company.

“Corporate parent” means any person, association, corporation, joint venture, partnership, or other entity that owns or controls 50 percent or more of a recipient corporation.

“Confidential information” means any internal, deliberative, preliminary, proprietary, personal, or protected economic development or taxpayer information as defined in §5B-10-6 of this code, §11-10-5d of this code, or Chapter 29B of this code, that is exempt from public disclosure.

“Date of subsidy” means the date that a granting body provides the initial monetary value of a development subsidy to a recipient corporation: *Provided*, That where the subsidy is for the installation of new equipment, such date shall be the date the recipient corporation puts the equipment into service: *Provided, however*, That where the subsidy is for improvements to property, such date shall be the date the improvements are finished, or the date the recipient corporation occupies the property, whichever is earlier.

“Development subsidy” means any financial transaction of public funds with an aggregate value of at least \$10,000 for the purpose of stimulating economic development within the state, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax increment financing, sponsorships, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

“Duration of subsidy” means as many years as a subsidy benefits a recipient corporation, such as the time period of a grant, the number of years a tax credit may be claimed and/or carried

forward, the number of years or term length of a loan, or the number of years a property tax reduction applies.

“Full-time job” means a job in which an individual is employed by a recipient corporation for at least 35 hours per week.

“Granting body” means any agency, board, office, public-private partnership, public benefit corporation or authority of the state or local government that provides a development subsidy to a recipient corporation.

“NAICS code” means the assigned code maintained by the North American Industry Classification System which describes a particular industry.

“New Employee” means a full-time employee who represents a net increase in the number of individuals employed by the recipient corporation in the state. “New employee” does not include an employee who performs a job that was previously performed by another employee of the recipient corporation if that job existed for at least six months before hiring the employee.

“Official report” means a formal, written report prepared by a granting body delivered to a third party, including, but not limited to, the Joint Committee on Government and Finance, Governor’s Office, or the public.

“Part-time job” means a job in which an individual is employed by a recipient corporation for less than 35 hours per week.

“Project site” means the site of a project for which any development subsidy is provided, as specified by street address, city name, and zip code.

“Recipient corporation” means any person, association, corporation, joint venture, partnership or other entity that receives a development subsidy.

“Subsidy type” means the classification of a development subsidy transaction, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zones, empowerment zones, tax

increment financing, grants, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

“Subsidy value” means the face value of any and all development subsidies provided to a recipient corporation. The face value of a loan means the amount of the loan.

“Temporary job” means a job in which an individual is hired for a season or for a limited period of time.

#### **§5B-10-4. Reporting requirements.**

(a) Within 30 days of the end of the fiscal year, each granting body shall provide the Auditor with the information required in §5B-10-6 of this code for each development subsidy provided to a recipient corporation by a granting body: *Provided*, That no development subsidy approved and legally obligated by the State of West Virginia shall be exempt from disclosure under this article.

(b) The Auditor shall provide guidance to each granting body regarding the standard and manner of reporting specified in this section.

(c) The Auditor may accept one or multiple official reports of a granting body to satisfy the requirements of this section provided the information provided in the official reports discloses the information required by §5B-10-6 of this code.

(d) The West Virginia Department of Economic Development may fulfill the requirements of this section on behalf of any granting bodies.

(e) The West Virginia Department of Economic Development may fulfill the requirements of this section by providing any agreements entered into or signed by the West Virginia Department of Economic Development which obligates public funds as of the date the agreement is entered into, signed or otherwise made public.

**§5B-10-5. Auditor's searchable economic development website created.**

No later than January 1, 2022, the Auditor shall develop and make publicly available a searchable financial transparency website containing the information specified in §5B-10-6 of this code.

**§5B-10-6. Contents of the searchable website.**

(a) The Auditor shall include as part of the searchable economic development transparency website the following content for each fiscal year and the previous three fiscal years:

(1) The name of the recipient corporation of a development subsidy: *Provided*, That if a name of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the recipient corporation instead of the name;

(2) The name of the corporate parent of the recipient corporation, if applicable: *Provided*, That should a name of a corporate parent of a recipient corporation of a development subsidy be considered confidential information, the granting body shall provide the business type of the corporate parent instead of the name;

(3) The project site: *Provided*, That should the project site be considered confidential information, the granting body shall provide the city, state, and zip code, but not the street address;

(4) The NAICS code or codes of the recipient corporation;

(5) The date of subsidy;

(6) The subsidy value;

(7) The duration of subsidy;

(8) The subsidy type;

(9) The number of new employees the development subsidy is expected to create within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs;

(10) The number of new employees the development subsidy has actually created within the duration of subsidy, classified by full-time jobs, part-time jobs, and temporary jobs: *Provided*, That this number may be estimated if an accurate count is not available, but the granting body shall clearly disclose that the reported number is an estimate;

(11) Any other direct or indirect benefits to the state the granting body intends the development subsidy to achieve, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases;

(12) Any other direct or indirect benefit to the state actually achieved by the development subsidy, including, but not limited to, creation of public infrastructure, vocational training, apprenticeships, workforce development, or state tourism visitor or permanent resident population increases; and

(13) The name or names of the granting body or bodies providing the development subsidy.

#### **§5B-10-7. Confidentiality.**

(a) Nothing in this article may be construed as requiring the West Virginia Department of Economic Development or the West Virginia Tax Department to release confidential information as defined in this article.

(b) If information regarding a development subsidy is confidential information, a granting body shall redact only those confidential items but shall disclose any other information pertaining to a development subsidy that is not confidential information.

(c) The Auditor may consult with the granting body to determine the confidentiality of development subsidy data required

in §5B-10-6 of this code and determine the appropriate disclosures on the searchable economic development website created in §5B-10-5 of this code to preserve confidentiality.

(d) The Auditor shall identify any redacted items not appearing on the searchable economic development transparency website and the justification as to why the items were redacted.

**§5B-10-8. Source and accuracy of information; failure to report.**

(a) To fulfill the requirements of this article, a granting body may independently compile the information required in §5B-10-6 of this code or request the information from a recipient corporation.

(b) A granting body shall review information received from a recipient corporation to ensure it is reasonably accurate but is not required to audit or certify the accuracy of the information.

(c) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who fails to comply with the requirements of this article.

(d) The Auditor shall publish a list on the searchable economic development transparency website detailing any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information: *Provided*, That the Auditor shall notify the Joint Committee on Government and Finance of any granting body or recipient corporation who intentionally submits false, misleading, or fraudulent information to the Auditor.

**§5B-10-9. Public hearings.**

The Auditor may conduct public hearings or training sessions to assist any recipient corporation or granting body in complying with the requirements of this article.

**ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.****§12-4-14. West Virginia Grant Transparency and Accountability Act; Accountability of grantees receiving state funds or grants; procedures, reporting, auditing, investigations, and recovery; sworn statements by volunteer fire departments; rule making, criminal penalties.**

(a) This section may be cited as The West Virginia Grant Transparency and Accountability Act. The West Virginia Grant Transparency and Accountability Act is intended to develop a coordinated, nonredundant process for the effective oversight and monitoring of grant recipients, thereby ensuring quality programs and limiting fraud, waste, and abuse.

~~(a)~~ (b) For the purposes of this section:

(1) “Grantor” means a state spending unit awarding a state grant.

(2) “Grantee” means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

(3) “Subgrantee” means an entity, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity, who receives grant money from a grantee who was awarded a state grant.

~~(3)~~ (4) “Report” means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term “report” does not mean a full-scope audit or review of the person receiving state funds.

(4) (5) “State grant” means funding provided by a state spending unit, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term “state

grant” does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds; (H) retirement benefits; and (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq.* The term “state grant” does not include formula distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code and does not include money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code.

(6) “West Virginia debarred list” means the list maintained by the State Auditor that contains the names of individuals and entities that are ineligible, either temporarily or permanently, from receiving an award of grant funds from the state.

(7) “State Auditor” means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

(8) “Stop payment order” means a communication from the state grant-making agency to the State Auditor and the State Treasurer, following procedures by the State Auditor, causing the cessation of payments to a grantee or subgrantee as a result of the grantee or subgrantee’s failure to comply with one or more terms of the grant or subgrant, violations of law, or the initiation of an audit or investigation.

(9) “Stop payment procedure” means the procedure created by the State Auditor which effects a stop payment order or the lifting of a stop payment order.

~~(b)~~ (c) (1) Any grantee who receives one or more state grants in the amount of \$50,000 or more in the aggregate in a state’s fiscal

year shall file with the grantor and the State Auditor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the grant funds, the audit is performed using generally accepted government auditing standards, and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, and submitted within the period provided in this section may be substituted for the report.

(2) Any grantee who receives a state grant in an amount less than \$50,000 or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection shall file with the grantor and State Auditor a sworn statement of expenditures made under the grant.

(3) Subgrant of grant funds – If any grantee obtains grant funds and grants any part or all of those funds to a subgrantee for a specific purpose or purposes, the granted funds shall be treated as a state grant.

~~(3)~~ (4) Reports and sworn statements of expenditures required by this ~~subsection~~ section shall be filed within two years of the end of the grantee's fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the grant was made.

(5) In the event the State Auditor determines that applicable reporting or record keeping provisions for state grants are delinquent or not in compliance with this code, the State Auditor shall notify the State Treasurer and no further grant funds appropriated to the grantor agency under the specific grant shall be encumbered or expended until such time as the State Auditor determines that all applicable reporting or record keeping provisions are brought into compliance: *Provided*, That such suspension of funding does not violate federal law or regulations

or unreasonably prevent or detrimentally impact the ability of the agency to receive federal support or funding.

(6) Each State grant-making agency shall designate a Chief Accountability Officer, to the extent possible from within its existing staff, who shall serve as a liaison to the State Auditor and shall be responsible for the state agency's implementation of and compliance with the law, rules, and terms of grants. Such position may be held concurrently with any other designated position.

~~(e)~~(d)(1) Grantor agencies or the State Auditor shall issue stop payment orders for failure to file required reports. Any grantee failing to file a required report or sworn statement of expenditures within the two-year period provided in subdivision (3), subsection (b) as provided in of this section for state grant funds is barred from subsequently receiving state grants until the grantee has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor of a state grant shall report any grantee failing to file a required report or sworn statement of expenditures within the required period provided in this section to the ~~Legislative~~ State Auditor for purposes of debarment from receiving state grants.

(3) The State Auditor shall maintain a searchable and publicly accessible database listing all awarded state grants. All grantors shall provide a list of grantees and subgrantees to the State Auditor and all other information regarding grant funds and grantees as required by law or rule.

~~(d)~~(e)(1) The state agency administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) All grantors awarding state grants shall, prior to awarding a state grant, ~~take reasonable actions to~~ verify that the grantee is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the grantee seeking the state grant provide a sworn statement from an authorized representative that the grantee has filed all reports and sworn statements of expenditures for state grants received as required under this section; and

(B) Confirmation from the ~~Legislative Auditor~~ State Auditor by the grantor that the grantee has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided for in ~~subsection (e)~~ of this section.

(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the ~~Legislative Auditor~~ State Auditor within 30 days of receipt by the grantor.

(4) The grantor and State Auditor shall maintain copies of reports and sworn statements of expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) Stop payment procedures – The State Auditor, in cooperation with state grant-making agencies, shall promulgate legislative, procedural, and interpretive rules in accordance with the provisions of §29A-3-1 et seq. of this code in implementing the provisions of this section which shall include, but not be limited to:

(A) Procedures concerning issuing and lifting stop payments and other corrective actions;

(B) Factors to be considered in determining whether to issue a stop payment order including whether or not a stop payment order is in the best interest of the state;

(C) Factors to be considered in determining whether a stop payment order should be lifted; and

(D) Procedures for notification to the grantee or subgrantee of the issuance of a stop payment order, the lifting of a stop payment order, and any other related information.

(6) Informal Conference – Whenever a grantor agency reasonably believes that grant funds are subject to recovery, the grantor agency shall provide the grantee the opportunity for at least one informal conference to determine the facts and issues and to resolve any conflicts before taking any formal recovery actions.

(7) Formal Procedures for Recovery –

(A) If a grantor agency determines that certain grant funds are to be recovered, then, prior to taking any action to recover the grant funds, the grantor agency shall provide the grantee of the funds a written notice of the intended recovery. This notice shall identify the funds and the amount to be recovered and the specific facts which permit recovery.

(B) A grantee shall have 35 days from the receipt of the notice required in paragraph (A) of this subdivision to return the grant funds or request a hearing in writing to show why recovery is not justified or proper.

(C) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then:

(i) The hearing shall be conducted under §29A-5-1 *et seq.* of this code, and be presided over by the grantor agency head or their designee;

(ii) The grantor agency shall hold the hearing at which the grantee or designated representative may present evidence and witnesses to show why recovery should not be permitted; and

(iii) After the conclusion of the hearing, the grantor agency shall make a final decision and issue a written final recovery order in compliance with §29A-5-3 of this code and send a copy of the order to the grantee and the State Auditor.

(D)(i) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision then the grantor agency may not take any action of recovery until at least 35 days after the grantor agency has issued a final recovery order pursuant to the requirements of paragraph (C) of this subdivision.

(ii) If a grantee does not return the grant funds or request a hearing as permitted in paragraph (B) of this subdivision, then the grantor agency may proceed with recovery of the grant funds identified in the notice issued pursuant to the requirements of paragraph (A) of this subdivision, at any time after the expiration of the 35 day request period established in paragraph (B) of this subdivision.

(8) Recovery of Grant Funds by Grantor Agency – Any grant funds which have been misspent or are being improperly held are subject to recovery by the grantor agency which made the grant. The grantor agency making the grant shall take affirmative and timely action to recover all misspent or improperly held grant funds. In order to effectuate the recovery of such grant funds, the grantor agency making the grant may use any one or a combination of the following:

(A) Offset the amounts against existing grants or future grants to be made by the grantor agency making the recovery;

(B) Request offsets of the amounts from existing grants or future grants to be made by other grantor agencies;

(C) Initiate any debt collection method authorized by law against any private person, business, or entity;

(D) Remove the grantee from the grantor agency's programs and debar the grantee's participation in future grant programs for a period not to exceed three years or until removed from the debarred list; or

(E) Request further action under subdivision (9) of this subsection to recover grant funds and otherwise enforce all applicable laws.

(9) Recovery of State Grant Funds – The Attorney General, independently or on behalf of the State Auditor, may take any action within his or her authority to recover any grant funds which have been misapplied or are being improperly held and have all the powers of collection established in this act in addition to any other powers authorized by law, including, without limitation, to file lawsuits to recover grant funds.

(10) All grant funds, whose use is not restricted by law or otherwise appropriated, which are recovered by the grantor, or State Auditor, and expired or unexpended grant funds remaining at grant completion or termination, shall be deposited in a special revenue fund, which is hereby created and established in the State Treasury to be known as the Grant Recovery Fund. The moneys in the fund, with all interest or other earnings thereon, shall be expended only upon appropriation by the Legislature.

(5) (11) The Secretary of the Department of Administration State Auditor has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to assist in implementing the provisions of this section. The rules shall set forth uniform administrative requirements and reporting procedures for state grants and subgrants to ensure compliance. State granting agencies shall not impose additional or inconsistent requirements unless specifically required by state or federal law.

(12) Conflicts of interest – The State Auditor shall adopt rules regarding conflict of interest policies for state grants. Grantors, grantees, and subgrantees must disclose in writing any potential conflicts of interest to the grant applicant prior to awarding the grant.

(e)(f)(1) Any state agency administering a state grant shall, in the manner designated by the ~~Legislative Auditor~~ State Auditor, notify the ~~Legislative Auditor~~ State Auditor of the maximum amount of funds to be disbursed, the identity of the grantee authorized to receive the funds, the grantee's fiscal year and federal employer identification number, and the purpose and nature of the

state grant within 30 days of making the state grant or authorizing the disbursement of the funds, whichever is later.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner designated by the Legislative Auditor.

(3) The ~~Legislative Auditor~~ State Auditor shall maintain a debarred list identifying grantees who have failed to file reports and sworn statements required by this section. The list ~~may shall~~ be in the form of a computerized database that ~~may shall~~ be ~~accessed~~ accessible by state agencies and the public over the Internet, unless public disclosure would violate federal law or regulations.

~~(f)~~ (g) An audit of state grant funds may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the State Auditor in cooperation with the Legislative Auditor at no cost to the grantee.

~~(g)~~ (h) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of §39A-1-1 *et seq.* of this code.

~~(h)~~ (i) Any grantee who files a fraudulent sworn statement of expenditures under subsection (b) of the section, a fraudulent sworn statement under subsection (d) of this section, or a fraudulent report under this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(j) Prohibition on use of grant funds for prohibited political activity –

(1) For the purpose of this section, “prohibited political activity” means activity directed toward the success or failure of a political party, candidate for political office, or ballot issue, and

includes, without limitation, express advocacy for the election or defeat of a political party, candidate, or ballot issue.

(2) Grantors, grantees, subgrantees, and personnel thereof shall not knowingly use grant funds, or goods or services purchased with grant funds, to engage, either directly or indirectly, in a prohibited political activity.

(3) Grantors, grantees, subgrantees and personnel thereof shall not be knowingly compensated from grant funds for time spent engaging in a prohibited political activity.

(4) Nothing in this section shall prohibit any organization described in 26 U.S.C. §501(c)(3) or 26 U.S.C. §501(c)(4) receiving a grant from the state from engaging in any federally permissible activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the specific funds acquired by a grant from the state or grantor shall not be used for those activities that are permitted by federal law but prohibited by this section.

(5) A grantor, grantee, subgrantee, or personnel thereof who knowingly uses grant funds for prohibited political activity in violation of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(k) Reporting – Effective on or before December 31, 2022 and every three years thereafter, the State Auditor shall submit to the Joint Legislative Committee on Government and Finance a report that demonstrates the efficiencies, cost savings, and reductions in fraud, waste and abuse. The report shall include, but not be limited to, facts describing:

(1) The number and names of entities placed on the West Virginia Debarred List;

(2) The number of stop payment orders issued to grantees;

(3) Any savings realized as a result of the implementation of this act;

(4) A statement of funds recovered and funds in the recovery process;

(5) Any reductions in the number of duplicative audit report reviews; and

(6) The overall number of state grants awarded that given year and the total amount of dollars awarded by each state agency.

The bill (Eng. Com. Sub. for H. B. 2573), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2674**, Relating to the administration of anesthetics.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was referred to the Committee on Rules.

**Eng. Com. Sub. for House Bill 2720**, Creating a Merit-Based Personnel System within DOT.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE  
BRANCH OF STATE GOVERNMENT.**

**ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

**§5F-2-8. Special merit-based personnel system for Department of Transportation employees.**

(a) In order to attract and retain employees in the Department of Transportation, the Secretary of Transportation shall establish a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, removal, discipline, classification, compensation, and welfare of its employees, and other incidents of state employment. All appointments and promotions to positions shall be made solely on the basis of merit and fitness for the position.

(b) The Department of Transportation personnel system shall be founded on effective performance management principles that set clear goals, provide efficient and effective services for our citizens, and appraise and reward employees for being responsible and performing as required.

(c) Beginning on January 1, 2022, notwithstanding any provision of this code or any rule to the contrary, employees and positions within the various agencies, boards, commissions, and divisions within the Department of Transportation currently governed by the provisions of §29-6-1 *et seq.* of this code shall be subject to the personnel system created pursuant to this section: *Provided*, That such employees and positions shall be deemed to retain their classified or classified-exempt status and all rights and privileges thereof. The employees of the Department of Transportation shall be afforded due process protections through §6C-2-1 *et seq.* of this code or other procedures established by the department that assure all of the protections required by law.

(d) The Department of Transportation personnel system is not exempt from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the employment process.

(e) The Department of Transportation personnel system may not be applied in any manner that would disqualify the department or its agencies, boards, commissions, or divisions for eligibility for any federal funding or assistance.

(f) The Division of Personnel shall, upon request of the Secretary of Transportation, take any action necessary to assist the Department of Transportation in completing the transition to the department's personnel system in an orderly and efficient manner.

(g) The Secretary of Transportation may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to implement the provisions of this section.

## CHAPTER 17. ROADS AND HIGHWAYS.

### ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

#### §17-2A-24. Special employment procedures for Division of Highways personnel.

[Repealed.]

The bill (Eng. Com. Sub. for H. B. 2720), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2794**, To extend the Neighborhood Investment Program Act to July 1, 2026.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2884**, To make changes to the FOIA law to protect public utility customer databases from disclosure, with exceptions.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Bill 2927**, Adding Caregiving expenses to campaign finance expense.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

### **§3-8-1a. Definitions.**

As used in this article, the following terms have the following definitions:

(1) “Ballot issue” means a constitutional amendment, special levy, bond issue, local option referendum, municipal charter or revision, an increase or decrease of corporate limits, or any other question that is placed before the voters for a binding decision.

(2) “Billboard advertisement” means a commercially available outdoor advertisement, sign, or similar display regularly available for lease or rental to advertise a person, place, or product.

(3) “Broadcast, cable, or satellite communication” means a communication that is publicly distributed by a television station, radio station, cable television system, or satellite system.

(4) “Candidate” means an individual who:

(A) Has filed a certificate of announcement under §3-5-7 of this code or a municipal charter;

(B) Has filed a declaration of candidacy under §3-5-23 of this code;

(C) Has been named to fill a vacancy on a ballot; or

(D) Has declared a write-in candidacy or otherwise publicly declared his or her intention to seek nomination or election for any state, district, county, municipal, or party office to be filled at any primary, general, or special election.

(5) “Candidate’s committee” means a political committee established with the approval of or in cooperation with a candidate or a prospective candidate to explore the possibilities of seeking a particular office or to support or aid his or her nomination or election to an office in an election cycle. If a candidate directs or influences the activities of more than one active committee in a current campaign, those committees shall be considered one committee for the purpose of contribution limits.

(6) “Caregiving services” means direct care, protection, and supervision of a child, or other person with a disability or a medical condition, for which a candidate has direct caregiving responsibility. For the purposes of this article, the caregiving service expense incurred shall be in direct connection with the candidate’s campaign activities during the current election cycle.

~~(6)~~ (7) “Caucus campaign committee” means a West Virginia House of Delegates or Senate political party caucus campaign committee that receives contributions and makes expenditures to support or oppose one or more specific candidates or slates of candidates for nomination, election, or committee membership.

~~(7)~~ (8) “Clearly identified” means that the name, nickname, photograph, drawing, or other depiction of the candidate appears, or the identity of the candidate is otherwise apparent through an unambiguous reference, such as “the Governor”, “your Senator”, or “the incumbent”, or through an unambiguous reference to his or her status as a candidate, such as “the Democratic candidate for Governor” or “the Republican candidate for Supreme Court of Appeals”.

~~(8)~~ (9) “Contribution” means a gift, subscription, loan, assessment, payment for services, dues, advance, donation, pledge, contract, agreement, forbearance, promise of money, or other tangible thing of value, whether conditional or legally enforceable, or a transfer of money or other tangible thing of value to a person, made for the purpose of influencing the nomination, election, or defeat of a candidate.

(A) A coordinated expenditure is a contribution for the purposes of this article.

(B) An offer or tender of a contribution is not a contribution if expressly and unconditionally rejected or returned. A contribution does not include volunteer personal services provided without compensation: *Provided*, That a nonmonetary contribution is to be considered at fair market value for reporting requirements and contribution limitations.

~~(9)~~ (10) “Coordinated expenditure” is an expenditure made in concert with, in cooperation with, or at the request or suggestion of a candidate or candidate’s committee and meeting the criteria provided in §3-8-9a of this code.

~~(10)~~ (11) “Corporate political action committee” means a political action committee that is a separate segregated fund of a corporation that may only accept contributions from its restricted group as outlined by the rules of the State Election Commission.

~~(11)~~ (12) “Direct costs of purchasing, producing, or disseminating electioneering communications” means:

(A) Costs charged by a vendor, including, but not limited to, studio rental time, compensation of staff and employees, costs of video or audio recording media and talent, material and printing costs, and postage; or

(B) The cost of air time on broadcast, cable, or satellite radio and television stations, the costs of disseminating printed materials, studio time, use of facilities, and the charges for a broker to purchase air time.

~~(12)~~ (13) “Disclosure date” means either of the following:

(A) The first date during any calendar year on which any electioneering communication is disseminated after the person paying for the communication has spent a total of \$5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications; or

(B) Any other date during that calendar year after any previous disclosure date on which the person has made additional expenditures totaling \$5,000 or more for the direct costs of purchasing, producing, or disseminating electioneering communications.

~~(13)~~ (14) “Election” means any primary, general, or special election conducted under the provisions of this code or under the charter of any municipality at which the voters nominate or elect candidates for public office. For purposes of this article, each primary, general, special, or local election constitutes a separate election. This definition is not intended to modify or abrogate the definition of the term “nomination” as used in this article.

~~(14)~~ (15) (A) “Electioneering communication” means any paid communication made by broadcast, cable or satellite signal, mass mailing, telephone bank, billboard advertisement, or publication in any newspaper, magazine, or other periodical that:

(i) Refers to a clearly identified candidate for Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Agriculture, Supreme Court of Appeals, or the Legislature;

(ii) Is publicly disseminated within:

(I) Thirty days before a primary election in which the nomination for office sought by the candidate is to be determined; or

(II) Sixty days before a general or special election in which the office sought by the candidate is to be filled; and

(iii) Is targeted to the relevant electorate.

(B) “Electioneering communication” does not include:

(i) A news story, commentary, or editorial disseminated through the facilities of any broadcast, cable or satellite television, radio station, newspaper, magazine, or other periodical publication not owned or controlled by a political party, political committee,

or candidate: *Provided*, That a news story disseminated through a medium owned or controlled by a political party, political committee, or candidate is nevertheless exempt if the news is:

(I) A bona fide news account communicated in a publication of general circulation or through a licensed broadcasting facility; and

(II) Is part of a general pattern of campaign-related news that gives reasonably equal coverage to all opposing candidates in the circulation, viewing, or listening area;

(ii) Activity by a candidate committee, party executive committee, a caucus campaign committee, or a political action committee that is required to be reported to the State Election Commission or the Secretary of State as an expenditure pursuant to §3-8-5 of this code or the rules of the State Election Commission or the Secretary of State promulgated pursuant to such provision: *Provided*, That independent expenditures by a party executive committee, caucus committee, or a political action committee required to be reported pursuant to §3-8-2 of this code are not exempt from the reporting requirements of this section;

(iii) A candidate debate or forum conducted pursuant to rules adopted by the State Election Commission or the Secretary of State or a communication promoting that debate or forum made by or on behalf of its sponsor;

(iv) A communication paid for by any organization operating under Section 501(c)(3) of the Internal Revenue Code of 1986;

(v) A communication made while the Legislature is in session which, incidental to promoting or opposing a specific piece of legislation pending before the Legislature, urges the audience to communicate with a member or members of the Legislature concerning that piece of legislation;

(vi) A statement or depiction by a membership organization in existence prior to the date on which the individual named or depicted became a candidate, made in a newsletter or other communication distributed only to bona fide members of that organization;

(vii) A communication made solely for the purpose of attracting public attention to a product or service offered for sale by a candidate or by a business owned or operated by a candidate which does not mention an election, the office sought by the candidate, or his or her status as a candidate; or

(viii) A communication, such as a voter's guide, which refers to all of the candidates for one or more offices, which contains no appearance of endorsement for or opposition to the nomination or election of any candidate and which is intended as nonpartisan public education focused on issues and voting history.

~~(15)~~ (16) "Expressly advocating" means any communication that:

(A) Uses phrases such as "vote for the Governor", "re-elect your Senator", "support the incumbent nominee for Supreme Court", "cast your ballot for the Republican challenger for House of Delegates", "Smith for House", "Bob Smith in '04", "vote Pro-Life", or "vote Pro-Choice" accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice, "vote against Old Hickory", "defeat" accompanied by a picture of one or more candidates, "reject the incumbent";

(B) Communicates campaign slogans or individual words that can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidates, such as posters, bumper stickers, advertisements, etc., which say "Smith's the One", "Jones '06", "Baker", etc.; or

(C) Is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

~~(16)~~ (17) "Financial agent" means any individual acting for and by himself or herself, or any two or more individuals acting together or cooperating in a financial way to aid or take part in the nomination or election of any candidate for public office, or to aid or promote the success or defeat of any political party at any election.

~~(17)~~ (18) “Financial transactions” means all contributions or loans received and all repayments of loans or expenditures made to promote the candidacy of any person by any candidate or any organization advocating or opposing the nomination, election, or defeat of any candidate to be voted on.

~~(18)~~ (19) “Firewall” means a policy designed and implemented to prohibit the flow of information between employees or consultants providing services for the person paying for a communication and those employees or consultants currently or previously providing services to a candidate, or to a committee supporting or opposing a candidate, clearly identified in the communication.

~~(19)~~ (20) “Foreign national” means the following:

(A) A foreign principal, as such term is defined in 22 U.S.C. §611(b), which includes:

(i) A government of a foreign country;

(ii) A foreign political party;

(iii) A person outside of the United States, unless it is established that such person:

(I) Is an individual and a citizen of the United States; or

(II) That such person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States; and

(iv) A partnership, association, corporation, organization, or other combination of persons organized under the laws of, or having its principal place of business in, a foreign country.

(B) An individual who is not a citizen of the United States or a national of the United States, as defined in 8 U.S.C. §1101(a)(22), and who is not lawfully admitted for permanent residence, as defined by 8 U.S.C. §1101(a)(20).

~~(20)~~ (21) “Fund-raising event” or “fundraiser” means an event such as a dinner, reception, testimonial, cocktail party, auction, or similar affair through which contributions are solicited or received.

~~(21)~~ (22) “In concert or cooperation with or at the request or suggestion of” means that a candidate or his or her agent consulted with:

(A) The sender regarding the content, timing, place, nature, or volume of a particular communication or communication to be made; or

(B) A person making an expenditure that would otherwise offset the necessity for an expenditure of the candidate or candidate’s committee.

~~(22)~~ (23) “Independent expenditure” means an expenditure by a person:

(A) Expressly advocating the election or defeat of a clearly identified candidate, including supporting or opposing the candidates of a political party; and

(B) That is not made in concert or cooperation with or at the request or suggestion of such candidate, his or her agents, the candidate’s authorized political committee, or a political party committee or its agents.

An expenditure which does not meet the criteria for an independent expenditure is considered a contribution.

~~(23)~~ (24) “Local” refers to the election of candidates to a city, county, or municipal office and any issue to be voted on by only the residents of a particular political subdivision.

~~(24)~~ (25) “Mass mailing” means a mailing by United States mail, facsimile, or electronic mail of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period. For purposes of this subdivision, “substantially similar” includes communications that contain substantially the same template or language, but vary in nonmaterial respects such

as communications customized by the recipient's name, occupation, or geographic location.

~~(25)~~ (26) "Membership organization" means a group that grants bona fide rights and privileges, such as the right to vote, to elect officers or directors, and the ability to hold office to its members and which uses a majority of its membership dues for purposes other than political purposes. "Membership organization" does not include organizations that grant membership upon receiving a contribution.

~~(26)~~ (27) "Name" means the full first name, middle name, or initial, if any, and full legal last name of an individual and the full name of any association, corporation, committee, or other organization of individuals, making the identity of any person who makes a contribution apparent by unambiguous reference.

~~(27)~~ (28) "Person" means an individual, corporation, partnership, committee, association, and any other organization or group of individuals.

~~(28)~~ (29) "Political action committee" means a committee organized by one or more persons, the primary purpose of which is to support or oppose the nomination or election of one or more candidates. The following are types of political action committees:

(A) A corporate political action committee, as that term is defined in this section;

(B) A membership organization, as that term is defined in this section; and

(C) An unaffiliated political action committee, as that term is defined in this section.

~~(29)~~ (30) "Political committee" means any candidate committee, political action committee, or political party committee.

~~(30)~~ (31) “Political party” means a political party as that term is defined by §3-1-8 of this code or any committee established, financed, maintained, or controlled by the party, including any subsidiary, branch, or local unit thereof and including national or regional affiliates of the party.

~~(31)~~ (32) “Political party committee” means a committee established by a political party or political party caucus for the purposes of engaging in the influencing of the election, nomination, or defeat of a candidate in any election.

~~(32)~~ (33) “Political purposes” means supporting or opposing the nomination, election, or defeat of one or more candidates or the passage or defeat of a ballot issue, supporting the retirement of the debt of a candidate or political committee or the administration or activities of an established political party or an organization which has declared itself a political party, and determining the advisability of becoming a candidate under the pre-candidacy financing provisions of this chapter.

~~(33)~~ (34) “Targeted to the relevant electorate” means a communication which refers to a clearly identified candidate for statewide office or the Legislature and which can be received by 140,000 or more individuals in the state in the case of a candidacy for statewide office, 8,220 or more individuals in the district in the case of a candidacy for the State Senate, and 2,410 or more individuals in the district in the case of a candidacy for the House of Delegates.

~~(34)~~ (35) “Telephone bank” means telephone calls that are targeted to the relevant electorate, other than telephone calls made by volunteer workers, regardless of whether paid professionals designed the telephone bank system, developed calling instructions, or trained volunteers.

~~(35)~~ (36) “Unaffiliated political action committee” means a political action committee that is not affiliated with a corporation or a membership organization.

**§3-8-9. Lawful and unlawful election expenses; public opinion polls and limiting their purposes; limitation upon expenses; use of advertising agencies and reporting requirements; delegation of expenditures.**

(a) No financial agent or treasurer of a political committee ~~shall~~ may pay, give, or lend, either directly or indirectly, any money or other thing of value for any election expenses, except for the following purposes:

(1) For rent, maintenance, office equipment, and other furnishing of offices to be used as political headquarters and for the payment of necessary employees;

(2) In the case of a candidate who does not maintain a headquarters, for reasonable office expenses, including, but not limited to, filing cabinets and other office equipment, and furnishings, computers, computer hardware and software, scanners, typewriters, calculators, audio visual equipment, the rental of the use of the same, or for the payment for the shared use of same with the candidate's business and for the payment of necessary employees;

(3) For printing and distributing books, pamphlets, circulars, and other printed matter, radio and television broadcasting, and painting, printing, and posting signs, banners, and other advertisements, including contributions to charitable, educational, or cultural events, for the promotion of the candidate or the candidate's name, or an issue on the ballot;

(4) For renting and decorating halls for public meetings and political conventions, for advertising public meetings, and for the payment of traveling expenses of speakers and musicians at such meetings;

(5) For the necessary traveling and hotel expenses of candidates, political agents, and committees and for stationery, postage, telegrams, telephone, express, freight, and public messenger service;

(6) For preparing, circulating, and filing petitions for nomination of candidates;

(7) For examining the lists of registered voters, securing copies thereof, investigating the right to vote of the persons listed therein, and conducting proceedings to prevent unlawful registration or voting;

(8) For conveying voters to and from the polls;

(9) For securing publication in newspapers and by radio and television broadcasting of documents, articles, speeches, arguments, and any information relating to any political issue, candidate, or question or proposition submitted to a vote;

(10) For conducting public opinion poll or polls. For the purpose of this section, the phrase “conducting of public opinion poll or polls” shall mean and be limited to the gathering, collection, collation, and evaluation of information reflecting public opinion, needs, and preferences as to any candidate, group of candidates, party, issue, or issues. No such poll may be deceptively designed or intentionally conducted in a manner calculated to advocate the election or defeat of any candidate or group of candidates or calculated to influence any person or persons so polled to vote for or against any candidate, group of candidates, proposition, or other matter to be voted on by the public at any election: *Provided*, That nothing herein may prevent the use of the results of any such poll or polls to further, promote or enhance the election of any candidate or group of candidates or the approval or defeat of any proposition or other matter to be voted on by the public at any election;

(11) For legitimate advertising agency services, including commissions, in connection with any campaign activity for which payment is authorized by subdivisions (3), (4), (5), (6), (7), (9), and (10) of this subsection;

(12) For the purchase of memorials, flowers, or citations by political party executive committees or political action committees representing a political party;

(13) For the purchase of nominal noncash expressions of appreciation following the close of the polls of an election or within 30 days thereafter;

(14) For the payment of dues or subscriptions to any national, state, or local committee of any political party;

(15) For contributions to a county party executive committee, state party executive committee, or a caucus campaign committee;

(16) For transfers to any national, state, or local committee of any political party when that committee is acting in the role of a vendor: *Provided*, That no such transfer may involve any coordination between the candidate and the political party committee without being considered as a contribution;

(17) For payment for legal and accounting services rendered to a candidate or candidate committee if the services are solely related to the candidacy or campaign;

(18) For payment for food and drink for campaign-related purposes;

(19) For the payment of any required filing fees associated with the campaign, except that a candidate may not pay any fines assessed against the candidate or the candidate's committee pursuant to this article; ~~and~~

(20) For contributions to a candidate committee: *Provided*, That a candidate committee may not contribute to another candidate committee except as otherwise provided by §3-8-10 of this code; and

(21) For expenses related to caregiving services.

(b) A political action committee may not contribute to another political action committee or receive contributions from another political action committee: *Provided*, That a political action committee may receive contributions from its national affiliate, if any.

(c) Every liability incurred, and payment made shall be for the fair market value of the services rendered.

(d) Every advertising agency subject to the provisions of this article shall file, in the manner and form required by §3-8-5a of this code, the financial statements required by §3-8-5 of this code at the times required therein and include therein, in itemized detail, all receipts from and expenditures made on behalf of a candidate, financial agent, or treasurer of a political party committee.

(e) Any candidate may designate a financial agent by a writing duly subscribed by the candidate which shall be in such form and filed in accordance with §3-8-4 of this code.

The bill (Eng. Com. Sub. for H. B. 2927), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 2953**, To clarify that counties can hire fire fighters as paid staff and to modify the existing procedures to include a procedure of public hearing to commission a vote.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2962**, Relating generally to dental practice.

On second reading, coming up in regular order, was read a second time.

On motions of Senators Takubo, Stollings, Plymale, and Woelfel, the following amendment to the bill was reported by the Clerk:

On page three, section eight, after line thirty-seven, by inserting a new subsection, designated subsection (d), to read as follows:

(d) An expedited license to practice dentistry for foreign dental graduates who have completed a one-year dental residency program in this state: *Provided*, That the board shall promulgate emergency and legislative rules, not later than July 1, 2021, related to this expedited licensure.

Following discussion,

The question being on the adoption of the amendment offered by Senators Takubo, Stollings, Plymale, and Woelfel to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 2962), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 3002**, Update road abandonment process.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.**

**§17-2A-8. Powers, duties, and responsibilities of commissioner.**

In addition to all other duties, powers, and responsibilities given and assigned to the commissioner in this chapter, the commissioner may:

(1) Exercise general supervision over the state road program and the construction, reconstruction, repair, and maintenance of state roads and highways: *Provided*, That the commissioner shall implement reasonable design techniques intended to minimize damage that may result from recurring floods within the purpose and need of the state road system;

(2) Determine the various methods of road construction best adapted to the various sections and areas of the state and establish standards for the construction and maintenance of roads and highways in the various sections and areas of the state;

(3) Conduct investigations and experiments, hold hearings and public meetings, and attend and participate in meetings and conferences within and without the state for purposes of acquiring information, making findings, and determining courses of action and procedure relative to advancement and improvement of the state road and highway system;

(4) Enter private lands to make inspections and surveys for road and highway purposes;

(5) Acquire, in the name of the ~~department~~ division, by lease, grant, right of eminent domain, or other lawful means all lands and interests and rights in lands necessary and required for roads, rights-of-way, cuts, fills, drains, storage for equipment and materials, and road construction and maintenance in general;

(6) Procure photostatic copies of any or all public records on file at the State Capitol of Virginia which may be considered necessary or proper in ascertaining the location and legal status of public road rights-of-way located or established in what is now the State of West Virginia, which when certified by the commissioner, may be admitted in evidence, in lieu of the original, in any of the courts of this state;

(7) Plan for and hold annually a school of good roads, of not less than three or more than six days' duration, for instruction of his or her employees, which is held in conjunction with West

Virginia University and may be held at the university or at any other suitable place in the state;

(8) Negotiate and enter in reciprocal contracts and agreements with proper authorities of other states and of the United States relating to and regulating the use of roads and highways with reference to weights and types of vehicles, registration of vehicles and licensing of operators, military and emergency movements of personnel and supplies, and all other matters of interstate or national interest;

(9) Classify and reclassify, locate, and relocate, expressway, trunkline, feeder, and state local service roads, and designate by number the routes within the state road system;

(10) Create, extend, or establish, upon petition of any interested party or parties or on the commissioner's own initiative, any new road or highway found necessary and proper;

(11) Exercise jurisdiction, control, supervision, and authority over local roads, outside the state road system, to the extent determined by him or her to be expedient and practicable;

(12) Discontinue, vacate, and close any road or highway, or any part of any road or highway, the continuance and maintenance of which are found unnecessary and improper, upon petition and hearing or upon investigation initiated by the commissioner. Any petition, motion, notice, decision, and order related to the discontinuance, vacating, or closing of any road or highway or part thereof shall be posted by the commissioner on the division's website available for review by the public. The division shall make virtual participation available to any person interested in participating in or attending any hearing related to such discontinuance, vacating, or closing;

(13) Close any state road while under construction or repair and provide a temporary road during the time of the construction or repair;

(14) Adjust damages occasioned by construction, reconstruction, or repair of any state road or the establishment of any temporary road;

(15) Establish and maintain a uniform system of road signs and markers;

(16) Fix standard widths for road rights-of-way, bridges, and approaches to bridges and fix and determine grades and elevations therefor;

(17) Test and standardize materials used in road construction and maintenance, either by governmental testing and standardization activities or through contract by private agencies;

(18) Allocate the cost of retaining walls and drainage projects, for the protection of a state road or its right-of-way, to the cost of construction, reconstruction, improvement, or maintenance;

(19) Acquire, establish, construct, maintain, and operate, in the name of the ~~department~~ division, roadside recreational areas along and adjacent to state roads and highways;

(20) Exercise general supervision over the construction and maintenance of airports and landing fields under the jurisdiction of the West Virginia State Aeronautics Commission, of which the commissioner is a member, and make a study and general plan of a statewide system of airports and landing fields;

(21) Provide traffic engineering services to municipalities of the state upon request of the governing body of any municipality and upon terms that are agreeably arranged;

(22) Institute complaints before the Public Service Commission or any other appropriate governmental agency relating to freight rates, car service, and movement of road materials and equipment;

(23) Invoke any appropriate legal or equitable remedies, subject to §17-2A-7 of this code, to enforce his or her orders, to compel compliance with requirements of law, and to protect and

preserve the state road and highway system or any part of the system;

(24) Make and promulgate rules for the government and conduct of personnel, for the orderly and efficient administration and supervision of the state road program, and for the effective and expeditious performance and discharge of the duties and responsibilities placed upon him or her by law;

(25) Delegate powers and duties to his or her appointees and employees who shall act by and under his or her direction and be responsible to him or her for their acts;

(26) Designate and define any construction and maintenance districts within the state road system that is found expedient and practicable;

(27) Contract for the construction, improvement, and maintenance of the roads;

(28) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with and cooperation in programs of the United States government and any proper department, bureau, or agency of the United States government relating to plans, surveys, construction, reconstruction, improvement, and maintenance of state roads and highways;

(29) Prepare budget estimates and requests;

(30) Establish a system of accounting covering and including all fiscal and financial matters of the ~~department~~ division;

(31) Establish and advance a right-of-way Acquisition Revolving Fund, a Materials Revolving Fund, and an Equipment Revolving Fund;

(32) Enter into contracts and agreements with and cooperate in programs of counties, municipalities, and other governmental agencies and subdivisions of the state relating to plans, surveys, construction, reconstruction, improvement, maintenance, and

supervision of highways, roads, streets, and other travel ways when and to the extent determined by the ~~department~~ division to be expedient and practical;

(33) Report, as provided by law, to the Governor and the Legislature;

(34) Purchase materials, supplies, and equipment required for the state road program and system;

(35) Dispose of all obsolete and unusable and surplus supplies and materials which cannot be used advantageously and beneficially by the ~~department~~ division in the state road program by transfer of the supplies and materials to other governmental agencies and institutions by exchange, trade, or sale of the supplies and materials;

(36) Investigate road conditions, official conduct of ~~department~~ division personnel, and fiscal and financial affairs of the ~~department~~ division and hold hearings and make findings thereon or on any other matters within the jurisdiction of the ~~department~~ division;

(37) Establish road policies and administrative practices;

(38) Fix and revise from time to time tolls for transit over highway projects constructed by the Division of Highways after May 1, 1999, that have been authorized by the provisions of §17-17A-5b of this ~~chapter~~ code;

(39) Take actions necessary to alleviate any conditions as the Governor may declare to constitute an emergency, whether or not the emergency condition affects areas normally under the jurisdiction of the Division of Highways; and

(40) Provide family restrooms at all rest areas along interstate highways in this state, all to be constructed in accordance with federal law.

The bill (Eng. Com. Sub. for H. B. 3002), as amended, was then ordered to third reading.

**Eng. House Bill 3078**, Relating to powers and duties of the parole board.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 12. PROBATION AND PAROLE.**

### **§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.**

(a) The Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

(b) Any inmate of a state correctional institution is eligible for parole if he or she:

(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or

(B) He or she has applied for and been accepted by the Commissioner of Corrections and Rehabilitation into an accelerated parole program. To be eligible to participate in an accelerated parole program, the commissioner must determine that the inmate:

(i) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;

(ii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense

for which the inmate is serving a consecutive sentence, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child; and

(iii) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment, or brandishing of a firearm is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided*, That any inmate who committed, or attempted to commit, any violation of §61-2-12 of this code, with the use, presentment, or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found guilty by the court if the matter was tried by the court without a jury.

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be. The notice shall state with particularity the grounds upon which the finding will be sought as fully as the grounds are otherwise required to be stated in an indictment, unless the grounds upon which the finding will be sought are alleged in the indictment or presentment upon which the matter is being tried;

(iv) Does not apply with respect to cases not affected by the amendments and in those cases the prior provisions of this section apply and are construed without reference to the amendments; and

(v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(E) As used in this section, “felony crime of violence against the person” means felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(F) As used in this section, “felony offense where the victim was a minor child” means any felony crime of violence against the person and any felony violation set forth in §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(G) For the purpose of this section, the term “firearm” means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means;

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment which has been approved by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the division prior to his or her release on parole. The Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall review and investigate the plan and provide findings to the board as to the suitability of the plan: *Provided, however*, That in cases in which there is a mandatory 30-day notification period required prior to the release of the inmate, pursuant to §62-12-23 of this code, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board believes parole should be granted, it may defer a final decision pending completion of an investigation and receipt of the commissioner's findings. Upon receipt of the plan, together with the investigation and findings, the board, through a panel, shall make a final decision regarding the granting or denial of parole; ~~and~~

(4) Has satisfied the board that if released on parole he or she will not constitute a danger to the community-; and

(5) Has successfully completed any individually required rehabilitative and educational programs, as determined by the division, while incarcerated: *Provided*, That, effective September 1, 2021, any inmate who satisfies all other parole eligibility requirements but is unable, through no fault of the inmate, to complete his or her required rehabilitative and educational programs while incarcerated, which are eligible to be taken while on parole, may be granted parole with the completion of such specified programs outside of the correctional institutions being a special condition of that person's parole term: *Provided, however*, That the Parole Board may consider whether completion of the inmate's outstanding amount of such programming would interfere with his or her successful reintegration into society.

(c) Except in the case of an inmate serving a life sentence, a person who has been previously twice convicted of a felony may not be released on parole until he or she has served the minimum term provided by law for the crime for which he or she was convicted. An inmate sentenced for life may not be paroled until he or she has served 10 years, and an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served 15 years.

(d) In the case of an inmate sentenced to a state correctional facility regardless of the inmate's place of detention or incarceration, the Parole Board, as soon as that inmate becomes eligible, shall consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and who is still eligible: *Provided*, That the board may reconsider and review parole eligibility any time within three years following the denial of parole of an inmate serving a life sentence with the possibility of parole.

(f) Any inmate in the custody of the commissioner for service of a sentence who reaches parole eligibility is entitled to a timely parole hearing without regard to the location in which he or she is housed.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted under this article are intended or may be construed to contravene, limit, or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines, or

otherwise exercise his or her constitutional powers of executive clemency.

(h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the standardized risk and needs assessment and a substance abuse assessment. The results of all standardized risk and needs assessments and substance abuse assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan, but completion of all the requirements of a rehabilitation treatment plan along with compliance with the requirements of subsection (b) of this section creates a rebuttable presumption that parole is appropriate. The presumption created by this subdivision may be rebutted by a Parole Board finding that, according to the standardized risk and needs assessment, at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in subsection (b) of this section or in this subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate. A denial of parole under this subsection precludes consideration for parole for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section, and has completed the rehabilitation treatment program required under subdivision (1), subsection (h) of this section, the Parole Board may not require the inmate to participate in an additional program, but may determine that the inmate must complete an assigned task or tasks prior to actual release on parole. The board may grant parole contingently, effective upon successful completion of the assigned task or tasks, without the need for a further hearing.

(k) (1) The Division of Corrections and Rehabilitation shall supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the Uniform Act for Out-of-State Parolee Supervision.

(2) The Division of Corrections and Rehabilitation shall provide supervision, treatment/recovery, and support services for all persons released to mandatory supervision under §15A-4-17 of this code.

(l) (1) When considering an inmate of a state correctional facility for release on parole, the Parole Board panel considering the parole shall have before it an authentic copy of, or report on, the inmate's current criminal record as provided through the West Virginia State Police, the United States Department of Justice, or any other reliable criminal information sources and written reports of the superintendent of the state correctional institution to which the inmate is sentenced:

(A) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered for the infractions;

(B) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted

to perform and in which the inmate is most likely to succeed when he or she leaves the state correctional institution; and

(C) On any physical, mental, psychological, or psychiatric examinations of the inmate.

(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided, however*, That nothing disclosed by the inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the parolee. In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to appear in person before a Parole Board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the Parole Board made pursuant to the provisions of this section: *Provided*, That an inmate may appear by video

teleconference if the members of the Parole Board panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks: *Provided, however,* That the requirement that an inmate personally appear may be waived where a physician authorized to do so by the Commissioner of the Division of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically or cognitively, to appear. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release must concur in the decision. The superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records, and reports received by the Parole Board shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional facility or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision of the state.

(o) The Parole Board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve, or commutation and shall make recommendation on the applications to the Governor.

(p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the sentencing judge and prosecuting attorney at least 10 days before the recommendation.

(q) A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

(r) The commissioner shall develop, maintain, and make publicly available a general list of rehabilitative and educational programs available outside of the correctional institutions which an inmate may be required to complete as a special condition of parole pursuant to subdivision (5) of subsection (b) of this section, and the manner and method in which such programs shall be completed by the parolee.

The bill (Eng. H. B. 3078), as amended, was then ordered to third reading.

**Eng. House Bill 3107**, Declaring that Post Traumatic Stress Disorder diagnosed by a licensed psychiatrist is a compensable occupational disease for first responders.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. House Bill 3129**, Relating to the Consumer Price Index rate increase.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3132**, Relating to motor carrier inspectors.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3133**, Relating to motor carrier rates.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3177**, Removing expired, outdated, inoperative and antiquated provisions and report requirements in education.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Education, were reported by the Clerk, considered simultaneously, and adopted:

On page sixteen, by striking out all of section seventeen and inserting in lieu thereof a new section seventeen, to read as follows:

**§18-9B-17. Duties of county board and county superintendent.**

A county board of education and a county superintendent shall comply with the instructions of the ~~state board of finance~~ State Board of Education and state superintendent and shall perform the duties required of them in accordance with the provisions of this article.;

On page sixteen, by striking out all of section eighteen and inserting in lieu thereof a new section eighteen, to read as follows:

**§18-9B-18. Issuance and enforcement of orders.**

The ~~board of finance~~ state superintendent shall enforce the requirements of and ~~its~~ his or her regulations issued under this article. The ~~board~~ state superintendent may issue orders to county boards of education requiring specific compliance with ~~its~~ his or her instructions. If a county board fails or refuses to comply, the ~~board~~ state superintendent may proceed to enforce ~~its~~ his or her order by any appropriate remedy, including, but not limited to, initiating legal action in any court of competent jurisdiction.;

And,

On page seventeen, by striking out all of section nineteen and inserting in lieu thereof a new section nineteen, to read as follows:

**§18-9B-19. Withholding of state aid for noncompliance by county board.**

(a) The ~~board of finance~~ state superintendent may withhold payment of state aid from a county board that fails or refuses to

comply with the provisions of this ~~article~~ code or the requirements of the state ~~board~~ superintendent. ~~made in accordance therewith~~

(b) If the state superintendent finds that the action of a county board or county superintendent does not comply with state law or state board policy, and that the noncompliance could adversely impact the delivery of a thorough and equitable education to all students in the county, the state superintendent may require the following action during the periods of noncompliance:

(1) Approval of meeting agendas by the state superintendent;

(2) Attendance by the state superintendent or designee at county board meetings; and

(3) Approval by the state superintendent of county-level expenditures.

(c) The state superintendent shall report any action of enforcement against a county board pursuant to this section or any other provision of law to the state board at its next meeting.

The bill (Eng. H. B. 3177), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 3215**, Amending the requirements to become an elected prosecutor.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 4. PROSECUTING ATTORNEY, REWARDS,  
AND LEGAL ADVICE.**

**§7-4-1a. Eligibility of prosecuting attorneys.**

To be eligible to be a candidate for the office of prosecuting attorney, a person shall be a duly licensed attorney in the State of West Virginia at the time of his or her filing for office.

The bill (Eng. Com. Sub. for H. B. 3215), as amended, was then ordered to third reading.

**Eng. Com. Sub. for House Bill 3266**, Providing for termination of extracurricular contact upon retirement.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3299**, Authorizing Higher Education Rules.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk and adopted:

On page seven, section two, lines one hundred seventy through one hundred seventy-four, by striking out all of subsection (II) and inserting in lieu thereof a new subsection (II), to read as follows:

(II) The legislative rule filed in the State Register on July 29, 2020, relating to the Higher Education Policy Commission (Mental Health Loan Repayment Program) is authorized, with the following amendments:

On page one, subdivision, 3.1.b., after the words “family therapist,” by inserting the words “psychiatric mental health nurse practitioner,”;

On page two, subsection 6.1, by striking out the words “at least” and inserting in lieu thereof the words “up to”; and

On page three, subsection 9.1, after the words “family therapists,” by inserting the words “psychiatric mental health nurse practitioners,”.

The bill (Eng. H. B. 3299), as amended, was then ordered to third reading.

**Eng. House Bill 3301**, Relating generally to property tax increment financing districts.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Finance, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**§7-11B-3. Definitions.**

(a) General. — When used in this article, words and phrases defined in this section have the meanings ascribed to them in this section unless a different meaning is clearly required either by the context in which the word or phrase is used or by specific definition in this article.

(b) Words and phrases defined. —

“Agency” includes a municipality, a county or municipal development agency established pursuant to authority granted in §7-12-1 of this code, a port authority, an airport authority or any other entity created by this state or an agency or instrumentality of this state that engages in economic development activity or the Division of Highways.

“Base assessed value” means the taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbooks and personal property books of the assessor on July 1 of the calendar year preceding the effective date of the order or ordinance creating and establishing the development or redevelopment district: *Provided*, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular

session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the base assessed value.

“Blighted area” means an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which the structures, buildings or improvements, by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for access, ventilation, light, air, sanitation, open spaces, high density of population and overcrowding or the existence of conditions which endanger life or property, are detrimental to the public health, safety, morals or welfare. “Blighted area” includes any area which, by reason of the presence of a substantial number of substandard, slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, defective or unusual conditions of title or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use, or any area which is predominantly open and which because of lack of accessibility, obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of the community.

“Commissioner of Highways” means the Commissioner of the Division of Highways.

“Conservation area” means any improved area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county in which fifty percent or more of the structures in the area have an age of thirty-five years or more. A conservation area is not yet a blighted area but is detrimental to the public health, safety, morals or

welfare and may become a blighted area because of any one or more of the following factors: Dilapidation; obsolescence; deterioration; illegal use of individual structures; presence of structures below minimum code standards; abandonment; excessive vacancies; overcrowding of structures and community facilities; lack of ventilation, light or sanitary facilities; inadequate utilities; excessive land coverage; deleterious land use or layout; depreciation of physical maintenance; and lack of community planning. A conservation area shall meet at least three of the factors provided in this subdivision.

“County commission” means the governing body of a county of this state and, for purposes of this article only, includes the governing body of a Class I, Class II or Class III municipality in this state.

“Current assessed value” means the annual taxable assessed value of all real and tangible personal property, excluding personal motor vehicles, having a tax situs within a development or redevelopment district as shown upon the landbook and personal property records of the assessor: *Provided*, That for any development or redevelopment district approved after the effective date of the amendments to this section enacted during the regular session of the Legislature in 2014, personal trailers, personal boats, personal campers, personal motor homes, personal ATVs and personal motorcycles having a tax situs within a development or redevelopment district are excluded from the current assessed value.

“Development office” means the West Virginia Department of Economic Development ~~Office~~ created in §5B-2-1 of this code.

“Development project” or “redevelopment project” means a project undertaken in a development or redevelopment district for eliminating or preventing the development or spread of slums or deteriorated, deteriorating or blighted areas, for discouraging the loss of commerce, industry or employment, for increasing employment or for any combination thereof in accordance with a tax increment financing plan. A development or redevelopment project may include one or more of the following:

(A) The acquisition of land and improvements, if any, within the development or redevelopment district and clearance of the land so acquired; or

(B) The development, redevelopment, revitalization or conservation of the project area whenever necessary to provide land for needed public facilities, public housing or industrial or commercial development or revitalization, to eliminate unhealthful, unsanitary or unsafe conditions, to lessen density, mitigate or eliminate traffic congestion, reduce traffic hazards, eliminate obsolete or other uses detrimental to public welfare or otherwise remove or prevent the spread of blight or deterioration;

(C) The financial or other assistance in the relocation of persons and organizations displaced as a result of carrying out the development or redevelopment project and other improvements necessary for carrying out the project plan, together with those site improvements that are necessary for the preparation of any sites and making any land or improvements acquired in the project area available, by sale or lease, for public housing or for development, redevelopment or rehabilitation by private enterprise for commercial or industrial uses in accordance with the plan;

(D) The construction of capital improvements within a development or redevelopment district designed to increase or enhance the development of commerce, industry or housing within the development project area; or

(E) Any other projects the county commission or the agency deems appropriate to carry out the purposes of this article.

“Development or redevelopment district” means an area proposed by one or more agencies as a development or redevelopment district which may include one or more counties, one or more municipalities or any combination thereof, that has been approved by the county commission of each county in which the project area is located if the project is located outside the corporate limits of a municipality, or by the governing body of a municipality if the project area is located within a municipality, or by both the county commission and the governing body of the

municipality when the development or redevelopment district is located both within and without a municipality.

“Division of Highways” means the state Department of Transportation, Division of Highways.

“Economic development area” means any area or portion of an area within the boundaries of a development or redevelopment district located within the territorial limits of a municipality or county that is neither a blighted area nor a conservation area and for which the county commission finds that development or redevelopment will not be solely used for development of commercial businesses that will unfairly compete in the local economy and that development or redevelopment is in the public interest because it will:

(A) Discourage commerce, industry or manufacturing from moving their operations to another state;

(B) Result in increased employment in the municipality or county, whichever is applicable; or

(C) Result in preservation or enhancement of the tax base of the county or municipality.

“Governing body of a municipality” means the city council of a Class I, Class II or Class III municipality in this state.

“Incremental value”, for any development or redevelopment district, means the difference between the base assessed value and the current assessed value. The incremental value will be positive if the current value exceeds the base value and the incremental value will be negative if the current value is less than the base assessed value.

“Includes” and “including”, when used in a definition contained in this article, shall not exclude other things otherwise within the meaning of the term being defined.

“Intergovernmental agreement” means any written agreement that may be entered into by and between two or more county

commissions, or between two or more municipalities, or between a county commission and a municipality, in the singular and the plural, or between two or more government entities and the Commissioner of Highways: *Provided*, That any intergovernmental agreement shall not be subject to provisions governing intergovernmental agreements set forth in other provisions of this code, including, but not limited to, §8-23-1 *et seq.* of this code, but shall be subject to the provisions of this article.

“Local levying body” means the county board of education and the county commission and includes the governing body of a municipality when the development or redevelopment district is located, in whole or in part, within the boundaries of the municipality.

“Obligations” or “tax increment financing obligations” means bonds, loans, debentures, notes, special certificates or other evidences of indebtedness issued by a county commission or municipality pursuant to this article to carry out a development or redevelopment project or to refund outstanding obligations under this article.

“Order” means an order of the county commission adopted in conformity with the provisions of this article and as provided in this chapter.

“Ordinance” means a law adopted by the governing body of a municipality in conformity with the provisions of this article and as provided in §8-1-1 *et seq.* of this code.

“Payment in lieu of taxes” means ~~those estimated revenues from real property and tangible personal property having a tax situs in the area selected for a development or redevelopment project which revenues, according to the development or redevelopment project or plan, are to be used for a private use, which levying bodies would have received had a county or municipality not adopted one or more tax increment financing plans and which would result from levies made after the date of adoption of a tax increment financing plan during the time the current assessed value~~

~~of all taxable real and tangible personal property in the area selected for the development or redevelopment project exceeds the total base assessed value of all taxable real and tangible personal property in the development or redevelopment district until the designation is terminated as provided in this article~~ a payment with respect to real and personal property located in a development or redevelopment district and owned in title by this state, a political subdivision of this state or an agency or instrumentality thereof, that is made by the lessee of such property pursuant to a written payment in lieu of taxes agreement, whether in effect as of, or subsequent to, the date of creation of the development or redevelopment district.

“Person” means any natural person, and any corporation, association, partnership, limited partnership, limited liability company or other entity, regardless of its form, structure or nature, other than a government agency or instrumentality.

“Private project” means any project that is subject to ad valorem property taxation in this state or to a payment in lieu of tax agreement that is undertaken by a project developer in accordance with a tax increment financing plan in a development or redevelopment district.

“Project” means any capital improvement, facility or both, as specifically set forth and defined in the project plan, requiring an investment of capital including, but not limited to, extensions, additions or improvements to existing facilities, including water or wastewater facilities, and the remediation of contaminated property as provided for in §22-22-1 *et seq.* of this code, but does not include performance of any governmental service by a county or municipal government.

“Project area” means an area within the boundaries of a development or redevelopment district in which a development or redevelopment project is undertaken as specifically set forth and defined in the project plan.

“Project costs” means expenditures made in preparation of the development or redevelopment project plan and made, or estimated

to be made, or monetary obligations incurred, or estimated to be incurred, by the county commission which are listed in the project plan as capital improvements within a development or redevelopment district, plus any costs incidental thereto. "Project costs" include, but are not limited to:

(A) Capital costs, including, but not limited to, the actual costs of the construction of public works or improvements, capital improvements and facilities, new buildings, structures and fixtures, the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures and fixtures, environmental remediation, parking and landscaping, the acquisition of equipment and site clearing, grading and preparation;

(B) Financing costs, including, but not limited to, an interest paid to holders of evidences of indebtedness issued to pay for project costs, all costs of issuance and any redemption premiums, credit enhancement or other related costs;

(C) Real property assembly costs, meaning any deficit incurred resulting from the sale or lease as lessor by the county commission of real or personal property having a tax situs within a development or redevelopment district for consideration that is less than its cost to the county commission;

(D) Professional service costs including, but not limited to, those costs incurred for architectural planning, engineering and legal advice and services;

(E) Imputed administrative costs including, but not limited to, reasonable charges for time spent by county employees or municipal employees in connection with the implementation of a project plan;

(F) Relocation costs including, but not limited to, those relocation payments made following condemnation and job training and retraining;

(G) Organizational costs including, but not limited to, the costs of conducting environmental impact and other studies and the costs of informing the public with respect to the creation of a

development or redevelopment district and the implementation of project plans;

(H) Payments made, in the discretion of the county commission or the governing body of a municipality, which are found to be necessary or convenient to creation of development or redevelopment districts or the implementation of project plans; and

(I) That portion of costs related to the construction of environmental protection devices, storm or sanitary sewer lines, water lines, amenities or streets or the rebuilding or expansion of streets, or the construction, alteration, rebuilding or expansion of which is necessitated by the project plan for a development or redevelopment district, whether or not the construction, alteration, rebuilding or expansion is within the area or on land contiguous thereto.

“Project developer” means any person who engages in the development of projects in the state.

“Project plan” means the plan for a development or redevelopment project that is adopted by a county commission or governing body of a municipality in conformity with the requirements of this article and this chapter or §8-1-1 *et seq.* of this code.

“Real property” means all lands, including improvements and fixtures on them and property of any nature appurtenant to them or used in connection with them and every estate, interest and right, legal or equitable, in them, including terms of years and liens by way of judgment, mortgage or otherwise, and indebtedness secured by the liens.

“Redevelopment area” means an area designated by a county commission or the governing body of a municipality in respect to which the commission or governing body has made a finding that there exist conditions which cause the area to be classified as a blighted area, a conservation area, an economic development area or a combination thereof, which area includes only those parcels of real property directly and substantially benefitted by the proposed

redevelopment project located within the development or redevelopment district or land contiguous thereto.

“Redevelopment plan” means the comprehensive program under this article of a county or municipality for redevelopment intended by the payment of redevelopment costs to reduce or eliminate those conditions, the existence of which qualified the redevelopment area as a blighted area, conservation area, economic development area or combination thereof, and to thereby enhance the tax bases of the levying bodies which extend into the redevelopment area. Each redevelopment plan shall conform to the requirements of this article.

“Tax increment” means the amount of regular levy property taxes attributable to the amount by which the current assessed value of real and tangible personal property having a tax situs in a development or redevelopment district exceeds the base assessed value of the property. Provided, That where the period of existence of a development or redevelopment district is extended beyond its originally scheduled termination date as permitted by §7-11B-10 of this code, only the regular and excess property tax levies of the county commission and any Class I, II, III or IV municipality, a portion of which is located within the boundaries of the development or redevelopment district, shall be included in the tax increment following the originally scheduled termination date of the development or redevelopment district.

“Tax increment financing fund” means a separate fund for a development or redevelopment district established by the county commission or governing body of the municipality into which all tax increment revenues and other pledged revenues are deposited and from which projected project costs, debt service and other expenditures authorized by this article are paid.

“This code” means the Code of West Virginia, 1931, as amended by the Legislature.

“Total ad valorem property tax regular levy rate” means the aggregate levy rate of all levying bodies on all taxable property having a tax situs within a development or redevelopment district

in a tax year but does not include excess levies, levies for general obligation bonded indebtedness or any other levies that are not regular levies.

**§7-11B-7. Creation of a development or redevelopment area or district.**

(a) County commissions and the governing bodies of Class I, Class II or Class III municipalities, upon their own initiative or upon application of an agency or a developer, may propose creation of a development or redevelopment district and designate the boundaries of the district: *Provided*, That a district may not include noncontiguous land.

(b) The county commission or municipality proposing creation of a development or redevelopment district shall then hold a public hearing at which interested parties are afforded a reasonable opportunity to express their views on the proposed creation of a development or redevelopment district and its proposed boundaries.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with §59-3-2 of this code.

(2) The notice shall include the time, place and purpose of the public hearing, describe in sufficient detail the tax increment financing plan, the proposed boundaries of the development or redevelopment district and, when a development or redevelopment project plan is being proposed, the proposed tax increment financing obligations to be issued to finance the development or redevelopment project costs.

(3) Prior to the first day of publication, a copy of the notice shall be sent by first-class mail to the director of the Development Office and to the chief executive officer of all other local levying bodies having the power to levy taxes on real and tangible personal property located within the proposed development or redevelopment district.

(4) All parties who appear at the hearing shall be afforded an opportunity to express their views on the proposal to create the

development or redevelopment district and, if applicable, the development or redevelopment project plan and proposed tax increment financing obligations.

(c) After the public hearing, the county commission, or the governing body of the municipality, shall finalize the boundaries of the development or redevelopment district, the development or redevelopment project plan, or both, and submit the same to the director of the Development Office for his or her review and approval. The director, within sixty days after receipt of the application, shall approve the application as submitted, reject the application or return the application to the county commission or governing body of the municipality for further development or review in accordance with instructions of the director of the Development Office. A development or redevelopment district or development or redevelopment project plan may not be adopted by the county commission or the governing body of a municipality until after it has been approved by the executive director of the Development Office.

(d) Upon approval of the application by the Development Office, the county commission may enter an order and the governing body of the municipality proposing the district or development or redevelopment project plan may adopt an ordinance, that:

(1) Describes the boundaries of a development or redevelopment district sufficiently to identify with ordinary and reasonable certainty the territory included in the district, which boundaries shall create a contiguous district;

(2) Creates the development or redevelopment district as of a date provided in the order or ordinance;

(3) Assigns a name to the development or redevelopment district for identification purposes.

(A) The name may include a geographic or other designation, shall identify the county or municipality authorizing the district and shall be assigned a number, beginning with the number one.

(B) Each subsequently created district in the county or municipality shall be assigned the next consecutive number;

(4) Contains findings that the real property within the development or redevelopment district will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment or any combination thereof;

(5) Approves the development or redevelopment project plan, if applicable;

(6) Establishes a tax increment financing fund as a separate fund into which all tax increment revenues and other revenues designated by the county commission, or governing body of the municipality, for the benefit of the development or redevelopment district shall be deposited, and from which all project costs shall be paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the county commission or the governing body of the municipality; and

(7) Provides that ad valorem property taxes on real and tangible personal property having a tax situs in the development or redevelopment district shall be assessed, collected and allocated in the following manner, commencing upon the date of adoption of such order or ordinance and continuing for so long as any tax increment financing obligations are payable from the tax increment financing fund, hereinafter authorized, are outstanding and unpaid:

(A) For each tax year, the county assessor shall record in the land and personal property books both the base assessed value and the current assessed value of the real and tangible personal property having a tax situs in the development or redevelopment district;

(B) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the district that are attributable to the lower of the base assessed value or the current assessed value of real and tangible personal property

located in the development project area shall be allocated to the levying bodies in the same manner as applicable to the tax year in which the development or redevelopment project plan is adopted by order of the county commission or by ordinance adopted by the governing body of the municipality;

(C) The tax increment with respect to real and tangible personal property in the development or redevelopment district shall be allocated and paid into the tax increment financing fund and shall be used to pay the principal of and interest on tax increment financing obligations issued to finance the costs of the development or redevelopment projects in the development or redevelopment district. Any levying body having a development or redevelopment district within its taxing jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in this article; and

(D) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in §11-8-1 *et seq.* of this code.

(e) Proceeds from tax increment financing obligations issued under this article may only be used to pay for costs of development and redevelopment projects to foster economic development in the development or redevelopment district or land contiguous thereto.

(f) Notwithstanding subsection (d) of this section, a county commission may not enter an order approving a development or redevelopment project plan unless the county commission expressly finds and states in the order that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(g) Notwithstanding subsection (d) of this section, the governing body of a municipality may not adopt an ordinance approving a development or redevelopment project plan unless the governing body expressly finds and states in the ordinance that the development or redevelopment project is not reasonably expected to occur without the use of tax increment financing.

(h) No county commission shall establish a development or redevelopment district any portion of which is within the boundaries of a Class I, II, III or IV municipality without the formal consent of the governing body of such municipality.

(i) A tax increment financing plan that has been approved by a county commission or the governing body of a municipality may be amended by following the procedures set forth in this article for adoption of a new development or redevelopment project plan.

(j) The county commission may modify the boundaries of the development or redevelopment district, from time to time, or the governing body of a county may extend the length of existence of the development or redevelopment district as set forth in §7-11B-10 of this code, subject to the limitations and requirements of this section, by entry of an order modifying the order creating the development or redevelopment district.

(k) The governing body of a municipality may modify the boundaries of the development or redevelopment district, from time to time, or extend the length of existence of the development or redevelopment district as set forth in §7-11B-10 of this code, by amending the ordinance establishing the boundaries of the district creating the development or redevelopment district.

(l) Before a county commission or the governing body of a municipality may amend such an order or ordinance, the county commission or municipality shall give the public notice as provided in subdivisions (1) and (2), subsection (b) of this section, hold a public hearing, as provided in subdivision (4), subsection (b) of this section, ~~and~~ obtain the approval of the director of the Development Office, and obtain the formal consent of the governing body of any Class I, II, III or IV municipality a portion of which is located within the boundaries of the development or redevelopment district following the procedures for establishing a new development or redevelopment district. In the event any tax increment financing obligations are outstanding with respect to the development or redevelopment district, any change in the boundaries shall not reduce the amount of tax increment available to secure the outstanding tax increment financing obligations.

**§7-11B-9. Project plan – amendment.**

(a) The county commission may by order, or the governing body of a municipality by ordinance, adopt an amendment to a project plan.

(b) Adoption of an amendment to a project plan shall be preceded by a public hearing held by the county commission, or governing body of the municipality, at which interested parties shall be afforded a reasonable opportunity to express their views on the amendment.

(1) Notice of the hearing shall be published as a Class II legal advertisement in accordance with ~~section two, article three, chapter fifty nine~~ §59-3-2 of this code.

(2) Prior to publication, a copy of the notice shall be sent by first-class mail to the chief executive officer of all other local levying bodies having the power to levy taxes on property within the development or redevelopment district.

(3) Copies of the proposed plan amendments shall be made available to the public at the county clerk's office or municipal clerk's office at least fifteen days prior to the hearing.

(c) One or more existing development or redevelopment districts may be combined pursuant to lawfully adopted amendments to the original plans for each district: *Provided*, That the county commission, or governing body of the municipality, finds that the combination of the districts will not impair the security for any tax increment financing obligations previously issued pursuant to this article.

(1) The base assessed value of the real and tangible personal property located in the combined development or redevelopment district following such combination shall be the same base assessed value as existed for such real and tangible personal property in each of the separate development or redevelopment districts prior to such combination.

(2) The termination date for the combined development or redevelopment district which results from the combination of two or more previously created districts shall be the termination date as provided pursuant to §7-11B-10 of this code of the development or redevelopment district which had the latest termination date prior to the combination of such districts.

**§7-11B-10. Termination of development or redevelopment district.**

(a) No development or redevelopment district may be in existence for a period longer than thirty years and no tax increment financing obligations may have a final maturity date later than the termination date of the area or district: Provided, That, for any existing development or redevelopment district for which tax increment financing obligations have been issued by a county commission, or the governing body of a municipality, prior to December 31, 2020, the termination date for that existing development or redevelopment district may be extended not more than five years or until December 31, 2050, whichever is earlier.

(b) The county commission or governing body of the municipality creating the development or redevelopment district may set a shorter period for the existence of the district. In this event, no tax increment financing obligations may have a final maturity date later than the termination date of the district. The county commission or the governing body of the municipality which created the development or redevelopment district may not take action to terminate a district prior to the time otherwise provided in its official action creating or extending the district if the county commission or the governing body of the municipality then has tax increment revenue obligations which remain outstanding and unpaid.

(c) Upon termination of the district, no further ad valorem tax revenues shall be distributed to the tax increment financing fund of the district.

(d) The county commission shall adopt, upon the expiration of the time periods set forth in this section, an order terminating the

development or redevelopment district created by the county commission: *Provided*, That no district shall be terminated so long as bonds with respect to the district remain outstanding.

(e) The governing body of the ~~county commission~~ municipality shall repeal, upon the expiration of the time periods set forth in this section, the ordinance establishing the development or redevelopment district: *Provided*, That no district shall be terminated so long as bonds with respect to the district remain outstanding.

### **§7-11B-18. Payments in lieu of taxes and other revenues.**

(a) The county commission or municipality that created the development or redevelopment district shall deposit in the tax increment financing fund of the development or redevelopment district all payments in lieu of taxes received pursuant to any agreement entered into on or subsequent to the date of creation of a development or redevelopment district on tax exempt property located within the development or redevelopment district, and prior to the amendments to this section enacted in the 2021 regular session of the Legislature.

~~(b) The lessee of property that is exempt from property taxes because it is owned by this state, a political subdivision of this state or an agency or instrumentality thereof, which is the lessee of any facilities financed, in whole or in part, with tax increment financing obligations, shall execute a payment in lieu of tax agreement that shall remain in effect until the tax increment financing obligations are paid, during which period of time the lessee agrees to pay to the county sheriff an amount equal to the amount of ad valorem property taxes that would have been levied against the assessed value of the property were it owned by the lessee rather than a tax exempt entity. The~~

(b) Any real or personal property located within the development or redevelopment district and owned by this state, a political subdivision of this state or an agency or instrumentality thereof may be made subject to a payment in lieu of taxes agreement. The real and personal property subject to a payment in

lieu of taxes agreement is deemed public property and exempt from ad valorem property taxation by this state, a political subdivision of this state, an agency or instrumentality thereof or other levying body, so long as it is owned in title by this state, a political subdivision of this state or an agency or instrumentality thereof. The exemption from ad valorem property taxation is applicable to any leasehold or similar interest held by persons other than this state, a political subdivision of this state or an agency or instrumentality thereof, if acquired or constructed with the written agreement of the county school board, county commission and any municipal authority within whose jurisdiction the real and personal property is physically situated.

(c) Any payment in lieu of taxes agreement shall be made between the public entity that owns the property, the lessee of the property who would be making the payment in lieu of taxes and the county school board, county commission and any municipal authority within whose jurisdiction the real or personal property is situate. The payment in lieu of taxes agreement shall provide the amount that shall be paid by the lessee and the amount, if any, that shall be attributable to the base assessed value of the property and the incremental value.

(d) Following the amendments to this section enacted in the 2021 regular session of the Legislature, any portion of the payment in lieu of taxes attributable in the payment in lieu of tax agreement to the incremental value shall be deposited in the tax increment financing fund. Following the amendments to this section enacted in the 2021 regular session of the Legislature, the remaining portion of the in lieu payment shall be distributed among the levying bodies as follows:

(1) The portion of the in lieu tax payment attributable to the base value of the property shall be distributed to the levying bodies in the same manner as taxes attributable in the payment in lieu of tax agreement to the base value of other property in the district are distributed; and

(2) The portions of the in lieu tax payment attributable in the payment in lieu of tax agreement to levies for bonded indebtedness

and excess levies shall be distributed in the same manner as those levies on other property in the district are distributed.

~~(e)~~ (e) Other revenues to be derived from the development or redevelopment district may also be deposited in the tax increment financing fund at the direction of the county commission.

**§7-11B-22. Tax increment financing obligations — terms, conditions.**

(a) Tax increment financing obligations may not be issued in an amount exceeding the estimated aggregate project costs, including all costs of issuance of the tax increment financing obligations.

(b) Tax increment financing obligations shall not be included in the computation of the Constitutional debt limitation of the county commission or municipality issuing the tax increment financing obligations.

(c) Tax increment financing obligations shall mature over a period not exceeding thirty years from ~~the date of entry of the county commission's order, or the effective date of the municipal ordinance, creating the development or redevelopment district and approving the development or redevelopment plan~~ their issue date, or a period terminating with the date of termination of the development or redevelopment district, whichever period terminates earlier.

(d) Tax increment financing obligations may contain a provision authorizing their redemption, in whole or in part, at stipulated prices, at the option of the county commission or municipality issuing the obligations, and, if so, the obligations shall provide the method of selecting the tax increment financing obligations to be redeemed.

(e) The principal and interest on tax increment financing obligations may be payable at any place set forth in the resolution, trust indenture or other document governing the obligations.

(f) Bonds or notes shall be issued in registered form.

(g) Bonds or notes may be issued in any denomination.

(h) Each tax increment financing obligation issued under this article is declared to be a negotiable instrument.

(i) The tax increment financing obligations may be sold at public or private sale.

(j) Insofar as they are consistent with subsections (a), (b) and (c) of this section, the procedures for issuance, form, contents, execution, negotiation and registration of county and municipal industrial or commercial revenue bonds set forth in ~~article two e, chapter thirteen~~ §13-2C-1 et seq. of this code are incorporated by reference herein.

(k) The bonds may be refunded or refinanced and refunding bonds may be issued in any principal amount: *Provided*, That the last maturity of the refunding bonds shall not be later than the ~~last maturity of the bonds being refunded~~ termination date of the district as set forth in §7-11B-10 of this code.

The bill (Eng. H. B. 3301), as amended, was then ordered to third reading.

**Eng. House Bill 3304**, Authorizing the Division of Corrections and Rehabilitation to establish a Reentry and Transitional Housing Program.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **CHAPTER 15A.**

### **DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.**

**ARTICLE 4A. EXPANDED WORK RELEASE PILOT PROGRAM.**

**§15A-4A-1. Purpose of article and legislative findings.**

(a) The purpose of this article is to establish an expanded required work release pilot program in no more than five locations in this state.

(b) The Legislature finds that the primary reasons for requiring participation in a work release program are to increase public protection while aiding the transition of the offender back into the community where he or she will be going with or without work release program participation. Participating in work release may reduce the likelihood of recidivism by gradually reintroducing an offender to the community while providing security, structure, and supervision and providing necessary services.

(c) The Legislature further finds that participation in a work release program provides an transitional environment for offenders nearing the end of their sentences while maintaining structure, supervision, offender accountability, improved program opportunities, employment counseling and placement, substance abuse, and life skills training.

**§15A-4A-2. Definitions.**

As used in this article, unless the context clearly requires a different meaning, the term:

(1) "Commissioner" means the commissioner of the Division of Corrections and Rehabilitation;

(2) "Division" means the Division of Corrections and Rehabilitation;

(3) "Offender" means a person sentenced to the custody of the Commissioner for service of a sentence of incarceration due to conviction of a felony or felonies.

**§15A-4A-3. Expanded work release pilot program.**

The Commissioner of the Division of Corrections and Rehabilitation is hereby authorized to establish a pilot program expanding available work release facilities to no more than a total of five locations be used for eligible offenders who are sentenced to serve a term of imprisonment in the custody of the commissioner and whom the commissioner requires to serve the last portion of their sentences in a work release facility in accordance with this article.

**§15A-4A-4. Eligibility; Funding.**

(a) An offender is eligible to participate in the work release program if he or she :

(1) Is 18 years of age or older;

(2) Is physically and psychologically able, as determined by the commissioner, to participate in the program: *Provided*, That offenders with medical conditions or disabilities shall be eligible for work release placement.

(3) Is directed by the Commissioner of Corrections to participate in the work release program; and

(4) Meets other criteria as the commissioner of the Division of Corrections and Rehabilitation may direct pursuant to §29A-1-1 *et seq.* of this code.

(b) The expansion of work release authorized by this article is subject to funds being appropriated by the legislature therefor or appropriated funds being redirected thereto.

**§15A-4A-5. Limitations on eligibility for work release participation.**

The following persons may not participate in the work release program:

(1) An offender who requires inpatient psychological or psychiatric treatment;

(2) An offender who refuses to participate in the Offender Financial Responsibility Program;

(3) An offender who refuses to participate in the Institution Release Preparation Program; and

(4) An offender determined by the commissioner, in his or her sole discretion, to pose a threat to the safety of another or to the community or to be an otherwise inappropriate candidate for participation in the program.

**§15A-4A-6. Internal policy development.**

(a) The commissioner shall develop operational procedures and policies for the work release program. The procedures and policies may, pursuant to §15A-3-12 of this code, allow the division to partner with contractors to be established at multiple sites, which sites shall subject to the control and authority of the commissioner.

(b) The procedures and policies shall include the following:

(1) A period of Imprisonment in work release of no more than 6 months prior to release on parole or discharge which period of Imprisonment may include substance abuse education, mandatory employment or employment skills training, social skills training, and psychological evaluation and treatment. Additionally, the state Board of Education and State Superintendent of Schools, pursuant to section five, article twenty, chapter eighteen of this code, respectively, may, as funds are available, establish an education program for those eligible offenders who are not recipients of a high school diploma or a certificate of high school equivalency.

(2) Policies and procedures identifying the facilities subject to the control and authority of the commissioner that will be used for offenders serving a sentence in a work release program;

(3) Policies and procedures establishing additional criteria the commissioner deems necessary and appropriate to determine eligibility and of offenders to serve the last portion of his or her sentence in a work release program;

(4) Policies and procedures to effectuate notification to a sentencing court of the performance of an eligible offender serving part of his or her sentence in a work release facility; and

(5) Any other policies and procedures that are necessary for the proper operation of the program.

(c) Upon successful completion of the work release program, an offender shall be released on parole or discharged in accordance with this article.

(d) An offender who does not satisfactorily complete the work release program shall be removed from the program and returned to serve the remainder of his or her sentence in a facility designated by the commissioner.

**§15A-4A-7. Funding and financial implications.**

Funding for the expanded work release pilot program may be derived from the state's general revenue fund or budget assigned annually to the division.

The bill (Eng. H. B. 3304), as amended, was then ordered to third reading.

**Eng. House Bill 3308**, Relating to increasing number of limited video lottery terminals.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. House Bill 3311**, Relating to the cost of medical records.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

**Eng. Com. Sub. for House Joint Resolution 3**, Property Tax Modernization Amendment.

On second reading, coming up in regular order, was read a second time.

At the request of Senator Takubo, and by unanimous consent, the resolution was advanced to third reading with the unreported committee amendments pending and the right for further amendments to be considered on that reading.

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

**Eng. Com. Sub. for House Bill 2025**, Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner.

**Eng. Com. Sub. for House Bill 2195**, Relating to motor vehicle crash reports.

**Eng. Com. Sub. for House Bill 2368**, Mylissa Smith's Law, creating patient visitation privileges.

**Eng. Com. Sub. for House Bill 2370**, Provide that Public Service Districts cannot charge sewer rates for filling a swimming pool.

**Eng. Com. Sub. for House Bill 2581**, Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property.

**Eng. Com. Sub. for House Bill 2667**, To create a cost saving program for state buildings regarding energy efficiency.

**Eng. Com. Sub. for House Bill 2671**, Relating to financial exploitation of elderly persons, protected persons or incapacitated adults.

**Eng. Com. Sub. for House Bill 2688**, Allow county political parties to have building funds in a similar manner that state parties are allowed.

**Eng. Com. Sub. for House Bill 2694**, Create the 2nd Amendment Preservation Act.

**Eng. Com. Sub. for House Bill 2747**, Transferring the Parole Board to the Office of Administrative Hearings.

**Eng. Com. Sub. for House Bill 2891**, Creating minimum statutory standards for law-enforcement officers.

**Eng. House Bill 2895**, Supplementing and amending the appropriations of public moneys to the Department of Veterans' Assistance.

**Eng. House Bill 2900**, Expiring funds to the balance of the Department of Education – State Board of Education – School Building Authority – School Construction Fund.

**Eng. Com. Sub. for House Bill 2933**, Anti-Discrimination Against Israel Act.

**Eng. Com. Sub. for House Bill 2982**, Relating to the Second Chances at Life Act of 2021.

**Eng. House Bill 2997**, Adding a defense to the civil penalty imposed for a result of delivery of fuel to a state other than the destination state printed on the shipping document for fuel.

**Eng. Com. Sub. for House Bill 3072**, Sunset the Board of Forestry.

**Eng. Com. Sub. for House Bill 3106**, To change the hearing requirement for misdemeanors to 10 days.

**Eng. House Bill 3128**, Relating to carrier fees on 911 fee revenues.

**Eng. House Bill 3313**, Making supplemental appropriation to the Division of Motor Vehicles.

**Eng. House Bill 3314**, Making supplemental appropriation to West Virginia State Police.

**Eng. House Bill 3315**, Making supplemental appropriation to Division of Environmental Protection - Oil and Gas Reclamation Fund.

And,

**Eng. House Bill 3316**, Supplemental appropriation to the Department of Education, State Board of Education.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Lindsay, Beach, Romano, and Woelfel.

At the request of Senator Lindsay, unanimous consent being granted, the Senate stood in observance of a moment of silence in recognition of the passing of KJ Taylor, a Capital High School student who was killed yesterday, Wednesday, April 7, 2021.

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Takubo, at 4 p.m., the Senate adjourned until tomorrow, Friday, April 9, 2021, at 11 a.m.

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## FRIDAY, APRIL 9, 2021

The Senate met at 11:22 a.m.

(Senator Blair, Mr. President, in the Chair.)

Prayer was offered by the Honorable Amy N. Grady, a senator from the fourth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Robert D. Beach, a senator from the thirteenth district.

Pending the reading of the Journal of Thursday, April 8, 2021,

At the request of Senator Stover, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect July 1, 2021, of

**Eng. Com. Sub. for Com. Sub. for Senate Bill 335**, Relating to WV Invests Grant Program for students at accredited community and technical college.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 419**, Redefining “firearm” to match federal code.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 7. DANGEROUS WEAPONS.**

### **§61-7-2. Definitions.**

As used in this article, unless the context otherwise requires:

(1) “Antique firearm” means:

(A) Any firearm, including, but not limited to, a firearm with a match lock, flintlock, percussion cap, or similar type of ignition system which was manufactured on or before 1898;

(B) Any replica of any firearm described in paragraph (A) of this subdivision if such replica is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade; and

(C) Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol, which is designed to use black powder, or black powder substitute, and which cannot use fixed ammunition. For purposes of this subdivision, the term “antique firearm” shall not include any weapon which includes a firearm frame or receiver, any firearm which is converted into a muzzle-loading weapon, or any muzzle-loading weapon which can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breechblock, or any combination thereof.

(2) “Blackjack” means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term “blackjack” includes, but is not limited to, a billy, billy club, sand club, sandbag, or slapjack.

(3) “Concealed” means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee is considered to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.

(4) “Controlled substance” has the same meaning as is ascribed to that term in §60A-1-101(e) of this code.

(5) “Deadly weapon” means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term “deadly weapon” includes, but is not limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code, in addition to the definition of “knife” set forth in subdivision (9) of this subsection, the term “deadly weapon” also includes any instrument included within the definition of “knife” with a blade of three and one-half inches or less in length. Additionally, for the purposes of §18A-5-1a of this code and §61-7-11a of this code, the term “deadly weapon” includes explosive, chemical, biological, and radiological materials. Notwithstanding any other provision of this section, the term “deadly weapon” does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes. The term “deadly weapon” does not include pepper spray as defined in ~~subdivision (9)~~ subdivision (12) of this subsection when used by any person over the age of 16 solely for self-defense purposes.

(6) “Drug” has the same meaning as is ascribed to that term in §60A-1-101(m) of this code.

(7) “Firearm” means any weapon which will expel a projectile by action of an explosion: Provided, That it does not mean an antique firearm as defined in subdivision (1) of this subsection; except for the purposes of §48-27-502 of this code.

(8) “Gravity knife” means any knife that has a blade released from the handle by the force of gravity or the application of centrifugal force and when released is locked in place by means of a button, spring, lever, or other locking or catching device.

(9) “Knife” means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term “knife” includes, but is not limited to, any dagger, dirk,

poniard, or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other recreational uses, or a knife designed for use as a tool or household implement is not included within the term “knife” as defined in this subdivision unless the knife is knowingly used or intended to be used to produce serious bodily injury or death.

(10) “Metallic or false knuckles” means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person who was struck. The terms “metallic or false knuckles” includes any such instrument without reference to the metal or other substance or substances from which the metallic or false knuckles are made.

(11) “Nunchaku” means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in ~~such~~ a manner ~~as to allow~~ that allows the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(12) “Pepper spray” means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

(13) “Pistol” means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(14) “Revolver” means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(15) “Switchblade knife” means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch, or other releasing device in its handle.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 419, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 419) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 458**, Relating to possession of firearms by individuals during state of emergency.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking everything after the enacting clause and inserting in lieu thereof the following:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

**§15-5-19a. Possession of firearms during a declared state of emergency**

~~(a) No person acting on behalf or under the authority of the state or a political subdivision of the state may do any of the following during any federal or state declared state of emergency.~~

(a) During a federal or state declared state of emergency, no state agency, county, or municipality, or any elected or appointed official or employee thereof, may:

(1) Prohibit or restrict the otherwise lawful possession, use, carrying, transfer, transportation, storage, sale, or display, or other lawful use of a firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms;

(2) Seize, confiscate, or authorize the seizure or confiscation of any otherwise lawfully possessed firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms unless:

(A) The person acting on behalf of or under the authority of the state, or political subdivision a county, or municipality is:

(i) Defending himself or herself or another from an assault; or

(ii) Arresting a person in actual possession of a firearm or ammunition for a violation of law; or

(B) The firearm or ammunition is being seized or confiscated as evidence of a crime;

(3) Require registration of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition

reloading equipment and supplies, or otherwise lawful personal weapons other than firearms;

(4) Suspend or revoke a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon issued pursuant to §61-7-1 et seq. of this code except as expressly authorized in that article;

(5) Willfully refuse to accept an application for a license to carry a concealed deadly weapon or provisional license to carry a concealed deadly weapon, provided the application has been properly completed in accordance with §61-7-1 et seq. of this code;

(6) Close or limit the operating hours of any entity engaged in the lawful selling or servicing of any firearm, including any component or accessory, ammunition, ammunition reloading equipment and supplies, or personal weapons other than firearms, unless the closing or limitation of hours applies generally within the jurisdiction of commerce;

(7) Close or limit the operating hours of any indoor or outdoor shooting range; or

(8) Place restrictions or quantity limitations on any entity regarding the lawful sale or servicing of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms.

(b) The prohibitions of ~~subsection (a)(1)~~ subdivision (1) of subsection (a) of this section do not prohibit the state or an authorized state or local authority from ordering and enforcing an evacuation or general closure of businesses in the affected area during a declared state of emergency.

(c) Any individual ~~aggrieved~~ adversely affected by a violation of this section may seek relief in an action at law or in equity for redress against any ~~person~~ state agency, county, municipality, or any elected or appointed official or employee of this state, a county, or municipality who that subjects ~~such~~ the individual, or causes

such the individual to be subjected, to an action prohibited by this section.

(d) In addition to any other remedy at law or in equity, an individual ~~aggrieved~~ adversely affected by the seizure or confiscation of ~~a firearm or ammunition~~ any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or otherwise lawful personal weapons other than firearms in violation of this section may bring an action for the return of ~~such firearm or ammunition~~ the seized or confiscated property in the circuit court of the county in which that individual resides or in which ~~such firearm or ammunition~~ the seized or confiscated property is located.

(e) ~~In any action or proceeding to enforce this section, the court shall award a prevailing plaintiff costs and reasonable attorney fees~~ A prevailing plaintiff in an action under this section is entitled to recover the following:

- (1) Actual damages, including consequential damages;
- (2) Court costs and fees; and
- (3) Reasonable attorney's fees.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 458, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 458) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 486**, Relating to powers and duties of Chief Technology Officer.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 488**, Relating to distributing hotel occupancy tax to convention and visitor's bureaus.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 521**, Extending licensure renewal term of certain private investigators, security guards, and associated firms.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

**Eng. Senate Bill 529**, Correcting improper citation relating to DMV registration.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Com. Sub. for Senate Bill 534**, Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.**

(a) The Legislature finds and declares that the citizens of the state benefit from the creation of jobs and businesses within the state; that business and industrial development loan programs provide for economic growth and stimulation within the state; that loans from pools established in the Consolidated Fund will assist in providing the needed capital to assist business and industrial development; and that time constraints relating to business and industrial development projects prohibit duplicative review by both the Board and West Virginia Economic Development Authority Board.

(b) ~~The~~ Subject to a liquidity determination, the West Virginia Board of Treasury Investments shall make a revolving loan available, ~~subject to a liquidity determination, in the form of a revolving loan, up to \$175 million from the Consolidated Fund to loan~~ the West Virginia Economic Development Authority in an amount of up to \$200 million. The revolving loan shall be used for business or industrial development projects authorized by §31-15-7 of this code and to consolidate existing loans authorized to be made to the West Virginia Economic Development Authority pursuant to this section and pursuant to ~~§31-15-2~~ §31-15-20 of this code which authorizes a ~~\$175~~ \$150 million revolving loan and §31-18B-1 *et seq.* of this code which authorizes a \$50 million investment pool: *Provided*, That the West Virginia Economic Development Authority may not loan more than \$15 million for any one business or industrial development project. The revolving loan authorized by this subsection shall be secured by one note at a variable interest rate equal to ~~the 12-month average of the board's~~

~~yield on its West Virginia Money Market pool. The rate shall be set on July 1 and adjusted annually on the same date. 50% of the West Virginia Economic Development Authority's weighted average interest rate for outstanding loans in the Business and Industrial Development Loan Program authorized by §31-15-7 of this code. The rate may not be lower than 1.50% and must be reset on July 1 of each year. The maximum annual adjustment may not exceed one percent.~~ Monthly payments made by the West Virginia Economic Development Authority to the board shall be calculated on a 120-month amortization. The revolving loan is secured by a security interest that pledges and assigns the cash proceeds of collateral from all loans under this revolving loan pool. The West Virginia Economic Development Authority may also pledge as collateral certain revenue streams from other revolving loan pools which source of funds does not originate from federal sources or from the board.

(c) The outstanding principal balance of the revolving loan from the board to the West Virginia Economic Development Authority may at no time exceed one hundred three percent of the aggregate outstanding principal balance of the business and industrial loans from the West Virginia Economic Development Authority to economic development projects funded from this revolving loan pool. The independent audit of the West Virginia Economic Development Authority financial records shall annually certify that one hundred three percent requirement.

(d) The interest rates and maturity dates on the loans made by the West Virginia Economic Development Authority for business and industrial development projects authorized by §31-15-7 of this code shall be at competitive rates and maturities as determined by the West Virginia Economic Development Authority Board.

(e) Any and all outstanding loans made by the West Virginia Board of Treasury Investments, or any predecessor entity, to the West Virginia Economic Development Authority are refundable by proceeds of the revolving loan contained in this section and the board shall make no loans to the West Virginia Economic Development Authority pursuant to §31-15-20 of this code or §31-18B-1 *et seq.* of this code.

(f) The directors of the West Virginia Board of Treasury Investments shall bear no fiduciary responsibility with regard to any of the loans contemplated in this section.

(g) *Inspection of records.* – Within 30 days of receiving a written request from the board, the authority shall provide the board with the opportunity to inspect and copy any records in the custody of the authority related to any loan issued by the board to the authority or any loan from the authority to a third party funded by a loan issued by the board. Records to be made available pursuant to this subsection include, but are not limited to, accounting records, loan applications, loan agreements, board minutes, audit reports, and transaction records. Records of the authority held from time to time by the board pursuant to this subsection that are exempt from disclosure pursuant to the provisions of §31-15-22 of this code or §29B-1-1 *et seq.* of this code shall remain so while held by the board.

**§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.**

(a) The West Virginia economic development authority is continued as a body corporate and politic, constituting a public corporation and government instrumentality.

(b) The authority shall be composed of a board of members consisting of a chairman, who shall be the Governor, or his or her designated representative, the State Treasurer, or his or her designated representative, the Tax Commissioner and seven members who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall be broadly representative of the geographic regions of the state. One member of the House of Delegates to be appointed by the Speaker and one member of the Senate to be appointed by the President shall serve on the board in an advisory capacity as ex officio, nonvoting members. The board shall direct the exercise of all the powers given to the authority in this article. The Governor shall also be the chief executive officer of the authority, and shall designate the treasurer and the secretary of the board.

(c) As appointments expire, each subsequent appointment shall be for a full four-year term. Any member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term. Any member is eligible for reappointment.

(d) The Governor may, by written notice filed with the secretary of the authority, from time to time, delegate to any subordinate the power to represent him or her at any meeting of the authority. In that case, the subordinate has the same power and privileges as the Governor and may vote on any question.

(e) Members of the authority are not entitled to compensation for services performed as members, but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties.

(f) A majority of the members constitutes a quorum for the purpose of conducting business. Except in the case of a loan or insurance application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan or insurance application shall be made by majority vote of the full membership of the board.

(g) The board shall manage the property and business of the authority and may prescribe, amend, adopt and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

(h) The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the State of West Virginia, appoint any necessary managers, assistant managers, officers, employees, attorneys and agents for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

(i) The board may delegate to the Executive Director the authority to make and execute all contracts and other agreements or instruments necessary ~~for the exercise of its powers or to carry out its corporate purpose~~ to carry out the duties and powers of the authority, as provided in this article: *Provided, That nothing in this article authorizes the authority to enter into contracts or agreements with financial institutions, as that term is defined in §31A-1-2 of this code, for banking goods or services without approval of the State Treasurer, in accordance with §12-1-1 et seq. of this code.*

(j) In cases of any vacancy in the office of a voting member, the vacancy shall be filled by the Governor. Any member appointed to fill a vacancy in the board occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of the term.

(k) The Governor may remove a member in the case of incompetence, neglect of duty, gross immorality or malfeasance in office, and may declare the member's office vacant and appoint a person for the vacancy as provided in other cases of vacancy.

(l) The secretary of the board shall keep a record of the proceedings of the board and perform any other duties determined appropriate by the board. The treasurer shall be custodian of all funds of the authority and shall be bonded in the amount designated by other members of the board.

#### **§31-15-6. General powers of authority.**

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power:

(a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing and tourist activity in this state.

(b) To determine, upon the proper application of an industrial development agency or an enterprise, whether the declared public

purposes of this article have been or will be accomplished by the establishment by such agency or enterprise of a project in this state.

(c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter relevant to this article and necessary for information on the establishment of any project.

(d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(e) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits any contempt after being summoned to appear.

(f) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits and issue subpoenas.

(g) To financially assist projects by insuring obligations in the manner provided in this article through the use of the insurance fund.

(h) To finance any projects by making loans to industrial development agencies or enterprises upon such terms as the authority shall deem appropriate: *Provided*, That nothing contained in this subsection (h) or under any other provision in this article shall be construed as permitting the authority to make loans for working capital: *Provided, however*, That nothing contained in this article shall be construed as prohibiting the authority from insuring loans for working capital made to industrial development agencies or to enterprises by financial institutions: *Provided further*, That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to refinance existing debt except when such refinancing will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs: *And provided further*, That nothing contained in this subsection or any other provision of this article shall be

construed as prohibiting the authority from making working capital loans from a revolving loan fund capitalized with federal grant funds including, but not limited to, federal grant funds received from the United States Economic Development Administration.

(i) To issue revenue bonds or notes to fulfill the purposes of this article, and to secure the payment of such bonds or notes, all as hereinafter provided.

(j) To issue and deliver revenue bonds or notes in exchange for a project.

(k) To borrow money for its purposes and issue bonds or notes for the money and provide for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and property of the project, including any part of the security for loans, and the authority may issue and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in this article.

(l) To maintain such sinking funds and reserves as the board shall determine appropriate for the purposes of meeting future monetary obligations and needs of the authority.

(m) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(n) To adopt, use and alter at will a corporate seal.

(o) To make, amend, repeal and adopt both bylaws and rules and regulations for the management and regulation of its affairs.

(p) To appoint officers, agents and employees and to contract for and engage the services of consultants.

(q) To make contracts ~~of every kind and nature~~ and to execute all instruments necessary ~~or convenient for carrying on its business~~ to carry out the powers and duties of the authority, as provided in

this article: *Provided*, That the provisions of §5A-3-3 of this code do not apply to contracts made pursuant to this subdivision; *Provided, however*, That nothing in this article authorizes the authority to enter into contracts or agreements with financial institutions, as that term is defined in §31A-1-2 of this code, for banking goods and services without approval of the State Treasurer, in accordance with §12-1-1 *et seq.* of this code.

(r) To accept grants and loans from and enter into contracts and other transactions with any federal agency.

(s) To take title by conveyance or foreclosure to any project where acquisition is necessary to protect any loan previously made by the authority and to sell, by public or private sale, transfer, lease or convey such project to any enterprise.

(t) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of an enterprise. The authority may file its claim against any such enterprise in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such enterprise or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(u) To acquire, construct, maintain, improve, repair, replace and operate projects within this state, as well as streets, roads, alleys, sidewalks, crosswalks and other means of ingress and egress to and from projects located within this state.

(v) To acquire, construct, maintain, improve, repair and replace and operate pipelines, electric transmission lines, waterlines, sewer lines, electric power substations, waterworks systems, sewage

treatment and disposal facilities and any combinations thereof for the use and benefit of any enterprise located within this state.

(w) To acquire watersheds, water and riparian rights, rights-of-way, easements, licenses and any and all other property, property rights and appurtenances for the use and benefit of any enterprise located within this state.

(x) To acquire, by purchase, lease, donation or eminent domain, any real or personal property, or any right or interest therein, as may be necessary or convenient to carry out the purposes of the authority. Title to all property, property rights and interests acquired by the authority shall be taken in the name of the authority.

(y) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds or notes by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not matured and whether or not the authority originally issued the bonds or notes to be refunded.

(z) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds or notes to the purchase, redemption or payment of the notes, security interests or bonds or notes to be refunded.

(aa) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(bb) To the extent permitted under its contracts with the holders of bonds, security interests or notes of the authority, to consent to any modification of the rate of interest, time of payment of any installment of principal or interest, security or any other term of

any bond, security interests, note or contract or agreement of any kind to which the authority is a party.

(cc) To sell loans, security interests or other obligations in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of loans, security interests, or other obligations may be used in the same manner and for the same purposes as bond and note revenues.

(dd) To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the authority deems desirable.

(ee) To sell, license, lease, mortgage, assign, pledge or donate its property, both real and personal, or any right or interest therein to another or authorize the possession, occupancy or use of such property or any right or interest therein by another, in such manner and upon such terms as it deems appropriate.

(ff) To participate with the state and federal agencies in efforts to promote the expansion of commercial and industrial development in this state.

(gg) To finance, organize, conduct, sponsor, participate and assist in the conduct of special institutes, conferences, demonstrations and studies relating to the stimulation and formation of business, industry and trade endeavors.

(hh) To conduct, finance and participate in technological, business, financial and other studies related to business and economic development.

(ii) To conduct, sponsor, finance, participate and assist in the preparation of business plans, financing plans and other proposals of new or established businesses suitable for support by the authority.

(jj) To prepare, publish and distribute, with or without charge as the authority may determine, such technical studies, reports, bulletins and other materials as it deems appropriate, subject only

to the maintenance and respect for confidentiality of client proprietary information.

(kk) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

(ll) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state.

(mm) To contract for the provision of legal services by private counsel, and notwithstanding the provisions of ~~article three, chapter five~~ §5-3-1 et seq. of this code, such counsel may, but is not limited to, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating thereto, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority.

(nn) To develop, maintain, operate and apply for the establishment of foreign trade zones pursuant to and in accordance with all applicable provisions of federal law.

(oo) To exercise the powers and responsibilities previously vested in the state building commission by ~~section eleven a, article six, chapter five~~ §5-6-11a of this code, including, but not limited to, the authority to refund bonds issued in accordance with that section.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 534**—A Bill to amend and reenact §12-6C-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §31-15-5 and §31-15-6 of said code, all relating generally to Economic Development Authority; increasing the revolving loan capacity from the Board of Treasury Investments to the Economic Development Authority to an amount not to exceed \$200 million; establishing the interest rate by which

the revolving loan will be secured; providing that the State Treasurer shall be a member of the Economic Development Authority Board; authorizing the Economic Development Authority to make working capital loans from a revolving loan fund capitalized with federal grant funds including those federal grant funds received from the United States Economic Development Administration; and clarifying that the authority is not authorized to enter into contracts or agreements with financial institutions for banking goods or services without the approval of the State Treasurer.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 534, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 534) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, to take effect July 1, 2021, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 613**, Adding classification and base salaries of certain civilian employees of State Police Forensic Laboratory.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Com. Sub. for Senate Bill 613**—A Bill to amend and reenact §15-2-5 and §15-2-7 of the Code of West Virginia, 1931, as amended, all relating to adding the classification and base salaries of certain civilian employees of the West Virginia State Police Forensic Laboratory as Evidence Custodians I-IV, Forensic Technicians I-III, Forensic Scientists I-VI, and Forensic Scientist Supervisors I-IV; providing for promotion based upon the Forensic Lab Career Progression System; directing that a written manual be provided to individuals within the forensic laboratory governing certain established systems and that specific procedures must be identified for the evaluation of promotion or reclassification of those individuals; and providing for the inclusion of these civilian employees in longevity salary increase provisions.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 613, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 613) passed with its House of Delegates amended title.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 613) takes effect July 1, 2021.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to the House of Delegates amendments to, and the passage as amended, of

**Eng. Com. Sub. for Senate Bill 626**, Updating regulation for purchase of automobile catalytic converters.

A message from the Clerk of the House of Delegates announced the amendment by that body to the title of the bill, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 671**, Appointing Director of Office of Emergency Medical Services.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the title of the bill was reported by the Clerk:

**Eng. Com. Sub. for Senate Bill 671**—A Bill to amend and reenact §16-4C-4 of the Code of West Virginia, 1931, as amended, relating to providing for the appointment of a Director of the Office of Emergency Medical Services; providing qualifications; and requiring that the Office of Emergency Medical Services director be appointed by the Secretary of the Department of Health and Human Resources.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the title of the bill.

Engrossed Committee Substitute for Senate Bill 671, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 671) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, and

requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 684**, Adding Curator of Division of Arts, Culture, and History as ex officio voting member to Library Commission.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 1. PUBLIC LIBRARIES.**

### **§10-1-12. State Library Commission.**

There shall be a state Library Commission, known as the West Virginia Library Commission, which shall consist of the Curator of the West Virginia Department of Arts, Culture and History as an ex officio voting member and five eight members who shall be appointed by the Governor, by and with the advice and consent of the Senate, each for a term of four years. ~~Thereafter, on July 1, 1995, four additional members shall be appointed: *Provided*, That for the four new members added to the commission in the year 1995, one shall serve an initial term of four years and three shall serve an initial term of two years.~~ No more than three members may reside in the same congressional district. At least four members of the commission shall be women and at least four members shall be men. No member of the commission shall receive compensation for services rendered, nor be engaged or interested in the publishing business.

The members of the commission in office on the date this code takes effect shall, unless sooner removed, continue to serve until their respective terms expire and their successors have been appointed and have qualified. On or before the expiration of the

terms for which ~~said~~ the members are appointed, the Governor shall appoint their successors.

On motion of Senator Takubo, the following amendment to the House of Delegates amendment to the bill (Eng. Com. Sub. for S. B. 684) was reported by the Clerk and adopted:

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Com. Sub. for Senate Bill 684**—A Bill to amend and reenact §10-1-12 of the Code of West Virginia, 1931, as amended, relating to the State Library Commission; adding the Curator of the West Virginia Department of Arts, Culture and History as an ex officio voting member; and updating other language.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment, as amended.

Engrossed Committee Substitute for Senate Bill 684, as amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 684) passed with its Senate amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, to

take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

**Eng. Com. Sub. for Senate Bill 695**, Providing procedures for decreasing or increasing corporate limits by annexation.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

#### **ARTICLE 6. ANNEXATION.**

##### **§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.**

(a) This section applies to municipalities in counties that have adopted a countywide zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have adopted local impact fees pursuant to the provisions of §7-20-1 *et seq.* of this code that want to annex additional property without an election.

(b) For purposes of this section only:

(1) “Contiguous” means property that is next to, abutting, and having a boundary that is coterminous with the municipality’s designated urban growth boundary. The length of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography are not to be used to determine if a property is contiguous: *Provided*, That the width of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography may be used to determine contiguous boundaries.

(2) “Urban growth boundary” means a site-specific line, delineated on a zoning map or a written description in a zoning

ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective 20-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word “boundary” shall be used in the name of the boundary. The boundary shall be established by the county commission in agreement with each individual municipality regarding that municipality’s boundary. If the county commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court. Once a county has adopted an urban growth boundary by its designation on an adopted county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality. The county commission shall review each urban growth boundary at a period not to exceed 10 years or upon request of the individual municipality.

*(c) Procedure for a municipality to annex property within an urban growth boundary. —*

(1) If the proposed property to be annexed by a municipality is entirely within the municipality’s designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code. Agreement with the county commission is not required.

(2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality’s designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the provisions of §8-6-5 of this code are followed, except that agreement with the county commission is not required.

(d) *Procedure for a municipality to annex property within urban growth boundaries of two or more municipalities.* —

If the proposed property to be annexed by a municipality is partially or wholly within another municipality's urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the two municipalities have executed an intergovernmental agreement regarding the annexation of the subject property. Agreement with the county commission is not required.

(e) *Procedure for a municipality to annex contiguous property outside an urban growth boundary.* —

(1) If the proposed property to be annexed by a municipality is outside the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code, if:

(A) The proposed property to be annexed is contiguous to the municipality, as defined in this section; and

(B) The municipality has the county commission's agreement.

(2) Prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(f) *Procedure for a municipality to annex noncontiguous property outside an urban growth boundary.* —

(1) If the proposed property to be annexed by a municipality is entirely outside the municipality's designated urban growth

boundary and is not contiguous to the municipality, as defined in this section, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the municipality has the county commission's agreement and, prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(2) After the public hearing and on-site notice, if the county commission finds, by a written record, that the proposed annexation is for the good of the county as a whole, then the county commission may agree to the annexation.

(g) Prior to the county commission entering an order for any annexation pursuant to this section, the annexed property shall be surveyed by a licensed professional surveyor and a metes and bounds description of the annexed property must be provided to the county commission of the county in which the property is located.

(h) After a municipality has annexed property pursuant to this section and the property has been surveyed, the county commission shall enter an order. After the order is entered, the corporate limits of the municipality include the annexed property.

#### **§8-6-5. Annexation by minor boundary adjustment.**

(a) ~~In the event~~ If a municipality desires to increase its corporate limits by making a minor boundary adjustment, the governing body of the municipality may apply to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the territory to be annexed, is located for permission to effect annexation by minor

boundary adjustment. The municipality shall pay the costs of all proceedings before the commission: Provided, That:

(1) A minor boundary adjustment may not exceed 105 percent of the existing total municipal boundary;

(2) A minor boundary adjustment may not exceed 120 percent of the current area of the municipality; and

(3) A minor boundary adjustment made in this manner is limited to one boundary annexation within a two-year period, regardless of subdivisions (1) and (2) of this subsection.

(b) In addition to any other annexation configuration, a municipality may incorporate by minor boundary adjustment: (i) Territory that consists of a street or highway as defined in §17C-1-35 of this code and one or more freeholders; or (ii) territory that consists of a street or highway as defined in §17C-1-35 of this code which does not include a freeholder, but which is necessary for the provision of emergency services in the territory being annexed.

(c) A county commission may develop a form application for annexation for minor boundary adjustment. An application for annexation by minor boundary adjustment shall include, but not be limited to:

(1) The number of businesses located in and persons residing in the additional territory;

(2) An affidavit of each business located in, each person residing in, and each freeholder of the additional territory stating that he, she, or it has consented to be included in the annexation, in such form as the county commission deems sufficient. ~~In the event~~ If the municipality cannot obtain an affidavit from a business, resident, or freeholder within 90 days after sending the affidavit form and a letter explaining the purpose of the affidavit via certified mail, return receipt requested, to the best available address for the business, resident, or freeholder, such business, resident, or freeholder shall be ~~deemed~~ considered to have consented to the annexation;

(3) An accurate map showing the metes and bounds of the additional territory;

(4) A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services, and street maintenance services, including to what extent the public services are or will be provided by a private solid waste collection service or a public service district;

(5) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers;

(6) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation;

(7) A statement of how the proposed annexation will affect the municipality's finances and services; and

(8) A statement that the proposed annexation meets the requirements of this section.

(d) Upon receipt of a complete application for annexation by minor boundary adjustment, the county commission shall determine whether the application meets the threshold requirements for consideration as a minor boundary adjustment including whether the annexation could be efficiently and cost effectively accomplished under §8-6-2 or §8-6-4 of this code. If the county commission determines that the annexation could be cost effectively and efficiently accomplished under §8-6-2 or §8-6-4 of this code, that the application lacks sufficient evidence that all affected parties of the additional territory consent to the annexation, or that the application otherwise fails to meet the threshold requirements for consideration as a minor boundary

adjustment, it shall enter an order denying the application, which order shall include the reasons upon which it is based.

(e) If the application meets the threshold requirements, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on the proposal. Publication shall be as in the case of an order calling for an election, as set forth in §8-6-2 of this code. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.

(f) In making its final decision on an application for annexation by minor boundary adjustment, the county commission shall, at a minimum, consider the following factors:

(1) Whether the territory proposed for annexation is contiguous to the corporate limits of the municipality. For purposes of this section, “contiguous” means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government;

(2) Whether the proposed annexation is limited solely to a Division of Highways right-of-way or whether the Division of Highways holds title to the property in fee;

(3) Whether affected parties of the territory to be annexed oppose or support the proposed annexation. For purposes of this section, “affected parties” means freeholders, firms, corporations, and qualified voters in the territory proposed for annexation and in the municipality, and a freeholder whose property abuts a street or highway, as defined in §17C-1-35 of this code, when: (i) The street or highway is being annexed to provide emergency services; or (ii) the annexation includes one or more freeholders at the end of the street or highway proposed for annexation;

(4) Whether the proposed annexation consists of a street or highway as defined in §17C-1-35 of this code and one or more freeholders;

(5) Whether the proposed annexation consists of a street or highway as defined in §17C-1-35 of this code which does not include a freeholder, but which is necessary for the provision of emergency services in the territory being annexed;

(6) Whether another municipality has made application to annex the same or substantially the same territory; and

(7) Whether the proposed annexation is in the best interest of the county as a whole.

(g) If the county commission denies the application for annexation by minor boundary adjustment, the commission may allow the municipality to modify the proposed annexation to meet the commissions objections. The commission must order another public hearing if significant modifications are proposed.

(h) The final order of the commission shall include the reasons for the grant or denial of the application.

(i) The municipality applying for annexation or any affected party may appeal the commission's final order to the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The county commission may participate in any appeal taken from its order in the same manner and to the same extent as a party to the appeal. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under §8-5-16 of this code.

(j) If the final order of the county commission is a denial of the application for annexation, the municipality may appeal as set forth in this section, but the municipality may not present the commission with another application for annexation relating to the same proposed change or any part thereof for a period of two years after issuance of the final order of the commission, unless such application is directed by the circuit court as the result of an appeal.

**ARTICLE 7. DECREASE OF CORPORATE LIMITS.****PART II. DECREASE OF CORPORATE LIMITS BY ELECTION.****§8-7-2. Procedure to decrease corporate limits.**

A petition to decrease the corporate limits of a municipality may be filed with the governing body thereof by five percent or more of the freeholders in the territory proposed for elimination. Five percent or more of the freeholders of a municipality desiring to decrease the corporate limits thereof may file their petition in writing with the governing body thereof, setting forth the change proposed in the metes and bounds of the municipality, and asking that a vote be taken upon the proposed change. Such The petition shall be verified and shall be accompanied by an accurate survey map showing the territory which would be eliminated from the corporate limits by the proposed change: *Provided, That within 90 days after notice of the petition shall have been given by publication of a Class II-0 legal advertisement pursuant to §59-3-1 et seq., of this code, cost to be paid by the petitioners each business and freeholder within the territory proposed for elimination may file a sworn statement objecting to the change to the metes and bounds of the municipality. If a business or freeholder files a timely objection, that property shall remain within the territory or the municipality and shall be removed from the metes and bounds description and survey map submitted to the qualified voters as provided in this section.* The governing body, upon bond in penalty prescribed by the governing body with good and sufficient surety being given by petitioners, and conditioned to pay the costs of such election if a majority of the legal votes cast are against the proposed change in boundary, shall thereupon order a vote of the qualified voters of such municipality to be taken upon the proposed change on a date and at a time and place therein to be named in the order, not less than 20 nor more than 30 days from the date thereof. The governing body shall cause the order to be published, at the cost of the municipality, as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the municipality. The first publication ~~must~~ shall be at least 14 days prior to the date upon which the vote is to be taken. The order so published shall contain

an accurate description by metes and bounds of the territory which would be eliminated from the corporate limits by the proposed change, and, if practicable, shall also contain a popular description of ~~such~~ the territory.

The election shall be held, superintended, and conducted, and the results thereof ascertained, certified, returned, and canvassed in the same manner and by the same individuals as elections for municipal officers. The ballots, or ballot labels where voting machines are used, shall have written, or printed on them the words:

For Decrease of Corporate Limits

Against Decrease of Corporate Limits

When an election is held in any municipality in accordance with the provisions of this section, another such election relating to the same proposed change or any part thereof shall not be held for a period of one year.

If a majority of all of the legal votes cast within such municipality are in favor of the proposed change, then the governing body shall proceed as specified in the immediately succeeding section of this article.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 695, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Caputo, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woodrum, and Blair (Mr. President)—25.

The nays were: Baldwin, Beach, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, and Woelfel—9.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 695) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Boley, Caputo, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woodrum, and Blair (Mr. President)—25.

The nays were: Baldwin, Beach, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, and Woelfel—9.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 695) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

**Eng. Senate Bill 714**, Relating to physician assistant practice act.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **ARTICLE 3E. PHYSICIAN ASSISTANTS PRACTICE ACT.**

### **§30-3E-1. Definitions.**

As used in this article:

~~(1) “Advance duties” means medical acts that require additional training beyond the basic education program training required for licensure as a physician assistant.~~

~~(2) “Alternate collaborating physician” means one or more physicians licensed in this state and designated by the collaborating physician to provide collaboration with a physician assistant in accordance with an authorized practice agreement.~~

~~(3) “Approved program” means an educational program for physician assistants approved and accredited by the Accreditation Review Commission on Education for the Physician Assistant or its successor. Prior to 2001, approval and accreditation would have been by either the Committee on Allied Health Education and Accreditation or the Commission on Accreditation Review Commission on Education for the Physician Assistant of Allied Health Education Programs.~~

~~(4) “Boards” means the West Virginia Board of Medicine and the West Virginia Board of Osteopathic Medicine.~~

~~(5) “Chronic condition” means a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication, and does not generally disappear. These conditions include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity.~~

~~(6) “Collaborating physician” means a doctor of medicine, osteopathy, or podiatry fully licensed, by the appropriate board in this state, without restriction or limitation, who collaborates with physician assistants.~~

(7) “Collaboration” means overseeing the activities of the medical services rendered by a physician assistant. Constant physical presence of the collaborating physician is not required as long as the collaborating physician and physician assistant are, or can be, easily in contact with one another by telecommunication. Collaboration does not require the personal presence of the collaborating physician at the place or places where services are rendered.

(8) “Endorsement” means a summer camp or volunteer endorsement authorized under this article.

(9) “Health care facility” means any licensed hospital, nursing home, extended care facility, state health or mental institution, clinic, or physician office.

~~(10) “Hospital” means a facility licensed pursuant to §16-5B-1 et seq. of this code and any acute care facility operated by the state government that primarily provides inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick persons under the supervision of physicians and includes psychiatric hospitals.~~

(11) “License” means a license issued by either of the boards pursuant to the provisions of this article.

(12) “Licensee” means a person licensed pursuant to the provisions of this article.

(13) “Physician” means a doctor of allopathic or osteopathic medicine who is fully licensed pursuant to the provisions of either §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code to practice medicine and surgery in this state.

(14) “Physician assistant” means a person who meets the qualifications set forth in this article and is licensed pursuant to this article to practice medicine ~~under~~ with a collaboration ~~collaborating physician.~~

~~(15) “Practice agreement” means a document that is executed between a collaborating physician and a physician assistant~~

~~pursuant to the provisions of this article, and is filed with and approved by the appropriate licensing board.~~

(16) “Practice notification” means a written notice to the appropriate licensing board that a physician assistant will practice in collaboration with one or more collaborating physicians ~~in a hospital~~ in the state of West Virginia.

### **§30-3E-2. Powers and duties of the boards.**

In addition to the powers and duties set forth in this code for the boards, the boards shall:

(1) Establish the requirements for licenses and temporary licenses pursuant to this article;

(2) Establish the procedures for submitting, approving, and rejecting applications for licenses and temporary licenses;

(3) Propose rules for legislative approval in accordance with the provisions of ~~article three, chapter twenty-nine~~ a §29A-3-1 *et seq.* of this code to implement the provisions of this article;

(4) Compile and publish an annual report that includes a list of currently licensed physician assistants ~~their collaborating physicians~~ and their primary practice locations in the state; and

(5) Take all other actions necessary and proper to effectuate the purposes of this article.

### **§30-3E-3. Rulemaking.**

(a) The boards shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article, including:

(1) The extent to which physician assistants may practice in this state;

(2) The extent to which physician assistants may pronounce death;

(3) Requirements for licenses and temporary licenses;

(4) Requirements for ~~practice agreements and~~ practice notifications;

(5) Requirements for continuing education;

(6) Conduct of a licensee for which discipline may be imposed;

(7) The eligibility and extent to which a physician assistant may prescribe, including: A state formulary classifying those categories of drugs which may not be prescribed by a physician assistant, including, but not limited to, Schedules I and II of the Uniform Controlled Substances Act, antineoplastics, radiopharmaceuticals, and general anesthetics: Provided, That a physician assistant or an advanced practice registered nurse may prescribe no more than a three-day supply, without refill, of a drug listed in the Uniform Controlled Substances Act as a Schedule II drug. Drugs listed under Schedule III shall be limited to a 30-day supply without refill. In addition to the above referenced provisions and restrictions and pursuant to a ~~practice agreement or~~ practice notification as set forth in this article, the rules shall permit the prescribing of an annual supply of any drug, with the exception of controlled substances, which is prescribed for the treatment of a chronic condition, other than chronic pain management. For the purposes of this section, a chronic condition is a condition which lasts three months or more, generally cannot be prevented by vaccines, can be controlled but not cured by medication, and does not generally disappear. These conditions, with the exception of chronic pain, include, but are not limited to, arthritis, asthma, cardiovascular disease, cancer, diabetes, epilepsy and seizures, and obesity;

(8) ~~The authority a collaborating physician may delegate for prescribing, dispensing, and administering of controlled substances, prescription drugs, or medical devices if the practice agreement includes:~~

~~(A) A notice of intent to delegate prescribing of controlled substances, prescription drugs, or medical devices;~~

~~(B) An attestation that all prescribing activities of the physician assistant shall comply with applicable federal and state law governing the practice of physician assistants;~~

~~(C) An attestation that all medical charts or records shall contain a notation of any prescriptions written by a physician assistant;~~

~~(D) An attestation that all prescriptions shall include the physician assistant's name and the collaborating physician name, business address, and business telephone number legibly written or printed; and~~

~~(E) An attestation that the physician assistant has successfully completed each of the requirements established by the appropriate board to be eligible to prescribe pursuant to a practice agreement accompanied by the production of any required documentation establishing eligibility;~~

~~(9)~~ (8) A fee schedule; and

~~(10)~~ (9) Any other rules necessary to effectuate the provisions of this article.

(b) The boards may propose emergency rules pursuant to §29A-3-1 *et seq.* of this code to ensure conformity with this article.

#### **§30-3E-4. License to practice as a physician assistant.**

(a) A person seeking licensure as a physician assistant shall apply to the Board of Medicine or to the Board of Osteopathic Medicine. The appropriate board shall issue a license to practice as a physician assistant with the collaboration of that board's licensed physicians or podiatrists.

(b) A license may be granted to a person who:

(1) Files a complete application;

(2) Pays the applicable fees;

(3) Demonstrates to the board's satisfaction that he or she:

(A) Obtained a baccalaureate or master's degree from an accredited program of instruction for physician assistants;

(B) Prior to July 1, 1994, graduated from an approved program of instruction in primary health care or surgery; or

(C) Prior to July 1, 1983, was certified by the Board of Medicine as a physician assistant then classified as Type B;

(4) Has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(5) Has a current certification from the National Commission on Certification of Physician Assistants or has a current license in good standing from a state that does not require a physician assistant to maintain national certification;

(6) Is mentally and physically able to engage safely in practice as a physician assistant;

(7) Has not had a physician assistant license, certification, or registration in any jurisdiction suspended or revoked;

(8) Is not currently subject to any limitation, restriction, suspension, revocation, or discipline concerning a physician assistant license, certification, or registration in any jurisdiction: *Provided*, That if a board is made aware of any problems with a physician assistant license, certification, or registration and agrees to issue a license, certification, or registration notwithstanding the provisions of this subdivision or subdivision (7) of this subsection;

(9) Is of good moral character; and

(10) Has fulfilled any other requirement specified by the appropriate board.

(c) A board may deny an application for a physician assistant license to any applicant determined to be unqualified by the board.

**§30-3E-9. Practice requirements.**

(a) A physician assistant may not practice independent of a collaborating physician.

~~(b) A physician assistant may practice in a hospital in collaboration with physicians after filing a practice notification with the appropriate board. A physician assistant may practice in collaboration with physicians in any practice setting pursuant to a practice notification which has been filed with, and activated by, the appropriate board in accordance with §30-3E-10a of this code: *Provided*, That a physician assistant who is currently practicing in collaboration with physicians pursuant to a practice agreement which was authorized by a board prior to June 1, 2021 may continue to practice under that authorization until the practice agreement terminates or until June 1, 2022, whichever is sooner.~~

~~(c) Except as set forth in subsection (b) of this section, before a licensed physician assistant may practice and before a collaborating physician may delegate medical acts to a physician assistant, the collaborating physician, and the physician assistant shall:~~

~~(1) File a practice agreement with the appropriate licensing board, including any designated alternate collaborating physicians;~~

~~(2) Pay the applicable fees; and~~

~~(3) Receive written authorization from the appropriate licensing board to commence practicing as a physician assistant pursuant to the practice agreement.~~

~~(d) A physician applying to collaborate with a physician assistant shall affirm that:~~

~~(1) The medical services set forth in the practice agreement are consistent with the skills and training of the collaborating physician and the physician assistant; and~~

~~(2) The activities delegated to a physician assistant are consistent with sound medical practice and will protect the health and safety of the patient.~~

~~(e) A collaborating physician may enter into practice agreements with up to five full-time physician assistants at any one time.~~

~~(f) A physician may collaborate with physician assistants in a hospital as approved by the hospital.~~

(c) Notwithstanding any other provision of this code to the contrary, and to the degree permitted by federal law, physician assistants shall be considered providers and shall not be reimbursed at rates lower than other providers who render similar health services by health insurers as well as health plans operated or paid for by the state.

### **§30-3E-10. Practice agreement requirements.**

[Repealed.]

### **§30-3E-10a. Practice notification requirements.**

~~(a) A physician assistant shall collaborate with physicians in a hospital only after the physician assistant is notified by the appropriate licensing board that a complete practice notification has been filed with the board. Before a licensed physician assistant may practice in collaboration with physicians, the physician assistant and a health care facility shall:~~

(1) File a practice notification with the appropriate licensing board;

(2) Pay the applicable fee; and

(3) Receive written notice from the appropriate licensing board that the practice notification is complete and active.

~~(b) The licensing boards shall promulgate emergency rules to establish the content and criteria for submission of practice notifications for physician assistant hospital practice.~~

(c) A physician assistant shall notify the board, in writing, within 10 days of the termination of a practice notification. Failure to provide timely notice of the termination constitutes unprofessional conduct and disciplinary proceedings may be instituted by the appropriate licensing board.

### **§30-3E-11. Collaboration with physician assistants.**

~~(a) A licensed physician or podiatrist may collaborate with a physician assistant:~~

~~(1) As a collaborating physician in accordance with an authorized practice agreement;~~

~~(2) As an alternate collaborating physician who:~~

~~(A) Collaborates in accordance with an authorized practice agreement;~~

~~(B) Has been designated an alternate collaborating physician in the authorized practice agreement; and~~

~~(C) Only delegates those medical acts that have been authorized by the practice agreement and are within the scope of practice of both the primary collaborating physician and the alternate collaborating physician; or~~

~~(3) In a hospital pursuant to a practice notification.~~

(a) Unless otherwise prohibited by a health care facility, a physician who practices medicine or podiatry at a health care facility may collaborate with any physician assistant who holds an active practice notification with the same facility.

(b) A collaborating physician When collaborating with physician assistants, collaborating physicians shall observe, direct, and evaluate the physician assistant's work, records, and practices including collaborating with the physician assistant in the care and treatment of a patient in a health care facility as necessary for appropriate and meaningful collaboration.

(c) A health care facility is only legally responsible for the actions or omissions of a physician assistant when the physician assistant is employed by or on behalf of the facility.

(d) Every licensed physician assistant shall be individually responsible and liable for the care they provide. This article does not relieve physician assistants or collaborating physicians of responsibility and liability which otherwise may exist for acts and omissions occurring during collaboration.

### **§30-3E-12. Scope of practice.**

(a) A license issued to a physician assistant by the appropriate state licensing board shall authorize the physician assistant to perform medical acts: commensurate with their education, training, and experience and which they are competent to perform, consistent with the rules of the boards. Medical acts include prescribing, dispensing, and administering of controlled substances, prescription drugs, or medical devices.

~~(1) Pursuant to a practice notification or delegated to the physician assistant as part of an authorized practice agreement~~

~~(2) Appropriate to the education, training, and experience of the physician assistant;~~

~~(3) Customary to the practice of the collaborating physician; and~~

~~(4) Consistent with the laws of this state and rules of the boards.~~

(b) A physician assistant shall provide only those medical services for which they have been prepared by their education, training, and experience and are competent to perform, consistent with sound medical practice and that will protect the health and safety of the patient. This may occur in any health care setting, both hospital and outpatient in accordance with their practice notification.

(c) A physician assistant with an active practice notification may perform medical acts and/or procedures in collaboration with

physicians which are consistent with the physician assistant's education, training and experience, the collaborating physician scope of practice, and any credentialing requirements of the health care facility where the physician assistant holds an active practice notification.

(b) (d) This article does not authorize a physician assistant to perform any specific function or duty delegated by this code to those persons licensed as chiropractors, dentists, dental hygienists, optometrists, or pharmacists, or certified as nurse anesthetists.

### **§30-3E-13. Identification.**

(a) While practicing, a physician assistant shall wear a name tag that identifies him or her as a physician assistant.

(b) A physician assistant shall keep his or her license and current ~~practice agreement~~ or practice notification available for inspection at his or her place of practice.

### **§30-3E-17. Complaint process.**

(a) All hearings and procedures related to denial of a license, and all complaints, investigations, hearings, and procedures regarding a physician assistant license and the discipline accorded thereto, shall be in accordance with the processes and procedures set forth in either §30-3-1 et seq. or articles three and/or fourteen §30-14-1 et seq. of this chapter code, depending on which board licenses the physician assistant.

(b) The boards may impose the same discipline, restrictions, and/or limitations upon the license of a physician assistant as they are authorized to impose upon physicians and/or podiatrists.

(c) The boards shall direct to the appropriate licensing board a complaint against a physician assistant and/or ~~a collaborating physician and/or an alternate~~ a collaborating physician.

(d) In the event that independent complaint processes are warranted by the boards with respect to the professional conduct of a physician assistant or a collaborating ~~and/or alternate~~

~~collaborating~~ physician, the boards are authorized to work cooperatively and to disclose to one another information which may assist the recipient appropriate licensing board in its disciplinary process. The determination of what information, if any, to disclose shall be at the discretion of the disclosing board.

(e) A physician assistant licensed under this article may not be disciplined for providing expedited partner therapy in accordance with ~~article four f, chapter sixteen~~ §16-4F-1 et seq. of this code.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

**Eng. Senate Bill 714**—A Bill to repeal §30-3E-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §30-3E-1, §30-3E-2, §30-3E-3, §30-3E-4, §30-3E-9, §30-3E-10a, §30-3E-11, §30-3E-12, §30-3E-13, and §30-3E-17 of said code, all relating to health care practitioners; defining terms; limiting rule-making authority; revising licensure requirements; revising practice requirements; eliminating practice agreement requirement; revising practice notification requirement; providing prescriptive authority; revising collaboration requirements; expanding scope of practice; expanding prescriptive authority; establishing minimum reimbursement rates; and revising complaint process.

Senator Takubo moved that the Senate concur in the House of Delegates amendments to the bill.

Following discussion,

The question being on the adoption of Senator Takubo's aforestated motion, the same was put and prevailed.

Engrossed Senate Bill 714, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld,

Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 714) passed with its House of Delegates amended title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

**Eng. Senate Bill 717**, Supplemental appropriation from General Revenue to WV Community and Technical College Education, Control Account.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

**Eng. Com. Sub. for House Bill 2005**, Relating to health care costs.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, to take effect July 1, 2021, of

**Eng. Com. Sub. for House Bill 2507**, Remove the limitations on advertising and promotional activities by limited video lottery retailers.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

**Eng. House Bill 2730**, Relating to persons filing federal bankruptcy petition to exempt certain property of the estate.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the changed effective date, to take effect from passage, of

**Eng. Com. Sub. for House Bill 2773**, Permitting DNR to issue up to 100 permits for boats greater than 10 horsepower on Upper Mud River Lake.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

**Eng. House Bill 2830**, Relating generally to sex trafficking.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

**Eng. Com. Sub. for House Bill 2842**, Preventing cities from banning utility companies in city limits.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

**Eng. Com. Sub. for House Bill 3254**, Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 91**—Requesting the Joint Committee on Government and Finance study the possible methods of retaining native businesses in West Virginia through the establishment of a “Business Retention Task Force”.

Referred to the Committee on Rules.

A message from the Clerk of the House of Delegates announced the adoption by that body and requested the concurrence of the Senate in the adoption of

**House Concurrent Resolution 104**—Providing for the expiration of certain emergency orders issued during the coronavirus pandemic declared on March 16, 2020 in West Virginia.

Referred to the Committee on Rules.

### **Executive Communications**

Senator Blair (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, regarding annual reports, which communication was received and filed with the Clerk:



*Jim Justice*  
*Governor of West Virginia*

April 8, 2021

**Executive Message 3**  
**2021 Regular Session**

The Honorable Craig Blair  
President, West Virginia State Senate  
State Capitol, Rm 229M  
Charleston, WV 25305

Dear Mr. President:

Pursuant to the provisions of section twenty, article one, chapter five of the Code of West Virginia, I hereby certify that the following annual reports have been received in the Office of the Governor:

211, West Virginia; 2020 Impact Report

Administration, West Virginia Department of; Real Estate Division "2020 Real Property and Lease Report"

Administration, West Virginia Department of; "Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2020"

Administration, West Virginia Department of; State Building Commission Fund

Agriculture, West Virginia Department of; 2020 Annual Report

Agriculture, West Virginia Department of; Annual Report for the WV Farms-to Food Bank Tax Credit for calendar years 2019 and 2020

American Bar Foundation; 2019 Annual Report

Architects, West Virginia Board of; Annual Report FY 2020 & FY 2019

Attorney General's Office, West Virginia; "Seventy-Eighth Biennial Report and Official Opinions of the Attorney General of the State of West Virginia for the Fiscal Years Beginning July 1, 2018 and ending June 30, 2020"

## OFFICE OF THE GOVERNOR

Attorney General's Office, West Virginia; "2020 Annual Report on the Activities of the Consumer Protection and Antitrust Division"

Attorney General's Office, West Virginia; Annual Report 2020

Barbers and Cosmetologists, State of West Virginia Board of; 2020 Annual Report

Board of Pharmacy, West Virginia; Annual Report on the West Virginia Controlled Substances Monitoring Program

Broadband Enhancement Council, West Virginia; 2020 Annual Report

Chiropractic Examiners, State of West Virginia Board of; Biennium Report July 1, 2018 to June 30, 2020

Coal Mine Health and Safety, State of West Virginia Board of; 2020 Annual Report

Commerce, West Virginia Department of; Tourism Development Act Report 2020

Commerce, West Virginia Department of; FY20 TIF Annual Report

Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee; 2020 Annual Report

Community Action of South Eastern West Virginia, Inc. (CASEWV); 2021 CASEWV Annual Report for its Head Start and Early Head Start Programs

Consolidated Public Retirement Board; West Virginia State Police Disability Experience Annual Report Fiscal Year 2020

Consolidated Public Retirement Board, West Virginia; 2020 Comprehensive Annual Financial Report

Consumer Advocate, Office of the West Virginia; Consumer Advocate Division 2021 Annual Report

Counseling, State of West Virginia Board of Examiners in; Biennium Report July 1, 2018-June 30, 2020

Dentistry, West Virginia Board of; Report of the Biennium for Fiscal Years 2019 & 2020

Development Office, West Virginia; Annual Report 2019

Development Office, West Virginia; FY 2019 Neighborhood Investment Program Annual Report

Development Office, West Virginia; 2018 Final Report on the Assessment 2015-2017

Engineers, West Virginia State Board of Registration for Professional; Annual Report FY2020

Environmental Protection, West Virginia Department of; 2020 Monthly and Year to Date OOG Permit Issuance Averages

Equal Employment Opportunity, West Virginia; 2020 Annual Report

Fire Commission, West Virginia State; FY 2020 Annual Report

Fire Marshal's Office, West Virginia State; FY 2020 Annual Report

Forestry, West Virginia Division of; Outdoor Heritage Conservation Funding Annual Report

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Forestry, West Virginia Division of; Report on Managed Timberland Program

Government Accountability, Foundation for; 2019 Annual Report

Grievance Board, Public Employees; 2020 Annual Report

Health and Human Resources, West Virginia Department of; Annual Report on the Olmstead Plan July 1, 2019-June 30, 2020

Health and Human Resources, West Virginia Department of; "Family Protection Services Board 2020 Annual Report July 1, 2019-June 30, 2020"

Health and Human Resources, West Virginia Department of; Office of Maternal, Child and Family Health (West Virginia Birth Defects) Calendar Years 2018 and 2019 (January-December)

Health and Human Resources, West Virginia Department of; Bureau for Public Health- West Virginia Office of Medical Cannabis Biennial Report 2021

Health and Human Resources, West Virginia Department of; Bureau for Behavioral Health- West Virginia Family & Community Support Program FY 2020 Annual Report

Health and Human Resources, West Virginia Department of; West Virginia Women's Commission 2020 Annual Report

Highways, West Virginia Division of; Annual Report (The Complete Streets Advisory Board)

Homeland Security, West Virginia Department of; Accomplishments 2017-2020 Report

Human Rights Commission, West Virginia; Annual Report 2020

Independent Living Council, West Virginia Statewide; "The State of Education for Children with Disabilities in West Virginia-Education Task Force; Annual Report 2019-2020"

Insurance Commissioner, State of West Virginia Offices of the; Occupational Pneumoconiosis Board 2019-2020 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; West Virginia State Agency Workers' Compensation Annual Report

Insurance Commissioner, State of West Virginia Offices of the; 2019-2020 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; Consumer Advocate Annual Report

Insurance Commissioner, State of West Virginia Offices of the; 2020 Annual Medical Malpractice Report

Judicial Compensation Commission, West Virginia; Report of the Judicial Compensation Commission 2020

Justice and Community Services, Division of Administrative; "Justice Reinvestment Initiative S.B. 371 July 1, 2019-June 30, 2020 Annual Report"

Justice and Community Services, Division of Administrative; "Juvenile Justice Subcommittee September 1, 2019-August 31, 2020 Annual Report"

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Justice and Community Services, Division of Administrative; "Sexual Assault Forensic Examination (SAFE) Commission Annual Report September 1, 2019-August 31, 2020"

Justice and Community Services, Division of Administrative; "West Virginia Community Corrections Act July 1, 2019-June 30, 2020 Annual Report"

Justice and Community Services, Division of Administrative; "Law Enforcement Professional Standards (LEPS) Subcommittee/Program July 1, 2019-June 30, 2020"

Land Trust, West Virginia; Annual Report 2019

Legislative Claims Commission, West Virginia; Supplemental Report December 2020

Legislative Claims Commission, West Virginia; November 2020 Report of the Legislative Claims Commission

Lottery, West Virginia; "Comprehensive Annual Financial Report for the Fiscal Years Ended June 30, 2019 and 2018"

Lottery, West Virginia; 2020 Comprehensive Annual Financial Report for the Fiscal Years Ended June 30, 2020 and 2019

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending February 29, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending March 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending April 30, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending May 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending June 30, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending July 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending August 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending September 30, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending October 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending November 30, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending December 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending January 31, 2021

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending February 28, 2021

Medical Imaging and Radiation Therapy Technology Board of Examiners, West Virginia; Annual Report 2020

Municipal Bond Commission, West Virginia; Annual Summary of Receipts and Disbursements July 1, 2019-June 30, 2020

National Coal Heritage Area Authority; 2020 Annual Report

Natural Resources, West Virginia Division of; 2019-2020 West Virginia Division of Natural Resources Annual Report

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Nursing Home Administrators Licensing Board; Annual Report 2020

Occupational Therapy, West Virginia Board of; Annual Report 2019-2020

Osteopathic Medicine, West Virginia School of; Annual Report

Privacy Office, West Virginia State; 2018-2019 Annual Report

Psychologists, West Virginia Board of; 2019-2020 Annual Report

Public Service Commission, West Virginia; State of West Virginia Public Utility Assessments Tax Year 2021

Public Service Commission, West Virginia; 2020 Management Summary Report and the Electric and Natural Gas Utilities Supply-Demand Forecasts for 2021-2030

Public Transit, West Virginia Division of Transportation/Division; 2019 Annual State Safety Oversight Report to the Governor

Regional Councils, West Virginia Association of; 2019 Annual Report

Regional Intergovernmental Council; 2020 Annual Report Boone, Clay, Kanawha and Putnam

Risk and Insurance Management, State of West Virginia Department of Administration; BRIM Annual Report 2020

Ron Yost Personal Assistance Services; 2020 Annual Report

Southern States Energy Board; Annual Report 2020

Tax Department, West Virginia State; "Manufacturing Property Tax Adjustment Credit Report to the Joint Committee on Government and Finance July 1, 2020"

Tax Department, West Virginia State; Tax Credit Review and Accountability Report for the West Virginia Economic Opportunity Tax Credit and the West Virginia Manufacturing Investment Tax Credit

Tax Department, West Virginia State; West Virginia Tax Expenditure Study for 2021

Transportation, West Virginia Department of; Division of Public Transit- State Safety Oversight Program-2020 Annual Safety Report to the Governor

Transportation, West Virginia Department of; The Office of Administrative Hearings Annual Report Fiscal Year 2020

Transportation, West Virginia Department of; Aeronautics Commission 2020 Annual Report to the Governor

Treasurer, West Virginia State; Cash Management Improvement Act CIMA Annual Report for fiscal years 2020

Treasury Investments, West Virginia Board of; "Audited Financial Statements with Supplementary & Other Financial Information Year Ended 6/30/20"

Treasury Investments, West Virginia Board of; Comprehensive Annual Financial Report Fiscal Year Ended

## OFFICE OF THE GOVERNOR

Veterinary Medicine, West Virginia Board of; Biennium Report 2019 and 2020

Water Development Authority, West Virginia; 2020 Annual Report

Water Sanitation Commission, Ohio River Valley; Annual Report

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Justice".

Jim Justice  
Governor

cc: Lee Cassis, Clerk, West Virginia State Senate  
Division of Culture and History

Senator Blair (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, submitting the annual probation and parole report, which was received:



*Jim Justice*  
*Governor of West Virginia*

April 8, 2021

**EXECUTIVE MESSAGE NO. 4**  
**2021 REGULAR SESSION**

The Honorable Craig Blair  
President, Senate of West Virginia  
State Capitol, Rm 228M  
Charleston, West Virginia 25305

Dear Mr. President:

In accordance with the provisions of section 11, article 7 of the Constitution of the State of West Virginia, and section 16, article 1, chapter 5 of the Code of West Virginia, I hereby report that I granted no pardons or reprieves, nor commuted punishment to any person, nor remitted any fines or penalties, during the period of March 7, 2020 through April 7, 2021.

Very truly yours,

  
Jim Justice  
Governor

cc: Lee Cassis, Senate of West Virginia  
Division of Archives and History

State Capitol | 1900 Kanawha Blvd., East, Charleston, WV 25305 | (304) 558-2000

At the request of Senator Woelfel, and by unanimous consent, Senator Woelfel addressed the Senate regarding the committee of conference for Engrossed Committee Substitute for House Bill 2003 (*Relating to the authority and obligations of the Governor and Legislature when in declared states of preparedness and emergency*).

Thereafter, at the request of Senator Plymale, and by unanimous consent, the remarks by Senator Woelfel were ordered printed in the Appendix to the Journal.

The Senate proceeded to the sixth order of business.

Senator Takubo offered the following resolution:

**Senate Concurrent Resolution 76**—Requesting the Joint Committee on Government and Finance study mental health parity in the State of West Virginia.

Whereas, Mental health parity is complicated and difficult to ascertain even among mental health providers and insurers; and

Whereas, On one hand, providers of mental health services believe that these services are not being reimbursed or delivered on par with physical health services; yet, insurance companies believe that medical necessity criteria and their own internal standards should dictate the level of care; and

Whereas, To determine whether or not these services are being properly reimbursed or delivered, data must be produced by the insurance company; and

Whereas, Federal mental health parity laws require that limitations on mental health and addiction treatment be no greater than those for medical or surgical benefits; and

Whereas, Recently a federal court concluded in *Wit. V. United Healthcare* that the health insurer “breached its fiduciary duty by violating its duty of loyalty, its duty of care, and its duty to comply with plan terms by adopting Guidelines that [were] unreasonable and [did] not reflect generally accepted standards of care” for both

residential mental health treatment and intensive outpatient mental health treatment. The court further states that insureds were harmed by being denied their right to fair adjudication of their claims for coverage based on guidelines that were developed solely for the insurer's benefit. Furthermore, the court found "by a preponderance of the evidence, that [the insurer's] guidelines were unreasonable and an abuse of discretion because they were more restrictive than generally accepted standards of care."; and

Whereas, Mental health care providers experience burdensome utilization review paperwork and overly frequent reviews; and

Whereas, Managed care organizations are not following American Society of Addiction Medicine's criteria for addiction treatment; and

Whereas, Timeliness of prior authorization denials for mental health care treatment by managed care organizations are resulting in loss of revenue for providers; and

Whereas, There are many inconsistencies between managed care organizations for mental health treatment guidelines which make consistent treatment difficult; and

Whereas, West Virginia is facing an ongoing opioid addiction epidemic, which harms not only affected citizens, but their families and communities; and

Whereas, Mental health initiatives are becoming increasingly important across the country as mental health diagnoses have risen; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study mental health parity in the State of West Virginia; and, be it

*Further Resolved,* That the study include analysis of guidelines used by managed plan organizations and health insurers in the state as applied to nonquantitative treatment limitations for benefits for

behavioral health, mental health, and substance use disorders; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation or resolutions 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 the legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Stollings and Caputo offered the following resolution:

**Senate Concurrent Resolution 77**—Requesting the Joint Committee on Government and Finance to study the fiscal impact of elimination or reduction of current tangible property tax, including commercial machinery and equipment, business inventory and tangible personal property, and corresponding revenue replacement mechanisms to mitigate the budgetary effects on political subdivisions including county and municipal governments, county school boards, and levying bodies.

Whereas, Property taxes provide substantial revenues necessary to finance the provisions of local government services and substantive modifications to the current property taxation may significantly impact delivery of such; and

Whereas, Elimination or reduction of property taxes will have a disparate effect on political subdivisions across this state; and

Whereas, Revenue replacement mechanisms will also have a disparate effect in mitigating potential losses resulting from the elimination or reduction of property taxes; and

Whereas, Participation by all impacted political subdivisions and levying bodies is tantamount to ensuring sustainable delivery of public services to the citizenry; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the fiscal impact of elimination or reduction of current tangible property tax, including commercial machinery and equipment, business inventory and tangible personal property, and corresponding revenue replacement mechanisms to mitigate the budgetary effects on political subdivisions including county and municipal governments, county school boards and levying bodies; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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.

Which, under the rules, lies over one day.

Senator Maroney offered the following resolution:

**Senate Resolution 47**—Recognizing the contributions of AARP West Virginia and its Capitol Advocacy Team of volunteers to the betterment of our state and its people.

Whereas, AARP West Virginia is a nonprofit, nonpartisan membership organization representing 250,000 West Virginians and 38 million individuals nationwide who are 50 years of age or older; and

Whereas, AARP and its Capitol Advocacy Team of nearly 30 dedicated volunteers actively participate in the legislative process

each year, bringing an important perspective to the development of policies and laws that affect our state's most vulnerable population and all those living and working in the Mountain State; and

Whereas, Even as the COVID-19 pandemic limited public access and in-person attendance at the State Capitol throughout the regular session of the Legislature, 2021, AARP and its volunteers continued to actively engage with the West Virginia Legislature virtually from their homes and communities; and

Whereas, The dedication of these volunteers embodies the spirit of AARP founder Dr. Ethel Percy Andrus, who said “. . . the human contribution is the essential ingredient. It is only in the giving of oneself to others that we truly live.”; and

Whereas, The words of Dr. Andrus continue to shape the work of AARP and its volunteers in helping people aged 50-plus live their best lives; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the contributions of AARP West Virginia and its Capitol Advocacy Team of volunteers to the betterment of our state and its people; and, be it

*Further Resolved,* That the Senate commends AARP West Virginia and its Capitol Advocacy Team of volunteers for their dedicated service and important contributions to AARP's work to improve the quality of life for all West Virginians as they age; and, be it

*Further Resolved,* That the Senate extends its sincere appreciation and gratitude to AARP West Virginia for its diligent advocacy and education efforts that raise awareness around the important issues affecting older West Virginians and their families; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of AARP West Virginia.

Which, under the rules, lies over one day.

Senators Boley and Azinger offered the following resolution:

**Senate Resolution 48**—Recognizing West Virginia University at Parkersburg on the occasion of its 60th anniversary.

Whereas, West Virginia University (WVU) at Parkersburg was founded in 1961, as the Parkersburg branch of West Virginia University and had an enrollment of 104 students; and

Whereas, WVU at Parkersburg is the state's only public institution founded by citizens who passed a bond levy to build the college; and

Whereas, In 1969, construction was completed on the campus complex on West Virginia 47 east of Parkersburg; and

Whereas, WVU at Parkersburg became one of the state's first comprehensive community colleges in July 1971, as Parkersburg Community College; and

Whereas, In 1989, the West Virginia Legislature established the college as West Virginia University at Parkersburg, a regional campus of West Virginia University; and

Whereas, In 1991, WVU at Parkersburg was accredited to offer baccalaureate degrees in business administration and elementary education, becoming the only community college in West Virginia to offer bachelor's degrees; and

Whereas, Through the years, WVU at Parkersburg has continued to grow, adding the Caperton Center for Applied Technology, the Applied Technology Center, offering a Bachelor of Applied Technology degree, and becoming a leader of higher education in West Virginia; and

Whereas, WVU at Parkersburg continually reinvents itself to serve the region's changing educational needs and to deliver workforce-ready graduates; and

Whereas, WVU at Parkersburg is a student-centered, accessible learning community dedicated to providing accessible, life-changing educational opportunities in a safe and supportive environment; and

Whereas, The faculty, staff, and administration of WVU at Parkersburg, individually and collectively, hold the responsibility of providing educational and cultural opportunities in the college's service community, based upon the following principles: Education holds a central position in the creation, development, and nurturing of a society; education should be constantly cognizant of the fact that all persons are individuals of worth and are entitled to be treated with dignity and respect; education functions under the realization that equal opportunity to access and to benefit from teaching and learning must be afforded to all persons; education provides the opportunity for all citizens in a democratic society to explore, to discover, and to develop their special aptitudes and interests; and education holds as a sacred trust its responsibility to assist persons in their quest for a fulfilling life and for responsible citizenship in a world characterized by change; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes West Virginia University Parkersburg on the occasion of its 60th anniversary; and, be it

*Further Resolved,* That the Senate extends its sincere gratitude and appreciation to West Virginia University at Parkersburg for its contributions to the State of West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the President of West Virginia University at Parkersburg, Dr. Chris Gilmer.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

**Senate Concurrent Resolution 73**, Expiring certain executive emergency orders issued during coronavirus pandemic.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Rules.

**Senate Resolution 44**, Recognizing public service of Honorable Tod Kaufman.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Lindsay, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, and on this question, Senator Lindsay demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 44) adopted.

Thereafter, at the request of Senator Beach, and by unanimous consent, the remarks by Senators Lindsay, Woelfel, Romano, and Trump regarding the adoption of Senate Resolution 44 were ordered printed in the Appendix to the Journal.

**Senate Resolution 45**, Recognizing centennial of WV Board of Architects.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

**Senate Resolution 46**, Recognizing Buffalo Elementary on being Imagine Learning's March MATH Madness champions.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Stollings, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

The question being on the adoption of the resolution, and on this question, Senator Phillips demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 46) adopted.

The Senate proceeded to the eighth order of business.

**Eng. Com. Sub. for House Bill 2002**, Relating to Broadband.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Plymale, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Plymale, the following amendment to the bill was reported by the Clerk:

On page eighteen, section six, after line three by inserting a new section, designated section seven, to read as follows:

**§31G-1A-7. Creation and Administration of Broadband Funds.**

(a) There is hereby created in the State Treasury a fund known as the Broadband Middle Mile Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(1) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(2) Expenditures from the fund shall be for the purposes of constructing middle mile fiber broadband to unserved and unfunded areas on the broadband availability map as so designated by the Office of Broadband and pursuant to this code: *Provided*, That if a broadband project is funded solely with public money, the project shall be an open access project.

(b) There is hereby created in the State Treasury a fund known as the Broadband Grant Matching Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(1) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(2) Expenditures from the fund shall be for the purposes of facilitating broadband projects which require up to a 50% match from sources other than the primary grantor and which extends or improves broadband access in this state. No expenditures shall be made from this fund until and unless satisfactory documentation of financial need is provided to the office and approved by the director: *Provided*, That but for this assistance, the grantee would be unable to be awarded or benefited by a grant.

(c) There is hereby created in the State Treasury a fund known as the Broadband Provider Expansion Fund. The fund shall be administered by and under the control of the Office of Broadband. Expenditures from the fund shall be for the purposes set forth in this section and are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(1) The fund shall consist of moneys appropriated by the Legislature. The amount appropriated shall be transferred to the fund to be used solely for the purposes provided by this section.

(2) Expenditures from the fund shall be for the purposes of supporting existing broadband providers to extend their last mile networks within unserved and unfunded areas as indicated on the broadband availability map as so designated by Office of Broadband and pursuant to this code. The following amounts shall be made available to broadband providers, not receiving any other financial support in the eligible area, to provide service to unserved and unfunded areas after the provider demonstrates to the director that they have completed the necessary infrastructure build to serve a home or business premises including verifiable speed test data with GPS coordinates and a signed affidavit indicating under criminal penalties that to the best of the provider's knowledge no other terrestrial broadband service was available to the premises at the time of installation:

(A) A provider shall receive \$2,000 per premises for completing infrastructure installation to a residence or business with

(i) an actual downstream data rate of at least 1,000 megabits per second; and

(ii) an actual upstream data rate of at least 50 megabits per second; and

(iii) unlimited data usage without overage charges; and

(iv) unlimited data usage without “throttling” or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period; or

(B) A provider shall receive \$500 per premises for completing infrastructure installation to a residence or business with a terrestrial wired or fixed wireless connection with

(i) an actual downstream data rate of at least 25 megabits per second; and

(ii) an actual upstream data rate of at least three megabits per second; and

(iii) unlimited data usage without overage charges; and

(iv) unlimited data usage without “throttling” or reduction of downstream or upstream data rate due, in whole or in part, to the amount of data transferred in any period.

(3) Disbursements from this fund shall be made available on a first-come, first-served basis and shall be expended and made available to providers until the fund is depleted. Upon additional legislative appropriation into this fund, disbursements shall be disbursed again in like fashion until the fund is depleted.

Following discussion,

The question being on the adoption of Senator Plymale’s amendment to the bill, the same was put and prevailed.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2002), as amended on Wednesday, April 7, 2021, and as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2002 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Stollings, Stover, Swope, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Smith and Sypolt—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2002) passed.

On motion of Senator Maynard, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2002**—A Bill to repeal §17-2E-6 of the Code of West Virginia, 1931, as amended; to repeal §31G-1-6, §31G-1-9, and §31G-1-12 of said code; to amend and reenact §17-2E-3, §17-2E-5, §17-2E-7, §17-2E-8, and §17-2E-9 of said code; to amend and reenact §31G-1-4 of said code; to amend said code by adding thereto a new article, designated §31G-1A-1, §31G-1A-2, §31G-1A-3, §31G-1A-4, §31G-1A-5, §31G-1A-6, and §31G-1A-7; to amend said code by adding thereto a new section, designated §31G-3-3 and §31G-3-4; to amend and reenact §31G-4-1, §31G-4-2, and §31G-4-4 of said code; and to amend said code by adding thereto a new article, designated §31G-6-1 and §31G-6-2, all relating to broadband expansion policies; establishing requirements for agreements between the Division of Highways and an entity seeking to install telecommunications facilities; providing that if such installation can be accommodated as a utility pursuant to federal and state law, the division shall issue a permit for access to rights-of-way; providing for permit procedures and requirements; requiring notice to the Office of

Broadband of a telecommunication entity's intent to seek construction in division rights-of-way; providing the Office of Broadband is responsible for ensuring compliance with certain terms of permit requirements; granting the division authority to determine whether its use of a telecommunication carrier's trench warrants apportionment of costs to it; modifying exceptions to dig once requirements; providing the division authority to allow carriers to use excess telecommunications facilities; allowing the division to transfer or assign ownership of excess telecommunications facilities to another state agency upon approval by Governor; providing rulemaking authority to the division; modifying the powers and duties of Broadband Enhancement Council; establishing the Office of Broadband within the Department of Economic Development; creating the position of the Director of the Office of Broadband; requiring the Office of Broadband report annually to the Joint Committee on Government and Finance; establishing the powers and duties of the Office of Broadband; requiring the Office of Broadband to coordinate with the Consumer Protection Division of the Attorney General's Office on specified consumer protection claims; requiring the Office of Broadband to map broadband in the state and establish an interactive public map; defining "unserved area"; requiring certain executive agencies to cooperate and provide information to the Office of Broadband regarding AREA maps; allowing Office of Broadband to establish a voluntary data collection program; providing that information collected in program not subject to the Freedom of Information Act; providing procedures and requirements for a data collection program; protecting proprietary business information provided to the Office of Broadband and exempting such information from Freedom of Information Act requirements; providing rulemaking authority to the Office of Broadband; creating specific broadband funds and establishing their purposes; establishing the Broadband Middle Mile Fund and specified requirements relating to the authorized expenditures of the funds; establishing the Broadband Grant Matching Fund and specified requirements relating to the authorized expenditures of the funds; establishing the Broadband Provider Expansion Fund and specified requirements relating to the authorized expenditures of the funds; providing that authorized expenditures from the

Broadband Provider Expansion Fund require broadband providers to meet or exceed specified downstream and upstream data rates of broadband service; providing that expenditures from the Broadband Provider Expansion Fund are made available on a first-come, first-served basis; establishing requirements for counties, municipalities, and political subdivisions regarding installation of conduit; authorizing a broadband operator to construct or operate a system over public rights-of-way and through easements which are within the area to be served and which have been dedicated for compatible uses; establishing requirements for broadband operators related to installation and construction; requiring broadband operators to indemnify the state for any claims for injury and damage to persons or property; establishing requirements for broadband operator related to the use of public highways and other public places; providing installations in railroad rights of way and trackways do not have any greater or lesser requirement to comply with stated railroad safety requirements; establishing requirements for broadband operator related easements; defining terms; requiring that an ILEC who accepts payment for make-ready work, and fails to perform that work within 45 days, to immediately return and refund the moneys paid for that work which was not completed, and providing remedies and exceptions in such instances; requiring the Public Service Commission to promulgate rules to address abandoned cable, conductor, and related facilities attached to utility poles and providing requirements for said rules; requiring the Public Service Commission to promulgate rules to govern the timely transfer of facilities from an old pole to a new pole and the removal of utility poles that have had electric facilities moved to new poles but continue to have other facilities attached in the telecommunications space on the old existing poles and providing requirements for said rules; providing for preemption of West Virginia Code, the Code of State Rules, and ordinances relating to installation of certain broadband equipment; providing private agreements, promulgated or effective after the effective date of this legislation, may not regulate or prevent the exterior installation of antennas and equipment necessary to or typically utilized for broadband deployment; providing for scheme of construction of such language in favor of encouraging and assisting broadband installation and deployment; providing for preemption

of West Virginia Code, the Code of State Rules, and ordinances relating to pole attachment of certain broadband equipment; and providing for scheme of construction of language of private agreements relating to pole attachment.

Senator Takubo moved that the bill take effect May 27, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Stollings, Stover, Swope, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Smith and Sypolt—2.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2002) takes effect May 27, 2021.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2029**, Relating to teacher preparation clinical experience programs.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2029) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2145**, Relating to student aide class titles.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2145) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2221**, Relating to the establishment of an insurance innovation process.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover,

Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2221) passed.

The following amendment to the title of the bill, from the Committee on Banking and Insurance, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2221**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-60-1, §33-60-2, §33-60-3, §33-60-4, §33-60-5, §33-60-6, §33-60-7, §33-60-8, §33-60-9, and §33-60-10, all relating to the establishment of an insurance innovation process; defining terms; setting forth application requirements; prohibiting certain persons from applying; providing for the acceptance or rejection of the application by the Insurance Commissioner; requiring that the Insurance Commissioner set forth certain terms and conditions that will govern a proposed insurance innovation; providing that the Insurance Commissioner issue a limited no-action letter that establishes a safe harbor under which the commissioner will not take administrative or regulatory action against a participant or client of the participant; establishing the time period of the safe harbor and for the extension thereof; setting forth the requirements that a participant must adhere to during the safe harbor period; providing for penalties regarding violations of the terms contained in a limited no-action letter; providing the right to an administrative hearing; setting forth the criteria for the Insurance Commissioner to issue an extended no-action letter; providing for what the extended no-action letter must contain; requiring that documents and other information submitted to the Insurance Commissioner in relation to the insurance innovation be confidential and privileged; allowing the Insurance Commissioner to disclose in the extended no-action letter any information

necessary to clearly establish the safe harbor; requiring the Insurance Commissioner to provide reports and, upon request, briefings to the Legislature; allowing the Insurance Commissioner to enter into reciprocity agreements with state, federal, or foreign regulatory agencies; and requiring rulemaking.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2266**, Relating to expanding certain insurance coverages for pregnant women.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Maroney, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Maroney, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section twelve, line twenty-seven, by striking out “123” and inserting in lieu thereof “203”.

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2266), as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2266 pass?”

On the passage of the bill, the yeas were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Azinger—1.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2266) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Azinger—1.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2266) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2379**, Make criminal invasion of privacy a felony.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Thursday, April 8, 2021, for further amendments to be received on third reading, was reported by the Clerk.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

On page two, section twenty-eight, line twenty-three, by striking out the word “confined” and inserting in lieu thereof the word “imprisoned”.

At the request of Senator Trump, as chair of the Committee on the Judiciary, and by unanimous consent, the Judiciary committee amendment to the bill was withdrawn.

On motion of Senator Karnes, the following amendments to the bill (Eng. H. B. 2379) were next reported by the Clerk and considered simultaneously:

On page two, section twenty-eight, lines twenty through twenty-five, by striking out subsection (b) and inserting in lieu thereof a new subsection (b), to read as follows:

(b) It is unlawful for a person to knowingly visually portray another person without that other person's knowledge, while that other person is fully or partially nude and is in a place where a reasonable person would have an expectation of privacy. A person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction, shall be confined in a county or regional jail for not more than one year or fined not more than \$5,000, or both.;

And,

On page two, section twenty-eight, lines thirty through thirty-two, by striking out all of subsection (d) and inserting in lieu thereof a new subsection (d), to read as follows:

(d) Notwithstanding the provisions of subsections (b) or (c) of this section, any person who is convicted of a second or subsequent violation of subsection (b) or (c) of this section, or who violates subsection (b) or (c) of this section with the intent to cause psychological or emotional injury to another is guilty of a felony, and, upon conviction thereof, shall be fined not more than \$10,000 or imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

Following discussion,

The question being on the adoption of the amendment offered by Senator Karnes to the bill (Eng. H. B. 2379), the same was put and prevailed.

There being no further amendments offered,

Having been engrossed, the bill (Eng. H. B. 2379), as just amended by Senator Karnes, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 2379) passed.

On motion of Senator Karnes, the following amendment to the title of the bill was reported by the Clerk and adopted:

**Eng. House Bill 2379**—A Bill to amend and reenact §61-8-28 of the Code of West Virginia, 1931, as amended, relating to the offense of criminal invasion of privacy, generally; creating the felony offenses of displaying or distributing a visual display of another in violation of the section with the intent to cause psychological or emotional injury to another; and establishing penalties.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 2500**, Create an act for Statewide Uniformity for Auxiliary Container Regulations.

On third reading, coming up in regular order, with the unreported Government Organization committee amendment pending, and with the right having been granted on yesterday,

Thursday, April 8, 2021, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend remaining in effect and with the unreported Judiciary committee amendment pending.

**Eng. Com. Sub. for House Bill 2573**, Relating generally to the transparency and accountability of state grants to reduce waste, fraud, and abuse.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2573) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2720**, Creating a Merit-Based Personnel System within DOT.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stollings,

Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woodrum, and Blair (Mr. President)—26.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Lindsay, Romano, and Woelfel—7.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2720) passed.

The following amendment to the title of the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2720**—A Bill to repeal §17-2A-24 of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §5F-2-8, all relating to establishing a merit-based personnel administration system for the agencies, authorities, boards, and commissions within the Department of Transportation; authorizing the Secretary of Transportation to establish a merit-based personnel system; providing requirements and effective date for the personnel system; preserving classified or classified-exempt status, rights and privileges thereof, and due process protections; requiring compliance with state law regarding nepotism, favoritism, discrimination, and ethics in the employment process; prohibiting actions with a negative effect on federal funding; requiring inter-agency cooperation by the Division of Personnel; authorizing rule-making; and removing duplicative special employment procedures for Division of Highways personnel.

Senator Takubo moved that the bill take effect January 1, 2022.

On this question, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woodrum, and Blair (Mr. President)—26.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Lindsay, Romano, and Woelfel—7.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2720) takes effect January 1, 2022.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2794**, To extend the Neighborhood Investment Program Act to July 1, 2026.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2794) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Bill 2884**, To make changes to the FOIA law to protect public utility customer databases from disclosure, with exceptions.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2884 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Clements, Grady, Hamilton, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—28.

The nays were: Beach, Caputo, Ihlenfeld, Lindsay, and Romano—5.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2884) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 2915**, Relating to public records management and preservation.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Maynard, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

**Eng. Com. Sub. for House Bill 2927**, Adding Caregiving expenses to campaign finance expense.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 2927 pass?”

On the passage of the bill, the yeas were: Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Azinger—1.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2927) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2927**—A Bill to amend and reenact §3-8-1a and §3-8-9 of the Code of West Virginia, 1931, as amended, relating to campaign finance expenses; adding caregiving services as a defined term; and adding caregiving services as a lawful campaign expense.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 2953**, To clarify that counties can hire fire fighters as paid staff and to modify the existing procedures to include a procedure of public hearing to commission a vote.

On third reading, coming up in regular order, with the right having been granted on yesterday, Thursday, April 8, 2021, for amendments to be received on third reading, was reported by the Clerk.

On motion of Senator Stollings, the following amendment to the bill was reported by the Clerk:

On page one, section twelve, line seven, after the word “article” by changing the period to a colon and adding the following proviso: *Provided*, That no more than twenty percent of all fees dedicated to the county fire board may be used for salaries.

Following discussion,

Senator Caputo requested a ruling from the Chair as to whether he should be excused from voting on any matter pertaining to the bill under Rule 43 of the Rules of the Senate.

The Chair replied that any impact on Senator Caputo would be as a member of a class of persons and that he would be required to vote.

The question being on the adoption of the amendment offered by Senator Stollings to the bill, and on this question, Senator Stollings demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Hamilton, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Stover, Unger, Weld, and Woelfel—13.

The nays were: Azinger, Boley, Clements, Grady, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Swope, Sypolt, Takubo, Tarr, Trump, Woodrum, and Blair (Mr. President)—20.

Absent: Plymale—1.

So, a majority of those present and voting not having voted in the affirmative, the President declared the amendment offered by Senator Stollings to the bill rejected.

On motion of Senator Stollings, the following amendment to the bill (Eng. Com. Sub. for H. B. 2953) was next reported by the Clerk:

On page three, section twelve, line thirty-nine, after the word “amended” by changing the period to a colon and adding the following proviso: *Provided*, That prior to issuing the order, the county commission shall publish the ordinance which must contain the anticipated allocation of any fees or charges and which would be enacted should the referendum succeed as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the county in which the county fire board is located.

Following discussion,

The question being on the adoption of the amendment offered by Senator Stollings to the bill, and on this question, Senator Tarr demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendment offered by Senator Stollings to the bill adopted.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2953), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt,

Takubo, Tarr, Trump, Unger, Woodrum, and Blair (Mr. President)—23.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Romano, Stollings, Weld, and Woelfel—10.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2953) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 2953**—A Bill to amend and reenact §7-17-3 and §7-17-12 of the Code of West Virginia, 1931, as amended, all relating to county fire protection services; clarifying that county commission may contract with fire department of any political subdivision for fire protection services; and modifying existing method for imposing fire service fees to add procedure for a ballot referendum to be used, if desired, instead of utilizing current procedure requiring 10 percent of voters to petition for imposition of such fees.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

On motion of Senator Takubo, at 1:04 p.m., the Senate recessed until 2 p.m. today.

The Senate reconvened at 2:24 p.m. and resumed consideration of its third reading calendar, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 2962**, Relating generally to dental practice.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2962) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 3002**, Update road abandonment process.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3002) passed.

The following amendment to the title of the bill, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 3002**—A Bill to amend and reenact §17-2A-8 of the Code of West Virginia, 1931, as amended, relating to requiring the Commissioner of the Division of Highways to post online certain records related to the discontinuance, vacating, or closing of any road or highway or part thereof; and requiring the Division of Highways to make virtual participation available to any person interested in participating in or attending any hearing related to such discontinuance, vacating, or closing.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3078**, Relating to powers and duties of the parole board.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3078) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 3078**—A Bill to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the parole board; providing as a new parole

eligibility requirement the successful completion of certain rehabilitative and educational programs during incarceration; providing that an inmate who is unable, through no fault of the inmate, to complete the required rehabilitative and educational programs, but who has completed all other parole eligibility requirements, may be granted parole under certain conditions; authorizing completion of specified rehabilitative and educational programs outside of a correctional institution as a special condition of a person's parole term; authorizing the Parole Board to consider whether completion of the outstanding amount of rehabilitative and educational programming would interfere with an inmate's successful reintegration into society; and requiring the Commissioner of Corrections and Rehabilitation to develop, maintain, and make publicly available a list of certain rehabilitative and educational programs outside of the correctional institution which an inmate may be required to complete as a special condition of parole, and the manner and method for an inmate to complete such programs.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3129**, Relating to the Consumer Price Index rate increase.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3129) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

**Eng. House Bill 3129**—A Bill to amend §24A-5-2a of the Code of West Virginia, 1931, as amended; relating to how the federal index rate increase percentage is calculated regarding solid waste motor carrier rate increases; requiring revised tariff showing rate increase be filed; requiring appropriate notice be provided; allowing covered carriers to correct excessive requested rates in lieu of administrative hearing; and providing when such increases become effective in each instance.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3132**, Relating to motor carrier inspectors.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3132) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3133**, Relating to motor carrier rates.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 3133 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3133) passed.

The following amendment to the title of the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

**Eng. House Bill 3133**—A Bill to amend and reenact §24A-2-5 of the Code of West Virginia, 1931, as amended, and to amend and reenact §24A-5-2 of said Code; all relating to correcting error in commercial motor carrier provisions of said code; restoring language to code setting forth the process to change rates for motor carriers that was inadvertently deleted and replaced; and to correct an erroneous exclusion to include the appropriate language relating to transfer of certificate of convenience and necessity.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3177**, Removing expired, outdated, inoperative and antiquated provisions and report requirements in education.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3177) passed.

The following amendment to the title of the bill, from the Committee on Education, was reported by the Clerk and adopted:

**Eng. House Bill 3177**—A Bill to repeal §18-2-5d, §18-2-13b, §18-2-24, §18-2-29, and §18-2-35 of the Code of West Virginia, 1931, as amended; to repeal §18-2E-4a of said code; to repeal §18-3-9b of said code; to repeal §18-4-12 of said code; to repeal §18-5-18e, and §18-5-43 of said code; to repeal §18-7A-36 of said code; to repeal §18-9A-8a of said code; to repeal §18-9B-11a of said code; to repeal §18-10H-4 of said code; to amend and reenact §18-9A-6a, §18-9A-7, and §18-9A-16 of said code; and to amend and reenact §18-9B-1, §18-9B-2, §18-9B-3, §18-9B-4, §18-9B-5, §18-9B-6, §18-9B-6a, §18-9B-7, §18-9B-8, §18-9B-9, §18-9B-10, §18-9B-12, §18-9B-13, §18-9B-14, §18-9B-15, §18-9B-17, §18-9B-18, §18-9B-19, §18-9B-20 and §18-9B-21 of said code, all relating to removing expired, outdated, inoperative and antiquated provisions and report requirements in education code; updating references; repealing expired report requirement related to productive and safe schools; repealing authorization of state board

respecting use of revenues from dormitories, home or refectories; repealing outdated structure for collaboration on professional development delivery among state universities, regional education service agencies and center for professional development; repealing unused competitive grant program for selected schools and school districts; repealing unused requirement for state board rule on school uniforms for students; repealing outdated exception to mailing school report cards; repealing outdated mandated reduction in budgeted amount for personal services in certain fiscal year; repealing outdated exception for county board meeting related to fixing salaries of county superintendent; repealing expired study and report on pupils per teacher; repealing expired report requirement relating to county-wide council on productive and safe schools; repealing expired report requirement relating to joint study of retirement systems; removing reference to repealed allocation to teachers retirement fund; removing expired provisions related to additional funding bus system using bio-diesel alternative fuel; repealing expired allowance for regional education service agencies; replacing reference to state board of school finance with state superintendent; removing expired provision prohibiting salary reduction of certain persons due to passage of school finance article; correcting references to tax commissioner for functions previously transferred to state auditor; deleting outdated references to employment term and instructional term; and removing outdated provisions creating state board of school finance and requiring state superintendent to exercise powers and perform duties; repealing outdated authorization for adjustments to average daily attendance; requiring county boards of education and county superintendents to comply with the instructions of the State Board of Education and state superintendent; expanding remedies that may be used to enforce certain orders of the state superintendent when a county board of education fails or refuses to comply; expanding circumstances under which the state superintendent can withhold payment of state aid from a county board; allowing, under certain circumstances of noncompliance with state law or State Board of Education policy, the state superintendent to require certain actions during the periods of noncompliance; requiring the state superintendent to report certain actions of enforcement against county board to the State Board of

Education at its next meeting; and repealing mandate for establishment of certain interdisciplinary doctoral program.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 3215**, Amending the requirements to become an elected prosecutor.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3215) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. Com. Sub. for House Bill 3215**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-4-1a, relating to eligibility of prosecuting attorneys; and requiring a person to be licensed as an attorney in the State of West Virginia at the time of filing for office as a candidate for the office of prosecuting attorney.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. Com. Sub. for House Bill 3266**, Providing for termination of extracurricular contact upon retirement.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3266) passed with its title.

Senator Takubo moved that the bill take effect July 1, 2021.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 3266) takes effect July 1, 2021.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3299**, Authorizing Higher Education Rules.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3299) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3301**, Relating generally to property tax increment financing districts.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3301) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

**Eng. House Bill 3301**—A Bill to amend and reenact §7-11B-3, §7-11B-7, §7-11B-9, §7-11B-10, §7-11B-18, and §7-11B-22 of the Code of West Virginia, 1931, as amended, relating generally to property tax increment financing districts; authorizing payment in lieu of tax agreements for property located within property tax increment financing districts; authorizing a county commission or municipality to extend the termination time of certain districts; modifying the revenue sources for a district that is extended; eliminating certain existing limitations on the terms of property tax increment financing obligations issued to refund existing obligations; and providing clarifications with respect to the base assessed value and termination date when two or more tax increment financing districts have been combined.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 3301) takes effect from passage.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3304**, Authorizing the Division of Corrections and Rehabilitation to establish a Reentry and Transitional Housing Program.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Trump, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Trump, the following amendment to the bill was reported by the Clerk and adopted:

On page two, section four, line nine, by inserting a period after the word “direct” and striking the remainder of the sentence.

Having been engrossed, the bill (Eng. H. B. 3304), as amended on yesterday, Thursday, April 8, 2021, and as just amended, was then read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 3304 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3304) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

**Eng. House Bill 3304**—A Bill to amend the Code of West Virginia 1931 as amended, by adding thereto a new article, designated §15A-4A-1, 15A-4A-2, 15A-4A-3, 15A-4A-4, 15A-

4A-5, 15A-4A-6 and 15A-4A-7, all relating generally to creating an expanded required work release pilot project within the Division of Corrections and Rehabilitation; stating the purposes of the article, setting forth findings; limiting programs to no more than five locations; defining terms; establishing eligibility and ineligibility criteria; directing the commissioner to establish policies and procedures; and providing for the return offenders who do not successfully complete work release to other facilities.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

**Eng. House Bill 3308**, Relating to increasing number of limited video lottery terminals.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Caputo, Clements, Hamilton, Ihlenfeld, Maroney, Nelson, Phillips, Romano, Rucker, Stollings, Stover, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—18.

The nays were: Azinger, Baldwin, Beach, Boley, Grady, Jeffries, Karnes, Lindsay, Martin, Maynard, Roberts, Smith, Sypolt, Unger, and Woelfel—15.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3308) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. House Bill 3311**, Relating to the cost of medical records.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 3311) passed with its title.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

On motion of Senator Takubo, at 3:09 p.m., the Senate recessed until 4 p.m. today.

The Senate reconvened at 4:20 p.m. and, at the request of Senator Takubo, unanimous consent being granted, returned to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 9th day of April, 2021, 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. 3292)**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

Senator Blair (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

**Senate Concurrent Resolution 41**, Requesting study on legal process for collection and enforcement of delinquent taxes and lands.

**Senate Concurrent Resolution 49**, Requesting study on development and expansion of municipal recycling programs.

**Senate Concurrent Resolution 57**, Requesting study on electronic database publication of legal notices in lieu of newspaper publication.

**Senate Concurrent Resolution 60**, Requesting study on program for suicide prevention for veterans and active-duty members of armed forces, National Guard, and reserves.

**Senate Concurrent Resolution 66**, Requesting study on existing and potential income sources for State Road Fund.

**Senate Concurrent Resolution 67**, Requesting study on criteria for honorary infrastructure naming resolutions.

**Senate Concurrent Resolution 68**, Requesting study on paid family leave for state and county boards of education employees.

**Senate Concurrent Resolution 69**, Requesting study on plan to promote adventure travel throughout WV.

**Senate Concurrent Resolution 70**, Requesting study on population of children experiencing homelessness and services provided.

**Senate Concurrent Resolution 72**, Requesting study on summer and non-school-day food programs by county boards of education.

**Senate Concurrent Resolution 74**, Requesting study on reducing criminal activity and increasing online marketplace transparency.

And,

**Senate Concurrent Resolution 75**, Requesting study on coinciding elections of political subdivisions with statewide and federal elections.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Craig Blair,  
*Chair ex officio.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (S. C. R. 41, 49, 57, 60, 66, 67, 68, 69, 70, 72, 74, and 75) contained in the preceding report from the Committee on Rules were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate and request concurrence therein.

Senator Blair (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

**Com. Sub. for House Concurrent Resolution 55**, Studying the viability of creating a veterinary school in West Virginia.

**Com. Sub. for House Concurrent Resolution 84**, Requesting the Joint Committee on Government and Finance to study the declining population of military service veterans in West Virginia.

**House Concurrent Resolution 86**, Study the recruitment and retention of Health Care Workers in West Virginia.

**House Concurrent Resolution 98**, For West Virginias Public Employee Insurance Agency (PEIA) Finance Board to examine how they can enhance reimbursement rates to providers.

**House Concurrent Resolution 100**, Requesting study on how Local Health Departments are funded and supported.

And,

**House Concurrent Resolution 101**, Requesting a study of the state's laboratory needs and the utilization of private laboratories.

And reports the same back with the recommendation that they each be adopted.

Respectfully submitted,

Craig Blair,  
*Chair ex officio.*

At the request of Senator Takubo, unanimous consent being granted, the resolutions (Com. Sub. for H. C. R. 55 and 84, and H. C. R. 86, 98, 100, and 101) contained in the preceding report from the Committee on Rules were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

*Ordered*, That the Clerk communicate to the House of Delegates the action of the Senate.

The Senate again proceeded to the eighth order of business, the next resolution coming up in numerical sequence being

**Eng. Com. Sub. for House Joint Resolution 1**, Education Accountability Amendment.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on Wednesday, April 7, 2021, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was laid over one day, retaining its place on the calendar, with the right to amend remaining in effect and with the unreported Judiciary committee amendment pending.

**Eng. House Joint Resolution 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

On third reading, coming up in regular order, with the right having been granted on Wednesday, April 7, 2021, for amendments to be received on third reading, was reported by the Clerk.

On motion of Senator Romano, the following amendments to the resolution were reported by the Clerk and considered simultaneously:

On page two, section nine, line two, after the word “with,” by inserting the words “the procedures established for”;

And,

On page two, section nine, line four, after the word “state” by deleting the period and inserting the words “relating to the procedures established and used during the proceedings.”

Following discussion,

The question being on the adoption of Senator Romano’s amendments to the resolution (Eng. H. J. R. 2), and on this question, Senator Romano demanded the yeas and nays.

The roll being taken, the yeas were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

The nays were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Romano's amendments to the resolution rejected.

There being no further amendments offered,

Having been engrossed, the resolution (Eng. H. J. R. 2) was then read a third time and put upon its adoption.

(Senator Weld in the Chair.)

Pending discussion,

(Senator Blair, Mr. President, in the Chair.)

Pending discussion,

The question being "Shall Engrossed House Joint Resolution 2 be adopted?"

On the adoption of the resolution, the yeas were: Azinger, Boley, Clements, Grady, Hamilton, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Roberts, Rucker, Smith, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—23.

The nays were: Baldwin, Beach, Caputo, Ihlenfeld, Jeffries, Lindsay, Plymale, Romano, Stollings, Unger, and Woelfel—11.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the resolution (Eng. H. J. R. 2) adopted with its title, as follows:

**Eng. House Joint Resolution 2**—Proposing an amendment to the Constitution of the State of West Virginia, amending section nine, article IV thereof, relating to the impeachment of officials; providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate; specifying that a judgment rendered by the Senate following an impeachment trial is not reviewable by any court of this state; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

*Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:*

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section nine, article IV thereof, be amended to read as follows:

#### **ARTICLE IV.**

##### **§9. Impeachment of officials.**

Any officer of the state may be impeached for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor. The House of Delegates ~~shall have~~ has the sole power of impeachment. The Senate ~~shall have~~ has the sole power to try impeachments and no person shall be convicted without the concurrence of two thirds of the members elected thereto. When sitting as a court of impeachment, the ~~President~~ Chief Justice of the Supreme Court of Appeals, or, if from any cause it be improper for him or her to act, then any other judge of that court, to be designated by it, shall preside; and the senators shall be on oath or affirmation, to do justice according to law and evidence. Judgment in cases of

impeachment ~~shall~~ does not extend further than ~~to~~ removal from office, and disqualification to hold any office of honor, trust or profit, under the state; but the party convicted ~~shall be~~ remains liable to indictment, trial, judgment, and punishment according to law. The Senate may sit during the recess of the Legislature for the trial of impeachments. No court of this state has any authority or jurisdiction, by writ or otherwise, to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate conducted hereunder; nor is any judgment rendered by the Senate following a trial of impeachment reviewable by any court of this state.

*Resolved further,* That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Clarification of the Judiciary’s Role in Impeachment Proceedings Amendment” and the purpose of the proposed amendment is summarized as follows: “Clarifying that courts have no authority or jurisdiction to intercede or intervene in or interfere with impeachment proceedings of the House of Delegates or the Senate; and specifying that a judgment rendered by the Senate following an impeachment trial is not reviewable by any court of this state.”

*Ordered,* That the Clerk communicate to the House of Delegates the action of the Senate.

**Eng. Com. Sub. for House Joint Resolution 3,** Property Tax Modernization Amendment.

On third reading, coming up in regular order, with the unreported committee amendments pending, and with the right having been granted on yesterday, Thursday, April 8, 2021, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the resolution was laid over one day, retaining its place on the calendar, with the right to amend remaining in effect and with the unreported committee amendments pending.

The Senate proceeded to the ninth order of business.

**Eng. Com. Sub. for House Bill 2025**, Provide liquor, wine, and beer licensees with some new concepts developed during the State of Emergency utilizing new technology to provide greater freedom to operate in a safe and responsible manner.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

## **CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

### **ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

#### **§7-1-3ss. County option election on forbidding nonintoxicating beer, wine, or alcoholic liquors to be sold, given, or dispensed after ~~10:00~~ 6:00 a.m. on Sundays.**

~~Beginning July 1, 2019, the~~ The county commission of any county may conduct a county option election on the question of whether the sale or dispensing of nonintoxicating beer, wine, or alcoholic liquors in or on a licensed premises shall be allowed in the county beginning 1:00 p.m. on any Sunday, as provided in §11-16-18, ~~of this code,~~ §60-7-12, ~~of this code,~~ and §60-8-34 of this code, upon approval as provided in this section. The option election on this question may be placed on the ballot in each county at any primary or general election. The county commission of the county shall give notice to the public of the election by publication of the notice as a Class II-0 legal advertisement in compliance with the provisions of ~~§60-59-3~~ §59-3-1 *et seq.* of this code, and the publication area for publication shall be the county in which the election is to be held. The date of the last publication of the notice shall fall on a date within the period of the 14 consecutive days next preceding the election. On the local option election ballot shall be printed the following: "Shall the beginning hour at which

nonintoxicating beer, wine, and alcoholic liquor be sold or dispensed for licensed on-premises ~~only~~ in \_\_\_\_\_ County on Sundays be changed from ~~10:00~~ 6:00 a.m. to 1:00 p.m.”

If approved by the voters this would forbid private clubs and restaurants licensed to sell and dispense nonintoxicating beer, wine, and alcoholic liquor; licensed private wine restaurants, private wine spas, and private wine bed and breakfasts to sell and dispense wine; and licensed Class A retail dealers to sell and dispense nonintoxicating beer for on-premises consumption until 1:00 p.m.

Yes  No

(Place a cross mark in the square opposite your choice.)

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county commission. The county commission shall, without delay, certify the result of the election. Upon receipt of the results of the election, in the event a majority of the votes are marked “Yes”, all applicable licensees shall be forbidden to sell and dispense beer, wine, or alcoholic liquors until 1:00 p.m. on Sundays. In the event a majority of the votes are marked “No”, all applicable licensees will continue to be required to comply with existing law.

## CHAPTER 11. TAXATION.

### ARTICLE 16. NONINTOXICATING BEER.

#### **§11-16-6d. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class A retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.**

(a) A Class A retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles

or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer by telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class A retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class A retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The annual nonintoxicating beer or nonintoxicating craft beer delivery license fee is \$200 per third party entity, with no limit on the number of drivers and vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code, and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) *Sale Requirements.* -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase shall accompany the purchase of prepared food or a meal

and the completion of the sale may be accomplished by the delivery of the prepared food or meal and nonintoxicating beer or nonintoxicating craft beer by the Class A retail dealer or third party licensee;

(2) Any person purchasing shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) "Prepared food or a meal" shall, for purposes of this article, mean food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of multiple meals shall not amount to any combination of bottles, cans, or sealed growlers in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee may not have a pecuniary interest in a Class A retail dealer, as set forth in this article, therefore a third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third party delivery licensee to the person purchasing may not be greater than five dollars per delivery order where nonintoxicating beer or nonintoxicating craft beer are ordered by the purchasing person. For any third party licensee also licensed for wine growler delivery as set forth in §60-8-6c of the code, or craft cocktail growler delivery as set forth in §60-7-8f of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Delivery Requirements.* -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. The licensed Class A retail dealer and the third party delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class A retail dealer or third party delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and shall submit certification of the training to the commissioner;

(3) The Class A retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6d(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit;

(4) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county or contiguous counties where the Class A retail dealer is located;

(5) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class A retail dealer or third party delivery licensee shall pay and account for all sales and municipal taxes;

(6) A Class A retail dealer or third party delivery licensee may not deliver prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer to any other Class A licensee;

(7) A Class A retail dealer or third party delivery licensee may only deliver prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer for personal use, and not for resale; and

(8) A Class A retail dealer or third party delivery licensee shall not deliver and leave prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer at any address

without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person may only permit the person who placed the order through a telephone, mobile ordering application, or web-based software to accept the prepared food or a meal, and nonintoxicating beer or nonintoxicating craft beer delivery which is subject to age verification upon delivery with the delivery person's visual review and age verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A Class A retail dealer or third party delivery licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer must be issued a retail transportation permit per §11-16-6d(g) of this code.

(g) Retail Transportation Permit. -

(1) A Class A retail dealer or third party delivery licensee shall obtain and maintain a retail transportation permit for the delivery of prepared food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class A retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, as required by the commissioner. Upon any change in vehicles or drivers, the Class A retail dealer or third party delivery licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) *Enforcement.* -

(1) A Class A retail dealer or third party delivery licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class A retail dealers or licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class A retail dealer or third party delivery licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

**§11-16-6e. License required for sale and shipment of nonintoxicating beer or nonintoxicating craft beer by a brewer or resident brewer; shipment of limited quantities of nonintoxicating beer or nonintoxicating craft beer; requirements; license fee; and penalties.**

(a) Authorization. - Notwithstanding the provisions of this article or any other law to the contrary, any person that is currently licensed and in good standing in its domicile state as a brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer, and who also obtains a nonintoxicating beer or

nonintoxicating craft beer direct shipper's license from the commissioner, as provided in this article, may sell and ship nonintoxicating beer or nonintoxicating craft beer brewed by the brewer, resident brewer, other nonintoxicating beer or nonintoxicating craft beer manufacturer by mail to a purchasing person who is 21 years of age or older, for personal use, and not for resale. A nonintoxicating beer or nonintoxicating craft beer direct shipper may ship nonintoxicating beer or nonintoxicating craft beer via mail to a purchasing person who is 21 years of age or older who purchases nonintoxicating beer or nonintoxicating craft beer, subject to the requirements of this article, in and throughout West Virginia. A nonintoxicating beer or nonintoxicating craft beer direct shipper may sell and ship nonintoxicating beer or nonintoxicating craft beer out of this state via mail to a purchasing person who is 21 years of age or older subject to the recipient state's or country's requirements, laws, and international laws.

(b) License requirements. – Before sending any shipment of nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older, the nonintoxicating beer or nonintoxicating craft beer direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the \$250 non-prorated and nonrefundable annual license fee to ship and sell only nonintoxicating beer or nonintoxicating craft beer;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the nonintoxicating beer or nonintoxicating craft beer direct shipper is

licensed in its state of domicile as a brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer;

(6) Obtain from the commissioner a nonintoxicating beer or nonintoxicating craft beer direct shipper's license;

(7) Submit to the commissioner a list of all brands and labels of nonintoxicating beer or nonintoxicating craft beer to be shipped to West Virginia and attest that all nonintoxicating beer or nonintoxicating craft beer brands and labels are manufactured by the brewer, resident brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer seeking licensure and are not counterfeit or adulterated nonintoxicating beer or nonintoxicating craft beer;

(8) Attest that the brewer, resident, brewer or other nonintoxicating beer or nonintoxicating craft beer manufacturer brews less than 25,000 barrels of beer per calendar year and provide documentary evidence along with the attestation.

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) *Shipping Requirements.* - All nonintoxicating beer or nonintoxicating craft beer direct shipper licensees shall:

(1) Not ship more than a maximum of two, 24 bottle or can, cases of nonintoxicating beer or nonintoxicating craft beer based on a 12 fluid ounce bottle or can, however no combination of bottles or cans may exceed a total for the two cases of 576 fluid ounces of nonintoxicating beer residing in West Virginia, for such person's personal use and consumption, and not for resale.

(2) Not ship to any licensed brewers, resident brewers, retailers, retail liquor outlets, any type of private club, private caterers, private wine restaurants, private wine spas, private wine bed and breakfasts, wine retailers, wine specialty shops, taverns, or other licensees licensed under this article or chapter 60 of this code;

(3) Ensure that all containers of nonintoxicating beer or nonintoxicating craft beer shipped directly to a purchasing person who is 21 years of age or older are clearly and conspicuously labeled with the words “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY”;

(4) Not ship nonintoxicating beer or nonintoxicating craft beer that has not been registered with the commissioner, register and pay any registration fees, and prove by documentation that the direct shipper has the rights from the manufacturer to ship the nonintoxicating beer or nonintoxicating craft beer;

(6) Not ship to:

(A) Any person under the age of 21;

(B) to an intoxicated person; or

(C) to a person physically incapacitated due to the consumption of nonintoxicating beer or nonintoxicating craft beer, wine, or liquor, or the use of drugs;

(7) Obtain a written or electronic signature upon delivery to a person who the nonintoxicating beer or nonintoxicating craft beer direct shipper’s carrier verifies in-person is at least 21 years of age or older, and if the carrier is not able to verify the age of the person and obtain that person’s signature, then the carrier may not complete the delivery of the nonintoxicating beer or nonintoxicating craft beer shipment;

(8) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code;

(9) First deliver any nonintoxicating beer or nonintoxicating craft beer shipment being shipped in and throughout West Virginia to the nonintoxicating beer or nonintoxicating craft beer brand’s nearest appointed distributor who has the nonintoxicating beer or nonintoxicating craft beer brand’s franchise territory located in the purchasing person’s county of residence in West Virginia: *Provided, That, if no distributor has been appointed for the*

nonintoxicating beer or nonintoxicating craft beer brand, then the brewer of the brand shall appoint a franchise distributor in the franchise territory where the purchasing person of the nonintoxicating beer or nonintoxicating craft beer resides;

(10) Have the appointed distributor complete any nonintoxicating beer or nonintoxicating craft beer shipment order with an in-person pickup, at the location of appointed distributor's distributorship, to the purchasing person subject to age and identity verification by the appointed distributor; *Provided, That, the appointed distributor is not a retailer, and therefore cannot charge an additional fee for the in-person pickup for the nonintoxicating beer or nonintoxicating craft beer shipment as this would be considered a part of the service provided under the appointed distributor's franchise agreement.*

(d) *Payment of Fees and Taxes.*

(1) Any nonintoxicating beer or nonintoxicating craft beer direct shipper licensee must meet the markup requirements for retail sales set forth in §47-11A-6 of the code.

(2) Further, the nonintoxicating beer or nonintoxicating craft beer direct shipper licensee shall collect and remit all beer barrel tax, state sales tax, and local sales tax on the sale of nonintoxicating beer or nonintoxicating craft beer to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments to persons residing in West Virginia. No nonintoxicating beer or nonintoxicating craft beer direct shipper shall pay any beer barrel or sales tax more than once.

(3) File monthly returns to the commissioner showing the total of nonintoxicating beer or nonintoxicating craft beer, by type, brand, sold, and shipped into West Virginia for the preceding month;

(4) Permit the Tax Commissioner or commissioner or their designees to perform an audit of the nonintoxicating beer or nonintoxicating craft beer direct shipper's records upon request;

(5) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(6) No nonintoxicating beer or nonintoxicating craft beer direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(e) Jurisdiction. - By obtaining a nonintoxicating beer or nonintoxicating craft beer direct shipper licensee the licensee shall be considered to have agreed and consented to the jurisdiction of the commissioner or any other state agency, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) Records and reports. -

(1) Licensed nonintoxicating beer or nonintoxicating craft beer direct shippers must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The nonintoxicating beer or nonintoxicating craft beer direct shipper may annually renew its license with the commissioner by application, paying the nonintoxicating beer or nonintoxicating craft beer direct shipper license fee and providing the commissioner with a true copy of a current brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer's license from the nonintoxicating beer or nonintoxicating craft beer direct shipper's domicile state.

(h) The commissioner may promulgate rules to effectuate the purposes of this law.

(i) Penalties. -

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §11-16-23 and §11-16-24 of this code to suspend or revoke a nonintoxicating beer or nonintoxicating craft beer direct shipper's license, and the commissioner may accept payment of a penalties as set forth in §11-16-23 and §11-16-24 of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §11-16-23 and §11-16-24a of this code.

(2) If any such violates the provisions of this article, the commissioner may determine to suspend the privileges of the brewer, resident brewer, or other nonintoxicating beer or nonintoxicating craft beer manufacturer to sell, ship, or deliver nonintoxicating beer or nonintoxicating craft beer to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to buy or receive nonintoxicating beer or nonintoxicating craft beer from such person or to have any dealings with such person with respect thereto.

(k) *Criminal Penalties.* – A shipment of nonintoxicating beer or nonintoxicating craft beer directly to citizens in West Virginia from persons who do not possess a valid nonintoxicating beer or nonintoxicating craft beer direct shipper's license is prohibited. Any person who knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment of nonintoxicating beer or nonintoxicating craft beer is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed \$10,000 per violation or shall be imprisoned in jail for a period not to exceed 72 hours. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports,

or receives such a direct shipment constitutes an act that is an unfair trade practice.

**§11-16-6f. Nonintoxicating beer or nonintoxicating craft beer delivery license for a licensed Class B retail dealer or a third party; requirements; limitations; third party license fee; retail transportation permit; and requirements.**

(a) A Class B retail dealer who is licensed to sell nonintoxicating beer or nonintoxicating craft beer may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license permitting the order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer in a sealed original container of bottles or cans, and sealed growlers, when separately licensed for growler sales. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when completed by the licensee or the licensee's employees to a person purchasing the nonintoxicating beer or nonintoxicating craft beer via telephone, a mobile ordering application, or a web-based software program, as authorized by the licensee's license. There is no additional fee for licensed Class B retail dealers to obtain a nonintoxicating beer or nonintoxicating craft beer delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for nonintoxicating beer or nonintoxicating craft beer sales or distribution, may apply for a nonintoxicating beer or nonintoxicating craft beer delivery license for the privilege and convenience to offer ordering and delivery services of nonintoxicating beer or nonintoxicating craft beer in the sealed original container of bottles or cans, and sealed growlers, from a licensee with a growler license. The order, sale, and delivery of nonintoxicating beer or nonintoxicating craft beer is permitted for off-premises consumption when the Class B retail dealer sells to a person purchasing the nonintoxicating beer or nonintoxicating craft beer through telephone orders, a mobile ordering application, or a web-based software program. The nonintoxicating beer or nonintoxicating craft beer delivery annual license fee is \$200 per third party licensee, with no limit on the number of drivers and

vehicles. The delivery license fee under this subsection may not be prorated nor refunded.

(c) The nonintoxicating beer or nonintoxicating craft beer delivery license application shall comply with licensure requirements in §11-16-8 of this code and shall require any information set forth in this article and as reasonably required by the commissioner.

(d) Sale Requirements. -

(1) The nonintoxicating beer or nonintoxicating craft beer purchase may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and nonintoxicating beer or nonintoxicating craft beer by the licensee or third party licensee;

(2) Any purchasing person shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and meet the requirements set forth in this article for the sale of nonintoxicating beer or nonintoxicating craft beer;

(3) Food, for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer;

(4) An order, sale, or delivery consisting of food and any combination of sealed nonintoxicating beer or nonintoxicating craft beer bottles, cans, or growlers shall not be in excess of 384 fluid ounces of nonintoxicating beer or nonintoxicating craft beer; and

(5) A third party delivery licensee shall not have a pecuniary interest in a Class B retail dealer, as set forth in this article. A third party delivery licensee may only charge a convenience fee for the delivery of any nonintoxicating beer or nonintoxicating craft beer. The third party licensee may not collect a percentage of the delivery order for the delivery of nonintoxicating beer or nonintoxicating craft beer, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third party delivery licensee to the purchasing

person may not be greater than five dollars per delivery order. For any third party licensee also licensed for wine delivery as set forth in §60-8-6f of the code, the total convenience fee for any order, sale, and delivery of sealed wine may not exceed five dollars.

(e) Delivery Requirements. -

(1) Delivery persons employed for the delivery of nonintoxicating beer or nonintoxicating craft beer shall be 21 years of age or older. A Class B retail dealer and a third party licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A Class B retail dealer and a third party licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication and submit the certification of the training to the commissioner;

(3) The Class B retail dealer or third party delivery licensee shall hold a retail transportation permit for each delivery vehicle delivering sealed nonintoxicating beer or nonintoxicating craft beer pursuant to §11-16-6f(g) of this code: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of the licensure;

(4) A Class B retail dealer and a third party licensee may deliver food and sealed nonintoxicating beer or nonintoxicating craft beer orders in the county where the Class B retail dealer is located;

(5) A Class B retail dealer and a third party licensee may only deliver food and sealed nonintoxicating beer or nonintoxicating craft beer to addresses located in West Virginia. A Class B retail dealer and a third party licensee shall pay and account for all sales and municipal taxes;

(6) A Class B retail dealer and a third party licensee may not deliver food and nonintoxicating beer or nonintoxicating craft beer to any other Class B licensee;

(7) Deliveries of food and sealed nonintoxicating beer or nonintoxicating craft beer are only for personal use, and not for resale; and

(8) A Class B retail dealer and a third party licensee shall not deliver and leave food and sealed nonintoxicating beer or nonintoxicating craft beer at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person may only permit the purchasing person who placed the order through a telephone, mobile ordering application, or web-based software to accept the food and nonintoxicating beer or nonintoxicating craft beer delivery. The delivery is subject to age verification upon delivery with the delivery person's visual review and age verification and, as applicable, requires a stored scanned image of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used must create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery person for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A Class B retail dealer and a third party licensee shall retain all records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) Each vehicle delivering nonintoxicating beer or nonintoxicating craft beer shall be issued a retail transportation permit in accordance with §11-16-6f(g) of this code.

(g) Retail Transportation Permit. -

(1) A Class B retail dealer and a third party licensee shall obtain and maintain a retail transportation permit for the delivery of food and nonintoxicating beer or nonintoxicating craft beer.

(2) A Class B retail dealer or a third party licensee shall apply for a permit and provide vehicle and driver information, required by the commissioner. Upon any change in vehicles or drivers, Class B retail dealer and a third party licensee shall update the vehicle and driver information with the commissioner within 10 days of the change.

(h) Enforcement. -

(1) The Class B retail dealer and a third party licensee are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple Class B retail dealers or third party licensees, employees, or independent contractors.

(2) A license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the Class B retail dealer or third party licensee, their employees, or independent contractors.

(3) It is a violation for any Class B retail dealer or third party licensee, their employees, or independent contractors to break the seal of a growler subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, or accepting delivery of orders are considered to be purchasers.

**§11-16-9. Amount of license tax; Class A and Class B retail dealers; purchase and sale of nonintoxicating beer permitted; distributors; brewers; brewpubs.**

(a) All retail dealers, distributors, brewpubs, brewers, and resident brewers of nonintoxicating beer and of nonintoxicating

craft beer shall pay an annual fee to maintain an active license as required by this article. The license period begins on July 1 of each year and ends on June 30 of the following year. If the license is granted for a shorter period, then the license fee shall be computed semiannually in proportion to the remainder of the fiscal year: *Provided*, That if a licensee fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, ~~after initial application~~, then an additional \$150 reactivation fee shall be charged and paid by the licensee; the fee may not be prorated or refunded, prior to the processing of any renewal application and applicable full year annual license fee; and furthermore a licensee who continues to operate ~~upon~~ after the expiration of its license is subject to all fines, penalties, and sanctions available in §11-16-23 of this code, all as determined by the commissioner.

(b) The annual license fees are as follows:

(1) Retail dealers shall be divided into two classes: Class A and Class B.

(A) For a Class A retail dealer, the license fee is \$150 for each place of business; the license fee for social, fraternal, or private clubs not operating for profit, and ~~having which have~~ been in continuous operation for two years or more immediately preceding the date of application, is \$150: *Provided*, That railroads operating in this state may dispense nonintoxicating beer upon payment of an annual license tax of \$10 for each dining, club, or buffet car in which the beer is dispensed.

Class A licenses issued for railroad dining, club, or buffet cars authorize the licensee to sell nonintoxicating beer at retail for consumption only on the licensed premises where sold. All other Class A ~~licenses authorize the licensee to~~ licensees may sell nonintoxicating beer or nonintoxicating craft beer at retail, as licensed, for consumption on the licensed premises or off the licensed premises. Class A licensees may sell nonintoxicating beer or nonintoxicating craft beer for consumption off the licensed premises when it is in a sealed original container and sold for personal use, and not for resale. Class A licensees shall provide

prepared food or meals along with sealed nonintoxicating beer or nonintoxicating craft beer in the original container or in a sealed growler as set forth for sales and service in §11-16-6d of this code, to a purchasing person who is in-person or in-vehicle picking up prepared food or a meal, and sealed nonintoxicating beer or nonintoxicating craft beer orders-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article.

(B) For a Class B retail dealer, the license fee, authorizing the sale of both chilled and unchilled beer, is \$150 for each place of business. A Class B license authorizes the licensee to sell nonintoxicating beer at retail in bottles, cans, or other sealed containers only, and only for consumption off the licensed premises. A Class B retailer may sell to a ~~patron~~ purchasing person, for personal use, and not for resale, quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption.

The Commissioner may only issue a A Class B license ~~may be issued only~~ to the proprietor or owner of a grocery store. For the purpose of this article, the term “grocery store” means any retail establishment commonly known as a grocery store or delicatessen, and caterer or party supply store, where food or food products are sold for consumption off the premises, and includes a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises. Caterers or party supply stores ~~are required to~~ shall purchase the appropriate licenses from the Alcohol Beverage Control Administration.

(C) A Class A retail dealer may contract, purchase, or develop a mobile ordering application or web-based software program to permit the ordering and purchase of nonintoxicating beer or nonintoxicating craft beer, as authorized by the licensee’s license. The nonintoxicating beer or nonintoxicating craft beer shall be in a sealed original container or a sealed growler and meet the requirements of §11-16-6d of this code.

(2) For a distributor, the license fee is \$1,000 for each place of business.

(3) For a brewer or a resident brewer with its principal place of business or manufacture located in this state and who produces:

(A) Twelve thousand five hundred barrels or less of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$500 for each place of manufacture;

(B) Twelve thousand five hundred one barrels and up to 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,000 for each place of manufacture;

(C) More than 25,001 barrels of nonintoxicating beer or nonintoxicating craft beer, the license fee is \$1,500 for each place of manufacture.

(4) For a brewer whose principal place of business or manufacture is not located in this state, the license fee is \$1,500. The brewer is exempt from the requirements set out in subsections (c), (d),<sub>2</sub> and (e) of this section: *Provided*, That a brewer whose principal place of business or manufacture is not located in this state that produces less than 25,000 barrels of nonintoxicating beer or nonintoxicating craft beer may choose to apply, in writing, to the commissioner to be subject to the variable license fees of subdivision (3), subsection (b) of this section and the requirements set out in subsections (c), (d),<sub>2</sub> and (e) of this section subject to investigation and approval by the commissioner as to brewer requirements.

(5) For a brewpub, the license fee is \$500 for each place of manufacture.

(c) As part of the application or renewal application and in order to determine a brewer or resident brewer's license fee pursuant to this section, a brewer or resident brewer shall provide the commissioner, on a form provided by the commissioner, with an estimate of the number of nonintoxicating beer or nonintoxicating craft beer barrels and gallons it ~~will~~ may produce during the year based upon the production capacity of the brewer's

or resident brewer's manufacturing facilities and the prior year's production and sales volume of nonintoxicating beer or nonintoxicating craft beer.

(d) On or before July 15 of each year, every brewer, or resident brewer who is granted a license shall file a final report, on a form provided by the commissioner, that is dated as of June 30 of ~~each~~ that year, stating the actual volume of nonintoxicating beer or nonintoxicating craft beer in barrels and gallons produced at its principal place of business and manufacture during the prior year.

(e) If the actual total production of nonintoxicating beer or nonintoxicating craft beer by the brewer or resident brewer exceeded the brewer's or resident brewer's estimate that was filed with the application or renewal application for a brewer's or resident brewer's license for that period, then the brewer or resident brewer shall include a remittance for the balance of the license fee pursuant to this section that would be required for the final, higher level of production.

(f) Any brewer or resident brewer failing to file the reports required in subsections (c) and (d) of this section, and who is not exempt from the reporting requirements, shall, at the discretion of the commissioner, be subject to the penalties set forth in §11-16-23 of this code.

(g) Notwithstanding subsections (a) and (b) of this section, the license fee per event for a nonintoxicating beer floor plan extension is ~~\$50~~ \$100, and the fee may not be prorated or refunded., ~~and must be accompanied with a license~~ A licensee shall submit an application, certification that the event meets certain requirements in the this code and rules, and ~~such~~ any other information as required by the commissioner ~~may reasonably require~~, at least 15 days prior to the event, all as determined by the commissioner.

(h) Notwithstanding subsections (a) and (b) of this section, a Class A retail dealer, in good standing with the commissioner, may apply, on a form provided by the commissioner, to sell, serve, and furnish nonintoxicating beer or nonintoxicating craft beer for on-premises consumption in an outdoor dining area or outdoor street

dining area, as authorized by any municipality or county commission and any state or county health department. The Class A retail dealer shall submit to the municipal council, county commission, or any state or county health department, for approval, a revised floorplan and a request to sell and serve nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved outdoor area. The area shall be adjacent to the licensee's licensed premises for nonintoxicating beer or nonintoxicating craft beer outdoor dining under the licensee's control with ingress and egress. For private outdoor street dining, or outdoor dining, the approved and bounded outdoor area need not be adjacent to the licensee's licensed premises, but in close proximity and under the licensee's control with right of ingress and egress. For purposes of this section, "close proximity" means an available area within 150 feet of the Class A retail dealer's licensed premises. A Class A retail dealer may operate a nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining in conjunction with a private outdoor dining or private outdoor street dining area set forth in §60-7-8d of this code and private wine outdoor dining or private wine outdoor street dining set forth in §60-8-32a of this code.

(i) For purposes of this article, "nonintoxicating beer or nonintoxicating craft beer outdoor dining and nonintoxicating beer or nonintoxicating craft beer outdoor street dining" includes dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

**§11-16-11c. Unlicensed brewer or unlicensed home brewer temporary license; fees; requirements.**

(a) An unlicensed brewer or home brewer may obtain a temporary special license, upon meeting the requirements set forth in this section, to offer its nonintoxicating beer or nonintoxicating craft beer for sampling and sales at a fair and festival licensed under §11-16-11 and §11-16-11b of this code, when granted approval by the fair and festival licensee. The unlicensed brewer or home brewer is exempt from the requirements of registering the brand and using a distributor and a franchise agreement due to the limited nature of this temporary license.

(b) An unlicensed brewer or home brewer is subject to the limits, taxes, fees, requirements, restrictions, and penalties set forth in this article: *Provided*, That the commissioner may, by rule or order, provide for certain waivers or exceptions with respect to the provisions, laws, rules, or orders as required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing, notwithstanding the provisions §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

(c) A brewer or home brewer, regardless of its designation in its domicile state, that is duly licensed and in good standing in its domicile state, but unlicensed in this state, or an unlicensed brewer or home brewer that is a resident of West Virginia, shall pay a \$150 nonrefundable and non-prorated fee and submit an application for a temporary license on a one-day basis. The temporary special license allows the unlicensed brewer or home brewer to sell nonintoxicating beer or nonintoxicating craft beer to a licensed fair or festival for the sampling and sale of the nonintoxicating beer or nonintoxicating craft beer for on-premises consumption at the licensed fair or festival. The brewer or home brewer shall pay all taxes due and the appropriate markup on the nonintoxicating beer or nonintoxicating craft beer.

(2) The unlicensed brewer or home brewer temporary license application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; if the unlicensed brewer or home brewer is from out of state, a copy of its licensure in its domicile state; a signed and notarized verification that it produces 25,000 barrels or less of nonintoxicating beer or nonintoxicating craft beer per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and a certified lab alcohol analysis for the nonintoxicating beer or nonintoxicating craft beer it plans to sell to a fair or festival licensed under §11-16-11 and §11-16-11b of this code; and any other information required by the commissioner.

(3) The applicant shall include in its application a list of all nonintoxicating beers or nonintoxicating craft beers it proposes to provide, in sealed containers, to a licensed fair or festival for sampling or sale so that the commissioner may review them in the interest of public health and safety. Once approved, the submitted nonintoxicating beer or nonintoxicating craft beer list creates a temporary nonintoxicating beer or nonintoxicating craft beer brand registration for up to two days at any event licensed under §11-16-11 and §11-16-11b of this code, for no additional fee.

(4) An applicant that receives this temporary license for any event licensed under §11-16-11 and §11-16-11b of this code shall provide a signed and notarized agreement acknowledging that it is the applicant's duty to pay all municipal, local, and sales taxes applicable to the sale of nonintoxicating beer or nonintoxicating craft beer in West Virginia.

(5) The unlicensed brewer or home brewer shall submit an application for each temporary special license sought for an event licensed under §11-16-11 and §11-16-11b of this code, at which the applicant proposes to provide nonintoxicating beer or nonintoxicating craft beer for sampling or sale. The license fee covers up to two separate one-day licenses for the event before an additional fee is required. Any applicant desiring to attend more than four events per year or otherwise operate in West Virginia

shall seek appropriate licensure as a brewery or resident brewery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, brand registration, franchise requirements, payment of beer barrel tax, and the appointment of a distributor franchise network, this temporary special license for an event licensed under §11-16-11 and §11-16-11b of this code, once granted, permits the licensee to operate in this limited capacity only at the approved specific, events licensed under §11-16-11 and §11-16-11b of this code, subject to the limitations noted in this section.

(7) The applicant shall also apply for and receive a nonintoxicating beer or nonintoxicating craft beer transportation permit in order to legally transport nonintoxicating beer or nonintoxicating craft beer in the state as required by §11-16-10(f) of this code: *Provided*, That the commissioner may not charge or collect an additional fee for a nonintoxicating beer or nonintoxicating craft beer transportation permit to an applicant seeking a temporary special license under this section.

(8) The licensee is subject to all applicable violations and/or penalties under this article and related legislative rules that are not otherwise excepted by this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions of this code, rules, or orders required by the circumstances of each festival or fair. The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions of §11-16-23 and §11-16-24 of this code: *Provided, however*, That under no circumstances shall the provisions of §11-16-8(a)(1), §11-16-8(a)(2), and §11-16-8(a)(3) of this code, be waived nor shall any exception be granted with respect to those provisions.

**§11-16-18. Unlawful acts of licensees; criminal penalties.**

(a) It is unlawful:

(1) ~~Except as provided for in §7-1-3ss and this chapter of this code, for any licensee, his, her, its, or their servants, agents, or employees to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected thereto, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 6:00 a.m., or between the hours of 2:00 a.m. and 10:00 a.m., or a Class A retail dealer to sell nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and 1:00 p.m. 6:00 a.m.; in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday, except in private clubs licensed under the provisions of §60-7-1 et seq. of this code, where the hours shall conform with the hours of sale of alcoholic liquors;~~

(2) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than 21 years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing ~~herein~~ contained in this section prohibits a licensee from crediting to a purchasing person the actual price charged for packages or containers returned by the original purchasing person as a credit on any sale, or from refunding to any purchasing person the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall

initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to \$25.00 per stock keeping unit, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided, however*, That, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services may be negotiated at no less than direct actual cost: *Provided further*, That a distributor may furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations as prescribed ~~herein~~ in this section. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events.

(6) For any brewer or distributor to sponsor any professional or amateur athletic event or provide prizes or awards for participants and winners when a majority of the athletes participating in the event are minors, unless the event is specifically authorized by the commissioner;

(7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with rules promulgated by the commissioner, and where written records of all cleanings are not maintained and available for inspection;

(8) For any licensee to permit in his or her premises any lewd, immoral, or improper entertainment, conduct, or practice;

(9) For any licensee, except the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code or a holder of a license or a private wine restaurant issued under the provisions of §60-8-1 *et seq.* of this code to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;

(10) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of §60-7-1 *et seq.* of this code, or the premises of a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code;

(11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code, nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is authorized to serve wine;

(12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased or acquired from any source other than a distributor, brewer, or manufacturer licensed under the laws of this state;

(13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located: *Provided*, That a licensee may have speaker systems for outside broadcasting as long as the noise levels do not create a public nuisance or violate local noise ordinances;

(14) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

(15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;

(16) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

(17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

(18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any person less than 18 years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of 18 years is in or upon the premises in the immediate company of ~~his or her parent or parents~~ a parent or legal guardian, or where and while a person under the age of 18 years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving any lawful service rendered in the licensed premises, including the consumption of any item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;

(19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of the nonintoxicating beer: *Provided*, That nothing in this section is considered to prohibit sales of convenience between distributors licensed in this state where one distributor sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale; and

(20) For any licensee or any agent, servant, or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter 29A of this code.

(b) Any person who violates any provision of this article, including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation of a license, or who commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor more than \$500, or confined in the county or regional jail for not less than 30 days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating

beer is sold, furnished, or given away by the use of the transaction device ~~may not be~~ ~~is not~~ subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer to an individual who is less than 21 years of age by one of his or her employees, servants, or agents. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away; (B) that it has communicated this policy to each employee, servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) “Transaction scan” means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and “transaction scan device” means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver’s license or other governmental identity card.

(d) Nothing in this article nor any rule of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in the

licensee's lawful employ, including the sale or ~~delivery~~ distribution of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods, or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age, but at least 16 years of age: *Provided*, That the person's duties may ~~not~~ include the sale or ~~delivery~~ of nonintoxicating beer or alcoholic liquors only when directly supervised by a person 21 years of age or older: *Provided, however*, That the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

## CHAPTER 19. AGRICULTURE.

### ARTICLE 2. MARKETING AGRICULTURAL PRODUCTS.

#### **§19-2-12. Agriculture Development Fund; administration; purpose; funding.**

(a) There is hereby created in the State Treasury a special revenue account to be known as the Agriculture Development Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys deposited into the fund pursuant to §60-8A-3 of this code; any moneys that may be designated for deposit in this fund by an act of the Legislature; any moneys appropriated and designated for the fund by the Legislature; any moneys able to be transferred into the fund by authority of the commissioner from other funds; and gifts, donations, and interest or other returns earned from investment of the fund.

(b) Expenditures from the fund shall be for the purpose of fostering and supporting the development of agricultural sectors, such as hard cider, within the state, and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 et seq. of this code and upon the fulfillment

of the provisions set forth in §11B-2-1 et seq. of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund and be expended as provided by this section.

**§19-2-13. Hard cider development program; purpose; funding.**

The commissioner shall establish a program to foster the development and growth of the hard cider industry in the state. The purpose of the program shall be to assist in the development of fruit inputs necessary for the production of hard cider in the state. The program shall be funded using moneys deposited within the Agriculture Development Fund created pursuant to §19-2-12 of this code.

**CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§60-1-5a. Farm wineries defined.**

(a) For the purpose of this chapter “Farm winery” means an establishment where in any year 50,000 gallons or less of wine, which includes hard cider, and nonfortified dessert wine are manufactured exclusively by natural fermentation from grapes, apples, pears, peaches, other fruits or honey, or other agricultural products containing sugar and where port, sherry, and Madeira wine may also be manufactured, with 25 percent of such raw products being produced by the owner of ~~such~~ the farm winery on the premises of that establishment and no more than 25 percent of such produce originating from any source outside this state. Any port, sherry, or Madeira wine manufactured by a winery or a farm winery ~~must~~ shall not exceed an alcoholic content of 22 percent alcohol by volume and shall be matured in wooden barrels or casks.

(b) Notwithstanding the provisions of subsection (a) of this section, a farm winery may include one off-farm location. The owner of a farm winery may provide to the commissioner evidence, accompanied by written findings by the West Virginia Agriculture

Commissioner in support thereof, that the owner has planted on the premises of the farm winery young nonbearing fruit plants. The commissioner may grant permission for one off-farm location when the location produces in an amount equal to that reasonably expected to be produced when the nonbearing fruit plants planted on the farm winery come into full production. The length of time of the permission to use an off-farm location shall be determined by the commissioner after consultation with the Agriculture Commissioner.

### **ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.**

#### **§60-3A-3b. Private liquor delivery license for a retail liquor outlet or a third party; requirements; limitations; third party license fee; private liquor bottle delivery permit; requirements, and curbside in-person and in-vehicle delivery by a retail liquor outlet.**

(a) A retail liquor outlet that is licensed to sell liquor for off-premises consumption may apply for a private liquor delivery license permitting the order, sale, and delivery of sealed liquor bottles or cans in the original container. The order, sale, and delivery of sealed liquor bottles or cans in the original container is permitted for off-premises consumption when completed by the licensee to a person purchasing the sealed liquor bottles or cans through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed retail liquor outlet to obtain a private liquor delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private liquor delivery license for the privilege of ordering and delivery of sealed liquor bottles or cans, from a licensed retail liquor outlet. The order and delivery of sealed liquor bottles or cans permitted for off-premises consumption by a third party licensee when a retail liquor outlet sells to a person purchasing the sealed liquor bottles or cans through telephone orders, a mobile ordering application, or a web-based software

program. The private liquor delivery license non-prorated, nonrefundable annual fee is \$200 per third party entity, with no limit on the number of drivers and vehicles.

(c) The private liquor delivery license application shall comply with licensure requirements in this article and shall provide any information required by the commissioner.

(d) Sale Requirements. -

(1) The purchase of sealed liquor bottles or cans in the original container may accompany the purchase of food and the completion of the sale may be accomplished by the delivery of food and sealed liquor bottles or cans in the original container by the licensee or third party licensee;

(2) Any purchasing person's shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and and in §11-16-1 et seq. of the code, for nonintoxicating beer or nonintoxicating craft beer.

(3) "Food", for purposes of this section, means food that has been cooked, microwaved, or that is pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of up to five 750 ml sealed liquor bottles for each order; *Provided*, That the entire delivery order may not contain any combination of sealed liquor bottles or cans in the original container, where the combination is more than 128 fluid ounces of liquor total; and

(5) A third party delivery licensee shall not have a pecuniary interest in a retail liquor outlet, as set forth in this article. A third party private liquor delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private liquor delivery licensee may not collect a percentage of the liquor delivery order, but may continue to collect a percentage of the delivery order directly related to food. The convenience fee charged by the third-party private liquor delivery licensee to the purchasing person shall be no greater than five dollars per delivery

order where a sealed liquor bottle or can in the original container is ordered by the purchasing person. For any third party licensee also licensed for other nonintoxicating beer or nonintoxicating craft beer delivery pursuant to §11-16-1 et seq. of this code, wine delivery pursuant to §60-8-1 et seq. of this code, or a sealed craft cocktail growler delivery pursuant to §60-7-1 et seq. of this code, the total convenience fee of any order, sale, and delivery of sealed alcoholic liquor or nonintoxicating beer, or nonintoxicating craft beer shall not exceed five dollars.

(e) Private Liquor Delivery Requirements. -

(1) Delivery persons employed for the delivery of a sealed liquor bottles or cans in the original container shall be 21 years of age or older and a retail liquor outlet and a third-party private liquor delivery licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) A retail liquor outlet and a third-party private liquor delivery licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. A retail liquor outlet and a third-party private liquor delivery licensee shall submit certification of the training to the commissioner;

(3) The retail liquor outlet or third party private liquor delivery licensee shall hold a private liquor bottle delivery permit for each vehicle delivering a sealed liquor bottle or can in the original container pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure;

(4) A retail liquor outlet or third party private liquor delivery licensee may deliver food and a sealed liquor bottle or can order in the original container in the market zone or contiguous market zone where the licensed retail liquor outlet is located;

(5) A retail liquor outlet or third party private liquor delivery licensee may only deliver food and a sealed liquor bottle or can in the original container to addresses located in West Virginia, The

retail liquor outlet or third party private liquor delivery licensee shall pay and account for all sales and municipal taxes;

(6) A retail liquor outlet or third party private liquor delivery licensee may not deliver food and a sealed liquor bottles or cans in the original container to any licensee licensed under §11-16-1 et seq. of this code, and under this chapter;

(7) Deliveries of food and a sealed liquor bottle or can in the original container are only for personal use, and not for resale; and

(8) A retail liquor outlet or third party private liquor delivery licensee shall not deliver and leave food and a sealed liquor bottle or can in the original container at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person shall only permit the person who placed the order through a telephone order, mobile ordering applicant, or web-based software to accept the food and a sealed liquor bottle or cans in the original container delivery which is subject to verification upon delivery with the delivery person's visual review and verification and, as applicable, a stored scanned image of the purchasing person's legal identification;

(2) Any application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. A retail liquor outlet or third party private liquor delivery licensee

shall retain records for three years, and shall not unreasonably withhold the records from the commissioner's inspection; and

(5) The retail liquor outlet or third party delivery licensee shall hold a valid private liquor bottle delivery permit required by subsection (g) of this section for each vehicle that may offer delivery.

(g) *Private Liquor Bottle Delivery Permit.* -

(1) Each private delivery vehicle, whose driver is 21 years of age or older, shall have a permit for the delivery of food and a sealed liquor bottle or can in the original container, subject to the requirements of this chapter.

(2) A retail liquor outlet or third party private delivery licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner as soon as possible.

(3) Subject to the requirement of §60-6-12 of this code, a private liquor bottle delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The retail liquor outlet or the licensed third party are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a sealed liquor bottle.

A person who violates the provisions of this subdivision is subject to the maximum penalties available in this chapter.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

(i) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and curbside in-person or in-vehicle pick-up of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person's is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

(j) Retail liquor outlets licensed for off-premises sales of sealed liquor bottles and cans in the original container may provide for the sale and delivery through a drive up or drive through structure, approved by the commissioner, of sealed liquor bottles or cans in the original container, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

**§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~~ the 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 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, except as provided in subsection (c) of this section;

(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, can 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 the retail licensee, or from having such the person sell ~~or deliver~~ liquor or transport liquor on behalf of a manufacturer 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 a retail licensee who are less than 18 years of age but at least 16 years of age, ~~but such the~~ persons' duties ~~shall~~

~~not~~ may include the sale or delivery of liquor only when directly supervised by a person 21 years of age or older: Provided, That the authorization to employ such the persons under the age of 18 years shall be clearly indicated on the retail licensee's license issued to any such retail licensee. Provided, however, That nothing in this article, nor any rule or regulation of the commissioner, shall prevent or be considered to prohibit any licensee from employing any person who is at least 21 years of age for the ordering and delivery of liquor when licensed for liquor ordering and delivery under the provisions of this chapter.

#### **ARTICLE 4. LICENSES.**

##### **§60-4-3a. Distillery and mini-distillery license to manufacture and sell.**

(a) *Sales of liquor.* — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off premises only. Except for complimentary samples offered pursuant to §60-6-1 of this code, customers ~~are prohibited from consuming~~ may not consume any liquor on the premises of the distillery, mini-distillery, or micro-distillery and except for a distillery, mini-distillery, or micro-distillery that obtains a private manufacturer club license set forth in §60-7-1 et seq. of this code, and a Class A retail dealer license set forth in §11-16-1 et seq. of the code: Provided, That a licensed distillery, mini-distillery, or micro-distillery may offer complimentary samples of alcoholic liquors as authorized per by this subsection of when alcoholic liquors are manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the licensed premises, only, on Sundays beginning at 10:00 a.m. in any county in which the same has been approved as provided for in §7-1-3pp of this code. Notwithstanding any other provision of law to the contrary, a licensed distillery, mini-distillery, or micro-distillery may sell, furnish, and serve alcoholic liquors when licensed accordingly beginning at 6:00 a.m. unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) *Retail off-premises consumption sales.* — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of §60-3A-9, §60-3A-11, §60-3A-13, §60-3A-16, §60-3A-17, §60-3A-18, §60-3A-19, §60-3A-22, §60-3A-23, §60-3A-24, §60-3A-25, and §60-3A-26 of this code, and the provisions of §60-3-1 *et seq.* and §60-4-1 *et seq.*, of this code, applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption ~~shall be~~ is subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That ~~no~~ liquor sold by the distillery, mini-distillery, or micro-distillery shall not be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) *Payments to market zone retailers.* — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall ~~be required to~~ submit to the commissioner is \$15,000 per annum.

(e) *Limitations on licensees.* — ~~No~~ A distillery, mini-distillery, or micro-distillery may not sell more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location during the initial ~~two years~~ 24 month period of licensure. The distillery, mini-distillery, or micro-distillery may increase sales at the

distillery, mini-distillery, micro-distillery location by 2,000 gallons following the initial 24 month period of licensure and may increase sales at the distillery, mini-distillery, or micro-distillery location each subsequent 24 month period by 2,000 gallons, not to exceed 10,000 gallons a year of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery location. ~~No~~ A licensed micro-distillery may not produce more than 10,000 gallons per calendar year at the micro-distillery location. ~~No~~ The commissioner may issue more than one distillery or mini-distillery license may be issued to a single person or entity and ~~no~~ a person may not hold both a distillery and a mini-distillery license. The owners of a licensed distillery, mini-distillery, or micro-distillery may operate a winery, farm winery, brewery, or as a resident brewer as otherwise specified in the code.

(f) Building code and tax classification- Notwithstanding any provision of this code to the contrary, the mere addition of a distillery, mini-distillery, or micro-distillery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

### **§60-4-3b. Winery and farm winery license to manufacture and sell.**

(a) An operator of a winery or farm winery may offer wine produced by the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, for retail sale to customers from the winery or farm winery for consumption off the premises only. Customers may consume wine on the premises when an operator of a winery or farm winery offers ~~Except for free complimentary samples offered pursuant to §60-6-1 of this code,~~ the winery or farm winery is licensed as a private wine restaurant, or the winery or farm winery is licensed as a private manufacturer club. ~~customers~~ Customers are prohibited from consuming may not consume any wine on the licensed premises of the winery, farm winery, or a farm entity authorized by §60-1-5c of this code, unless ~~such~~ the winery, farm winery, or farm entity has obtained a multi-capacity winery or farm winery license: *Provided, That under this*

subsection, a licensed winery or farm winery may offer complimentary samples ~~per this subsection~~ of wine manufactured by that licensed winery or farm winery for consumption on the premises only on Sundays beginning at ~~10:00~~ 6:00 a.m. in any county in which the same has been approved as provided in §7-1-3ss of this code. Notwithstanding any other provision of law to the contrary, a licensed winery or farm winery may sell, serve, and furnish wine, for on-premises consumption when licensed accordingly, beginning at 6:00 a.m., and for off-premises consumption beginning at 6:00 a.m. on any day of the week, unless otherwise determined by the residents of the county pursuant to §7-1-3ss of this code.

(b) Complimentary samples allowed by the provisions of this section may not exceed two fluid ounces and no more than three ~~such~~ samples may be given to a patron in any one day.

(c) Complimentary samples may be provided only for on-premises consumption.

(d) A winery, farm winery, or farm entity pursuant to §60-1-5c of this code may offer for retail sale from their licensed premises sealed original container bottles of wine for off-premises consumption only.

(e) A winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code, holding a multicapacity license and a private wine restaurant license may offer wine by the drink or glass in a private wine restaurant located on the property of the winery, farm winery, or farm entity licensed pursuant to §60-1-5c of this code.

(f) Every licensed winery or farm winery shall comply with the provisions of §60-3-1 *et seq.*, §60-4-1 *et seq.*, and §60-8-1 *et seq.* of this code as applicable to wine retailers, wineries, and suppliers when properly licensed in such capacities.

(g) (1) The winery or farm winery shall pay all taxes and fees required of licensed wine retailers and meet applicable licensing provisions as required by this chapter and by rules promulgated by the commissioner.

(2) Each winery or farm winery acting as its own supplier shall submit to the Tax Commissioner the liter tax for all sales at the winery or farm winery each month, as provided in §60-8-1 *et seq.* of this code.

(3) The five percent wine excise tax, levied pursuant to §60-3-9d of this code, or pursuant to §8-13-7 of this code, may not be imposed or collected on purchases of wine in the original sealed package for the purpose of resale in the original sealed package, if the final purchase of ~~such~~ the wine is subject to the excise tax or if the purchase is delivered outside this state.

(4) No liter tax shall be collected on wine sold in the original sealed package for the purpose of resale in the original sealed package if a subsequent sale of ~~such~~ the wine is subject to the liter tax.

(5) This section shall not be interpreted to authorize a purchase for resale exemption in contravention of §11-15-9a of this code.

(h) A winery or farm winery may advertise a particular brand or brands of wine produced by it. ~~and the~~ The price of the wine is subject to federal requirements or restrictions.

(i) A winery or farm winery ~~must~~ shall maintain a separate winery or farm winery supplier, retailer, and direct shipper licenses when acting in one or more of those capacities and ~~must~~ shall pay all associated license fees, unless ~~such~~ the winery or farm winery holds a license issued pursuant to the provisions of §60-8-3(b)(12) of this code. A winery or farm winery, if holding the appropriate licenses or a multi-capacity winery or farm winery license, may act as its own supplier; retailer for off-premises consumption of its wine as specified in §60-6-2 of this code; private wine restaurant; and direct shipper for wine produced by the winery or farm winery. A winery or farm winery that has applied, paid all fees, and met all requirements may obtain a private manufacturer club license subject to the requirements of §60-7-1 *et seq.* of this code, and a Class A retail dealer license subject to the requirements of §11-16-1 *et seq.* of the code. All wineries must use a distributor to distribute and sell their wine in the state, except for farm wineries. ~~No more~~

~~than one winery or farm winery license may be issued to a single person or entity and no person may hold both a winery and a farm winery license~~ Wineries or farm wineries may enter into alternating wine proprietorship agreements pursuant to §60-1-5c of this code.

(j) The owners of a licensed winery or farm winery may operate a distillery, mini-distillery, or micro-distillery, brewery, or as a resident brewer, as otherwise specified in the code.

~~(j)~~ (k) For purposes of this section, terms ~~will~~ have the same meaning as provided in §8-13-7 of this code.

(l) Building code and tax classification- Notwithstanding any provision of this code to the contrary, the mere addition of a winery or farm winery licensed under this article on a property does not change the nature or use of the property which otherwise qualifies as agricultural use for building code and property tax classification purposes.

**§60-4-3c. License required for sale and shipment of liquor by a distillery, mini-distillery or micro-distillery; shipment of limited quantities of liquor permitted by a private direct shipper; requirements; license fee, and penalties.**

(a) Authorization. - Except for the commissioner, no person may offer for sale liquor, sell liquor, or offer liquor for shipment in this state, except for a licensed private direct shipper. A distillery, mini-distillery, or micro-distillery, whose licensed premises is located in this state or whose licensed premises is located and licensed out of this state, who desires to engage in the sale and shipment of liquor produced by the distillery, mini-distillery, or micro-distillery on its licensed premises, shall ship directly from the licensee's primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older, for personal use, and not for resale under this article. The distillery, mini-distillery, or micro distillery shall obtain a private direct shipper license. Shipments to a purchasing person shall only be to a retail liquor outlet in the market zone in which the purchasing person resides. A private direct shipper may ship liquor subject to the requirements in this chapter in and throughout West

Virginia, except for those local option areas designated as “dry” areas per §60-5-1 et seq. of this code. A private direct shipper may also sell and ship liquor out of this state directly from its primary place of distilling by mail, using a mail shipping carrier to a purchasing person who is 21 years of age or older subject to the recipient state’s or country’s requirements, laws, and international laws.

(b) License requirements. – Before sending any shipment of liquor to a purchasing person who is 21 years of age or older, the private direct shipper must first:

(1) File a license application with the commissioner with the appropriate background check information, using forms required by the commissioner. Criminal background checks will not be required of applicants licensed in their state of domicile who can provide a certificate of good standing from their state of domicile;

(2) Pay to the commissioner the \$250 non-prorated and nonrefundable annual license fee to ship and sell only liquor;

(3) Obtain a business registration number from the Tax Commissioner;

(4) Register with the office of the Secretary of State;

(5) Provide the commissioner a true copy of its current active license issued in the state of domicile, proving that the private direct shipper is licensed in its state of domicile as a distillery, is authorized by such state to ship liquor;

(6) Obtain from the commissioner a private direct shipper’s license;

(7) Submit to the commissioner a list of all brands of liquor to be shipped to West Virginia and attest that all liquor brands are manufactured by the distillery on its licensed premises seeking licensure and are not counterfeit or adulterated liquor;

(8) Attest that the distillery, mini-distillery, or micro-distillery distills less than 50,000 gallons of liquor each calendar year and provide documentary evidence along with the attestation; and

(9) Meet all other licensing requirements of this chapter and provide any other information that the commissioner may reasonably require.

(c) Shipping Requirements. - All private direct shipper licensees shall:

(1) Not ship more than two bottles of liquor per month to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older for his or her personal use and consumption, and not for resale. The combined fluid volume of both bottles shall not exceed 3 liters;

(2) Not ship to any address in an area identified by the commissioner as a “dry” or local option area where it is unlawful to sell liquor;

(3) Not ship to any licensed suppliers, brokers, distributors, retailers, private clubs, or other licensees licensed under this chapter or §11-16-1 *et seq.* of this code;

(4) Not ship liquor from overseas or internationally; and

(5) Ensure that all containers of liquor shipped to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older, are clearly and conspicuously labeled with the words “CONTAINS ALCOHOL: SIGNATURE OF PERSON 21 OR OLDER REQUIRED FOR DELIVERY”;

(6) Obtain a written or electronic signature upon delivery to a retail liquor outlet for pickup by a purchasing person who is 21 years of age or older; and

(7) Utilize a licensed and bonded shipping carrier who has obtained a transportation permit as specified in §60-6-12 of the code.

(d) Payment of Fees and Taxes.

(1) Any private direct shipper licensee on all sales of liquor must collect and remit the entire wholesale markup percentage and any handling fees, in full, as set forth in §60-3A-17 of the code and by rule of the commissioner to the commissioner at the close of each month and file a monthly report, on a form provided by the commissioner.

(2) Further, the private direct shipper licensee on all sales of liquor shall collect and remit all state sales tax, municipal tax, and local sales tax to the Tax Commissioner at the close of each month and file a monthly return, on a form provided by the Tax Commissioner, reflecting the taxes paid for all sales and shipments.

(3) The payment of fees to the commissioner and taxes to the Tax Commissioner may be in addition to fees and taxes levied by the private direct shipper's domicile state.

(4) No private direct shipper will be required to pay any fees to the commissioner or taxes to the Tax Commissioner more than once.

(5) A retail liquor outlet which has entered a written agreement with a private direct shipper to accept a liquor shipment under this section may charge an additional fee of ten percent fee based on the total price of the liquor shipment, excluding the shipping charges, to a lawful purchaser.

(e) *Jurisdiction.* - By obtaining a private direct shipper licensee be deemed to have agreed and consented to the jurisdiction of the commissioner or any other state agency, which is Charleston, West Virginia and the Kanawha County circuit court, concerning enforcement of this chapter and any other related laws or rules.

(f) Records and reports. –

(1) Licensed private direct shippers and retail liquor outlets must maintain accurate records of all shipments sent to West Virginia.

(2) Provide proof or records to the commissioner, upon request, that all direct shipments of liquor were purchased and delivered to a purchasing person who is 21 years of age or older.

(g) The private direct shipper may annually renew its license with the commissioner by application, paying the private direct shipper license fee and providing the commissioner with a true copy of a current distillery license from the private direct shipper's domicile state.

(h) The commissioner may promulgate rules to effectuate the purposes of this law.

(i) Penalties. –

(1) The commissioner may enforce the requirements of this chapter by administrative proceedings as set forth in §60-7-13 and §60-7-13a of this code to suspend or revoke a private direct shipper's license or retail liquor outlet's license, and the commissioner may accept payment of a penalties as set forth in §60-7-13 and §60-7-13a of this code or an offer in compromise in lieu of suspension, at the commissioner's discretion. Hearings and appeals on such notices may be had in the same manner as in the case of revocations of licenses set forth in §60-7-13 and §60-7-13a of this code.

(2) If any such distillery violates the provisions of this chapter, the commissioner may determine to suspend the privileges of the distillery to sell, ship, or deliver liquor to a purchasing person who is 21 years of age or older or to the commissioner, or otherwise engage in the liquor business in this state for a period of one year from the date a notice is mailed to such person by the commissioner of the fact that such person has violated the provisions of this article. During such one-year period, it shall be unlawful for any person within this state to buy or receive liquor from such person or to have any dealings with such person with respect thereto.

(k) Criminal Penalties. – A shipment of liquor directly to citizens in West Virginia from persons who do not possess a valid private direct shipper's license is prohibited. Any person who

knowingly makes, participates in, transports, imports, or receives such an unlicensed and unauthorized direct shipment is guilty of a felony and, shall, upon conviction thereof, be fined in an amount not to exceed \$10,000 per violation or shall be imprisoned in jail for a period not to exceed 72 hours. Without limitation on any punishment or remedy, criminal or civil, any person who knowingly makes, participates in, transports, imports, or receives such a direct shipment constitutes an act that is an unfair trade practice.

## **ARTICLE 6. MISCELLANEOUS PROVISIONS.**

### **§60-6-8. Unlawful sale or possession by licensee.**

A licensed person shall not:

(1) Sell, furnish, tender, or serve alcoholic liquors of a kind other than that which ~~such~~ the license or this chapter authorizes him or her to sell;

(2) Sell, furnish, tender, or serve beer to which wine, spirits, or alcohol has been added;

(3) Sell, furnish, tender, or serve wine to which other alcoholic spirits have been added, otherwise than as required in the manufacture ~~thereof~~ of the wine under ~~regulations~~ rules of the commission;

(4) Sell, furnish, tender, or serve alcoholic liquors to a person specified in §60-3-22 of this code;

(5) Sell, furnish, tender, or serve alcoholic liquors except as authorized by ~~his or her~~ its license;

(6) Sell, furnish, tender, or serve alcoholic liquors other than by the drink, poured from the alcoholic liquors' original container: *Provided*, That under certain requirements exceptions to liquor by the drink are as follows:

(A) A private club licensed under §60-7-1 *et seq.* of this code, that is in good standing with the commissioner and has paid a

\$1000 on-premises only bottle service fee to the commissioner, may sell or serve liquor by the bottle to two or more persons for consumption on the licensed premises only, and any liquor bottle sold by ~~such a~~ the private club shall be sold at retail for personal use, and not for resale, to a person for not less than 300 percent of the private club's cost, and ~~no such~~ the liquor bottle shall ~~not~~ be removed from the licensed premises by any person or the licensee; and

(B) A Class A licensee licensed under §60-8-1 *et seq.* of this code may sell or serve wine by the bottle to two or more persons for consumption on the licensed premises only, unless ~~such~~ the licensee has obtained a license or privilege authorizing other activity;

(7) Sell, furnish, tender, or serve pre-mixed alcoholic liquor that is not in the original container: *Provided*, That a licensee may sell, furnish, tender, and serve up to 15 recipes of pre-mixed beverages consisting of alcoholic liquors; and nonalcoholic mixer, and ice if in a manner approved by the commissioner and in accord with public health and safety standards:

(A) The licensee shall use approved dispensing and storage equipment which shall be cleaned at the end of the day. Failure to clean the dispensing and storage equipment shall result in the immediate suspension or revocation of the permit;

(B) The licensee shall sanitize and clean the pre-mixing beverage storage equipment after each usage or after each batch of the pre-mixed beverage is made;

~~(A) The frozen drink mixing beverage machine is emptied and sanitized daily; and~~

~~(B)(C) That~~ The licensee shall maintain a written record reflecting the cleaning and sanitizing of the storage and dispensing equipment ~~frozen drink machine is maintained~~ for inspection by the commissioner and health inspectors;

(D) A violation or violations this subdivision may result in the suspension or revocation of the permit and may result in additional sanctions under this chapter or §11-16-1 et seq. of this code;

(8) Sell, furnish, tender, or serve any alcoholic liquor when forbidden by the provisions of this chapter;

(9) Sell, possess, possess for sale, tender, serve, furnish, or provide any powdered alcohol;

(10) Keep on the premises covered by his or her license alcoholic liquor other than that which he or she is authorized to sell, furnish, tender, or serve by such license or by this chapter.

A person who violates any provision of this section ~~shall be~~ is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$50 nor more than \$500 or confined in jail not less than 30 days nor more than one year, or both ~~such fine~~ fined and confined ~~confinement~~ for the first offense. Upon conviction of a second or subsequent offense, the court may ~~in its discretion~~ impose a penalty of imprisonment in a state correctional facility for a period not to exceed three years. A person who violates any provision of this section for the second or any subsequent offense under this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a period not to exceed three years.

## **ARTICLE 7. LICENSES TO PRIVATE CLUBS.**

### **§60-7-2. Definitions; authorizations; requirements for certain licenses. ~~power to lease building for establishment of private club.~~**

Unless the context in which used clearly requires a different meaning, as used in this article:

(a) “Applicant” means a private club applying for a license under the provisions of this article.

(b) “Code” means the official Code of West Virginia, 1931, as amended.

(c) “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.

(d) “Licensee” means the holder of a license to operate a private club granted under this article, which ~~license shall~~ remains unexpired, unsuspended, and unrevoked.

(e) “Private club” means any corporation or unincorporated association which either: (1) Belongs to or is affiliated with a nationally recognized fraternal or veterans’ organization which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; ~~or~~ (2) is a nonprofit social club, which is operated exclusively for the benefit of its members, which pays no part of its income to its shareholders or individual members, which owns or leases a building or other premises to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment for serving food to members and their guests; ~~or~~ (3) is organized and operated for legitimate purposes which has at least 100 duly elected or approved dues-paying members in good standing, which owns or leases a building or other premises, including any vessel licensed or approved by any federal agency to carry or accommodate passengers on navigable waters of this state, to which club are admitted only duly elected or approved dues-paying members in good standing of the corporation or association and their guests while in the company of a member and to which club the general public is not admitted, and which club maintains in the building or on the premises a suitable kitchen and dining facility with related equipment and employs a

sufficient number of persons for serving meals to members and their guests; or (4) is organized for legitimate purposes and owns or leases a building or other delimited premises in any state, county, or municipal park or at any airport, in which building or premises a club has been established, to which club are admitted only duly elected and approved dues-paying members in good standing and their guests while in the company of a member and to which club the general public is not admitted, and which maintains in connection with the club a suitable kitchen and dining facility and related equipment and employs a sufficient number of persons for serving meals in the club to the members and their guests.

(f) “Private caterer” means a licensed private club restaurant authorized by the commissioner to cater and serve food and sell and serve alcoholic liquors, or non-intoxicating beer, or non-intoxicating craft beer. A private caterer shall purchase wine sold or served at a catering event from a wine distributor. A private caterer shall purchase non-intoxicating beer and non-intoxicating craft beer sold or served at the catering event from a licensed beer distributor. A private caterer shall purchase liquor from a retail liquor outlet authorized to sell in the market zone, where the catering event is held. The private caterer or the persons or entity holding the catering event shall:

(1) Have at least 10 members and guests attending the catering event;

(2) Have obtained an open container waiver or have otherwise been approved by a municipality or county in which the event is being held;

(3) Operate a private club restaurant on a daily operating basis;

(4) Only use its employees, independent contractors, or volunteers to sell and serve alcoholic liquors who have received certified training in verifying the legal identification, the age of a purchasing person, and the signs of visible, noticeable, and physical intoxication;

(5) Provide to the commissioner, at least 7 days before the event is to take place:

(A) The name and business address of the unlicensed private venue where the private caterer is to provide food and alcohol for a catering event;

(B) The name of the owner or operator of the unlicensed private venue;

(C) A copy of the contract or contracts between the private caterer, the person contracting with the caterer, and the unlicensed private venue;

(D) A floorplan of the unlicensed private venue to comprise the private catering premises, which shall only include spaces in buildings or rooms of an unlicensed private venue where the private caterer has control of the space for a set time period where the space safely accounts for the ingress and egress of the stated members and guests who will be attending the private catering event at the catering premises. The unlicensed private venue's floorplan during the set time period as stated in the contract shall comprise the private caterer's licensed premises, which is authorized for the lawful sale, service, and consumption of alcoholic liquors, nonintoxicating beer and nonintoxicating craft beer, and wine throughout the licensed private catering premises; *Provided*, That the unlicensed private venue shall: (i) Be inside a building or structure, (ii) have other facilities to prepare and serve food and alcohol, (iii) have adequate restrooms, and sufficient building facilities for the number of members and guests expected to attend the private catering event, and (iv) otherwise be in compliance with health, fire, safety, and zoning requirements;

(6) Not hold more than 15 private catering events per calendar year. Upon reaching the 16th event, the unlicensed venue shall obtain its own private club license;

(7) Submit to the commissioner, evidence that any noncontiguous area of an unlicensed venue is within 150 feet of the private caterers submitted floorplan and may submit a floorplan

extension for authorization to permit alcohol and food at an outdoor event;

(8) Meet and be subject to all other private club requirements; and

(9) Use an age verification system approved by the commissioner.

(g) “Private club bar” means an applicant for a private club or licensed private club licensee that has a primary function for the use of the licensed premises as a bar for the sale and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer when licensed for such sales, while providing a limited food menu for members and guests, and meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operates a bar with a kitchen, including at least: (A) A two-burner hot plate, air fryer, or microwave oven; (B) a sink with hot and cold running water; (C) a 17 cubic foot refrigerator or freezer, or some combination of a refrigerator and freezer, which is not used for alcohol cold storage; (D) kitchen utensils and other food consumption apparatus, as determined by the commissioner; and (E) food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, \$500 of food inventory capable of being prepared in the private club bar’s kitchen. In calculating the food inventory, the commissioner shall include television dinners, bags of chips or similar products, microwavable food or meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under the age of 18 who are in the private club bar are accompanied by a parent or legal guardian, and if a person under 18 years of age is not accompanied by a parent or legal guardian that person may not be admitted as a guest; and

(5) Meets and is subject to all other private club requirements.

(h) "Private club restaurant" means an applicant for a private club or licensed private club licensee that has a primary function of using the licensed premises as a restaurant for serving freshly prepared meals and dining in the restaurant area. The private club restaurant may have a bar area separate from or commingled with the restaurant, seating requirements for members and guests must be met by the restaurant area. The applicant for a private club restaurant license shall meet the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Operate a restaurant and full kitchen with at least: (A) Ovens and four-burner ranges; (B) refrigerators or freezers, or some combination of refrigerators and freezers, greater than 50 cubic feet, or a walk-in refrigerator or freezer; (C) other kitchen utensils and apparatus, as determined by the commissioner; and (D) freshly prepared food fit for human consumption available to be served during all hours of operation on the licensed premises;

(3) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private club restaurant's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Uses an age verification system approved by the commissioner for the purpose of verifying that persons under 18 years of age who are in the bar area of a private club restaurant are accompanied by a parent or legal guardian. The licensee may not seat a person in the bar area who is under the age of 18 years and who is not accompanied by a parent or legal guardian, but may allow that person, as a guest, to dine for food and nonalcoholic beverage purposes in the restaurant area of a private club restaurant;

(5) May uncork and serve members and guests up to two bottles of wine that a member purchased from a wine retailer, wine specialty shop, an applicable winery or farm winery when licensed for retail sales, or a licensed wine direct shipper when the purchase is for personal use and, not for resale, The licensee may charge a corkage fee of up to \$10 dollars per bottle. In no event may a member or a group of members and guests exceed two sealed bottles or containers of wine to carry onto the licensed premises for uncorking and serving by the private club restaurant and for personal consumption by the member and guests. A member or guest may cork and reseal any unconsumed wine bottles as provided in §60-8-3(j) of this code and the legislative rules, for carrying unconsumed wine off the licensed premises; and

(6) Must have at least two restrooms for members and their guests: *Provided*, That this requirement may be waived by the local health department upon supplying a written waiver of the requirement to the commissioner: *Provided, however*, That the requirement may also be waived for a historic building by written waiver supplied to commissioner of the requirement from the historic association or district with jurisdiction over a historic building: *Provided, further* That in no event shall a private club restaurant have less than one restroom;

(7) Shall meet and be subject to all other private club requirements.

(i) “Private manufacturer club” means an applicant for a private club or licensed private club licensee which is also licensed as a distillery, mini-distillery, micro-distillery, winery, farm winery, brewery, or resident brewery that manufacturers liquor, wine, nonintoxicating beer, or nonintoxicating craft beer, which may be sold, served, and furnished to members and guests for on-premises consumption at the licensee’s licensed premises and in the area or areas denoted on the licensee’s floorplan, and which meets the criteria set forth in this subsection and which:

(1) Has at least 100 members;

(2) Offers tours, may offer complimentary samples, and may offer space as a conference center or for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer, or some combination of a refrigerator and freezer, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Maintains, at any one time, \$500 of fresh food inventory capable of being prepared in the private manufacturer club's full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least one acre which is contiguous bounded or fenced real property that would be listed on the licensee's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private manufacturer club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors, nonintoxicating beer or nonintoxicating craft beer, and wine throughout the licensed premises, whether these activities were conducted in a building or structure or outdoors while on the private manufacturer club's licensed premises, and as noted on the private manufacturer club's floorplan;

(7) Identifies a person, persons, an entity, or entities who or which has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) Uses an age verification system approved by the commissioner; and

(9) Meets and is subject to all other private club requirements.

~~(f)~~(j) “Private fair and festival” means an applicant for a private club or a licensed private club meeting the requirements of §60-7-8a of this code for a temporary event, and the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Has been sponsored, endorsed, or approved, in writing, by the governing body (or its duly elected or appointed officers) of either the municipality or of the county ~~wherein~~ in which the festival, fair, or other event is to be conducted;

(3) ~~Shall prepare, provide, or engage~~ Prepares, provides, or engages a food ~~eater~~ vendor to provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and further shall provide any documentation or agreements of such to the commissioner prior to approval;

(4) ~~Shall~~ Does not use third-party entities or individuals to purchase, sell, furnish, or serve alcoholic liquors (~~liquor and wine~~), nonintoxicating beer, or nonintoxicating craft beer;

(5) ~~Shall provide~~ Provides adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the festival, fair, or other event;

(6) ~~Shall provide~~ Provides a floorplan for the proposed premises with a defined and bounded area to safely account for the ingress and egress of stated members and guests who will be attending the festival, fair, or other event; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

~~(g)~~(k) “Private hotel” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 2,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 30 separate bedrooms, and also offers a conference center for meetings;

(3) Operates a restaurant and full kitchen with ovens, four-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 20 hours per week;

(4) Maintains, at any one time, \$2,500 of fresh food inventory capable of being prepared in the private hotel's full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to more than one acre but fewer than three acres, which are contiguous acres of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for hotel and conferences and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) ~~Lists in the application referenced in subdivision (5) of this subsection the entire property and all adjoining buildings and structures~~ Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private hotel's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private hotel's licensed premises and as noted on the private hotel's floorplan;

(7) Has an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises; ~~and~~

(8) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(9) Meets and is subject to all other private club requirements.

~~(h)~~(1) “Private resort hotel” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 5,000 members;

(2) Offers short-term, daily rate accommodations or lodging for members and their guests amounting to at least 50 separate bedrooms;

(3) Operates a restaurant and full kitchen with ovens, six-burner ranges, walk-in freezers, and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 25 hours per week;

(4) Maintains, at any one time, \$5,000 of fresh food inventory capable of being prepared in the private resort hotel’s full kitchen, and in calculating the food inventory the commissioner may not include microwavable, frozen, or canned foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 10 contiguous acres of bounded or fenced real property which would be listed on the licensee’s floorplan and would be used for destination, resort, and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private resort hotel’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private resort hotel’s licensed premises and as noted on the private resort hotel’s floorplan;

(7) Has an identified person, ~~or~~ persons, or entity that has right, title, and ownership or lease interest in the real property, buildings, and structures located on the proposed licensed premises;

(8) ~~Utilizes~~ Uses an age verification system approved by the commissioner; ~~and~~

(9) Meets and is subject to all other private club requirements;  
and

~~(9)~~(10) May have a separately licensed resident brewer with a brewpub license inner-connected via a walkway, doorway, or entryway, all as determined and approved by the commissioner, for limited access during permitted hours of operation for tours and complimentary samples at the resident brewery.

~~(i)~~(m) “Private golf club” means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least one 18-hole golf course with separate and distinct golf playing holes, not reusing nine golf playing holes to comprise the 18 golf playing holes, and a clubhouse;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property which would be listed on the private golf club’s floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private golf club’s floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and

consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private golf club's licensed premises and as noted on the private golf club's floorplan;

(6) Has an identified person, ~~or~~ persons, or entity that has right, title, and ownership interest in the real property, buildings, and structures located on the proposed licensed premises; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

~~(j)~~(n) "Private nine-hole golf course" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 50 members;

(2) Maintains at least one nine-hole golf course with separate and distinct golf playing holes;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and serves freshly prepared food at least 15 hours per week;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least 30 contiguous acres of bounded or fenced real property which would be listed on the private nine-hole golf course's floorplan and could be used for golfing events and large contracted for group-type events such as weddings, reunions, conferences, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private nine-hole golf course's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private nine-hole golf

course's licensed premises and as noted on the private nine-hole golf course's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises; ~~and~~

(7) ~~Utilizes~~ Uses an age verification system approved by the commissioner; and

(8) Meets and is subject to all other private club requirements.

(o) "Private tennis club" means an applicant for a private club or licensed private club licensee meeting the criteria set forth in this subsection which:

(1) Has at least 100 members;

(2) Maintains at least four separate and distinct tennis courts, either indoor or outdoor, and a clubhouse or similar facility;

(3) Has a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property which would be listed on the private tennis club's floorplan and could be used for tennis events and large events such as weddings, reunions, conferences, tournaments, meetings, and sporting or recreational events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private tennis club's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private tennis club's licensed premises and as noted on the private tennis club's floorplan;

(6) Has identified a person, persons, an entity, or entities who or which has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meets and is subject to all other private club requirements; and

(8) Uses an age verification system approved by the commissioner.

(p) “Private professional sports stadium “ means an applicant for a private club or licensed private club licensee that is only open for professional sporting events when such events are affiliated with or sponsored by a professional sporting association, reserved weddings, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant. The licensee may not sell alcoholic liquors when conducting or hosting non-professional sporting events, and further the applicant shall:

(1) Have at least 1000 members;

(2) Maintain an open air or closed air stadium venue primarily used for sporting events, such as football, baseball, soccer, auto racing, or other professional sports, and also weddings, reunions, conferences, meetings, or other events where parties must reserve the stadium venue in advance of the event;

(3) Operate a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium;

(4) Own or lease, control, operate, and use acreage amounting to at least 3 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the professional sports stadium’s floorplan and could be used for contracted for professional sporting events, group-type weddings, reunions, conferences, meetings, or other events;

(5) List the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private professional sports stadium's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private professional sports stadium's licensed premises and as noted on the private professional sports stadium's floorplan;

(6) Have an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meet and be subject to all other private club requirements; and

(8) Use an age verification system approved by the commissioner.

(q) "Private farmers market" means an applicant for a private club or licensed private club licensee that operates as an association of bars, restaurants, retailers who sell West Virginia made products among other products, and other stores who open primarily during daytime hours of 6 a.m. to 6 p.m., but may operate in the day or evenings for special events where the sale of food and alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer may occur for on-premises consumption, such as reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events and does not maintain daily or regular operating hours as a bar or restaurant, and all business that are members of the association have agreed in writing to be liable and responsible for all sales, service, furnishing, tendering and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer occurring on the entire licensed premises of the private farmer's market, including indoor and outdoor bounded areas, and further the applicant shall:

(1) Have at least 100 members;

(2) Have one or more members operating a private club restaurant and full kitchen with ovens, four-burner ranges, a refrigerator, or freezer (or some combination of the two), and other kitchen utensils and apparatus as determined by the commissioner on the licensed premises and serves freshly prepared food at least 15 hours per week;

(3) Have one or more members operating who maintain, at any one time, \$1,000 of fresh food inventory capable of being prepared for events conducted at the private farmers market in the private club restaurant's full kitchen, and in calculating the food inventory the commissioner may not include television dinners, bags of chips or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(4) Have an association that owns or leases, controls, operates, and uses acreage amounting to more than one acre, which is contiguous acreage of bounded or fenced real property which would be listed on the licensee's floorplan and would be used for large contracted for reserved weddings, reserved dinners, pairing events, tasting events, reunions, conferences, meetings, or other special events;

(5) Have an association that lists in the application for licensure the entire property and all adjoining buildings and structures on the private farmers market's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private farmers market's licensed premises and as noted on the private farmers market's floorplan;

(6) Have an identified person, persons, or entity that has right, title, and ownership or lease interest in the real property buildings and structures located on the proposed licensed premises;

(7) Have at least two separate and unrelated vendors applying for the license and certifying that all vendors in the association

have agreed to the liability, responsibility associated with a private farmers market license;

(8) Not use third-party entities or individuals to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private farmers market;

(10) Provide a copy of a written agreement between all the vendors of the association that is executed by all vendors stating that each vendor is jointly and severally liable for any violations of this chapter committed during the event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members, patrons, and guests ages, whether a member, patron, or guest is intoxicated and to provide for the public health and safety of members, patrons, and guests;

(12) Use an age verification system approved by the commissioner; and

(13) Meet and be subject to all other private club requirements.

(r) “Private wedding venue or barn” means an applicant for a private club or licensed private club licensee that is only open for reserved weddings, reunions, conferences, meetings, or other events and does not maintain daily or regular operating hours, and which:

(1) Has at least 25 members;

(2) Maintains a venue, facility, barn, or pavilion primarily used for weddings, reunions, conferences, meetings, or other events where parties must reserve or contract for the venue, facility, barn, or pavilion in advance of the event;

(3) Operates a restaurant and full kitchen with ovens, as determined by the commissioner, on the licensed premises and is capable of serving freshly prepared food, or may engage a food caterer to provide adequate freshly prepared food or meals to serve its stated members, guests, and patrons who will be attending the event at the private wedding venue or barn. The applicant or licensee shall provide written documentation including a list of food caterers or written agreements regarding any food catering operations to the commissioner prior to approval of a food catering event;

(4) Owns or leases, controls, operates, and uses acreage amounting to at least two contiguous acres of bounded or fenced real property. The applicant or licensee shall verify that, the property is less than two acres and is remotely located, subject to the commissioner's approval. The bounded or fenced real property may be listed on the private wedding venue's floorplan and may be used for large events such as weddings, reunions, conferences, meetings, or other events;

(5) Lists the entire property from subdivision (4) of this subsection and all adjoining buildings and structures on the private wedding venue or barn's floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private wedding venue or barn's licensed premises and as noted on the private wedding venue or barn's floorplan;

(6) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(7) Meets and is subject to all other private club requirements; and

(8) Uses an age verification system approved by the commissioner.

(s) “Private multi-sport complex” means an applicant for a private club or licensed private club licensee that is open for multiple sports events to be played at the complex facilities, reserved weddings, concerts, reunions, conferences, meetings, or other special events, and which:

(1) Has at least 100 members;

(2) Maintains an open air multi-sport complex primarily for use for sporting events, such as baseball, soccer, basketball, tennis, frisbee, quidditch, or other sports, but may also conduct weddings, concerts, reunions, conferences, meetings, or other events where parties must reserve the parts of the sports complex in advance of the sporting or other event;

(3) Operates a restaurant and full kitchen with ovens in the licensee’s main facility, as determined by the commissioner, on the licensed premises and capable of serving freshly prepared food, or meals to serve its stated members, guests, and patrons who will be attending the event at the private professional sports stadium. A licensee may contract with temporary food vendors or food trucks for food sales only, but not on a permanent basis, in areas of the multi-sport complex not readily accessible by the main facility;

(4) Maintains, at any one time, \$1,000 of fresh food inventory capable of being prepared in the private multi-sport complex’s full kitchen. In calculating the food inventory, the commissioner may not include television dinners, bags of chips, or similar products, microwavable meals, frozen meals, prepackaged foods, or canned prepared foods;

(5) Owns or leases, controls, operates, and uses acreage amounting to at least 80 contiguous acres of bounded or fenced real property, as determined by the commissioner, which would be listed on the private multi-sport complex’s floorplan and could be used for contracted for sporting events, group-type weddings, concerts, reunions, conferences, meetings, or other events;

(6) Lists the entire property from subdivision (5) of this subsection and all adjoining buildings and structures on the private

multi-sport complex's floorplan which would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of alcoholic liquors throughout the licensed premises whether these activities were conducted in a building or structure or outdoors while on the private multi-sport complex's licensed premises and as noted on the private multi-sport complex's floorplan. The licensee may sell alcoholic liquors from a golf cart or food truck owned or leased by the licensee and also operated by the licensee when the golf cart or food truck is located on the private multi-sport complex's licensed premises;

(7) Has an identified person, persons, or entity that has right, title, and ownership interest in the real property buildings and structures located on the proposed licensed premises;

(8) Meets and is subject to all other private club requirements; and

(9) Uses an age verification system approved by the commissioner.

The Department of Natural Resources, the authority governing any county or municipal park, or any county commission, municipality, other governmental entity, public corporation, or public authority operating any park or airport may lease, as lessor, a building or portion thereof or other limited premises in any such park or airport to any corporation or unincorporated association for the establishment of a private club pursuant to this article.

#### **§60-7-6. Annual license fee; partial fee; and reactivation fee.**

(a) The annual license fee for a license issued under the provisions of this article to a fraternal or veterans' organization or a nonprofit social club ~~shall be~~ is \$750.

(b) The annual license fee for a license issued under the provisions of this article to a private club other than a private club of the type specified in subsection (a) of this section ~~shall be~~ is \$1,000 if the private club bar or restaurant has fewer than 1,000 members; \$1,000 for a private club restaurant to be licensed as a private caterer as defined in §60-7-2 of this code; \$1,500 if the

private club is a private wedding venue or barn; \$2,000 if the private club is a private nine-hole golf course, private farmers market, private professional sports stadium, private multi-sport complex, private manufacturer club, or a private tennis club as defined in §60-7-2 of this code; \$2,500 if the private club bar or private club restaurant has 1,000 or more members; \$4,000 if the private club is a private hotel with three or fewer designated areas or a private golf club as defined in §60-7-2 of this code; and further, if the private club is a private resort hotel as defined in §60-7-2 of this code, ~~said~~ the private resort hotel may designate areas within the licensed premises for the lawful sale, service, and consumption of alcoholic liquors as provided for by this article. The annual license fee for a private resort hotel with five or fewer designated areas ~~shall be~~ is \$7,500 and the annual license fee for a private resort hotel with at least six, but no more than 10 designated areas ~~shall be~~ is \$12,500. The annual license fee for a private resort hotel with at least 11, but no more than 15 designated areas shall be \$17,500 . The annual license fee for a private resort hotel with no fewer than 15 nor more than 20 designated areas ~~shall be~~ is \$22,500. ~~Provided, That a~~ A private resort hotel ~~having that~~ obtained the license and paid the \$22,500 annual license fee may, upon application to and approval of the commissioner, designate additional areas for a period not to exceed seven days for an additional fee of \$150 per day, per designated area.

(c) The fee for any ~~such~~ license issued following January 1 of any year ~~and to expire that expires~~ on June 30 of ~~such that~~ year ~~shall be~~ is one half of the annual license fee prescribed by subsections (a) and (b) of this section.

(d) A licensee that fails to complete a renewal application and make payment of its annual license fee in renewing its license on or before June 30 of any subsequent year, after initial application, shall be charged an additional \$150 reactivation fee. The fee payment may not be prorated or refunded, and the reactivation fee ~~must~~ shall be paid prior to the processing of any renewal application and payment of the applicable full year annual license fee. A licensee who continues to operate upon the expiration of its license is subject to all fines, penalties, and sanctions available in

§60-7-13 and §60-7-13a of this code, all as determined by the commissioner.

(e) ~~All such fees shall be paid by the~~ The commissioner shall pay the fees to the State Treasurer and credited to the General Revenue Fund of the state.

(f)(1) The Legislature finds that the hospitality industry has been particularly damaged by the Covid-19 pandemic and that some assistance is warranted to promote reopening and continued operation of private clubs and restaurants licensed under this article.

(2) Accordingly, the fees set forth in subsections (a) and (b) of this section are temporarily modified as follows:

(A) License fees for the license period beginning July 1, 2021, shall be reduced to one-third of the rate set forth in subsections (a) and (b) of this section;

(B) License fees for the license period beginning July 1, 2022, shall be two-thirds of the rate set forth in subsections (a) and (b) of this section; and

(C) License fees for the license period beginning July 1, 2023, shall be as set forth in subsections (a) and (b) of this section.

**§60-7-8b. One-day charitable rare, antique, or vintage liquor auction; licensee fee and application; license subject to provisions of article; exceptions.**

(a) The commissioner may issue a special one-day, license to a licensed private club in partnership with one or more duly organized, federally approved nonprofit corporations, associations, organizations, or entities allowing the nonprofit to conduct a charitable auction of certain sealed bottles of rare, antique, or vintage liquor, as determined by the commissioner, on the private club licensee's licensed premises for off-premises consumption only, when raising money for athletic, charitable, educational, scientific, or religious purposes. A licensed private club may not receive more than 12 licenses under this section per year.

(b) “Auction or auctioning”, for the purposes of this section, means any silent, physical act, or verbal bid auction, where the auction requires in-person bidding at a licensed private club or online internet-based auction bidding, with bidders present at the licensed private club during the nonprofit auction, through a secure internet-based application or website.

(c) Requirements.-

(1) The licensed private club and nonprofit shall jointly complete an application, at least 15 days prior to the event. The application may require, but is not limited to, information relating to the date, time, place, floorplan of the charitable event, and any other information as the commissioner may require. The applicants shall include with the application a written signed and notarized statement that at least 80 percent of the net proceeds from the charitable event will be donated directly to the nonprofit. The commissioner may audit the licensed private club and nonprofit to verify the 80 percent requirement has been met.

(2) The licensed private club and nonprofit must be in good standing with the commissioner, and the applicants must receive the commissioner’s approval prior to the charitable event.

(3) The licensed private club and nonprofit shall submit, and the commissioner shall review, the applicants’ list of rare, antique, or vintage liquor, and the applicants shall submit documentation showing that the liquor was purchased from a licensed retail outlet in accordance with §60-3A-1 *et seq.* of this code with all taxes and fees paid. Any rare, antique, or vintage liquor with no documentation or that was not purchased in accordance with §60-3A-1 *et seq.* of this code, may be approved for auction, if all taxes and fees are paid to the commissioner in accordance with §60-3A-1 *et seq.* of this code. Any undocumented rare, antique, or vintage liquor approved for charitable auction by the commissioner must be labeled in the interest of public health and safety: “Purchase and consume at your own risk, as the authenticity or source of manufacture of this bottle has not been verified”.

(4) The private club and nonprofit may not deliver, mail, or ship sealed or unsealed rare, antique, or vintage liquor bottles.

(5) The winning bidder of the auctioned rare, antique, or vintage liquor shall pay and receive the sealed rare, antique, or vintage liquor bottle before the conclusion of the event.

(6) The applicants shall pay a \$150 nonrefundable and nonprorated fee for the license.

(d) *Exceptions.*-

(1) The nonprofit's charitable auctioning of sealed rare, antique, or vintage liquor bottles, as determined by the commissioner, is permitted on the private club's licensed premises, notwithstanding the bingo, raffle, and lottery provisions of §47-20-10, §47-21-11, and §61-10-1 *et seq.* of this code, but in compliance with the auction requirements of §19-2c-1 *et seq.* of this code;

(2) The nonprofit, upon licensure by this section, is permitted a limited, one-time exception of the requirement to be a licensed retail outlet and hold a retail license issued pursuant to §60-3A-1 *et seq.* of this code to sell liquor; and

(3) The private club, upon licensure by this section, is provided a limited, one-time exception from §60-7-12(a)(1) and §60-6-8(6) of this code, in order to permit the licensed nonprofit to sell at auction the sealed rare, antique, or vintage liquor bottles for off-premises consumption, to permit the carrying onto, the sale of, and the carrying off of the licensed premises the approved sealed liquor bottles. Any private club or nonprofit licensed pursuant to this code section are subject to all penalties for violations committed under §60-3A-1 *et seq.* of this code and §60-7-1 *et seq.* of this code.

**§60-7-8c. Special license for a multi-vendor private fair and festival; license fee and application; license subject to provisions of article; exception.**

(a) There is hereby created a special license designated Class S3 private multivendor fair and festival license for the retail sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer

for on-premises consumption at an event where multiple vendors shall share liability and responsibility, and apply for this license. Each vendor may temporarily purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, and nonintoxicating craft beer as provided in this section.

(b) To be eligible for the license authorized by subsection (a) of this section, the private multivendor fair and festival or other event shall:

(1) Be sponsored, endorsed, or approved by the governing body or its designee of the county or municipality in which the private multivendor fair and festival or other event is located;

(2) Jointly apply to the commissioner for the special license at least 15 days prior to the private fair, festival, or other event;

(3) Pay a nonrefundable nonprorated license fee of \$500 per event that may be divided among all the vendors attending the event;

(4) Be approved by the commissioner to operate the private multivendor fair, festival, or other event;

(5) Be limited to no more than 15 consecutive days;

(6) Have at least two separate and unrelated vendors applying for the license and certifying that at least 100 members will be in attendance;

(7) Freshly prepare and provide food or meals, or engage a food vendor to prepare and provide adequate freshly prepared food or meals to serve its stated members and guests who will be attending the temporary festival, fair, or other event, and provide any written documentation or agreements of the food caterer to the commissioner prior to approval of the license;

(8) Not use third-party entities or individuals to purchase, sell, furnish, or serve liquor, wine, nonintoxicating beer, or nonintoxicating craft beer;

(9) Provide adequate restroom facilities, whether permanent or portable, to serve the stated members and guests who will be attending the private multi-vendor festival, fair, or other event;

(10) Provide an executed agreement between the vendors and/or food caterers stating that each vendor is jointly and severally liable for any improper acts or conduct committed during the multi-vendor festival or fair event;

(11) Provide a security plan indicating all vendor points of service, entrances, and exits in order to verify members', patrons', and guests' ages, and whether a member, patron, or guest is intoxicated, to provide for the public health and safety of members, patrons, and guests;

(12) Provide a floorplan for the proposed premises with one defined and bounded indoor and/or outdoor area to safely account for the ingress and egress of stated members, patrons, and guests who will be attending the festival, fair, or other event, and the floorplan that would comprise the licensed premises, which would be authorized for the lawful sales, service, and consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer throughout the licensed premises whether these activities were conducted in a building or structure, or outdoors while on the licensed premises and as noted on the floorplan;

(13) Meet and be subject to all other private club requirements; and

(14) Use an age verification system approved by the commissioner.

(c) Nonintoxicating beer and nonintoxicating craft beer sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from the licensed distributor that services the area in which the private multi-vendor fair and festival will be held or from a resident brewer acting in a limited capacity as a distributor, in accordance with §11-16-1 *et seq.* of this code.

(d) Wine sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed

distributor, winery, or farm winery in accordance with §60-8-1 et seq. of this code.

(e) Liquor sold, furnished, tendered, or served pursuant to the license created by this section shall be purchased from a licensed retail liquor outlet in the market zone or contiguous market zone where the private multi-vendor fair or festival will be held, all in accordance with §60-3A-1 et seq. of this code.

(f) A licensee authorized by this section may use bona fide employees, independent contractors, or volunteers to sell, furnish, tender, or serve the liquor, wine, nonintoxicating beer, or nonintoxicating craft beer; *Provided*, That The licensee shall train all employees, independent contractors, or volunteers to verify legal identification and to verify signs of intoxication.

(g) Licensed representatives of a brewer, resident brewer, beer distributor, wine distributor, wine supplier, winery, farm winery, distillery, mini-distillery, micro-distillery, and liquor brokers may attend a private multi-vendor festival or fair and discuss their respective products but may not engage in the selling, furnishing, tendering, or serving of any liquor, wine, nonintoxicating beer, or nonintoxicating craft beer.

(h) A licensee licensed under this section is subject to all other provisions of this article and the rules and orders of the commissioner: *Provided*, That the commissioner may, by rule or order, allow certain waivers or exceptions with respect to those provisions, rules, or orders as required by the circumstances of each private multi-vendor fair and festival. The commissioner may revoke or suspend immediately any license issued under this section prior to any notice or hearing, notwithstanding §60-7-13a of this code: *Provided, however*, That under no circumstances may the provisions of §60-7-12 of this code be waived or an exception granted with respect thereto.

**§60-7-8d. Where private clubs may sell and serve alcoholic liquors and nonintoxicating beer or nonintoxicating craft beer.**

(a) Any private club licensee, in good standing with the commissioner, may apply, on a form provided by the

commissioner, to sell, serve, and furnish alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, for on-premises consumption from a temporary area, legally demarcated, that would permit sales of alcoholic liquors or nonintoxicating beer or nonintoxicating craft beer in a private outdoor dining area or private outdoor street dining area, as legally demarcated by any municipal council or county commission.

(b) The private club licensee shall submit to the commissioner: (1) the municipal or county approval of the private outdoor dining area or private outdoor street dining area; and, (2) a revised floorplan requesting to sell alcoholic liquors, and when licensed for nonintoxicating beer or nonintoxicating craft beer, then nonintoxicating beer or nonintoxicating craft beer, subject to the commissioner's requirements, in an approved and bounded outdoor area that must be adjacent to the licensee's licensed premises for private outdoor dining under the licensee's control and with right of ingress and egress. The approved and bounded area need not be adjacent to the licensee's licensed premises, but in close proximity, for private outdoor street dining. For purposes of this subsection, "close proximity" means an available area within 150 feet of a licensee's licensed premises and under the licensee's control and with right of ingress and egress.

(c) This private outdoor dining or private outdoor street dining may be operated in conjunction with a private wine outdoor dining or private wine outdoor street dining area set forth in §60-8-32a of this code and nonintoxicating beer or nonintoxicating craft beer outdoor dining or outdoor street dining set forth in §11-16-9 of this code.

(d) For purposes of this section, private outdoor dining and private outdoor street dining include dining areas that are:

(1) Outside and not served by an HVAC system for air handling services and use outside air;

(2) Open to the air; and

(3) Not enclosed by fixed or temporary walls; however, the commissioner may seasonally approve a partial enclosure with up to three temporary or fixed walls.

Any area where seating is incorporated inside a permanent building with ambient air through HVAC is not considered outdoor dining pursuant to this subsection.

(e) A private club restaurant or a private manufacturer club licensed for craft cocktail growler sales must provide food or a meal along with sealed craft cocktail growler sales as set forth in this article to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly, or noticeably intoxicated, and as otherwise specified in this article.

**§60-7-8e. Private club restaurant or private manufacturer club licensee's authority to sell craft cocktail growlers.**

(a) *Legislative findings.* — The Legislature hereby finds that it is in the public interest to regulate, control, and support the brewing, manufacturing, distribution, sale, consumption, transportation, and storage of liquor and its industry in this state to protect the public health, welfare, and safety of the citizens of this state and promote hospitality and tourism. Therefore, this section authorizes a licensed private club restaurant or private manufacturer club, to have certain abilities to promote the sale of liquor manufactured in this state for the benefit of the citizens of this state, the state's growing distilling industry, and the state's hospitality and tourism industry, all of which are vital components for the state's economy.

(b) *Sales of craft cocktail growlers.* — A licensed private club restaurant or private manufacturer club is authorized under a current and valid license and meets the requirements of this section may offer a craft cocktail growler in the ratio of up to one fluid ounce of liquor to four fluid ounces of nonalcoholic beverages or mixers, not to exceed 128 fluid ounces for the entire beverage in the craft cocktail growler, for retail sale to patrons from their

licensed premises in a sealed craft cocktail growler for personal consumption only off of the licensed premises. Prior to the sale, the licensee shall verify in-person, using proper identification, that any patron purchasing the craft cocktail growler is 21 years of age or older and that the patron is not visibly or noticeably intoxicated. There shall be a \$100 non-prorated, non-refundable annual fee to sell craft cocktail growlers.

(c) *Retail sales.* — Every licensee licensed under this section shall comply with all the provisions of this chapter as applicable to retail sale of liquor at retail liquor outlets, comply with markup specified in §60-3A-17(e)(2) of this code when conducting sealed craft cocktail growler sales, and shall be subject to all applicable requirements and penalties in this article.

(d) *Payment of taxes.* — Every licensee licensed under this section shall pay all sales taxes required of retail liquor outlets, in addition to any other taxes required, and meet any applicable licensing provisions as required by this chapter and by rule of the commissioner.

(e) *Advertising.* — Every licensee licensed under this section may only advertise a particular brand or brands of liquor manufactured by a distillery, mini-distillery, or micro-distillery upon written approval from the distillery, mini-distillery, micro-distillery, or an authorized and licensed broker to the licensee. Advertisements may not encourage intemperance or target minors.

(f) *Craft cocktail growler defined.* — For purposes of this chapter, “Craft Cocktail Growler” means a container or jug that is made of glass, ceramic, metal, plastic, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premises sales only of liquor and a nonalcoholic mixer or beverage for personal consumption not on a licensed premise. Notwithstanding any other provision of this code to the contrary, a securely sealed craft cocktail growler is not an open container under state and local law. A craft cocktail growler with a broken seal is an open container under state and local law unless it is located in an area of

the motor vehicle physically separated from the passenger compartment. A craft cocktail growler is not an original container of liquor, but once sanitized, filled, properly sealed, and sold, all as set forth in this article, is a sealed container.

(h) *Craft cocktail growler requirements.* — A licensee licensed under this section must prevent patrons from accessing the secure area where the filling of the craft cocktail occurs or to fill a craft cocktail growler. A licensee licensed under this section must sanitize, fill, securely seal, and label any craft cocktail growler prior to its sale. A licensee licensed under this section may refill a craft cocktail growler subject to the requirements of this section. A licensee licensed under this section shall visually inspect any craft cocktail growler before filling or refilling it. A licensee licensed under this section may not fill or refill any craft cocktail growler that appears to be cracked, broken, unsafe, or otherwise unfit to serve as a sealed beverage container. For purpose of this article, a secure sealing means using a tamper-evident seal, such as: (1) A plastic heat shrink wrap band, strip, or sleeve extending around the cap or lid of craft cocktail growler to form a seal that must be broken when the container is opened; or (2) A screw top cap or lid that breaks apart when the craft cocktail growler is opened.

(i) *Craft cocktail growler labeling.* — A licensee licensed under this section selling craft cocktail growlers shall affix a conspicuous label on all sold and securely sealed craft cocktail growlers listing the name of the licensee selling the craft cocktail growler, the brand of the liquor in the craft cocktail growler, the type of craft cocktail or name of the craft cocktail, the alcohol content by volume of the liquor in the craft cocktail growler, and the date the craft cocktail growler was filled or refilled, and, all labeling on the craft cocktail growler shall be consistent with all federal labeling and warning requirements.

(j) *Craft cocktail growler sanitation.* — A licensee licensed under this section shall clean and sanitize all craft cocktail growlers he or she fills or refills in accordance with all state and county health requirements prior to its sealing. In addition, the licensee licensed under this section shall sanitize, in accordance with all state and county health requirements, all taps, tap lines, pipe lines,

barrel tubes, and any other related equipment used to fill or refill craft cocktail growlers. Failure to comply with this subsection may result in penalties under this article; Provided that, if the reuse or refilling of a craft cocktail growler would violate federal law, then, notwithstanding the provisions of this section to the contrary, such craft cocktail growler must only be used one-time, for one filling, and be discarded after the one-time use.

(k) *Pre-mixing of craft cocktail.* - A licensee licensed under this section may pre-mix the nonalcoholic beverages or mixers in the advance of a craft cocktail growler purchase and sealing, and add the liquor, as set forth in this section, upon a member or guest's purchase of a craft cocktail growler. A licensee licensed under this section must dispose of any expired premixed nonalcoholic beverages or mixers pursuant to Bureau for Public Health requirements when such premixed nonalcoholic beverages or mixers are no longer fit for human consumption. A licensee authorized under §60-6-8(7) may use a premixed beverage meeting the requirements therein and is also subject to the requirements of this section for a craft cocktail growler.

(l) *Limitations on licensees.* — A licensee licensed under this section shall not sell craft cocktail growlers to other licensees, but only to its members and guests. A licensee licensed under this section must provide food or a meal along with one sealed craft cocktail growler to a patron who is in-person or in-vehicle while picking up food or a meal, and a sealed craft cocktail growler order-to-go, subject to verification that the purchasing person is 21 years of age or older, and not visibly or noticeably intoxicated, and as otherwise specified in this article. A licensee licensed under this section may only sell one sealed craft cocktail growler to a patron who has not been consuming alcoholic liquors or nonintoxicating beer on its licensed premises or one craft cocktail growler per food or meal in the order delivered per §60-7-8f of this code. A licensee licensed under this section shall be subject to the applicable penalties under this article for violations of this article.

(m) *Rules.* — The commissioner, in consultation with the Bureau for Public Health, is authorized to propose rules concerning

sanitation for legislative approval, pursuant to §29A-3-1 et seq. of this code, to implement the purposes of this section.

**§60-7-8f. Private delivery license for a licensed private club restaurant, private manufacturer club, or a third party; requirements; limitations; third party license fee; private cocktail delivery permit; and requirements.**

(a) A licensed private club restaurant or private manufacturer club licensed to sell liquor for on-premises consumption may apply for a private delivery license permitting the order, sale, and delivery of liquor and a nonalcoholic mixer or beverage in a sealed craft cocktail growler, when separately licensed for craft cocktail growler sales. The order, sale, and delivery of a sealed craft cocktail growler is permitted for off-premises consumption when completed by the licensee to a person purchasing the craft cocktail growler through a telephone, a mobile ordering application, or a web-based software program, authorized by the licensee's license. There is no additional fee for a licensed private club restaurant or private manufacturer club to obtain a private delivery license. The order, sale, and delivery process shall meet the requirements of this section. The order, sale, and delivery process is subject to the penalties of this article.

(b) A third party, not licensed for liquor sales or distribution, may apply for a private delivery license for the privilege of ordering and delivery of craft cocktail growlers, from a licensee with a craft cocktail growler license. The order and delivery of a sealed craft cocktail growler is permitted by a third party who obtains a license under this section when a private club restaurant or private manufacturer club sells to a person purchasing the sealed craft cocktail growler through telephone orders, a mobile ordering application, or a web-based software program. The private delivery license nonprorated, nonrefundable annual fee is \$200 for each third party entity, with no limit on the number of drivers and vehicles.

(c) The private delivery license application shall comply with licensure requirements in this article and shall require any information required by the commissioner; *Provided*, That the

license application may not require a third party applicant to furnish information pursuant to §60-7-12 of this code.

(d) Sale Requirements. -

(1) The craft cocktail growler purchase shall accompany the purchase of prepared food or a meal and the completion of the sale may be accomplished by the delivery of the prepared food or a meal, and craft cocktail growler by the licensee or third party private delivery licensee;

(2) Any purchasing person's shall be 21 years of age or older, shall not be visibly or noticeably intoxicated at the time of delivery, and shall meet the requirements set forth in this chapter for the sale of alcoholic liquors and as set forth in §11-16-1 et seq. of the code for nonintoxicating beer or nonintoxicating craft beer.

(3) "Prepared food or a meal" for this article, means food that has been cooked, grilled, fried, deep-fried, air-fried, smoked, boiled, broiled, twice baked, blanched, sautéed, or in any other manner freshly made and prepared, and does not include pre-packaged food from the manufacturer.

(4) An order, sale, and delivery may consist of multiple sealed craft cocktail growlers for each order of food or meal; *Provided*, That the entire delivery order may not contain any combination of craft cocktail growlers of more than 128 fluid ounces total; and

(5) A third party private delivery licensee shall not have a pecuniary interest in a private club restaurant or private manufacturer club licensee, as set forth in this article. A third party private delivery licensee may only charge a convenience fee for the delivery of any alcohol. The third party private delivery licensee may not collect a percentage of the delivery order for the delivery of alcohol, but may continue to collect a percentage of the delivery order directly related to the prepared food or a meal. The convenience fee charged by the third-party private delivery licensee to the purchasing person shall be no greater than five dollars per delivery order where a craft cocktail growler is ordered by the purchasing person. For any third party licensee also licensed

for wine growler delivery as set forth in §60-8-6c of the code, or nonintoxicating beer or nonintoxicating craft beer growler delivery as set forth in §11-16-6d of the code, the total convenience fee of any order, sale, and delivery of a sealed growler, wine growler, or craft cocktail growler shall not exceed five dollars.

(e) *Craft Cocktail Growler Delivery Requirements.* -

(1) Delivery persons employed for the delivery of a sealed craft cocktail growler shall be 21 years of age or older. The licensee shall file each delivery person's name, driver's license, and vehicle information with the commissioner;

(2) The licensee shall train delivery persons on verifying legal identification and in identifying the signs of intoxication. The licensee shall submit certification of the training to the commissioner;

(3) The third party delivery licensee or the private club restaurant or private manufacturing club shall hold a private cocktail delivery permit for each vehicle delivering a craft cocktail growler pursuant to subsection (g) of this section: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(4) Prepared food or a meal, and a sealed craft cocktail growler order delivered by a third party private delivery licensee, a private club restaurant, or private manufacturer club may occur in the county or contiguous counties where the licensed private club restaurant or private manufacturer club is located;

(5) The licensee may only deliver prepared food or a meal, and a sealed craft cocktail growler to addresses located in West Virginia. The licensee shall account for and pay all sales and municipal taxes;

(6) The licensee may not deliver prepared food or a meal, and a sealed craft cocktail growler to any other licensee;

(7) Deliveries of prepared food or a meal, and a sealed craft cocktail growler are only for personal use, and not for resale; and

(8) The licensee shall not deliver and leave the prepared food or a meal, and a sealed craft cocktail growler at any address without verifying a person's age and identification as required by this section.

(f) Telephone, mobile ordering application, or web-based software requirements. -

(1) The delivery person may only permit the person who placed the order through telephone order, a mobile ordering application, or web-based software to accept the prepared food or meal and a craft cocktail growler delivery, subject to verification upon delivery with the delivery person's visual reviewing, verifying, and collecting a stored scanned image, of the purchasing person's legal identification;

(2) Any mobile ordering application or web-based software used shall create a stored record and image of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(3) Any telephone ordering system shall maintain a log or record of the purchasing person's legal identification and details of the sale, accessible by the delivery driver for verification, and shall include the delivery driver's name and vehicle information;

(4) All records are subject to inspection by the commissioner. The licensee shall retain records for three years, and may not unreasonably withhold the records from the commissioner's inspection; and

(5) The third party private delivery licensee or the private club restaurant or private manufacturing club shall hold a valid private cocktail delivery permit under subsection (g) of this section for each vehicle used for delivery: *Provided*, That a delivery driver may retain an electronic copy of his or her permit as proof of licensure.

(g) Private Cocktail Delivery Permit. -

(1) Each private delivery vehicle, whose driver is 21 years of age or older, shall have a permit for the delivery of the prepared food or a meal, and a sealed craft cocktail growler, subject to the requirements of this article.

(2) A third party private delivery licensee, a private club restaurant, or private manufacturer club licensee shall provide vehicle and driver information, requested by the commissioner. Upon any change in vehicles or drivers, the licensee shall update the driver and vehicle information with the commissioner as soon as possible.

(3) In conjunction with §60-6-12 of this code, a private cocktail delivery permit shall meet the requirements of a transportation permit authorizing the permit holder to transport liquor subject to the requirements of this chapter.

(h) *Enforcement.* -

(1) The third party private delivery licensee, the private club restaurant, or the private manufacturers club licensed by this section are responsible for any violations committed by their employees or independent contractors under this article, and more than one violation may be issued for a single violation involving multiple licensees, employees, or independent contractors.

(2) Any license or permit granted by this section is subject to the penalties of probation, monetary fines, suspension, and revocation, as set forth in this article, for violations committed by the licensee, its employees, or independent contractors.

(3) It is a violation for any licensee, its employees, or independent contractors to break the seal of a craft cocktail growler. The licensees in violation are subject to the maximum penalties available in this article.

(4) For purposes of criminal enforcement of the provisions of this article, persons ordering, purchasing, and accepting delivery of orders are considered to be purchasers.

**§60-7-12. Certain acts of licensee prohibited; criminal penalties.**

(a) It is unlawful for any licensee, or agent, employee or member thereof, on such licensee's premises to:

(1) Sell, offer for sale, tender, or serve any alcoholic liquors other than by the drink poured from the original package or container, except as authorized in §60-6-8 of this code;

(2) Authorize or permit any disturbance of the peace, obscene, lewd, immoral, or improper entertainment, conduct, or practice, gambling or any slot machine, multiple coin console machine, multiple coin console slot machine, or device in the nature of a slot machine; however, various games, gaming, and wagering conducted by duly licensed persons of the West Virginia State Lottery Commission, charitable bingo games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-20-1 et seq. of this code, and charitable raffle games conducted by a duly licensed charitable or public service organization (or its auxiliaries), pursuant to §47-21-1 et seq. of this code, all of which are permissible on a licensee's licensed premises when operated in accordance with this code; ~~rules, and regulations: *Provided, That a* and rules promulgated thereunder.~~ A private resort hotel holding a license issued pursuant to §60-7-1 et seq. of this code, may sell, tender, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on the premises licensed under §29-22A-1 et seq. and §29-22C-1 et seq., or §29-25-1 et seq. of this code, during hours of operation authorized by §29-22A-1 et seq. and §29-22C-1 et seq., or §29-25-1 et seq. of this code;

(3) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic liquors for or to, or permit the consumption of nonintoxicating beer, wine, or alcoholic liquors on the licensee's premises, by any person less than 21 years of age;

(4) Sell, give away, or permit the sale of, gift to, or the procurement of any nonintoxicating beer, wine, or alcoholic

liquors, for or to any person known to be ~~deemed~~ considered legally incompetent, or for or to any person who is physically incapacitated due to consumption of nonintoxicating beer, wine or alcoholic liquor or the use of drugs;

(5) Sell, give, or dispense nonintoxicating beer, wine, or alcoholic liquors in or on any licensed premises, or in any rooms directly connected therewith between the hours of 3:00 a.m. and 7:00 ~~6:00~~ a.m. on weekdays, ~~or Saturdays, and Sundays, between the hours of 3:00 a.m. and 10:00 a.m. on any Sunday~~ or, between the hours of 3:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday; and

(6) Permit the consumption by, or serve to, on the licensed premises any nonintoxicating beer, wine, or alcoholic liquors, covered by this article, to any person who is less than 21 years of age;

(7) With the intent to defraud, alter, change, or misrepresent the quality, quantity, or brand name of any alcoholic liquor;

(8) Sell or offer for sale any alcoholic liquor to any person who is not a duly elected or approved dues-paying member in good standing of ~~said~~ the private club or a guest of ~~such~~ the member;

(9) Sell, offer for sale, give away, facilitate the use of or allow the use of carbon dioxide, cyclopropane, ethylene, helium, or nitrous oxide for purposes of human consumption, except as authorized by the commissioner;

(10)(A) Employ any person who is less than ~~18~~ 16 years of age in a position where the primary responsibility for such employment is to sell, furnish, tender, serve, or give nonintoxicating beer, wine, or alcoholic liquors to any person;

(B) Employ any person who is ~~between the ages of at least 18~~ 16 years of age and not 21 years of age who is not directly supervised by a person aged 21 or over in a position where the primary responsibility for such employment is to sell, furnish, tender, serve or give nonintoxicating beer, wine, or alcoholic liquors to any person; or

(11) Violate any reasonable rule of the commissioner.

(b) It is lawful for any licensee to advertise price and brand in any news media or other means, outside of the licensee's premises.

(c) Any person who violates any of the ~~foregoing~~ provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$1,000, or imprisoned in jail for a period not to exceed one year, or both fined and imprisoned.

## **ARTICLE 8. SALE OF WINES.**

### **§60-8-2. Definitions.**

Unless the context in which used clearly requires a different meaning, as used in this article:

“Commissioner” or “commission” means the West Virginia Alcohol Beverage Control Commissioner.

“Distributor” means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute wine to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops and that sells or distributes nonfortified dessert wine, port, sherry and Madeira wines to wine specialty shops, private wine restaurants, private clubs, or retailers under authority of this article and maintains a warehouse in this state for the distribution of wine. For the purpose of a distributor only, the term “person” means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee or other persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 *et seq.* of this code.

“Fortified wine” means any wine to which brandy or other alcohol has been added where the alcohol content by volume does not exceed 24 percent, and ~~shall include~~ includes nonfortified dessert wines which are not fortified having an alcohol content by volume of at least fourteen and one-tenths percent and not exceeding sixteen percent where the alcohol content by volume is greater than 17 percent and does not exceed 24 percent.

“Grocery store” means any retail establishment, commonly known as a grocery store, supermarket, delicatessen, caterer, or party supply store, where food, food products, and supplies for the table are sold for consumption off the premises with average monthly sales (exclusive of sales of wine) of not less than \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than \$500 ~~\$3,000~~. The term “grocery store” ~~shall also include and mean~~ also includes and means a separate and segregated portion of any other retail store which is dedicated solely to the sale of food, food products, and supplies for the table for consumption off the premises with average monthly sales with respect to ~~such~~ the separate or segregated portion (exclusive of sales of wine) of not less than ~~\$3,000~~ \$500 and an average monthly inventory (exclusive of inventory of wine) of not less than ~~\$3,000~~ \$500.

“Hard Cider” means a type of wine that is derived primarily from the fermentation of apples, pears, peaches, honey, or another fruit, or from apple, pear, peach, or another fruit juice concentrate and water; contains no more than 0.64 grams of carbon dioxide per 100 milliliters; contains at least one half of one percent and less than 12 and one half percent alcohol by volume; and is advertised, labeled, offered for sale, or sold, as hard cider or cider containing alcohol, and not as wine, wine product, or as a substitute for wine.

“Hard Cider Distributor” means any person whose principal place of business is within the State of West Virginia who makes purchases from a supplier to sell or distribute hard cider (but not other types of wine) to retailers, grocery stores, private wine bed and breakfasts, private wine restaurants, private wine spas, private clubs, or wine specialty shops under authority of this code and maintains a warehouse in this state for the distribution of hard cider

(but not other types of wine). For the purpose of a hard cider distributor, the term “person” means and includes an individual, firm, trust, partnership, limited partnership, limited liability company, association, or corporation. Any trust licensed as a distributor or any trust that is an owner of a distributor licensee, and the trustee, or any other person or persons in active control of the activities of the trust relating to the distributor license, is liable for acts of the trust or its beneficiaries relating to the distributor license that are unlawful acts or violations of this article, notwithstanding the liability of trustees in §44D-10-1 et seq. of this code.

“Licensee” means the holder of a license granted under the provisions of this article.

“Nonfortified dessert wine” means a wine that is a dessert wine to which brandy or other alcohol has not been added, and which has an alcohol content by volume of at least 14.1 percent and less than or equal to 17 percent.

“Person” means and includes an individual, firm, partnership, limited partnership, limited liability company, association, or corporation.

“Private wine bed and breakfast” means any business with the sole purpose of providing, in a residential or country setting, a hotel, motel, inn, or other such establishment properly zoned as to its municipality or local ordinances, lodging and meals to its customers in the course of their stay at the establishment, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public.

“Private wine restaurant” means a restaurant which: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which has, as its principal purpose, the business of serving meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member and does not admit the general public. ~~Such~~ Private clubs that meet the private wine restaurant requirements numbered (1), (2), and (3) in this definition shall be considered private wine restaurants: Provided, That, a private wine restaurant shall have at least two restrooms: Provided, however, That the two restroom requirement may be waived by a written waiver provided from a local health department to the commissioner: Provided, further, That a private wine restaurant located in an historic building may also be relieved of the two restroom requirement if a historic association or district with jurisdiction over a historic building provides a written waiver of the requirement to the commissioner: And Provided, further, That in no event shall a private wine restaurant have less than one restroom.

Private wine spa” means any business with the sole purpose of providing commercial facilities devoted especially to health, fitness, weight loss, beauty, therapeutic services, and relaxation, and may ~~be also~~ also be a licensed massage parlor or a salon with licensed beauticians or stylists, which business also: (1) Is a partnership, limited partnership, corporation, unincorporated association, or other business entity which as part of its general business purpose provides meals on its premises to its members and their guests; (2) is licensed under the provisions of this article as to all of its premises or as to a separate segregated portion of its premises to serve up to two glasses of wine to its members and their guests when ~~such~~ the sale accompanies the serving of food or meals; and (3) admits only duly elected and approved dues-paying members and their guests while in the company of a member, and does not admit the general public.

“Retailer” means any person licensed to sell wine at retail to the public at his or her established place of business for off-premises consumption and who is licensed to do so under authority of this article.

“Supplier” means any manufacturer, producer, processor, winery, farm winery, national distributor, or other supplier of wine who sells or offers to sell or solicits or negotiates the sale of wine to any licensed West Virginia distributor.

“Table wine” means a wine with an alcohol content by volume between 0.5 percent and 14 percent.

“Tax” includes within its meaning interest, additions to tax, and penalties.

“Taxpayer” means any person liable for any tax, interest, additions to tax, or penalty under the provisions of this article, and any person claiming a refund of tax.

“Varietal wine” means any wine labeled according to the grape variety from which ~~such~~ the wine is made.

“Vintage wine” or “vintage-dated wine” means wines from which the grapes used to produce ~~such~~ the wine are harvested during a particular year, or wines produced from the grapes of a particular harvest in a particular region of production.

“Wine” means any alcoholic beverage obtained by the natural fermentation of the natural content of grapes, other fruits, or honey or other agricultural products containing sugar ~~and~~ to which no alcohol has been added and ~~shall exclude fortified wine and shall also exclude any product defined as or embraced within the definition of nonintoxicating beer under the provisions of article sixteen, chapter eleven of this code~~ includes table wine, hard cider, nonfortified dessert wine, wine coolers, and other similar wine-based beverages. Fortified wine and any product defined as or contained within the definition of nonintoxicating beer under the provisions of §11-16-1 et seq., of this code are excluded from this definition of wine.

“Wine specialty shop” means a retailer who ~~shall deal~~ deals principally in the sale of table wine, nonfortified dessert wines, wine accessories, and food or foodstuffs normally associated with wine and: (1) Who ~~shall maintain~~ maintains a representative number of ~~such~~ wines for sale in his or her inventory which are designated by label as varietal wine, vintage, generic, and/or according to region of production and the inventory shall contain not less than 15 percent vintage or vintage-dated wine by actual bottle count; and (2) who, any other provisions of this code to the contrary notwithstanding, may maintain an inventory of port, sherry, and Madeira wines having an alcoholic content of not more than 22 percent alcohol by volume and which have been matured in wooden barrels or casks. All wine available for sale shall be for off-premises consumption except where wine tasting or wine sampling is separately authorized by this code.

### **§60-8-3. Licenses; fees; general restrictions.**

(a) No person may engage in business in the capacity of a winery, farm winery, supplier, distributor, retailer, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop without first obtaining a license from the commissioner, nor shall a person continue to engage in any activity after his or her license has expired, been suspended, or revoked. No person may be licensed simultaneously as a distributor and a retailer. No person, except for a winery or farm winery, may be licensed simultaneously as a supplier and a retailer. No person may be licensed simultaneously as a supplier and a private wine bed and breakfast, private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a distributor and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. No person may be licensed simultaneously as a retailer and a private wine bed and breakfast, a private wine restaurant, or a private wine spa. Any person who is licensed to engage in any business concerning the manufacture, sale, or distribution of wine may also engage in the manufacture, sale, or distribution of hard cider without obtaining a separate hard cider license.

(b) The commissioner shall collect an annual fee for licenses issued under this article as follows:

(1) \$150 per year for a supplier's license;

(2) \$2,500 per year for a distributor's license and each separate warehouse or other facility from which a distributor sells, transfers, or delivers wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$2,500 as provided in this subdivision;

(3) \$150 per year for a retailer's license;

(4) \$250 per year for a wine specialty shop license, in addition to any other licensing fees paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

(5) \$150 per year for a wine tasting license;

(6) \$150 per year for a private wine bed and breakfast license. Each separate bed and breakfast from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(7) \$250 per year for a private wine restaurant license. Each separate restaurant from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision;

(8) \$150 per year for a private wine spa license. Each separate private wine spa from which a licensee sells wine shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$150 as provided in this subdivision;

(9) \$150 per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

(10) No fee ~~shall be charged~~ for a special one-day license under subsection (p) of this section or for a heritage fair and festival license under subsection (q) of this section;

(11) \$150 per year for a direct shipper's license for a licensee who sells and ships only wine and \$250 per year for a direct shipper's license who ships and sells wine, nonfortified dessert wine, port, sherry, or Madeira wines; ~~and~~

(12) \$300 per year for a multi-capacity winery or farm winery license which enables the holder to operate as a retailer, wine specialty shop, supplier, and direct shipper without obtaining an individual license for each capacity; and

(13) \$250 per year for a hard cider distributor's license. Each separate warehouse or other facility from which a distributor sells, transfers, or delivers hard cider shall be separately licensed and there shall be collected with respect to each location the annual license fee of \$250 as provided in this subdivision: *Provided, That if a licensee is licensed as a nonintoxicating beer or nonintoxicating beer distributor then there is no additional license fee to distribute hard cider.*

(c) The license period begins on July 1 of each year and ends on June 30 of the following year and if granted for a less period, the same shall be computed semiannually in proportion to the remainder of the fiscal year.

(d) No retailer may be licensed as a private club as provided by §60-7-1 *et seq.* of this code, except as provided by subsection (k) of this section.

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided, That a delicatessen, a caterer, or party supply store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however, That any delicatessen, caterer, or party supply store licensed in both capacities ~~must~~ shall maintain average monthly sales exclusive of**

sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. ~~Such~~ The wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. ~~Such~~ The club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public or ~~shall~~ meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

(g) A retailer who has more than one place of retail business shall obtain a license for each separate retail establishment. A retailer's license may be issued only to the proprietor or owner of a bona fide grocery store or wine specialty shop.

(h)(1) The commissioner may issue a license for the retail sale of wine at any festival or fair which is endorsed or sponsored by the governing body of a municipality or a county commission. ~~Such~~ The license shall be issued for a term of no longer than 10 consecutive days and the fee for the license ~~shall be~~ is \$250 regardless of the term of the license. The application for the license shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the festival or fair.

(2) Notwithstanding subdivision (1) of this subsection, if the applicant for the festival or fair license is the manufacturer of ~~said~~ the wine, a winery, or a farm winery as defined in §60-1-5a of this code, and the event is located on the premises of a winery or a farm winery, then the license fee is \$50 per festival or fair.

(3) A licensed winery or a farm winery, which has the festival or fair licensee's written authorization and approval from the commissioner, may, in addition to or in conjunction with the

festival and fair licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed three, two-fluid ounce, tastings or samples per patron, for consumption on the premises during the operation of a festival or fair only; and may sell wine for off-premises consumption only: *Provided*, That for licensed wineries or farm wineries at a licensed festival or fair the tastings, samples and off-premises sales shall occur under the hours of operation as required in this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and ~~10:00~~ 6:00 a.m.

(4) A festival or fair license may be issued to a “wine club” as defined in this subdivision for a license fee of \$250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words “wine club”. The license shall be issued in the name of the wine club. A licensee ~~may not commence the sale of~~ sell wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail license or private club. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a festival or fair under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed festival or fair, is subject to all other

provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as required by the circumstances of each festival or fair ~~may require~~, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code, be waived nor shall any exception be granted with respect to those subsections.

(6) A license issued under the provisions of this section and the licensee holding the license are not subject to the provisions of subsection (g) of this section.

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery ~~shall be is~~ subject to the same limits, fees, requirements, restrictions and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as required by the circumstances of each festival or fair. ~~may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball

stadium. For the purpose of this subsection, “professional baseball stadium” means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term beginning on the date of issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur ~~must~~ shall be surrounded by a fence or other barrier prohibiting entry except upon the franchisee’s express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee holding the license are subject to all other provisions of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each professional baseball stadium ~~may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code; ~~and~~ *Provided, however*, That under no circumstances may §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the operator to sell and serve wine, for consumption on the premises of the licensee, when the sale accompanies the serving of food or a meal to its members and their guests in accordance with the provisions of this article: *Provided*, That a licensed private wine bed and breakfast, private wine restaurant, private wine spa, or a private club may permit a person over 21 years of age to purchase wine, consume wine, and recork or reseal, using a tamper resistant cork or seal, up to two separate bottles of unconsumed wine in conjunction with the serving of food or a meal to its members and their guests in accordance with the provisions of this article and in accordance with rules promulgated by the commissioner for the purpose of consumption of ~~said~~ the wine off premises: *Provided, however*, ~~That for this article, food or a meal provided by the private licensee means that the total food purchase, excluding beverage purchases, taxes, gratuity, or other fees is at least \$15: *Provided further*,~~ That a licensed private wine restaurant or a private club may offer for sale, for consumption off the premises, sealed bottles of wine to its customers provided that no more than one bottle is sold per each person over 21 years of age, as verified by the private wine restaurant or private club, for consumption off the premises. ~~Such~~ The licensees ~~are authorized to~~ may keep and maintain on their premises a supply of wine in quantities appropriate for the conduct of operations thereof. Any sale of wine is subject to all restrictions set forth in §60-8-20 of this code. A private wine restaurant may also be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code.

(k) With respect to subsections (h), (i), (j), (o), and (p) of this section, the commissioner shall propose rules for promulgation in accordance with §29A-1-1 *et seq.* of this code, including, but not limited to, the form of the applications and the suitability of both the applicant and location of the licensed premises.

(l) The commissioner shall propose rules for promulgation in accordance with the provisions of §29A-1-1 *et seq.* of this code to allow restaurants to serve wine with meals and to sell wine by the

bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional \$100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

(o) A wine specialty shop under this article may also hold a wine sampling license authorizing the wine specialty shop to conduct special wine sampling events at a licensed wine specialty shop location during regular hours of business. The wine specialty shop may serve up to three complimentary samples of wine, consisting of no more than two fluid ounces each, to any one consumer in one day. Persons serving the complimentary samples ~~must~~ shall be 21 years of age or older and an authorized representative of the licensed wine specialty shop, winery, farm winery, or a representative of a distributor or registered supplier. Distributor and supplier representatives attending wine sampling events ~~must be registered~~ shall register with the commissioner. No licensee, employee, or representative may furnish, give, sell, or serve complimentary samples of wine to any person less than 21 years of age or to a person who is physically incapacitated due to the consumption of alcoholic liquor or the use of drugs. The wine specialty shop shall notify and secure permission from the commissioner for all wine sampling events ~~one month~~ 30 days prior to the event. Wine sampling events may not exceed six hours per calendar day. Licensees ~~must~~ shall purchase all wines used during these events from a licensed farm winery or a licensed distributor.

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain sealed bottles of wine for off-premises consumption only, when raising money for athletic, charitable, educational, or religious purposes. “Auction or auctioning”, for the purposes of this subsection, means any silent,

physical act, or verbal bid auction, whether or not ~~such~~ the auction requires in-presence bidding or online Internet-based electronic bidding through a secure application or website, but shall not include any action in violation of §47-20-10, §47-20-11, or §61-10-1 *et seq.* of this code. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Accompanying the license application, the applicant shall submit a signed and notarized statement that at least 80 percent of the gross proceeds from the charitable event will be donated directly to the nonprofit corporation or organization before accounting for the charitable event's expenses. Wines used during these events may be donated by, or purchased from, a licensed retailer, a distributor, winery, or a farm winery. A licensed winery or farm winery which is authorized in writing by a representative of the duly organized, nonprofit corporation ~~and~~ or association which has obtained the one-day license; is in good standing with the state; and obtains the commissioner's approval prior to the one-day license event may, in conjunction with the one-day licensee, exhibit, conduct complimentary tastings, or sell samples not to exceed ~~of~~ three, two-fluid ounce tastings or samples per patron, for consumption on the premises during the operation of the one-day license event; and may sell certain sealed wine bottles manufactured by the licensed winery or farm winery for off-premises consumption: *Provided*, That for a licensed winery or farm winery at a licensed one-day event, the tastings, samples and off-premises sales shall occur under the hours of operation ~~as required in~~ permitted by this article, except on Sunday, tastings, samples, and off-premises sales are unlawful between the hours of 2:00 a.m. and ~~10:00~~ 6:00 a.m., from the one-day licensee's submitted floor plan for the event subject to the requirements in the code and rules. Under no circumstances may the provisions of §60-8-20(c) or §60-8-20(f) of this code be waived nor may any exception be granted with respect to those subsections. ~~No more than six licenses may be issued to any single licensee during any calendar year.~~

(q) (1) In addition to the authorization granted to licensed wineries and farm wineries in subsections (h) and (p) of this section, an unlicensed winery, regardless of its designation in

another state, but that is duly licensed in its domicile state, may pay a \$150 nonrefundable and non-prorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under subsection (p) of this section; and ~~such~~ any other information as the commissioner may reasonably require.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold in sealed containers at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list ~~will create~~ creates a temporary wine brand registration for up to two special one-day ~~license~~ licenses for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event ~~will provide~~ shall provide the commissioner a signed and notarized written agreement ~~where the applicant winery agrees~~ acknowledging that the applicant winery understands its responsibility to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted per special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day license for nonprofit events before an additional fee would be ~~paid~~ is required. In no circumstance would ~~such a~~ the winery be permitted to attend more than four special one-day ~~license for nonprofit events per year~~

licensed events. Any ~~such~~ applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits ~~such~~ a winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations ~~noted~~ contained in this section.

(7) The applicant winery ~~will need to further~~ shall also apply for and receive a transportation permit ~~in order~~ to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that are not otherwise excepted by this subsection: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders ~~as required by~~ the circumstances of each festival or fair. ~~may require, including, without limitation, the right to~~ The commissioner may revoke or suspend any license issued pursuant to this ~~section~~ article, prior to any notice or hearing.

(r) The commissioner may issue special licenses to heritage fairs and festivals allowing the sale, serving, and sampling of wine from a licensed farm winery. The license application shall contain information required by the commissioner and shall be submitted to the commissioner at least 30 days prior to the event. Wines used during these events may be donated by or purchased from a licensed farm winery. Under no circumstances may the provision of §60-8-20(c) of this code be waived nor may any exception be granted with respect thereto. The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this subsection.

(s)(1) The commissioner may issue a special license for the retail sale of wine in a college stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine for consumption in a college stadium. For the purpose of this subsection, “college stadium” means a facility constructed primarily for the use of a Division I, II, or III college that is a member of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium. A special license issued pursuant to this subsection shall be for a term beginning on the date of its issuance and ending on the next following June 30, and its fee is \$250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold. The special license may be issued in the name of the National Collegiate Athletic Association Division I, II, or III college or university or the name of the primary food and beverage vendor under contract with that college or university. ~~These~~ All sales must take place within the confines of the college stadium: *Provided*, That the exterior of the area where wine sales may occur ~~must~~ shall be surrounded by a fence or other barrier prohibiting entry except upon the college or university’s express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

(2) A license issued under this subsection and the licensee are subject to the other requirements of this article and the rules and orders of the commissioner relating to the special license: *Provided*, That the commissioner may by rule or order grant certain waivers or exceptions to those rules or orders as required by the circumstances of each the college stadium. ~~may require, including, without limitation, the right to~~ The commissioner may revoke or immediately suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding §60-8-27 and §60-8-28 of this code: *Provided, however*, That §60-8-20(c) or §60-8-20(d) of this code may not be waived, nor shall any exception be granted concerning those subsections.

(3) The commissioner may propose rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this subsection.

#### **§60-8-4. Liter tax.**

There is hereby levied and imposed on all wine sold after July 1, 2007, by suppliers to distributors, and including all wine sold and sent ~~to West Virginia adult residents~~ to persons 21 years of age or older who reside in West Virginia from direct shippers, except wine sold to the commissioner, a tax of twenty-six and four hundred six-thousandths cents per liter. Effective July 1, 2021, hard cider is excepted from this per liter tax and is taxed pursuant to §60-8A-3 of this code.

Before the 16th day of each month thereafter, every supplier, distributor and direct shipper shall make a written report under oath to the Tax Commissioner and the commissioner showing the identity of the purchasing person, the quantity, label and alcoholic content of wine sold by the supplier to West Virginia distributors or the direct shipper ~~to West Virginia adult residents~~ to persons 21 years of age or older who reside in West Virginia during the preceding month and at the same time shall pay the tax imposed by this article on the wine sold to the distributor or ~~the West Virginia adult residents~~ or to persons 21 years of age or older who reside in West Virginia during the preceding month to the Tax Commissioner.

The reports shall contain other information and be in the form required by the Tax Commissioner ~~may require~~. For purposes of this article, the reports required by this section shall be considered tax returns covered by the provisions of §11-10-1 *et seq.* of this code. Failure to timely file the tax returns within five calendar days of the 16th day of each month ~~will also subject~~ also subjects a supplier, distributor, and direct shipper to penalties under §60-8-18 of this code.

No wine imported, sold, or distributed in this state or sold and shipped to this state by a direct shipper shall be subject to more than one liter tax.







